Premji Bhai Parmar and Others

Vs

Delhi Development Authority and Others

R. C. Richhariya and Others

Vs

Delhi Development Authority and Others

Writ Petitions Nos. 4660 of 1978 and 562 of 1979

(V. R. Krishna Iyer, D. A. Desai JJ)

21.12.1979

JUDGMENT

DESAI, J. –

1. Allottees of flats, constructed by the Delhi Development Authority ('Authority' for short), located at Rajouri Garden, Prasad Nagar and Lawrence Road comprised in Middle Income Group Scheme, question the decision of first respondent (Delhi Development Authority) to collect surcharge as part of the sale price of each flat from each of them as unauthorised and discriminatory in character, in these two petitions under Article 32 of the Constitution. Both the petitions raise identical contentions and it was said that Writ Petition No. 562 of 1979 is more comprehensive in character and, therefore, the facts alleged therein may be taken as representative in character. They may be briefly stated.

2. Delhi Development Authority was set up under the Delhi Development Act, 1957. The Act was enacted to provide for the development of Delhi according to plan and for matters ancillary thereto and for carrying out the objects underlying the Act, the Authority has prepared Master and Zonal development plans for Delhi. With a view to easing the acute housing problems in the capital city the Authority undertakes construction of dwelling units for people belonging to different income groups styled as Middle Income Group ('MIG' for short). Low Income Group ('LIG' for short). Janta and Community Personnel Service ('CPS' for short). In 1971 the Authority commenced registration of intending applicants desirous of having a dwelling unit in different income groups. Some of the petitioners got themselves registered with the authority in accordance with the terms and conditions laid down by it and made the initial deposits as required by the terms and conditions. Petitioners had applied and got themselves registered for allotment of flats in MIG scheme situated at Lawrence Road. As the number of available flats in the scheme were less than the number of allottees registered, lots were drawn and the petitioners were informed that they have been allotted flats and that each of them should deposit the amount mentioned in the letter of allotment. It appears that the petitioners paid the amount they were called upon to pay and a flat was allotted to each of them and they have entered into possession. Petitioners now contend that the Authority being a statutory body formed with an object of working on 'no profit no loss' basis and having prescribed a formula for working out the cost of price of flats has levied and collected a surcharge from each of the

petitioners. According to the petitioners the cost price worked out in accordance with formula prescribed by the Authority, cost of each flat would be between Rs. 51,800 and Rs. 55,600 depending upon the area, extra balcony etc. However, each one of them had to pay between Rs. 56,000 to Rs. 60,000 and that according to the petitioners a surcharge varying from Rs. 3400 to Rs. 6000 for a flat has been illegally and unlawfully collected by way of premium or profit. It is further alleged that the Authority has not levied and collected such surcharge from other allottees of flats in some other MIG Scheme and that this action of levying and collecting surcharge is violative of Article 14 inasmuch as persons belonging to the same class, namely, allottees of flats in MIG scheme have been unequally treated. It is also alleged that there was no valid or understandable justification for levying and collecting surcharge price of flats comprised in MIG Schemes, between 1976 and 1977, and that from May 10, 1978, this unauthorised surcharge has been abolished. Petitioners also contend that the assertion of the Authority that this surcharge was levied and collected with a view to financing housing projects for lower income groups, Janta and CSP dwelling units so as to provide these weaker sections of the society, houses at a price lower than cost price with a view to making them affordable by such members of the weaker sections of the society, is believed by facts undisputed and that the whole attempt of the Authority, in violation of its avowed policy, was to make profit by laying such illegal surcharge. The petitioners, therefore, prayed for issue of a writ or order or direction declaring the levy of surcharge as illegal and unconstitutional and for a direction for refund thereof together with the interest at the rate of 12% per annum from the date of levy and collection till date of refund.

3. In the cognate petition the petitioners are allottees of flats situated at Prasad Nagar and Rajouri Garden under MIG scheme and they complain that in their case surcharge varies from Rs. 19,200 to Rs. 22,600.

