(1984) 08 MP CK 0007

In the Madhya Pradesh High Court

Case No : M.P. No. 84 of 1984

Satwant Singh Anand and others — APPELLANT

Vs

Jabalpur Development Authority, Jabalpur and others — RESPONDENT

Date of Decision : 27-08-1984

Acts Referred:

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 38, 58

Citation : (1984) JLJ 731

Hon'ble Judges : G.L. Oza, Acting C.J.;C.P. Sen, J

Bench : Division Bench

Advocate : S.L. Saxena and A.K. Pathak, for the Appellant; Y.S. Dharmadhikari for respondent No. 1 and R.K. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Oza, Ag. C.J.

1. This is a petition fifed by the petitioners seeking a direction to the respondent No. 1 to fix premium/sale price of the shops in accordance with the Act and Rules on the basis of development, cost of construction and other things and allotment of the same in favour of the registered purchasers.

2. According to the petitioners, petitioners Nos. 1 and 2 are persons who have registered their claim for allotment of shops constructed by respondent No. 1, the Jabalpur Development Authority, and petitioner No. 3 is the association of all those persons who have so registered for allotment of shops.

3. It is alleged that u/s 38 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, the Authority "Nagar Tatha Gram Vikas Pradhikaran, Jabalpur" was constituted by notification in the Madhya Pradesh Gazette dated 11-1-1980. In April 1981, respondent No. 1 floated various schemes for allotment of plots, residential houses and shops. Under this schemes, respondent No. 1 proposed to construct 500 shops, 5000 residential houses and 10,000 residential plots for sale by the end of 1986, and the city is divided into various localities like Civic

Centre, Madhatal, Jabalpur, which is covered by scheme No. 18. In this scheme, it was proposed to develop 23 plots and construct 48 shops and one cinema house.

4. It is also alleged that for allotment of plots, residential houses and shops, the respondent Authority had also published a booklet entitled "Panjiyan Jama Yojna" and according to this booklet, certain terms and conditions were offered to a willing customer for the proposed allotment of shops. It was also indicated in this booklet that all those interested in allotment of shops should get them registered under the ''Panjiyan Jama Yojna'' between 1-5-1981 to 31-5-1981 by cash deposit of Rs. 5,000/- for each shop. It was also indicated that the names of all the depositors will be arranged in the same order in which they deposited the amount and the allotment of shops would be made in accordance with the serial number in which the names of the persons were registered with the respondent-Authority. It was also mentioned in this booklet that for allotment of shops, separate application will have to be made after the construction of the shops under a particular scheme and it was indicated that all those persons who intend to get the shops must get their names registered under the said deposit scheme. Accordingly, petitioners No. 1 and 2 and other members of the association-petitioner No. 3, deposited Rs. 5000/-each as provided under the said scheme for allotment of shops in Civic Centre, Madhatal, Jabalpur.

5. It is alleged that clause 4 of this scheme provided that respondent No. 1 shall notify the cost of construction of shops and buildings while executing any scheme but according to the petitioners this was not notified although the shops were constructed. It is also alleged that construction of shops was undertaken in Civic Centre, Jabalpur, under scheme No. 18.

6. It is also alleged that in October 1983, respondent No. 1 completed construction of about 20 shops in Civic Centre, Jabalpur, which became available for allotment and sale to the persons registered under the scheme.

7. It is further alleged by the petitioners that in contravention of the conditions notified in the booklet, the Authority decided to all ot the shops on the basis of auction irrespective of the fact whether a person who offers the bid has his name registered or not under the aforesaid scheme. It is also alleged that on 8-11-1983, respondent-No. 1 sold 4 of the shops constructed at Civic Centre, Jabalpur by public auction. By this auction, two big shops were sold for Rs. 2,24,000/- and Rs. 2, 01,000/- and one small shop with facing on two sides was sold for Rs. 1.40,000/-whereas the other small shop with a single facing was sold for Rs. 58,000/- and it is alleged that in this manner respondents Nos. 2 to 5 have been declared as successful purchasers.

8. It is alleged that on 16-12-1983, the Chief Executive Officer of the respondent-Authority called a meeting of 28 registered purchasers including petitioners Nos. 1 and 2 and asked them to choose one shop each. On this occasion, the registered purchasers raised objections about the auction of four shops the

arbitrary fixation of premium and the mode of payment. The Chief Executive Officer asked them to submit their objections in writing addressed to the Chairman of the respondent-Authority and the meeting was dissolved.

