

(1997) 02 KAR CK 0067

In the Karnataka High Court

Case No : Writ Appeal No's. 859 to 896 of 1995 (BDA) connected with Civil
Petition No's. 209 and 210 of 1995

Suguna D. Shenoy and Others

APPELLANT

Vs

Bangalore Development Authority

RESPONDENT

Date of Decision : 13-02-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226

Citation : (1999) 4 KarLJ 69

Hon'ble Judges : R.P. Sethi, C.J;G. Patri Basavana Goud, J

Bench : Division Bench

Advocate : Sri Mohandas N. Hegde, for the Appellant; Sri N.K. Patil, for the
Respondent

Judgement

R.P. Sethi, C.J.—By a notification dated 30-1-1989, the Bangalore Development Authority issued an advertisement inviting applications for allotment of lands falling under Low Income Group under the Self-financing Scheme Rules, 1982. The costs of the flats situated in the ground floor was shown to be Rs. 1,35,000/-, in the first floor Rs. 1,32,000/-, and in the second floor Rs. 1,30,000/-. Appellants who belong to the Low Income Group submitted applications for allotment of flats and made necessary payments in terms of the conditions of the notification. All of them were intimated in the year 1990 to pay the balance amount within the time specified in Annexure-C. By individual endorsements issued on 5-9-1992 all the appellants were informed that the possession of the flats would be given within 7 days as is evident from Annexure-D, According to the appellants the condition of the flats was deplorable at the time of delivery of possession and they had to incur huge expenditure to make the flats habitable. The appellants were intimated to pay additional sums varying from Rs. 41,000/- to 43,000/- as escalated price vide Annexure-F. Aggrieved by the aforesaid endorsement Annexure-F various writ petitions were filed challenging the action of the respondent- authority with prayer for restraining it

from demanding the escalation price and from taking any steps to recover the same from them. The writ petitions were dismissed vide the order impugned in this appeal holding that the authority was justified in escalating the price as per condition No. 17 of the notification whereby the value fixed at the time of the earlier notification was only tentative and subject to escalation. The plea that the escalation of the price was arbitrary and unguided was rejected.

2. The learned Counsel for the appellant has vehemently argued that the escalation of the price under the circumstances was not justified and the action of the respondent was arbitrary. It is submitted that the details furnished by the respondent-authority were contradictory having no rationale. After the delivery of the possession the authority had no jurisdiction to demand additional price and that rule of promissory estoppel could not be pressed into service against the appellants. The action of the Authority is stated to be against the Bangalore Development Authority (Allotment of Buildings under Self-financing Scheme) Rules, 1982.

3. Before passing the impugned order, the learned Single Judge had disposed of Writ Petition No. 16844 of 1993 on 6th August, 1993 rejecting the contentions raised on behalf of the allottees therein. Writ Appeal No. 2082 of 1994 filed against the aforesaid order was dismissed vide judgment dated 27-10-1994. Civil Petition No. 122 of 1996 filed for the purpose of reviewing the judgment passed in the aforesaid writ appeal was rejected by the Division Bench vide order dated 18-12-1996. While disposing of W.A. No. 2082 of 1994 the Division Bench had held:

"So far as the challenge to the escalation clause is concerned, it has to be stated that in the notification, issued by the Bangalore Development Authority it was clearly stated that the cost of the building indicated in the offer was tentative and was subject to escalation. Fully aware of this possibility, the appellant applied for a flat. Therefore, it is not open to him now to urge that because the flats were almost ready on the date on which the said notification was issued, the BDA must have known the actual cost at that time and therefore, escalation of cost could not have been made a term of agreement between the parties. The Bangalore Development Authority had made it clear while offering the flats that the total cost which was mentioned in the notification was only tentative. That would mean that the BDA had not worked out the final cost of the building by that time. Therefore, it is not possible to accept the contention that incorporation of such a term is an arbitrary act.

2. As regard the extent of escalation the total cost is now up by 25%. What was the total cost was disclosed by the Bangalore Development Authority to this Court while it disposed of Writ Petition No. 37200 of 1993 and connected matters. The cost of each flat has been worked out on the basis of that data. The only ground on which fixation of cost is now attacked is that the appellant had obtained an opinion of one Valuer, H.S. Gurumurthy on 16-6-1993 and he has opined that considering the rates which were prevalent in the year 1991-92, the

cost of the flat would be 1,30,000/- and not Rs. 1,78,000/-. It appears that the valuer has given his opinion on the basis of a price list issued by Deccan Structural Systems Private Limited. It is annexed with his report dated 1-6-1992. Price-list issued by one company cannot be taken as a safe base for holding that was the price level for the materials mentioned therein. Price of each material would depend upon the quality of that material. What type of material was used by the BDA and when was it purchased is not stated by the appellant or his expert valuer. Moreover, the valuer has considered only the value of the flat without taking into consideration the cost incurred for other facilities like laying of pipelines, etc. Therefore, also no reliance can be placed upon the report of the said valuer. The appellant has completely failed to establish that the cost fixed by the Bangalore Development Authority for the flats is in any manner arbitrary".