4. Respondents to the petition are Delhi Development Authority, No. 1 and Chairman and Vice-Chairman of the Authority, Nos. 2 and 3 respectively. In Writ Petition No. 4660 of 1978 the Authority is respondent 1 and Union of India, respondent 2. Petitions were mainly contested by and on behalf of the Authority.

5. The Delhi Development Act, 1957 ('Act' for short), was enacted as its long title shows with a view to providing for the development of Delhi according to the plan and for arresting haphazard growth and for matters ancillary thereto. It envisages the setting up of an Authority to be styled as Delhi Development Authority which would be body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property, both moveable and immovable, and to contract and shall by the said name, sue and be sued. The composition of the Authority is set out in sub-section (iii) of Section 3. Amongst others, Administrator of Union Territory of Delhi would be an ex-officio Chairman and a Vice-Chairman to be appointed by the Central Government. The Vice-Chairman may be either a whole-time or part-time officer as the Central Government may think fit. Section 5 contemplates the constitution of an Advisory Council for the purpose of advising the Authority on the preparation of the master plan and on such matters relating to the planning of the development or arising out of or in connection with the administration of the Act. Section 5-A which was added by amending Act 56 of 1963 confers power on the Authority to constitute as many committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons and for such purpose or purposes as it may think fit. Chapter III-A which was inserted by the Amending Act of 1963 confers power for modification of the master plan once prepared. Chapter IV provides for development of lands. Chapter V confers power on the Central Government to acquire land for the purposes of development or for any other purpose under the Act under the provisions of the Land Acquisition

Act, 1894, and further authorises the Central Government to transfer the land so acquired to the Authority. Chapter VI provides for finances and audit of the accounts of the Authority. Chapter VII provides for supplemental and miscellaneous provisions. Section 52 confers power on the Authority to delegate any power exercisable by it under the Act, except the power to make the regulations, on such officer or local authority or committee constituted under Section 5-A as may be mentioned, by a notification to be published in the official Gazette in such cases and subject to such condition, if any, as may be specified therein. One more section of which notice should be taken is Section 57 which confers power on the Authority with previous approval of the Central Government by notification in the official Gazette to make regulations consistent with the Act and the rules made thereunder to carry out the purposes of this Act. Sub-section (2) provides that until the Authority is established under the Act any regulation which may be made under sub-section (1) may be made by the Central Government and any regulation so made may be altered or rescinded by the Authority in exercise of its powers under sub-section (1). Section 58 makes it obligatory to lay every rule and regulation made under this Act before each House of Parliament in session for a period of 30 days and subject to any alteration or modification therein the rule or regulation shall after expiry of the prescribed period mentioned have effect only in such modified form or be of no effect as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule or regulation.

6. Petitioners belong to MIG, each of whom registered himself as an intending applicant for a flat in MIG scheme and each of whom has been allotted a flat either in Rajouri Garden, Prasad Nagar or Lawrence Road. Number of persons desirous of having a flat registered with the Authority far outnumbered the available flats with the result that lots had to be drawn and the lucky ones got a letter of allotment to pay the price set out in the brochure in respect of each scheme and to obtain a flat. Each petitioner had paid the price and has entered into possession of the allotted flat. All the petitioners now contend that the Authority has levied and collected a surcharge as part of purchase price of flat arbitrarily and without the authority of the law and has collected the same from them in violation of its object of functioning on 'no profit no loss' basis and thereby made a huge profit. They further contend that they have been subjected to discriminatory treatment in contravention of Article 14 of the Constitution inasmuch as no surcharge has been collected from allottees of flats in MIG schemes prior to November 1976 and subsequently to January 1977 except these three schemes and one Wazirpur MIG scheme. Further, no other MIG scheme flats have been subjected to such unauthorised levy of surcharge. It is pointed out that the levy of surcharge has been scrapped in 1978. The petitioners contend that levy of surcharge has no nexus to the object for which the Authority was set up, namely, providing housing accommodation at reasonable price by the Authority whose declared policy is 'no profit no loss'. It was said on behalf of the petitioners that even if the Authority was set up for providing housing accommodation to the people in different income groups (keeping in view their financial capacity/affordability) yet a statutory body like the Authority operating on 'no profit no loss' basis must have a scientifically prescribed formula for working cut its price structure and that must be uniformly applied to all those who apply for flats and to whom they are allotted and such a statutory authority cannot discriminate in working out the disposal price of the flats by including surcharge in respect of some MIG schemes within a certain specified period, a surcharge not authorised by law and not sanctioned by the Authority as a component of price and unknown to pricing of flats, while others similarly situated and similarly circumstanced and belonging to the same income group enjoyed the benefit of getting flats at cost price and, therefore, petitioners have been accorded discriminatory treatment in the matter of price of flats allotted to them. Petitioners, therefore, contend that even if they applied for flats and got registered and were offered flats and accepted the same at the price stated in the brochure and even

