
(1990) 01 MAD CK 0017
In the Madras High Court

T.M. Ramalingam

APPELLANT

Vs

The Chairman, Madras Metropolitan Development Authority
and Another

RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 1 MLJ 364

Hon'ble Judges : MANUTN06181990.htm, J;K.M. Natarajan, J

Bench : Division Bench

Judgement

K.M. Natarajan, J.—This is a petition under Article 226 of the Constitution of India for issuance of a writ of mandamus calling for records

of respondents 1 and 2 concerning the allotment to petitioner, directing the first respondent to re-fix the value of the house allotted to the petitioner

at Rs. 18,000, to direct the first respondent to carry out all the necessary repairs forthwith and to stay further collection by the first respondent

from the petitioner.

2. It is seen from the affidavit filed in support of the petition that the petitioner applied for allotment of Low Income Group (LIG) ready built house

(RBH) Type III at Rs. 33,000. According to the petitioner, the first respondent arbitrarily increased the cost to Rs. 36,700 in his letter No.

AL2/C-122/81 dated 3.3.1983 and consequently increased the monthly instalments as stated therein. The petitioner is a person belonging to a

weaker section of the society and he had no choice except to accept the price increase, although there is no justification for the increase in 1983

for a construction completed in 1979. Further, similar houses in the same block were earlier allotted at Rs. 18,000 each. The petitioner was

allotted a house in Block No. 28, plot No. 09, in Type III, L.I.G., in Manali New Town area by the first respondent in his letter dated 27.5.1983.

The petitioner, after inspecting the house, wrote to the first respondent on 16.8.1983 that his acceptance of the allotment was on condition of the

repairs being carried out quickly. The first respondent without giving due regard to the said letter held out a threat of cancellation of allotment on

the ground of non-occupation in his letter dated 15.11.1983. Again, another letter holding out threat of cancellation dated 19.3.1984 was sent by

the first respondent to the petitioner, to which he sent a rejoinder on 5.4.1984. It is further stated that on inspection he found to his distress several

vital defects in the house which is still used as a godown. The second respondent is responsible for the substandard and defective construction, poor

quality of materials and inefficient workmanship. It appears that the soil has not been filled up properly over previously existing agricultural well.

According to the petitioner, the first respondent (Madras Metropolitan Development Authority) is the authority under Article 12 of the Constitution

of India and it is bound to conduct its affairs in accordance with the rule of law and cannot transgress the policy of the State. Having advertised the

cost at Rs. 18,000 the same L.I.G. House in the same block 28 constructed in 1978-79 cannot be attempted to be sold to the petitioner by the

first respondent, a statutory body at an exorbitant price. The first respondent after making solemn assurance cannot act differently. Further, being

a statutory authority, it owes a statutory duty to hand over the duly allotted house to the petitioner in a fit and proper condition with a fitness

certificate. The first respondent is also illegally misusing the house by storing materials unauthorisedly and consequently caused damages to the

already defective structure. Hence the writ petition.

3. The Chief Executive Officer of the first respondent filed a counter-affidavit denying the above allegations and contended as follows: The

petitioner applied for allotment of a house, by his own will, on seeing an advertisement for allotment of a L.I.G. ready built house, Type III, in

respect of which the cost was fixed tentatively at Rs. 33,000. The petitioner, after allotment, had executed a lease-cum-sale agreement in favour of

the first respondent agreeing to the cost of the house allotted to him. The petitioner has now gone back on the agreement and without honouring the

lease-cum-sale agreement, as filed this writ petition to direct this respondent to re-fix the value and allot the same to him for Rs. 18,000 and also to carry out the repairs. The rights and liabilities of the parties to the agreement are contractual in nature. The petitioner cannot invoke the writ jurisdiction of this Court and on that ground alone, the petition is liable to be dismissed in limine. It is further stated that Manali New Scheme is undertaken by the first respondent utilising the financial assistance obtained from HUDCO by way of loan. The whole amount with interest has to be re-paid by the first respondent to HUDCO. The scheme has been executed in phased manner. The pricing of the ready built houses has been based on the relative factors of various cost aspects involved in the execution of the scheme. There is no profit motive in fixing the cost of houses in Manali New Town Scheme area. The scheme is based on no profit and no loss. It is the responsibility of the first respondent to realise the sale price of the ready built houses from the allottees and re-pay the loan amount with interest to the HUDCO. The petitioner was not successful in the earlier bid of allotment of ready built houses with regard to the scheme RBH/270 and he himself agreed to the price at Rs. 33,000 in respect of the scheme RBH/542 and he readily complied with. Even in the letter of the 1st respondent dated 27.5.1983 it was indicated that the tentative cost was Rs. 36,708. The petitioner accepted the terms and requested allotment. His request for allotment of another house on the ground that the house requires repairs was not conceded. He was called upon to pay the initial deposit without delay. Finally the petitioner in his letter dated 12.8.1983 accepted the allotment and agreed to the conditions of allotment stipulated in the order dated 27.5,1983. He requested time upto 30.9.1983 for initial payment and monthly instalment and monthly maintenance charges. The petitioner executed the lease-cum-sale agreement on 9.1.1984 in favour of the first respondent. Having secured the allotment by agreeing to the conditions and executing the lease-cum-sale agreement, the petitioner is estopped from agitating the final cost fixed by the first respondent. As regards the allegation of the petitioner about the repairs to be carried out in the house allotted to him, the executive agency of the Manali New Town Scheme, engaged by the first respondent, namely, the Tamil Nadu Housing Board, was requested to carry out the necessary repairs and the second respondent also took necessary action in this regard to

rectify the defects after getting opinion from the Soil Expert of Guindy Engineering College. As per direction given by this Court in W.M.P.Nos.