4. Dealing with the similar questions and considering the scope of interference by the High Court in the matter of escalation of prices another Division Bench of this Court in (W.A. No. 553 of 1996, DD: 10-1-1997), referred to various judgments of the Apex Court such: as Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, , Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, , Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others, , Indore Development Authority Vs. Sadhana Agarwal (Smt) and Others, , and held that the Development Authority had right to enhance the sital value subject to the conditions that such an escalation was not apparently unreasonable, wholly irrational, unfair, arbitrary or erratic. This Court further held:

"It is however settled principle of law that while exercising power under Article 226 of the Constitution, the High Court does not sit as the Court of appeal and cannot substitute its opinion for opinion of the concerned authorities. Exercise of jurisdiction under Article 226 of the Constitution is limited to the extent of only determining the fairness and reasonableness of the action taken by the authority. The High Court is not expected to examine the disputed facts and would not normally go into the complicated process of computation of the sital value. The Court would decline to interfere by the use of magnifying glasses to look or ascertain the action of the respondent in determining the prices. If the process of fixation of the prices is not unfair, unreasonable or arbitrary, the Court would not interfere. But where the position is otherwise, appropriate directions shall be issued".

5. In the instant case the prices raised were attributed to the escalation of the cost of building and other circumstances detailed in the reply filed by the Authority. The learned Judge took note of the details and concluded that the same was neither unreasonable nor arbitrary. For the purposes of convenience the details of the final cost of calculation as noted by the learned Single Judge is detailed as under:

"(A)

Expenditure of buildings (12 blocks of 144 tenements including tender premium upto the end of July 1992-

Rs.

(a)

Civil works

75,41,794-00

(b)

BWSSB deposits for laying main lines

4,91,103-00

(c)

KEB deposits

9,06,166-00

(d)

Others (electricity and sanitary)

21,72,996-00

(e)

Cement and steel

8,43,441-00

(f)

Difference in cost of cement and steel

60,565-00

(g)

Probable expenditure for the balance work

25,00,000-00

(h)

Prorata charges for water supply paid on August 1992

2,00,850-00

(i)

Prorata charges for UGD paid on August 1992

2,29,680-00

(j)

Cost of meter charges to KEB paid on August 1992

1,67,000-00

(B)

Add: ETP charges at 17 1/2% on Item 1(a), (g) and (d)

19,26,791-00

(C)

Probable expenditure to settle the EIRL claims of contractor and other development works etc.

33,74,786-00

(D)

Land cost at Rs. 452/- per sq. mtr. for 7,776 sq. mtr. (at Rs. 301/- plus 50% per sq. mtr. for LIG houses)

35,15,000-00 ----- 245,83,906-00

2,45,83,906 Cost for tenements= ----- 144

1,66,000/-

Final cost for tenements

Ground Floor

1.78

First Floor

1.71

Second Floor

1.67

5.16 ----- 1.76 3

Amount realised Rs. 2,46,000/-".

6. During the course of arguments the respondent-Authority filed an affidavit on behalf of the respondent stating therein that the power exercised by the Authority was not arbitrary but was strictly in accordance with the resolution passed by the Authority. Along with the affidavit a fresh statement regarding final cost of calculation of Additional L.I.G. of S.F.H.S. Area of Nandini Layout was filed. Pointing out, to expenditure shown as Item "C" as noted by the learned Single Judge and Item "D" in the calculations filed along with the affidavit, the learned Counsel for appellants has urged that as the expenditure shown are

contradictory, the action of respondent cannot be termed to be fair and proper. A comparison of both the statements regarding cost of construction and expenditures, however, shows that the total cost of 144 tenements is Rs. 2,45,83,906-00. The Court can interfere with if it finds that there has been some irregularity in the decision making process but would not normally intervene with respect to the consequential decisions unless the decisions are shown to be unreasonable, irrational, unfair, arbitrary or erratic. We are of the opinion that the basis of the decision taken by the respondent does not come within any of the aforesaid categories warranting our interference.

7. The learned Counsel for the appellants has at end submitted that the respondents were not justified in demanding the payment of balance amount along with interest. Such a plea has vehemently been opposed by the respondent-Authority who has filed a memo along with the extract of the proceedings of the meeting of the Authority held on 28-5-1988 resolving to charge interest under the circumstances specified. Be it as it may, we consider it proper not to comment on the rival contentions because no such plea was either raised or canvassed before the learned Single Judge. We would however appreciate if the persons like the appellants who belong to Low Income Group are not subjected to the exorbitant rates of interest for their failure to make the payment of the balance amount. No other point was argued in the appeals.

8. The petitioners in Civil Petitions 209 and 210 of 1995 seek review of the order dated 22-2-1995 made in W.As. 195 and 196 of 1995 on the ground that the order made in W.P. 2082 of 1994 had no bearing on the facts of the case. It is submitted that the respondent-Authority had not placed all the facts on record honestly and bona fide. It is contended that the Court was not justified in holding that there was no arbitrariness in the calculations made by the Authority. We have perused the records and the order sought to be reviewed and do not find any ground to review the same in terms of Order 47, Rule 1 of the CPC. Otherwise also, in view of our judgment in the aforesaid appeals, no ground is made out to review the order.

9. There is no merit in these appeals and petitions which are accordingly dismissed. No order as to costs.