

Bareilly Development Authority and Another

Vs

Ajai Pal Singh and Others

Civil Appeals Nos. 2809-2812-A of 1986

(G. L. Oza, S. R. Pandian JJ)

17.02.1989

JUDGMENT

RATNAVEL PANDIAN, J. –

1. These five appeals by special leave under Article 136 of the Constitution of India are preferred against the judgment and order dated February 6, 1986 passed by the Allahabad High Court in Civil Misc. Writ Petition No. 2274 of 1984 connected with Civil Misc. Writ Petition Nos. 2983 of 1984, 3860 of 1984, 4558 of 1984 and 3202 of 1984 directing the respondents (appellants herein) to re-determined the cost of the appellants' (respondents herein) flats and instalments payable by them after hearing their grievances.

2. Since identical contentions are urged in all the appeals, we are rendering a common judgment.

3. As it is said that Civil Appeal No. 2809 of 1986 arising out of Civil Misc. Writ Petition No. 2274 of 1984 is more comprehensive and the facts alleged therein may be taken as representative in character, the facts relating to this appeal are briefly stated :

The Bareilly Development Authority (hereinafter referred as 'BDA'), the first appellant was constituted under Section 4 of the U.P. Urban Planning and Development Act, 1973 by the State Government for the purposes of development in the district of Bareilly. With a view to easing the acute housing problem in the said district, the BDA has undertaken construction of dwelling units for people belonging to different income groups styled as 'Lower Income Group', 'Middle Income Group', 'Higher Income Group' and the 'Economically Weaker Section' (hereinafter referred as LIG, MIG, HIG and EWS respectively). The BDA issued an advertisement offering to register names of intending application desirous of purchasing dwelling houses/flats in any one of the different income groups intended to be constructed by the BDA. In this appeal i.e. Civil Appeal No. 2809 of 1986, the respondents 1 to 17 and 20 got themselves registered for allotment of flats in MIG scheme and respondents 18 and 19 in HIG scheme with the BDA in accordance with the terms and conditions contained in the brochure issued by the Authority. The following table of the brochure shows the necessary details inclusive of the estimated cost for the different types of flats under various categories :

#-----	Type of	Range of Cost
Initial Interest	Approx. monthly	House Income Payment instalment-----
-----	MIG	Rs. 1000 to Rs. 64,000 Rs. 5000 12%

Rs. 551 p.m. Rs. 1500 p.m. for 15 yrs.HIG Rs. 1500 and Rs. 1,15,000 Rs. 7000 12%
Rs. 1440 p.m. above p.m. for 10 yrs.LIG Rs. 351 to Rs. 35,000 Rs. 2000 11% Rs.
345 p.m. Rs. 1000 p.m. for 15 yrs.EWS Rs. 350 p.m. Rs. 11,000 Rs. 100 7% Rs. 89
p.m. for 20 yrs.-----##

4. The note under the 'General Information Table' given in the said brochure states that the cost shown therein is only estimated cost and it would increase or decrease according to the rise or fall in the price at the time of completion of the houses/flats.

5. All the respondents registered their names for MIG, HIG, and EWS flats as the case may be and made the initial deposit. Thereafter, the respondents in MIG group received identical notices dated January 19/20, 1984 from the Secretary, Bareilly Development Authority (second appellant) intimating that the revised cost of houses/flats of MIG groups as well as the amount of monthly instalment would be as follows :

#1. Number of houses available for allotment 772. Cost of the house .. . Rs.
1,27,0003. Down payment to be made/paid on allotment .. Rs. 35,0004. Number of
monthly instalments fixed for the payment of remaining amount .. 1805. Rate of
yearly interest .. 13.5 per cent6. Amount of monthly instalment with interest .. Rs.
1031.50##

6. By the said notice, the respondents in MIG group were informed that 40 per cent of the houses/flats mentioned in the notice would be given to the allottee who would deposit the entire cost in one cash payment and that the other allottees who intend to buy houses/flats on the above revised price/instalments must send by January 28, 1984 their written acceptance on the annexed pro forma to the Registration Section of the office of the BDA otherwise their claims would not be included in the lots to be drawn on January 31, 1984. Except respondents 13, 17, 18 and 20, all other respondents in reply to those notices gave their unequivocal and unconditional written consent. Hence their names were included in the draw and on becoming lucky in the draw, the respondents barring the above four were allotted their respective houses. After allotment, they were asked to complete the other formalities and make down payments in accordance with the notice dated January 19/20, 1984, by a further notice dated February 3, 1984 (Annexure 'F'). Similar notice were issued to all the registered allottees for all types of houses and the respondents were also intimated that in case any of the registered persons does not want to purchase the house, his name would not be included in the draw but he would have his choice later on.