19055 and 19056 of 1986, the second respondent agreed to rectify all the defects and issue fitness certificate in three months and the petitioner

was also directed to pay the instalments in respect of the building allotted to him as soon as repairs are effected and fitness certificate issued. In the

circumstances, it is prayed that the petition is to be dismissed.

4. The learned Counsel for the writ-petitioner mainly submitted that the construction of the house which was allotted to him took place in 1978-79.

He further submitted that in respect of one such set of houses constructed in 1978-79, the cost of construction was fixed at Rs. 18,000 while in

respect of another house which was allotted to the petitioner, he was asked to pay a sum of Rs. 36,000 and odd, and that in the circumstances

fixing the cost of construction of the house allotted to the petitioner at Rs. 18,000 only is fit and proper. Further, the claim of interest at 19 per cent

is exorbitant while the rate of interest at 12 per cent per annum is reasonable. It is further submitted by the learned Counsel that the house which

was allotted to the petitioner required some repairs to be done and it was unfit for occupation. As such, there was delay in occupying the premises

and in this regard, he has incurred damage by occupying a rental premises and the respondents have to bear the damages. On the other hand, the

learned Counsel appearing for the respondents submitted that admittedly the petitioner was not selected for allotment of house, which was

constructed previously under the 270 ready built houses scheme, and subsequently he applied for allotment and requested the authorities to consider

the allotment of ready built houses in the next scheme which consisted of 540 houses and that it was only at the request of the petitioner, his

application was considered and allotment was given. Even originally when publication was made calling for offers, the tentative cost was fixed at

Rs. 33,000. At the end of the completion of all the houses and the project, the authorities took into consideration various factors and fixed the cost

at Rs. 36,708. The petitioner accepted the terms and conditions of the allotment in his very application and he has also executed lease-cum-sale

agreement embodying the various terms and conditions. Having accepted the cost of construction at Rs. 36,708 and paid the earnest money of Rs.

500, he did not make initial payment of Rs. 9,200 within the time and subsequently after the period was extended at his request, he paid the amount on 27.9.1983. He has executed the lease-cum-sale agreement on 9.1.1984. As per Clause 2 of the agreement, he agreed to pay a sum of Rs. 325 p.m. as provisional instalment on or before the 10th of each month commencing from July, 1983. As per Clause 13 he agreed to pay the purchase price of the house in monthly instalments of such amount as may be fixed by the Member-Secretary on or before 10th of each month for which it is due. The agreement contains as many as 29 clauses. The writ petition was filed in 1986. Subsequently as per direction of this Court, repairs were carried out and the petitioner took possession of the premises on 8.6.1988. According to the learned Additional Government Pleader, in view of the lease-cum-sale agreement for ready built houses executed by the writ petitioner and in view of the fact that a contractual obligation was entered into between the parties, they have to go only by the agreement entered into and the rights of the parties are governed only by the terms of the contract and not by constitutional provisions and no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple. In this connection, reliance was placed on the decision in *Bareilly Development Authority v. Ajay Pal Singh*, 1989 S.C. 1076 and submitted that the said case is applicable in all fours to the facts of this case and as such he prayed for dismissal of the petition. On the other hand, the learned Counsel for the petitioner wants to distinguish the said case by relying on the decision of the Supreme Court in *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, and submitted that even in case of breach of contract, the writ jurisdiction can be invoked.

5. For proper appreciation of the respective contentions, it is worthwhile to see the reliefs prayed for in the writ petition. The petitioner prayed for issue of a writ of mandamus directing the first respondent to re-fix the value of the house allotted to him at Rs. 18,000 and to direct the first respondent to carry out the necessary repairs forthwith and to stay further collection by the first respondent from the petitioner. As regards carrying out necessary repairs, it is seen that the petitioner filed W.M.P.Nos.19055 and 19056 of 1986, and the second respondent, namely, Housing

Board, undertook to carry out the repairs and remedy the defects pointed out by the petitioner within three months. Accordingly the second

respondent was directed to do so, and the writ petitioner was directed to pay the instalments as soon as repairs are effected and fitness certificate

was issued to him. It is admitted by the petitioner that such repairs were carried out as undertaken and that the petitioner occupied the premises

even on 8.6.1988. The above fact of handing over possession after effecting necessary repairs was also recorded in this Court in W.M.P.No.

13999 of 1987 on 23.6.1988. Hence it is seen that as far as the said relief is concerned, it has been duly complied with.

