
(1995) 12 MP CK 0031

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 54 of 1994

Smt. Nisha Singhal

APPELLANT

Vs

M.P. Housing Board, Bhopal and Others

RESPONDENT

Date of Decision : 20-12-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Citation : AIR 1996 MP 212 : (1996) 41 MPLJ 469 : (1996) MPLJ 469

Hon'ble Judges : Fakhruddin, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : H.H. Upadhyaya, for the Appellant; H.P. Mittal, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.

This letters patent appeal has been preferred against the judgment of the learned single Judge dated 20-8-1994, whereby the writ petition filed by the appellant, being M. P. No. 445 of 1993, has been dismissed.

The facts, not in dispute, are that MIG House No. 185 in Pandit Dindayal Nagar Colony of Gwalior was allotted to the appellant under the Housing Hire-Purchase Scheme of the Madhya Pradesh Housing Board. The agreed price payable by instalments was Rs. 1,58,000/- which the appellant is prepared to pay and states that, in fact, has been paid by now. The appellant is aggrieved by the impugned demand (Annexure-P/9) whereby some excess money, not initially agreed, is being demanded, resulting in enhancement of the cost of the house to Rs. 1,93,653/-. The contention of the appellant before the learned single Judge in the writ petition was that the additional price claimed under several heads is contrary to the terms of the agreement reached between the parties and is also otherwise totally arbitrary and without any justification. The appellant had claimed a writ for being delivered possession of the house on payment of the initially agreed price.

The learned single Judge dismissed the petition firstly on the ground that under the terms of the said sale agreement under the Housing Scheme, the prices notified and agreed were liable to enhancement and the enhancement was within the powers of the Board. Reliance was placed on the decision of the Supreme Court in Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, . The learned single Judge also dismissed the petition on the second ground that the rights between the Board and the appellant are regulated by a contract and the writ jurisdiction of this Court under Article 226 cannot be brought in aid by the appellant.

The learned counsel Shri H.N. Upadhyaya in this appeal, contends that the learned single Judge did not properly construe the terms of the agreement for holding that the enhancement in the price of house was within the competence of the Board. Second contention advanced is that as the impugned demand notice (Annexure-P/9) from its various heads would disclose that enhanced price was also claimed for the land and for so-called better location which was completely without any justification under the terms of contract or in law. The attention of the Court is invited to the various heads contained in the demand notice (Annexure-P/9) resulting in enhancement of price from Rs. 1,58,000/- to Rs. 1,96,653/-. The various heads are as under:--

Premium price of the Plot

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Rs. 33,750.00

Initial amount 20% or 30% for the house

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Rs. 1,58,140.00

Corner charges 10%

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Other charges

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Rs. 1,075.00

Better location

.

Rs. 1,688.00

Total price Minus

.

Rs. 1,93,653.00

Amount deposited

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Rs. 78,000.00

Amount payable

.

Rs. 1,15,653.00

In the return submitted in the petition, a bald statement has been made that the price initially fixed was approximate and the price had to be increased due to the increase in the value of raw materials, labour charges and supervision costs. Reliance for the exercise of that power of increase in price is placed on the decision in Bareilly Development Authority's case (supra). The specific averment made in para 6 of the return is as under :--

"The price and charges has been included on the actual basis and as per the rules and prevailing practice with the respondent. The demand of the amount of Rs. 1,58,000/- was neither unjust nor unreasonable."

In reply to the return, the appellant had filed a rejoinder in the writ petition and has specifically taken a plea that as per the various heads mentioned in the demand notice, a sum of Rs. 33,750/- is charged towards extra price of the plot and Rs. 1,075/- and Rs. 1,688/- have been demanded for better location or miscellaneous charges which cannot be demanded and are wholly unjustified. The Housing Board, neither in the return, nor in the course of arguments advanced by its counsel in this appeal have been able to show any justification for demand of extra price towards cost of plot and for better location. Except for making a bald statement that extra price was being charged due to escalation of prices of raw material and labour, no other details have been given in the return or furnished to this Court. It is submitted that the extra price of the entire scheme has been worked out and have been proportionately divided between various allottees. Even those details worked out by the authorities of the Board have not been annexed with the return, nor any effort has been made to justify each one of the heads mentioned in the demand notice. The details of the heads have been quoted above which clearly show that the extra price was claimed not for increased in the price of raw material and labour charges, but towards the price of the plot and its better location. The other charges" one miscellaneous charges which is also not explained.

The two questions fall for consideration before this Court. Whether such unjustified extra demand of price for the house can be supported and whether the appellant could be denied relief on the ground that the matter between them is purely contractual and not justiciable in writ jurisdiction of this Court under Article 226.

We have considered the contentions advanced by the learned counsel for the parties and have also gone through the decision in Bareilly Development Authority's case (supra) of the Supreme Court. In Bareilly Development Authority's case (supra), the demand of enhanced price of houses allotted was upheld on the ground that the Brochure indicated estimated cost and under the terms of allotment, an increase in costs by the authorities could not be labelled as arbitrary and discriminatory. For the above reason, although the authority was "State" for the purpose of Article 12, the demand of enhanced price was upheld by denying relief under Article 226 and by holding that the demand was strictly as per the contract entered into between the parties. We find that the Bareilly Development Authority's case of the Supreme Court (supra) is no authority to uphold the contention advanced on behalf of the Board that no writ can be issued against the Board in the matter of enhancement of price even though it is found to be unjustified, unreasonable and arbitrary. Where the price initially notified is tentative and estimated, the right of the Board to enhance the price cannot be questioned, but that does not give an arbitrary right to the Board to enhance the price without showing justification for the same. To the same effect is the subsequent decision of the Supreme Court in the case of Delhi Development Authority v. Pushpendra Kumar Jain, AIR1994 SCW 3985, on which reliance is placed on behalf of the Board. The above two decisions of the Supreme Court in Bareilly Development Authority and Delhi Development Authority (both, supra) came for reconsideration before the Supreme Court in the case of Indore Development Authority Vs. Tarak Singh and others etc. etc., . In the aforesaid latest decision of the Supreme Court, the earlier two decision of the Supreme Court have been explained to lay down that the authority falling under Article 12 have no absolute right to hike the cost of construction initially announced and such authorities owe a duty to explain and to satisfy the Court, the reasons for such high escalation. In the Indore Development Authority's case (supra), the Supreme Court upheld the escalation although laying down the law as above, because the plinth area of the plot itself later on came to be increased from 50 s.ft. to 714.94 s.ft. It is better to quote the law laid down by the Supreme Court in the case of Indore Development Authority as under :--