7. At this stage, all the respondents in these appeals approached the High Court under Article 226 of the Constitution of India challenging the revised terms and conditions on the BDA on the ground that the petitioners were estopped from changing the conditions subject to which the respondents-applicants had applied for registration and deposited the initial payment in the year 1980; that the enhancement of cost of the house/flat 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 petitioners is to the prejudice of the respondents. On the above contentions, the respondents prayed in their respective petitions for issue of writ of mandamus directing the petitioners to maintain the allotment of the flats in their favour on the original terms and conditions, to hand over the possession of the same and further to restrain the petitioners from cancelling the original allotment. The above plea was resisted by the petitioners strongly relying on certain conditions contained in the brochure especially of clauses 12 and 13 as per which the BDA has reserved its discretion to change, alter or

modify any of the terms and/or conditions of the allotment given in the brochure; that its decision would be final with regard to any matter concerning the registration and allotment and that the BDA has right to relax any conditions in its discretion. It has been further contended that respondents barring 13, 17, 18 and 20 have given their written acceptance to the changed conditions as mentioned in the notice dated January 19/20, 1984 and as such they are not entitled to the reliefs claimed in the writ petition. According to the petitioners the increase in the cost and the interest demanded from the respondents is neither arbitrary nor unreasonable and the High Court is not the proper forum for examining in detail the terms regarding payment of instalments in the circumstances of the present case, and if the respondents were not agreeable to the changed terms and conditions, they could as well resile from their consent. Finally, it was contended that the respondents are estopped from challenging the varied terms and conditions of the allotment after having consented.

8. The High Court though repelled the contention of the respondents (allottees) based on the principle of promissory estoppel, made the following observations with regard to the case of the respondents in the MIG category :

In the circumstances of the present case the fixation of monthly instalment to the tune of Rs. 1031.50 from the petitioners of MIG groups whose income is hardly Rs. 1500 per month appears to us smacking of arbitrariness and unreasonableness on the part of the contesting opposite party (petitioners herein)

In the circumstances of the present case, we are not satisfied that the contesting opposite party has succeeded in establishing its demand of double the estimated cost by facts and figures. The end of justice demands that the authority should re-fix the cost of the petitioner's flats after hearing their grievance.

9. The High Court answered the objections taken by the petitioners herein that the respondents have consented for the changed terms and conditions observing : "We think that the consent obtained from the petitioners was also not a reasonable act on the part of the contesting opposite parties (appellants herein) ". Finally, the High Court adopting the above reasoning in respect of the cases of other respondents also falling under various categories directed the appellants herein in all the writ petitions "to re-determine the cost of the petitioners' (respondents herein) flats and instalments payable by them after hearing their grievances".

10. Being aggrieved by the impugned judgment the appellants have filed these appeals by special leave.

11. Shri Rajinder Sachar, senior advocate after taking us through the relevant documents and the additional affidavit filed by the second respondents and the reply affidavit assailed the reasonings given by the High Court contending that the said Court has erroneously held that the BDA has failed to justify the demand of the enhancement in the cost of houses/flats as well as the increase of the monthly instalments is disproportionate to their income, because of the income of the applicant was relevant only to determine the category of the scheme in which the applicant had to be included for eligibility to get a house/flat under the scheme but not for enhancement of the cost of the houses/flats and monthly instalments. According to him since the declared policy of the BDA being 'No Profit No Loss', it had fixed the cost of the houses/flats and the rate of instalments after taking into consideration the escalation of the building material, labour charges, cost of transport and the allied valuable factors which all enter into the price fixation, and as such the High Court is not