6. As regards the relief of refixing the value of the house allotted to the petitioner at Rs. 18,000, it is seen from the very affidavit filed by the

petitioner that he applied for allotment of the Low Income Group ready built house for Rs. 33,000 in respect of which there was an advertisement.

The grievance of the petitioner is that subsequently the first respondent arbitrarily increased the cost at Rs. 36,700. According to him, there was no

justification for the increase. He submitted that similar houses which were constructed in 1979 in the same block were allotted at Rs. 18,000 each.

It is not in dispute that when the petitioner first applied for allotment of a house in 1979 he was unsuccessful, and subsequently he applied for

allotment of this house on seeing the advertisement wherein it was advertised fixing the tentative value at Rs. 33,000. The petitioner also after

allotment had executed a lease-cum-sale agreement in favour of the first respondent agreeing for the cost of construction at Rs. 36,708. It is seen

that Manali New Town Scheme was undertaken by the first respondent utilising the financial assistance from HUDCO by way of loan. The pricing

of the ready built houses has been based on the relative factors of various cost aspects involved in the execution of the scheme. The Scheme is

based on no profit and no loss. The difference between the tentative cost as advertised and the final cost as fixed is only Rs. 3,700 which works

out to 11%. Further, there is absolutely nothing to suggest that there was any mis-statement or incorrect statement or fraudulent concealment in the

information supplied in the advertisement published in this regard and on the basis of the same, the petitioner applied for allotment. In the instant

case, as rightly contended on behalf of the respondents, there was a concluded contract as is evidenced by the lease-cum-sale agreement executed

by the petitioner even on 9.1.1984 and the respondents acted only in accordance with the terms and conditions of the said lease-cum-sale

agreement. The petitioner, who is educated and employed, has accepted the terms and conditions and also the tentative price originally fixed in the

advertisement and subsequently the final price arrived at after the completion of the scheme. In the circumstances, the decision relied on by the

learned Counsel for the respondents reported in Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, , as rightly

contended by the learned Counsel for the respondents is in all fours applicable to the instant case. That was a case where the Bareilly Development

Authority, with a view to easing the acute housing problem in the district undertook construction of dwelling units for people belonging to different

income groups. A brochure was issued to the intending purchaser, containing general terms and the estimated cost of the dwelling house. The note

given in the brochure copy states that the cost shown therein is only an estimated cost and that it would increase or decrease according to the rise

or fall in the price at the time of completion of the houses/flats. Notice was subsequently issued increasing the price of the house, the amount of

instalment and interest. Most of the allottees, except a few, gave their unequivocal and unconditional written consent. However, some allottees

challenged the revised terms and conditions on the ground that the Development Authority were estopped from changing the conditions Subject to

which the respondent-applicants had applied for registration and deposited the initial payment and that the enhancement of cost amounting almost

double of the estimated cost as shown in the brochure while inviting the applications and the increase of the monthly instalments are much beyond

the means of the respondents and that this arbitrary and unilateral stand of the petitioner is to the prejudice of the respondents/allottees. It was held

that the allottees after voluntarily accepting the conditions imposed by the BDA have entered into the realm of concluded contract pure and simple

with the BDA and hence the allottees can only claim the right conferred upon them by the said contract and are bound by the terms of the contract

unless some statute steps in and confers some special statutory obligations on the part of the BDA in the contractual field. The contract between

the parties not being statutory, the finding of the High Court that there was arbitrariness and unreasonableness on the part of BDA in increasing the

cost on the ground that BDA was "other authority" under Article 12 of the Constitution was improper. The decision in *Ajay Pal Singh v. Bareilly*

Development Authority AIR 1986 A11362 against which the decision of the Supreme Court was rendered was reversed. Their Lordships of the

Supreme Court also observed.

When the contract entered into by the State is non-statutory and purely contractual the relations are no longer governed by the constitutional

provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. In this sphere, the parties can only

claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority in the said contractual field.

It is also settled that no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a

breach of contract pure and simple.

The decision relied on by the learned Counsel for the petitioner in *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, is not relevant to

this case and it is not in anyway helpful to the writ petitioner. That was a case where on the principle of promissory estoppel, the Gujarat State

Financial Corporation was estopped from backing out of its obligation arising from a solemn promise made by it to the respondent to advance the

loan and accordingly the Supreme Court directed to release the amount. There is absolutely no material in this case to show that the first

respondent has increased the cost arbitrarily and consequently increased the monthly instalment. But, on the other hand, it is only in pursuance of

the terms and conditions of the lease-cum-sale agreement, the said cost was fixed and also on the basis of the relative factors of cost aspects

involved in the execution of the scheme. Applying the ratio laid down in *Bareilly Development Authority and Another Vs. Ajay Pal Singh and*

Others, the writ petition is not maintainable and is liable to be dismissed. If there is any violation or the breach of the contract, the remedy of the

petitioner is only to enforce the said contract and not invoke the writ jurisdiction of this Court.

In the result, the writ petition fails and stands dismissed. No costs.