if it has resulted in concluded contract yet the Court should not turn a blind eye to such gross discrimination by a statutory authority charged with a duty to provide housing accommodation acting on the declared policy of 'no profit no loss'. It was simultaneously contended that the Vice-Chairman of the Authority authorised to determine the prices of flats in each income group has not made any order or has not given any direction for levying surcharge and that the levy of surcharge was wholly unauthorised.

7. A preliminary objection was raised by the Authority that the petitions are not maintainable under Article 32 of the Constitution inasmuch as the petitioners have not come to the Court for enforcement of a fundamental right conferred upon the petitioners under Part III of the Constitution but the petitioners have invoked jurisdiction of this Court for a relief of reopening concluded contracts. It was also submitted that if the Court accepts the contention of the petitioners they would derive an unfair advantage over others who may not have applied for flats because of the price set out in the brochure and if surcharge is excluded they may have applied for flats at a lower price and, therefore, also the Court should not entertain the petitions.

8. Though we are not inclined to reject the petitions on this preliminary objection as we have heard them on merits it is undeniable that camouflage of Article 14 cannot conceal the real purpose motivating these petitions, namely, to get back a part of the purchase price of flats paid by the petitioners with wide open eyes after flats have been securely obtained and petition to this Court under Article 32 is not a proper remedy nor is this Court a proper forum for reopening the concluded contracts with a view to getting back a part of the purchase price and the benefit taken. The undisputed facts are that petitioners offered themselves for registration for allotment of flats that may be constructed by the Authority for MIG scheme. After the registration and when the flats were constructed and ready for occupation brochures were issued by the Authority. One such brochure for allotment of MIG flats in Lawrence Road residential scheme is Annexure R-1. This brochure specifies the terms and conditions including price on which flat will be offered. It also reserves the right to surrender or cancel the registration, the mode and method of paying the price and handing over the possession. There is an application form annexed to the brochure. Annexure 'A' to the brochure sets out the price of flat on the ground floor, first floor and second floor respectively. It sets out the premium amount payable for land as also the total cost in respect of the flats on the ground floor, first floor and second floor. The statement also shows the earnest money deposited at the time of the registration and the balance payable. It is on the basis of these brochures and the applicants applied for the flats in Lawrence Road and other MIG schemes. They knew and are presumed to know the contents of the brochure and particularly the price payable. They offered to purchase the flats at the price on which the Authority offered to sell the same. After the lots were drawn and they were lucky enough to be found eligible for allotment of flats, each one of them paid the price set out in the brochure and took possession of the flat, and thus sale became complete. There is no suggestion that there was a misstatement or incorrect statement or any fraudulent concealment in the information supplied in the brochures published by the Authority on the strength of which they applied and obtained flats. How the seller works out his price is a matter of his own choice unless it is subject to statutory control. Price of property is in the realm of contract between a seller and buyer. There is no obligation on the purchaser to purchase the flat at the price offered. Even after registration the registered applicants may opt for other schemes. His right to enter into other scheme opting out of present offer is not thereby jeopardised or negatived and applicants so outnumbered the available flats that lots had to be drawn. With this background the petitioners now contend that the Authority has collected surcharge as component of price which the Authority was not authorised or entitled to collect. Even if there may be any merit in this contention, though there is none, such a relief of refund cannot be the subject-matter of a petition under Article 32. And

