

M/s B. P. Jain and Associates

Vs

State of Haryana and Another

Writ Petition (Civil) No. 981 of 1991

(K. N. Singh, R. M. Sahai, S. Mohan JJ)

12.12.1991

JUDGMENT

MOHAN, J. –

1. The petitioner is a firm carrying on business as builders, colonizers and contractors. The petitioner is the owner of 24.45 acres of vacant land situated in village Lakkarpur, near Surajkund, District Faridabad, Haryana State. Being engaged in construction activities it made an application under the provisions of Haryana Development and Regulation of Urban Areas Act of 1975 (hereinafter referred to as the Act) read with 1976 Rules for the grant of licence for group housing scheme. This application was submitted by the petitioner on July 21, 1983 without necessary documents. After several representations the Director of Town and Country Planning Department Haryana, Chandigarh replied that it was proposed to grant licence to the petitioner for setting up of Group Housing Colony at Village Lakkarpur, District Faridabad. The petitioner was called upon to fulfil the conditions laid down in Rule 11 of the Haryana Development and Regulation of Urban Rules, 1976 within a period of 30 days from the date of service of that notice. The agreement was required to be executed on non-judicial stamp paper of Rs 3.
2. The petitioner was also called upon to execute a bank guarantee for Rs 109.30 lakhs as required under Rule 11(1) of the said rules. On a request made by the petitioner for extension of time for furnishing the bank guarantee, time was extended (vide letter dated April 5, 1984) by four weeks. A further extension was prayed by the petitioner that was also granted on July 5, 1984 granting a further extension by four weeks.
3. On October 19, 1984, while returning the estimates for development and service plans, respondent 2 (Director of Town and Country Planning, Haryana, Chandigarh) for 24.45 acres, the petitioner was directed to submit the estimate only for 21.15 acres. On receipt of this letter, the petitioner wrote on November 14, 1984 that the external development charges which were demanded by respondent 2 might be reduced in view of the reduction in the area. This request of the petitioner was not acceded to by the Director. The petitioner was called upon to execute an agreement under bank guarantee as already asked for.
4. After some lapse of time, on December 12, 1987, the petitioner explained the circumstances under which he could not arrange for the bank guarantee of Rs 109.30 lakhs earlier. The bankers were willing to provide a bank guarantee for Rs 109.30 lakhs within 30 days of his intimating them to do so. It was also stated that he was willing to abide by all the directions and conditions which had been prescribed by respondent 2. Again, on September 26, 1988, October 11, 1988, January 2, 1989 and January 7, 1989, the request was rejected for the revival of the sanction and agreeing to

comply with the rules and conditions. On September 25, 1989, the petitioner was informed that it is a request for grant of a licence which was refused since it had failed to fulfil the conditions laid down under Rule 11 within the stipulated/extended period.

5. Upon receipt of this letter, the petitioner filed a memorandum to the Governor of Haryana on May 4, 1991 since the State of Haryana was under President's rule. It appears from the affidavit that the Governor made a suggestion that the licence granted in February 1984 could be revalidated if the petitioner was ready and willing to pay interest at bank rate on the amount of Rs 109.30 lakhs which was demanded as a security by the Director of Town and Country Planning, Haryana, Chandigarh w.e.f. 1984. Thereupon, the petitioner consented to such a course. The affidavit further avers that the Governor while recording the statement of the petitioner directed to submit a report and to calculate the total amount.

6. With the change of the government, these directions of the Governor were not implemented. Hence, in this present petition, the petitioner prays for an order in the nature of mandamus to direct the State of Haryana to revalidate the licence/permission granted by the Director by his letter dated 'Nil' Memo No. 1823-5 DP-84 permitting the petitioner to construct the multi-storeyed houses and flats in accordance with law by accepting security/bank guarantee to the tune of Rs 109.30 lakhs as demanded by the respondent under Rule 11(a).

7. A further prayer is for permission, approval or sanction to enable the petitioner to construct the multi-storeyed houses in pursuance of the licence granted by respondent 2 in the year 1984.

8. In support of the petition, the grounds are as under :

(a) Since the petitioner is the owner of the land and permission has been granted subject to compliance with Rule 11, on furnishing bank guarantee of Rs 109.30 lakhs by grant of extension of time for compliance with those conditions no prejudice whatsoever is caused to the respondent.

(b) Having given an assurance it is not open to the respondent to withdraw that assurance and in such a case the principle of promissory estoppel will apply. In any event, the petitioner was willing to comply with the directions as given by the Governor. Under those circumstances, to refuse to accord licence would amount to acting in an arbitrary and unreasonable manner, more, so, when respondent 2 is exercising powers under Sections 8(2) and (3) of the Act. Certainly, the respondent could not be allowed to frustrate the setting up of the Group Housing Colony.

9. The counter-affidavit has been filed on behalf of the respondents in which preliminary objection is taken that the petitioner has not exhausted the alternative remedy of appeal and review provided under Sections 19 and 20 of the Act. Disputed question of fact sought to be raised cannot be adjudicated upon in a writ petition under Article 32 of the Constitution. The writ petition also suffers from delay and laches as the impugned order was passed on September 25, 1989 the petition cannot be considered at this belated stage.