"Although, this Court has from time to time taking the special facts and circumstances of the cases in question has upheld the excess charge by the development authorities, over the cost initially announced as estimated cost, but it should not be understood that this Court has held that such development authorities have absolute right to hike the cost of flats, initially announced as approximate or estimated cost for such flats. It is well known that person belonging to Middle and Lower Income Groups, before registering themselves for such flats, have to take their financial capacity into consideration and in some cases it results into great hardship when the development authorities announce an estimated or approximate cost and deliver the same at twice or thrice of the said amount. The final cost should be proportionate to the approximate or estimated cost mentioned in the offers or agreements. With the high rate of

inflation, escalation of the prices of construction materials and labour charges, if the scheme is not ready within the time frame, then it is not possible to deliver the flats or houses in question at the cost so announced. It will be advisable that before offering the flats to the public such development authorities should fix the estimated cost of the flats taking into consideration the escalation of the cost during the period the scheme is to be completed. In the instant case, the estimated cost for the LIG flat was given out at Rs. 45,000/-. But by the impugned communication, the appellant informed the respondents that the actual cost of the flat shall be Rs. 1,16,000/- i.e. the escalation is more than 100%. The High Court was justified in saying that in such circumstances, the authority owed a duty to explain and to satisfy the Court the reasons for such high escalation. We may add that this does not mean that the High Court in such disputes, while exercising the writ jurisdiction, has to examine every detail of the construction with reference to the cost incurred. The High Court has to be satisfied on the materials on record that the authority has not acted in an arbitrary or erratic manner." (Underlining for emphasis)

Applying the above ratio of the Supreme Court judgment, we find that in this particular case, there was absolutely no justification for the Board to demand any extra price for the plot and for better location. The stand taken in the return that the extra price demanded was due to increase in costs of raw material, labour and supervision charges, has not been substantiated by producing any material or document before the learned single Judge or in this Court. The learned counsel appearing for the Board was also unable to point out the details of various claims mentioned in the demand notice (Annexure-P/9). The argument advanced deserves to be outright rejected that since the rights and liabilities between parties are regulated by a contract. No writ could be issued against the Board. This branch of the Administrative Law in India has advanced from the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, and thereafter that an arbitrary action of an authority falling under Article 12 although falling in a contractual field is open to judicial review under Article 226 if the action is found by the Courts to be wholly unreasonable, arbitrary or discriminatory. The decision of the Supreme Court in *Indore Development Authority's case* (supra) is itself an authority that an arbitrary action of State falling under Article 12 is amenable to writ jurisdiction if the same is found to be wholly arbitrary and unreasonable may be, that; the, "State" is acting in contractual field.

There is another reason for us to hold that the demand of enhanced price under notice (Annexure-P/9) is liable to be quashed. The terms of the contract are contained in the terms and conditions of allotment which are on record as Annexure-P/1. The relevant condition No. 5, rendered into English is as under :

"In the table, the estimated price of houses have been shown. After acceptance of tenders, in the event of escalation of price of raw material or for any

unavoidable contingency or eventuality, if price of houses increases, notice shall be sent before the due date fixed for payment of second instalment. Those members who are unwritting to take the house because of rise in price shall be allowed to get back their entire deposit on an application in the prescribed time. They will also be entitled to payment of interest on fixed deposit system. The rate of interest would be 5%. The interest shall be paid by the Board."

On the language of the above condition, the learned counsel for, the appellant is right in submitting that if at all any extra price was demanded for increase in cost of raw material or cost of construction, the notice in that behalf ought to have been served, on the appellant well before the due date for payment of second instalment. In the instant case, the demand was made from the appellant at the time of making payment of the last instalment and taking possession of the house. The demand for increased price, therefore, cannot also be supported on the basis of the agreed condition No. 5, quoted above.

This Court, in this appeal, by an interim order passed on 9-11-1994, had passed a conditional order staying cancellation of the allotment and allotting the house to a third party on the condition of the appellant depositing the initially agreed price of the house excluding the increased price of Rs. 33,750/-. It is stated at the Bar on behalf of the appellant that the entire price as initially decreed has already been paid and the house has not been allotted to any third party, but still is in possession of the Housing Board.

In view of the legal discussion and statement of facts, mentioned above, we allow this appeal. The order of the learned single Judge dated 20-8-1994 is hereby set aside. This appeal is allowed, the demand notice (Annexure-P/9) claiming enhanced price for the house is hereby quashed. It is directed that the Housing Board shall deliver possession of the house to the appellant within a period of one month from today on payment of initially agreed price of the house, i.e., House No. MIG 185 in Pandit Dindayal Nagar Colony of Gwalior, if not already paid. The appellant shall also get costs throughout. Counsel fee Rs. 1,000/-, if certified.