Article 14 cannot camouflage the real bone of contention. Conceding for this submission that the Authority has the trappings of a State or would be comprehended in 'other authority' for the purpose of Article 12, while determining price of flats constructed by it, it acts purely in its executive capacity and "is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in the exercise of its constitutional powers. But after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the constructed field which is apart from contract" (see Radhakrishna Agarwal v. State of Bihar ((1977) 3 SCR 249, 255 : (1977) 3 SCC 457)). Petitioners were under no obligation to seek allotment of flats even after had registered themselves. They looked at the price and flats and applied for the flats. This they did voluntarily. They were advised by the brochures to look at the flats before going in for the same. They were lucky enough to get allotment when the lots were drawn. Each one of them was allotted a flat and he paid the price voluntarily. They are now trying to wriggle out by an invidious method so as to get back a part of the purchase price not offering to return the benefit under the contract, namely, surrender of flat. The Authority in its affidavit in reply in terms stated that it is willing to take back the flats and to repay them the full price. The transaction is complete, viz., possession of the flat is taken and price is paid. At a later stage when they are secure in possession with title, petitioners are trying to get back a part of the purchase price and thus trying to reopen and wriggle out of a concluded contract only partially. In a similar and identical situation a Constitution Bench of this Court in Har Shankar v. Dy. Excise and Taxation Commissioner ((1975) 3 SCR 254 : (1975) 1 SCC 737), has observed that those who contract with open eyes must accept the burdens of the contract along with its benefits. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test to contract would ever have a binding force. The jurisdiction of this Court under Article 32 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred. It would thus appear that petitions ought not to have been entertained. However, as the petitions were heard on merits, the contentions canvassed on behalf of the petitioners may as well be examined.

9. The principal contention canvassed on behalf of the petitioners is that the treatment meted to them by the Authority is discriminatory inasmuch as no surcharge was levied on flats in MIG scheme constructed and allotted prior to November, 1976 and after January, 1977. MIG flats involved in these petitions were constructed and were available for allotment in November, 1976 and the lots were drawn in January, 1977. There is one more MIG scheme at Munirka where the allotment took place at or about the same time but in which case no surcharge was levied. The contention is that once for the purpose of eligibility to acquire a flat, the criterion is grounded in income brackets, MIG, LIG, et al, those in the same income bracket form one class even for the purpose of determining disposal price of flats allottable to them irrespective of situation, location or other relevant determinants which enter into price calculation and, therefore, in the same income group there cannot be differentiation by levying of surcharge in some cases and charging only the cost price in other cases and that the discrimination is thus writ large on the face of the record because by levying surcharge in case of petitioners they have been treated unequally and with an evil eye. It is difficult to appreciate how Article 14 can be attracted in the circumstances hereinabove mentioned. Cost price of a property offered for sale is determined according to the