9. It is alleged by the petitioners that the State Government has not framed Rules governing disposal of shop and section 58 of the Adhiniyam auho-rises the Authority to frame its own Regulations subject to the Rules framed by the Government. It is also alleged that the Authority has also not made any Regulations and, therefore, it is contended that the booklet (Annexure-A) should be deemed to be the Regulation itself and it is alleged that the respondent Authority is trying to go back on this Regulation stated in the booklet (Annexure-A),

10. It is also alleged that the registered purchasers'' association, petitioner No. 3, submitted written objections to the Chairman of the Authority and it is alleged that respondent No. 1 has not so far communicated its decision.

11. It is further alleged that on 26-12-1983, respondent No. 1 issued notices to the registered purchasers to contact the Authority and it is alleged that these notices indicated that the terms and conditions of the auction dated 8-11-1983 would be binding on them. The Authority fixed the premiums of the shops as under:-

(i) Big shop Rs. 2,16,000/-

(ii) Small shop double facing Rs. 1,00,000/-

(iii) Small shop single faciog Rs. 58.000/-

It was also indicated in the notices that for allotment of any shop, the person has to deposit 30% of the prescribed premium and the remaining amount of the premium was to be deposited in two quarterly instalments.

12. It is further alleged that none of the shops have been allotted to any one of the registered purchasers.

13. It is contended by the petitioners that respondent No. 1 had no right to transfer the shops to any person other than the registered purchasers, as this was the declared policy of the respondem No. 1 in the pamphlet issued. It is further contended that respondent No. 1 was created only to cater the needs of genuinely needy person who do not own any houses or plots. In the booklet it is alleged that condilions were Iaid down for registration indicating the extent to which a person could register his name under the scheme. It is further alleged that respondent No. 1 is a corporate body and all its actions have to be regulated by the provisions of the Act and Rules and the main grievance made by the petitioners is that the Authority cannot fix up the premium of the shops arbitrarily without having regard to the cost of construction, acquisition and development of land. It is also alleged that respondent-Authority has proceeded to fix the premium on the basis of the auction held on 8-11-1983 in respect of

the four shops and thus it is illegal and, therfore, deserves to be quashed.

14. Most of the facts are not in dispute. It the return filed by respondent No. 1, it is contended that although the booklec (Anrexure-A) was issued by the respondent-authority, yet it nowhere agreed to sell the shops at any particular value. It is also contended that the respondent-authority had no intention or idea to deprive the registered purchasers of the shops but four shops were auctioned only for fixing up the sale price so that on the basis of this sample auction, the sale price of the shops could be fixed and the premium could be settled. It is also contended that in fact, after the auction of the four shops, the respondent-authority had communicated to the registered purchasers about the premium and price fixed on the basis of this auction and indicated that those of the registered purchasers who were interested should deposit 30% of the price so fixed. It is further stated in the returnthat the respondent-Authority even after getting the highest bid in the auction of these four shops has fixed the price on a very reasonable basis. It is also contended that the respondent-Authority has also to construct the residential accommodation for the low income group and economically weaker section of the Society and for that the Authority may have to subsidize and this could be only properly met if the shops are sold at a reasonable market price. It was also contended that at no point of time any undertaking was given to the registered purchasers to sell the shops at a particular price and thus none of the conditions of the Booklet (Annexure-A) has been contravened.

15. The main grievance of the petitioners which has been highlighted in the course of the argument was that in clause 4 of the booklet (Annexure-A) it was clearly indicated that 5% of the plots will be sold by auction but in respect of shops, nothing of this kind was indicated, It was also contended when the scheme was floated, an assurance was given that the shops will only be allotted in favour of those who registered themselves but it is not disputed that in none of the clauses of this booklet (Annexure-A), any sale price was stated nor any criterion was fixed for fixing of the price of any one of the shops so constructed. It was contended that section 58 of the Adhiniyam provides that Regulations shall be made subject to the Rules that may be made by the State Government for disposal of developed lands, houses, and other structures. It is not disputed that neither the State Government has framed any Rules nor any Regulations have been framed by the Development Authority for disposal of shops as contained in section 58. It is also not disputed that in the booklet (Annexure-A), neither there is any mention of the sale price or premium nor any method indicated on the basis of which sale price or premium will be fixed. It is also not in dispute that this booklet does not contain any condition which goes to show that the Authority undertook to sell away the shops on any sale price indicated in this booklet. The main controversy, therefore, is that out of the shops which are ready for allotment, four shops have been sold by public auction, which according to the petitioners, deprives them of those four shops which they were entitled to get them allotted in accordance with the deposit scheme of the