correct in going into the question of computation of cost of the construction of houses/flats and the plea of clerical mistakes while exercising its jurisdiction under Article 226 of the Constitution of India. He further submits that the High Court has gone wrong in importing the principle laid down in *Ramana Dayaram Shetty v. International Airport Authority of India* ((1979) 3 SCC 489 : AIR 1979 SC 1628) to the present facts and circumstances of the case in view of the fact that in price fixation the executive has a wide discretion and it is only answerable provided there is any statutory control over its policy of price fixation and it is not the function of the High Court to sit in judgment over such matters of economic policy. It has been vehemently urged that after the parties have entered into the field of ordinary contract, the relations are no longer covered by the constitutional provisions but by the legally valid contract which determines the right and obligations of the parties inter se.

12. The fact that all respondents had applied for registration only on acceptance of terms and conditions contained in the brochure inclusive of clauses 12 and 13 as well as the conditions mentioned in the Notes 1 and 2 of the 'General Information Table' of the said brochure, and further the respondents barring respondents 13, 17, 18 and 20 in MIG group gave their reply accepting the changed terms and conditions as per letter dated January 19/20, 1984 cannot be challenged in view of the unassailable documentary evidence namely Annexures 'A', 'D', 'E' and 'F'.

13. Now, we shall reproduce some of the relevant conditions of the brochure as well as the changed conditions contained in the letter dated January 19/20, 1984. Clauses 12 and 13 of the brochure issued by the BDA and the notes 1 and 2 of the General Information Table thereto read thus :

Clause 12

For allotment by lottery all the abovementioned terms and rules given in the booklet would ordinarily be followed but the Development Authority will have the right to change, enhance or amend any of the terms and/or conditions as when it thinks necessary and as its discretion.

Clause 13

The decision of the Development Authority in regard to any matter in relation to the registration application will be final. It would have the right to relax any of the conditions at its discretion. The right to sell by auction the Middle Income Groups and Higher Income Groups plots/houses or any portion thereof, of the various schemes, will also vest in the Development Authority.

General Information Table

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Note : (1) The cost shown in the column 4 is only estimated cost. It will increase or decrease according to the rise or fall in the price at the time of completion of the property.

(2) The data given in the above mentioned table can be amended as felt necessary.

14. The last paragraph of the letter dated January 19/20, 1984 (Annexure 'D') reads thus :

If you want to buy the house on the above price/instalment then you must sent by January 28, 1984 your written acceptance on the annexed pro forma to the Registration Section of this office.

15. It may be mentioned here that in this letter (Annexure 'D'), the BDA has informed the allottees of MIG about the enhancement of the cost of the houses/flats as well as the increase of the monthly instalment and the rate of yearly interest etc. and requested the allottees to give their written acceptance so that their names could be included in the list.

16. The respondents except the four above have sent their written acceptance to the letter (Annexure 'D'). For a better appreciation of the case of the appellants, we think that as an example the letter (Annexure 'E') of the first respondent in this case namely Shri Ajay Pal Singh may be reproduced :

I, Ajay Pal Singh, s/o Shri Sujan Singh want to take a Middle Income Group house in the Housing Scheme No. 2 situated at Tibrinath of the Bareilly Development Authority on payment by instalment. I have seen the house and am satisfied. I accept the rules of the Bareilly Development Authority.

17. Only on the basis of the written acceptance, the names of the first respondent was included in the draw and he was successful in getting the allotment of House No. 37 in MIG type which fact is clearly borne out by the letter from the second respondent (Annexure 'F'). In this connection, it is worthwhile to note that the first respondent, Shri Ajay Pal Singh is the Principal of Shri Guru Govind Singh Inter College and his educational qualifications are M.A. (Econ. & Hist.), B.Sc., B.Ed., LL.B. From the above, it is clear that all the respondents who have sent their applications for registration with initial payment only after having fully understood the terms and conditions of the brochure inclusive of the clauses 12 and 13 and Notes 1 and 2 of the General Information Table as per which the BDA has reserved its right to change, enhance or amend any of the terms and/or conditions as the when felt necessary, and also the right to relax any of the conditions at its discretion, and that the cost shown in the column 4 of the brochure was only estimated cost subject to increase or decrease according to the rise or fall in the price at the time of completion of the property. This is not only the case of the applicants of MIG scheme but also of the other applicants falling under the other categories i.e. HIG, LIG and EWS. So it cannot be said that there was a mis-statement or incorrect statement or any fraudulent concealment in the information supplied in the brochure published by the BDA on the strength of which all the applicants falling under the various categories applied and got their names registered. In such a circumstances the respondents cannot be heard to say that the BDA has arbitrarily and unreasonably changed the terms and conditions of the brochure to the prejudice of the respondents.