volition of the owner who has constructed the property unless it is shown that he is under any statutory obligation to determine cost price according to certain statutory formula. Except the submission that the Authority has a proclaimed policy of constructing and offering flats on 'no profit no loss' basis which according to Mr. Nariman has a statutory flavour in the regulations enacted under the Act, the Authority is under no statutory obligation about its pricing policy of the flats constructed by it. When the flats were offered to the petitioners the prior in round figure in respect of each flat was mentioned and surcharge was not separately set out and this price has been accepted by petitioners. The obligation that regulations are binding on the Authority and have provided for a statutory price fixation formula on 'no profit no loss' basis will be presently examined but save this the Authority is under no obligation to fix price of different flats in different schemes albeit in the same income group at the same level or by any particular statutory or binding formula. The Authority having the trappings of a State might be covered by the expression 'other authority' in Article 12 and would certainly be precluded from according discriminatory treatment to persons offering to purchase flats in the same scheme. Those who opt to take flats in a particular income-wise area-wise scheme in which all flats came up together as one project, may form a class and any discriminatory treatment in the same class may attract Article 14. But to say that throughout its course of existence the Authority would be bound to offer flats income-group-wise according to the same price formula is to expect the Authority to ignore time, situation, location and other relevant factors which all enter the price structure. In price fixation executive has a wide discretion and is only answerable provided there is any statutory control over its policy of price fixation and it is not the function of the Court to sit in judgment over such matters of economic policy as must be necessarily left to the government of the day to decide. The experts alone can work out the mechanics of price determination; Court can certainly not be expected to decide without the assistance of the experts (see Prag Ice & Oils Mills v. Union of India ((1978) 3 SCR 293, 330 : (1978) 3 SCC 459, 495)). In the leading judgment it has been observed that mechanics of price fixation have necessarily to be left to the executive and unless it is patent that there is hostile discrimination against a class the processual basis of price fixation has to be accepted in the generality of cases as valid. This Court in Avinder Singh v. State of Punjab ((1979) 1 SCR 845 : (1979) 1 SCC 137), approved the following dictum of Willis on Constitutional Law, page 587 : (SCC p. 145, para 5)

The State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably . . . . The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation.

What is forbidden by Article 14 is discrimination amongst persons of the same class and for the purposes of allotment of flats scheme-wise, allottees of flats in the same scheme, not different schemes in the same income bracket, will have to be treated as a class and unless in each such class there is unequal treatment or unreasonable or arbitrary treatment, the complaint that Article 14 is violated cannot be entertained. Therefore, in the State of Gujarat v. Shri Ambica Mills Ltd., Ahmedabad ((1974) 3 SCR 760, 782 : (1974) 4 SCC 656 : 1974 SCC (L&S) 381), Mathew, J., speaking for the Court observed as under : (SCC p. 675, para 54)

A reasonable classification is one which includes all who are similarly situated and none who are not. The question then is what does the phrase 'similarly situated' mean ? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some

positive public good.

Is the classification income-wise scheme-wise violative of Article 14 in any manner ? The Authority formulates income-wise area-wise schemes for constructing flats. Petitioners contend that there should be only income-wise classification wholly ignoring area and time factor for classification. They say that allottees of flats in all MIG schemes irrespective of area and location and irrespective of when the flats were constructed form one class for determining price of flats. There is no merit in this contention. What are price determinants ? Price of land, building material, labour charges and cost of transport, quality and availability of land, supervision and management charges are all variable factors that enter into price fixation. Their cost varies time-wise, place-wise, availability-wise. All these uncertain factors cannot be overlooked for the purpose of classification. Therefore, it is not possible to hold that allottees of flats in MIG scheme at any place and executed at any time will form one class for the purpose of pricing policy. Only valid basis for classification would be income-wise, area-wise, time-wise, scheme-wise, meaning all flats constructed at or about the same time in same area in one project for particular income group will form a class. And there is no discrimination amongst them.