booklet (Annexure-A); whereas, according to the respondent-Authority, those four shops were auctioned just to arrive at a reasonable sale price on the basis of which the sale price of the premium could be fixed and the respondent does not dispute that the rest of the shops will be allotted on priority basis to the registered purchasers under the deposit scheme provided they fulfil the conditions of depositing 30% of the premium indicated to them within the prescribed time. It is also not disputed that there is no provision in the Act or any Rule or Regulation to justify auction of the shops. Reliance was placed by the learned counsel for the respondent-Authority on the Madhya Pradesh Nagar Tatha Gram Nivesb Vika-sit Bhoomiyo, Griho, Bhavano Tatha An a Sanrachanao Ka Viniyaman Niyam, 1975, wherein Rule 5 of these rules provide for sale by Public auction but it is not disputed that all these Rules talk of griho, bhawano but Rule 5 talks of-land only and it does not talk of constructed houses or shops. It was contended by the learned counsel that although there is no Rule authorising disposal of the shops by public auction yet relying on these Rules, the Authority decided to fix the price on the basis of sample sale by public auction, and this is how it was done. It was also contended that the shops which were put to auction were of different categories; two big ones and two small ones so that on the basis of the sale by public auction of two big shops, a reasonable price for a big shop could be arrived at. Similarly, by sale of two small shops by public auction, a reasonable price for a small shop could be arrived at and in arriving at a reasonable price, it is contended, that the maximum price has not been taken as the basis and it is on this basis that the respondent-Authority has offered these shops for allotment to the petitioners in order of priority on the terms and conditions indicated to them and, therefore, it could not be contended that the respondent in any manner has committed any breach of any of the conditions of Annexure-A nor it could be said that respondent No. 1 has discriminated against the petitioners. It was contended that by registration under the scheme, the petitioners only got a right to be considered for purchase of shop but it does not create a complete contract nor any right is created in favour of the petitioners, but still it was contended that the petitioners'' claim is not denied and the respondent-Authority has offered them the shops as are available at present and will be offered as and when they are made available but in the absence of any formula for filiation of sale-price, a reasonable formula is being applied and that is by selling some of the shops by public auction.

16. It could not be disputed that Annexure-A, which is a small booklet issued by the Development Authority, inviting the purchasers to register themselves on the basis of deposit scheme, does not create any contractual obligation. It is also clear that only those who are registered under the scheme would be entitled to be considered at the time of allotment of shops. It is also clear that there is no stipulation in this booklet about the sale price nor there is any criterion fixed on the basis of which the sale price could be ascertained. It could not, therefore, be contended that respondent No. 1 has gone back on any of the representations made in this booklet. The only grievance, therefore, appears is that by sale of

four shops by public auction, four persons has obtained these shops who were not the registered purchasers in accordance with this scheme, but it is contended that this is the only reasonable way to fix the sale price. It was also contended that in clause 5 of this booklet, it was clearly indicated that 10% allotment will depend upon the discretion of the Chairman and these shops, which have been sold by public auction for ascertainment of the price was for fixation of a reasonable selling price, would be within this 10%. Apart from it, it was also contended that admittedly, at present there were 20 shops constructed out of which four shops have been sold by public auction and the remaining 16 are available for allotment. Since the number of registered purchasers under the scheme is a large number and each one of them cannot get a shop, so it was contended that as and when other schemes are undertaken and the shops are available, these registered purchasers will be entitled to them and, therefore, it could not be said that any one is deprived of his legitimate right to be considered for allotment of a shop nor it could be said that there is any discrimination. It is not in dispute that neither this booklet, nor any Rule or Regulation provides for a formula for ascertainment of the selling price and even if it is accepted that the rule does not apply to a shop let to petitioners still it can only be considered as a criterion for purposes of verifying the formula for fixing of the selling price, it could not, therefore, be said that if the Development Authority has applied this formula for fixing the selling price or premium, it has committed any breach or contravention of the conditions of the booklet (Annexure-A) in breach of any provision of law, or Rule nor it could be contended that in this manner there has been any discrimination against any one of the petitioners. In these circumstances, we therefore, see no reasons to entertain this petition.

17. Consequenty, the petition is dismissed. As assured by respondent-No. 1 Authority, that on the basis of the price so fixed, the shops available shall be given to the registered purchasers in accordance with the deposit scheme and if they comply with the conditions, the shops will be allotted to them. In the circumstances of the case, the parties are directed to bear their owns costs. Security amount, if deposited, be refunded to the petitioners.

