

(1988) 05 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ. Petition No. 20553 of 1987

Shiv Pal Karan Kholi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-05-1988

Acts Referred:

Contract Act, 1872 — Section 9
Evidence Act, 1872 — Section 115

Citation : AIR 1988 All 268 : (1988) 2 AWC 1047

Hon'ble Judges : V.N. Khare, J;M.M. Lal, J

Bench : Division Bench

Advocate : B.D. Mandhyan, S.C. Madhyan and Vinod Sinha, for the Appellant;
N.L. Ganguli, for the Respondent

Final Decision : Dismissed

Judgement

1. In this writ petition filed under Article 226 of the Constitution, the petitioners who are thirty nine in number have sought a writ of mandamus directing the respondents not to charge from them the prices of the houses in excess of the prices originally fixed and to return to the petitioners the amount already recovered-from them in excess etc.

2. In the years 1979 and 1981 U.P. Avas Evam Vikas Parishad, respondent No. 2, which is hereinafter referred to as Vikas Parishad, invited applications for registration for allotment of residential houses under various scheme"s. In response, the petitioners got themselves registered under M.I.G., H.I.G. and L.I.G. houses scheme and deposited the registration fees. In 1979 the cost of the L.I.G. house, M.I.G. "A" house, M.I.G. "B" houses and H.I.G. house was stated to be Rs. 18,000/- to Rs. 22,000/-, Rs. 28,000/-to Rs. 30,000/-, Rs. 46,000/- to Rs. 50,000/-and Rs. 80,000/-to Rs. 1,20,000/- respectively. In the year 1981 the prices of the said houses were specified as Rs. 18,000/- to Rs. 22,000/- Rs. 27,000/- to Rs. 32,000/-, Rs. 46,000/- to Rs. 55,000/- and Rs. 80,000/- to Rs. 1,20,000/-respectively. Subsequently when the houses were constructed and the

aforesaid Vikas Parishad invited applications for allotment of houses, the petitioners submitted the said applications and they were successful in the draw of lots for the allotment of the said houses. In the years 1984 and 1985 the Vikas Parishad sent demand notices to the petitioners according to which the prices of the aforesaid L.I.G. houses, M.I.G. "A" houses, M.I.G. "B" houses and H.I.G. houses were increased to Rs. 42024/-. Rs. 105014/-, Rs. 106929/- and Rs. 245820/- respectively. The petitioners in this petition have challenged that the respondents could not enhance the cost, interest and installments of the houses. The respondents have filed a counter-affidavit in which it has been stated that when the applications for registration of the houses under the various categories were invited, the prospective allottees were informed that the cost of the houses mentioned in the Brochure was approximate and same was liable to variation. They have also furnished data to show that the revision of the cost of the houses due to escalation of prices was fair and reasonable.

3. We have heard learned counsel for the parties and have perused the record

4. Learned counsel for the petitioners had urged before us that the aforesaid Vikas Parishad had no right and was estopped from subsequently revising the prices of the houses. In our view the said argument is devoid of force. The record shows that at the time when the Vikas Parishad had invited applications for registration of the applicants for allotment of the houses under various schemes, it was clearly mentioned in the brochure that the cost of the houses mentioned in the brochure was merely an approximate and was liable to variations. When this is so it is clear that the Vikas Parishad had all the right to vary the cost of the houses if due to escalation of prices the cost of the said houses has increased

5. Learned counsel for the petitioners had further submitted before us that the action of the Vikas Parishad in increasing the prices of the houses, as indicated above, was quite arbitrary. Learned counsel for the respondents on the other hand has tried to urge that the said increase was fair. He has also tried to refer to us the data given in this respect in the counter-affidavit. We are not concerned in this writ petition whether the houses allotted to the petitioners, had cost the aforesaid amount or not. That was a matter for the Vikas Parishad to determine with regard to the cost of construction and incidental charges especially when in this case we find that before allotment of the houses, the petitioners with their eyes wide open had agreed to purchase the said houses at the aforesaid revised prices. In this case some of the petitioners, i.e. petitioner Nos. 1, 2, 3, 5, and 7, had deposited the full price of the houses allotted to them and had also got the sale deed of the same executed in their favour. The remaining petitioners in pursuance of the agreement are also paying the installments from the last few years. There was thus a concluded contract between the parties. The petitioners have also entered into the possession of the allotted houses. In our view when the petitioners have securely obtained the houses, they cannot be permitted to reopen the concluded contract with a view to get back either part of the purchase price or the installments paid by them. The undisputed facts are that the

petitioner had got themselves registered for allotment of houses. When the said houses were ready, brochure of the allotment of the said houses was issued which contained the terms and conditions, including the enhanced prices of the houses. The petitioners were under no obligation to apply for the allotment of the said houses at that time and they could very well claim refund of the registration fee. Instead of doing the same the petitioners agreed to purchase the said houses at the enhanced prices which were mentioned in the brochure and accordingly applied for allotment of the houses at the said prices. Obviously the number of the prospective allottees was more than number of the houses available. The petitioners were lucky in the draw of the lots and accordingly the aforesaid houses were allotted to them. As earlier stated some of the petitioners paid the full price of the house and got the sale deed executed in their favour. The remaining petitioners started paying the installments at the enhanced rate. All the petitioners obtained the possession of the houses, the transaction, therefore, became complete between the parties. To repeat, therefore, we are of the view when there is a concluded contract between the parties the same cannot be reopened in this writ petition.

6. During the course of his arguments learned counsel for the petitioners appreciated that the petitioners Nos. 1, 2, 3, 6 and 7 could not possibly get the refund of the purchase price already paid by them, and, therefore, stated that the said petitioners do not want to press their writ petitions and same may be dismissed. In our view the said statement cannot improve the cases of the remaining petitioners because as already observed, there is also a concluded agreement between them and the Vikas Parishad.

7. Learned counsel for the petitioners has further urged before us that the action of the respondents in increasing the prices of the aforesaid houses to the aforesaid extent was an arbitrary exercise of power. In support he has referred to *Ajai Pal Singh and Others Vs. Bareilly Development Authority, Bareilly* and *Another*, in which the Board was directed to re-determine the cost of the flats and installments after hearing the grievance of the petitioners. In our view the said case does not lend any support to the petitioners' case. The facts of that case were different. In that case there was no concluded contract between the parties and the petitioners had not agreed to pay the enhanced amount of installments and cost of flats. In this case, as already observed, the petitioners offered to purchase the aforesaid houses and pay the prices and installments thereof at the enhanced rates.

8. Learned counsel for the petitioners had further referred to us *AIR 1988 All 114 -- Smt. Nirmala Dixit v. State of U.P.*, and on the basis of the same has tried to argue that the enhancement of the amount of the installments in this case was arbitrary and therefore the Vikas Parishad should be directed to fix reasonable amount of installments. In our opinion the said argument has got no substance and the said ruling does not help the petitioners, because as, already observed, there is a concluded contract between the parties; and the petitioners of their

own accord agreed to pay the installments at the enhanced rate -- so much so that they are paying the installments at the enhanced rate from the last two years.

9. In the result we find no merit in this writ petition and same is accordingly dismissed.