10. Pricing policy is an executive policy. If the Authority was set up for making available dwelling units at reasonable price to persons belonging to different income groups it would not be precluded from devising its own price formula for different income groups. If in so doing it uniformly collects something more than cost price from those with cushion to benefit those who are less fortunate it cannot be accused of discrimination. In this country where weaker and poorer sections are unable to enjoy the basic necessities, namely, food, shelter and clothing, a body like the Authority undertaking a comprehensive policy of providing shelter to those who cannot afford to have the same in the competitive albeit harsh market of demand and supply nor can afford it on their own meagre emoluments or income, a little more from theses who can afford for the benefit of those who need succour, can by no stretch of imagination attract Article 14. People in the MIG can be charged more than the actual cost price so as to give benefit to allottees of flats in LIG, Janta and CPS. And yet record shows that those better off got flats comparatively cheaper to such flats in open market. It is a well recognised policy underlying tax law that the State has a wide discretion in selecting the persons or objects it will tax and that the statute is not open to attack on the ground that it takes some persons or objects and not others. It is only when within the range of its selection the law operates unequally, and this cannot be justified on the basis of a valid classification, that there would be a violation of Article 14 (see East India Tobacco Co. v. State if A. P. ((1963) 1 SCR 404 : AIR 1962 SC 1733 : (1962) 13 STC 529)). Can it be said that classification income-wise-cum-scheme-wise is unreasonable ? The answer is a firm no. Even the petitioners could not point out unequal treatment in the same class. However, a feeble attempt was made to urge that allottees of flats in MIG scheme at Munirka which project came up at or about the same time were not subjected to surcharge. This will be presently examined but aside from that, contention is that why within a particular period, namely, November, 1976 to January, 1977 the policy of levying surcharge was resorted to and that in MIG schemes pertaining to period prior to November, 1976 and later April, 1977 no surcharge was levied. If a certain policy was adopted for a certain period and was uniformly applied to projects coming up that period, it cannot be the foundation for a submission why such policy was not adopted earlier or abandoned later.

11. It was, however, said that levying of surcharge runs counter to object for which Authority was set up, namely, to make available housing accommodation on 'no profit no loss' basis. The argument proceeds on the assumption that the principle of 'no profit no loss' implies that in respect of each flat the cost of its construction must be worked and that alone can be the disposal price of each flat.

Principle of 'no profit no loss' has been explained by the respondents. It is said that in the overall working, planning and execution of projects which the Authority undertakes as part of development of Delhi, the integral part of it being construction of flats for different income groups the motives and working of it would not be profit oriented but would work on 'no profit no loss' economic doctrine. This would not for a moment suggest that the principle of 'no profit no loss' should apply either to every flat or to every scheme or to every piece of land developed by the Authority. It would be impossible for the Authority to function on such fragmented basis and such a policy statement has been made by the Authority. Of course some public statement appears to have been made that the overall working of the Authority is on 'no profit no loss' basis. Respondent 1 has been able to point out that the Authority's housing scheme as a whole has been running in heavy deficit because flats including such as those of the petitioners' actually cost much more than the initially determined estimates and by the time flats are ready for occupation initial estimates founded on prevalent market prices of materials and labour escalate and revised estimates have to be made. It is also shown that till municipal authority takes over municipal services the Authority spends for the same and incurs cost. Apart from that petitioners have not been able to show that the Authority is actuated by commercial profit-oriented approach in its overall working.

12. It is, however, necessary to examine the contention whether this 'no profit no loss' policy statement has any statutory flavour as contended by Mr. Nariman. The regulations styled as the Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968, ('Regulations' for short) are framed in exercise of the powers conferred by the Section 57 and were laid before the Houses of Parliament as required by Section 58. Disposal price has been defined in Regulation 2(13) to mean in relation to a property such price as may be fixed by the Authority for such property. There is not slightest or even a remote reference to 'no profit no loss' formula for determining the cost price. A quick survey of the Regulations does not spell out any formula for price determination on the basis on 'no profit no loss'. Whether the power to determine disposal price is in the Housing Committee will he presently examined. Regulations, however, on the contrary indicate that the power to determine the disposal price is vested in the Authority and as price has been fixed by the delegate of the Authority even if it is inclusive of surcharge it cannot be said that it runs counter to the declared policy of the Authority.

13. It is at this stage necessary to examine the contention that in case of Wazirpur and Munirka LIG schemes which came up during this very period no surcharge was levied and, therefore, there is invidious discrimination amongst members of the same class. Again the argument proceeds that income-wise classification alone is valid. Here time-wise (November, 1976 to January, 1977) classification is relied upon. It is an admitted position that no surcharge is levied on MIG flats at Munirka. The affidavit in reply shows that the land on which flats are constructed in Munirka MIG scheme turned out to be very rocky with the result that the construction cost in respect of flats at Munirka MIG scheme worked out at Rs. 456 per plinth area per meter whereas in respect of Lawrence Road it came to Rs. 401.54 only. The Authority, therefore thought that if surcharge is levied on flats under MIG scheme in Munirka area the disposal price would be very high and would be beyond the reach of MIG. It is in this background of the special facts that no surcharge was levied in respect of any flat in MIG in Munirka area. Project-wise price fixation area cannot be dubbed as arbitrary or discriminatory in comparison with other projects at different places.