18. More so, the respondents barring respondents 13, 17, 18 and 20 after having given their written consent accepting the changed and varied terms and conditions as shown in the letter dated January 19/20, 1984 are not justified in contending that the BDA has gone back on its original terms and conditions and has substituted new conditions to their detriment. It is quite understandable that the persons like the first respondent who is highly educated, occupying the post of the Principal of a College and who has accepted the changed terms and conditions by his letter is making these allegations against the BDA.

19. The respondents were under no obligation to seek allotment of houses/flats even after they had registered themselves. Notwithstanding, of houses/flats even after they had registered themselves as applicants, only after fully understanding the terms and conditions of the brochure inclusive of

clauses 12 and 13 and Notes 1 and 2 of the General Information Table which we have reproduced above, they are now trying to obtain the houses/flats at the price indicated in the brochure at the initial stage conveniently ignoring the other express conditions by and under which the BDA has reserved its right to change the terms and conditions as and when felt necessary, evidently depending upon the escalation of the prices. One should not lose sight of the fact that the BDA did not compel anyone of the applicants to purchase the flat at the rates subsequently fixed by it and pay the increased monthly instalments. On the contrary, the opinion was left over only to the allottees. In fact, the respondents in Civil Appeal No. 2809 of 1986 except the four abovementioned have unconditionally accepted the changed terms and conditions.

20. Thus the factual position in this case clearly and unambiguously reveals that the respondents 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 respondents 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. In the case before us, the contract between the respondents and the BDA does not contain any statutory terms and/or conditions. When the factual position is so, the High Court placing reliance on the decision in *Ramana Dayaram Shetty case* ((1979) 3 SCC 489 : AIR 1979 SC 1628) has erroneously held :

It has not been disputed that the contesting opposite party is included within the term 'other authority' mentioned under Article 12 of the Constitution. Therefore, the contesting opposite parties cannot be permitted to act arbitrarily with the principle which meets the test of reason and relevance. Where an authority appears acting unreasonably this Court is not powerless and a writ of mandamus can be issued for performing its duty free from arbitrariness or unreasonableness.

21. This finding, in our view, is not correct in the light of the facts and circumstances of this case because in *Ramana Dayaram Shetty case* ((1979) 3 SCC 489 : AIR 1979 SC 1928) there was no concluded contract as in this case. Even conceding that the BDA has the trappings of a State or would be comprehended in 'other authority' for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly instalments to be paid, the 'authority' or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter 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, they can only claim right conferred upon them by the contract in the absence of any statutory obligations on the part of the authority (i.e. BDA in this case) in the said contractual field.

22. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the right are governed only by the terms of the contract, 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 - *Radhakrishna Agarwal v. State of Bihar* ((1977) 3 SCC 457 : (1977) 3 SCR 249), *Premji Bhai Parmar v. Delhi Development Authority* ((1980) 2 SCC 129 : (1980) 2 SCR 704) and *DFO v. Biswanath Tea Company Ltd.* ((1981) 3 SCC 238 : (1981) 3 SCR 662)

23. In view of the authoritative judicial pronouncements of this Court in the series of cases dealing with the scope of interference of a High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India in cases of non-statutory concluded contracts like the one in hand,

we are constrained to hold that the High Court in the present case has gone wrong in its finding that there is arbitrariness and unreasonableness on the part of the appellants herein in increasing the cost of the houses/flats and the rate of monthly instalments and giving directions in the writ petitions as prayed for.

24. For the reason hereinbefore stated, we set aside the judgment of the High Court and accordingly allow all the appeals. There will be no order as to costs.

25. Before parting with the judgment, we would like to observe that it is open to the respondents to approach the appellants for correction of any clerical mistake in the calculation, if any and they are at liberty to move any proper authority for any remedy if they are otherwise legally entitled to.

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