14. It was, however, pointed out that 132 flats in Rajouri Garden MIG scheme were disposed of without levying surcharge as component of sale price. It is pointed out in affidavit in reply that these flats were handed over to the Government of India for meeting their needs for staff quarters and that was done in the year 1978. It is also pointed out that the government charged half the price of the

land in respect of these 132 flats and, therefore, surcharge was not levied. There is two-fold fallacy in this submission. Government ordinarily is in a class by it self and its needs of staff quarters deserve to be met in larger public interest. Government has not got any undeserved benefit at the cost and risk of petitioners. Hence their complaint in this behalf is without merits.

15. It was next contended that surcharge is arbitrary inasmuch as how the surcharge is worked out in each case does not answer any rational, tangible, scientific or understandable formula. How the figure of the surcharge has been worked out has been explained in detail in affidavit in reply. Briefly recapitulating the same, it may be mentioned that initial estimates for 304 MIG flats in Prasad Nagar area were prepared in or about 1971 and the estimated cost was Rs. 1,17,83,200 and that on March 21, 1972 an estimate cost of Rs. 1,09,97,100 was sanctioned. After the work commenced and the actual cost started coming in the revised estimate for 304 flats was of the order of Rs. 2,07,33,000 which was approved by the Vice-Chairman on September 18, 1976. According to the revised estimate the approximate disposal cost for each flat came to Rs. 68,202 and the cost of the land per dwelling unit was Rs. 7008. Extracts of original notes of Financial Advisor (Housing) and the approval of the same by the Vice-Chairman have been set out in the affidavit in reply. The subsequent revised estimates show that disposal price of each flat would be Rs. 75,200. In the mean time the Income Tax Department wanted to acquire 40 MIG flats in Prasad Nagar area were offered at the price of Rs. 75,000, per flat. Commissioner of Income Tax accepted the price. This became the starting point for working out the disposal price in that period. The difference between the cost price and the disposal price Rs. 75,000 per flat was treated as surcharge and the purpose was to use the extra money for extending cost reduction benefit to the allottees of flats in LIG, Janata and CPS schemes. Affidavit in reply of the Secretary of respondent 1 provides further information which shows that the cost price would be Rs. 72,000. Therefore at best the component of surcharge would be between Rs. 1700 to Rs. 2200 in Rajouri Garden MIG flats. Similarly, with regard to MIG flats at Lawrence Road the actual cost price would be in close proximity of the disposal price charged from the petitioners. It is, therefore, difficult to entertain the contention that even if surcharge could be justified its actual computation is arbitrary and irrational.

16. The next contention is that Vice-Chairman had no authority to levy surcharge and that even if he has authorised the same it runs counter to the principle of fixing disposal price incorporated in Resolution No. 209 dated November 26, 1974. The Vice-Chairman is to be appointed by the Central Government as per Section 3(3)(b) of the Act. It appears that this Vice-Chairman is whole-time officer and will be the Chief Executive of the Authority. This becomes clear from Regulation 3 of the Regulations which provides as under :

> 3. These regulations shall be administered by the Vice-Chairman, subject to the general guidance and resolutions of the Authority, who may delegate his powers to any officer of the Authority.

Thus the Vice-Chairman, subject to general guidance and resolutions of the Authority, shall administer the Regulations. He can delegate the functions to any officer of the Authority. Regulation 59 is important which reads as under :

> 59. The Authority may delegate all or any of its powers under these Regulations to the Vice-Chairman or to a whole-time member.

Armed with this power of delegation the Authority adopted Resolution No. 60 dated February 21, 1970 which reads as under :

> Resolved that the recommendations of the Committee be approved and all the powers of Delhi Development Authority be exercised by the Housing Committee and the Chairman. Delhi Development Authority be authorised to constitute the said committee, determine the organisational set-up and take (sic) all efforts for implementing the housing and allied schemes.

Serious exception was taken to this crass abdication of its powers and functions by the Authority. The composition of the Authority as set out in Section 3 would include such persons as Finance and Accounts Member, Engineering member, representative of Municipal Corporation of Delhi representatives of Metropolitan Council as and when set up. Three other persons were to be nominated by Central Government of whom one shall be person with experience of planning. It is High power body. Yet it completely abdicated its power and authority in favour of Housing Committee. The Housing Committee will practically supplant the Authority. But the more objectionable part of Resolution No. 60 is that such Housing Committee which is to enjoy all powers and functions of the Authority was to be constituted by the Chairman at his sole discretion because he was authorised not only to constitute the Housing Committee but to determine organisational set-up and then make all efforts for implementing the housing and allied schemes. It is really difficult to appreciate such whole-sale abdication or delegation of powers by a statutory authority in favour of a Committee whose composition would be determined by one man, the Chairman. By a process of elimination the Housing Committee would supplant the Authority and the Chairman could constitute Housing Committee. Therefore, the Chairman enjoyed a very wide discretionary power. Though Mr. Nariman did challenge the validity of Resolution No. 60, Mr. Chitale in cognate petition refrained from doing so. Once the power to delegate is given by the Regulations the challenge to validity on the ground of delegation must fail.

17. It is, however, necessary to examine the submission whether Vice-Chairman could have permitted levy of surcharge as a component of the price of flats in MIG schemes. In this connection it would be advantageous to refer to Resolution No. 200 dated June 18, 1968, of the Authority by which the recommendations of the Standing Committee, inter alia, empowering the Vice-Chairman to approve forms of application as well as to fix the disposal and hire-purchase price were accepted. Resolution No. 209 is the one adopted by the Housing Committee. It takes note of the delegation of powers to fix disposal and hire-purchase price of flats to the Vice-Chairman and further provides that if there is a marginal saving in any scheme the amount is always diverted to subsidise cost of Janata and CPS houses. It seems the Resolution is for information of the Housing Committee and the Housing Committee has merely resolved that the information be noted. The Resolution No. 200 of the Authority with Resolution No. 209 of the Housing committee sets out clearly that the power to fix the disposal price was delegated to the Vice-Chairman and ordinarily such excessive delegation to one man may be galling to a judicial body yet the scheme of regulations and the provisions contained in Regulation 3 read with Section 59 clearly envisages such delegation of powers. It is, therefore, idle to contended that the Vice-Chairman had no authority to levy the surcharge as component of disposal price of the flats.

18. It was next contended that even if Vice-Chairman had such power there is nothing to show that he has exercised this power and that, therefore, somewhere without any authority someone has added the surcharge to the disposal price and that, therefore, the surcharge is unauthorised. The submission seems to be factually incorrect. The note of Accounts Officer (Housing) dated September 8, 1976 submitted to the Financial Advisor (Housing) shows that the flats have been offered at the rate of Rs. 75,000 to the Commissioner of Income Tax Department and that should be the disposal price. This note was approved by the Financial Advisor (Housing) and ultimately

countersigned by the Vice-Chairman. Therefore, the price of Rs. 75,000 as the disposal price is approved by the Vice-Chairman. Even if it includes surcharge it cannot be said with confidence that the Vice-chairman has not approved the surcharge as a component of disposal price.

19. The last contention is that the Authority has made a huge profit by levy of surcharge. In this connection statistical table was annexed to the petition and there was serious controversy about the facts and figures set out therein, by the other side. Having gone through the detailed affidavit in reply it transpires that the contention is without merits. Therefore, there is no substance in the contention that the Authority has made a huge profit. On the contrary it appears that the overall working of the Authority is deficit ridden.

20. These were all contentions in these petitions and as there is no merit in any of them the petitions are dismissed. There will be no order as costs.

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