10. There is no justification for approaching this Court directly under Article 32 of the Constitution. The petitioner could well approach the High Court under Article 226 of the Constitution. On the merits it is submitted that there is no violation of fundamental rights so as to enable the petitioner to approach this Court.

11. The petitioner's scheme was to construct multi-storeyed building but it is made out that his scheme is to accommodate/give shelter to the weaker sections of the society. The flats, if constructed, can only be purchased by high/middle class group of people as the site where the petitioner wanted to build up his colony falls in a well developed area. Hence, it would be beyond the reach of the weaker sections of the society to purchase these multi-storeyed flats.

12. When the petitioner was called upon to execute the necessary agreements and furnish bank guarantee, it did not do so. Therefore, the blame lies only at the door of the petitioner. When repeated extensions were granted in order that the provisional decision to grant licence could be finally ordered, the petitioner did not do so. It is denied that the petitioner ever submitted a letter on May 4, 1991 to the Governor of Haryana. In any event, it could be considered an appeal under Section 19 of the Act.

13. Sections 8(2) and (3) are not applicable to the present case, as no licence had been granted to the petitioner.

14. Learned counsel for the petitioner submitted before us that the only condition on which the provisional decision to grant licence could not be finalised was because of the non-execution of agreement by the petitioner as well as non-furnishing of bank guarantee by way of security for a sum of Rs 109.30 lakhs. As of today, the petitioner is willing to comply with all the conditions set out under rule and will deposit such amount as is required. As a matter of fact, on the basis of the suggestion of the Governor, inclusive of interest from 1984 it has come to 2.20 crores, which the petitioner is willing to deposit. Since, essentially, the housing scheme is intended to benefit the weaker sections, 15 per cent of the houses will be reserved for weaker sections only.

15. Subject to these conditions, if licence is granted, no prejudice is cause to the respondent. The respondent cannot be allowed to act arbitrarily and unreasonably, merely because at the time when the petitioner was called upon to furnish bank guarantee, it was in difficult circumstances.

16. The learned counsel for the respondents would reiterate the averments in the counter-affidavit and would urge upon us that the petitioner had not exhausted the alternative remedy. Nothing prevented it from approaching the High Court since there is no violation of any fundamental right under Article 14, 19 or 21 of the Constitution.

17. When the petitioner itself failed to carry out the conditions of executing the agreement and furnishing bank guarantee, it cannot after so many years turn round and say that it is now willing regardless of passage of time. There is no arbitrariness or unreasonableness in the act of the respondent in not granting further extensions, especially so, when two extensions were granted.

18. We will now proceed to consider the above submissions. It is not disputed before us that there is acute housing problem in the State. In fact the respondent in the counter admits and states as follows :

"It is not disputed that in some areas there is a housing problem but that is general problem."

About the necessity for promoting a national housing policy to overcome the acute shortage of housing in our country, this Court had occasion to consider in *Prabhakaran Nair v. State of T.N.* [(1987) 4 SCC 238 : AIR 1987 SC 2117]. In para 36 it was stated as under : (SCC p. 261-62)

"It is common knowledge that there is acute shortage of housing, various factors have led to this problem. The laws relating to letting and of landlord and tenant in different States have from different States' angles tried to grapple the problem. Yet in view of the magnitude of the problem, the problem has become insoluble and the litigations abound and the people suffer. More houses must, therefore, be built, more accommodation and more spaces made available for the people to live in..... Men with money should be given proper and meaningful incentives as in some European countries to build houses, tax holidays for new houses can be encouraged. The tenants should also be given protection and security and certain amount of reasonableness in the rent. Escalation of prices in the urban properties, land, materials and houses must be rationally checked. This country very vitally and very urgently requires a National Housing Policy if we want to prevent a major breakdown of law and order and gradual disillusionment of people. After all shelter is one of our fundamental rights. New national housing policy must attract new buildings, encourage new buildings, make available new spaces, rationalise the rent structure and rationalise the rent provisions and bring certain amount of uniformity though having scope for sufficient flexibility among the States to adjust such legislation according to its needs."

Again, in *Shantistar Builders v. Narayan Khimalal Totame* [(1990) 1 SCC 520 : AIR 1990 SC 630] dealing with the case, it was observed as under : (SCC pp. 527-28, paras 9 & 10)

"Basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable commendation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.

With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries. These are features which are mainly responsible for increase in the homeless urban population. Millions of people today live on the pavements of different cities of India and a greater number live animal-like existence in jhuggis."

19. Thus, it would be clear that both the decisions clearly emphasise the basic need to every citizen of this country to have a reasonable accommodation to live. They also emphasize the need to encourage house building activities. We need not underscore the magnitude of the problem and the

urgent need to provide solution excepting to subscribe to the above judicial pronouncements.

20. Here, the petitioner desires to build houses on his own land. It cannot be denied and it is not denied before us that on his application dated July 21, 1983, the director of Town and Country Planning, Haryana, Chandigarh categorically stated, "it is now proposed to grant licence to you for setting up Group Housing Colony at village Lakkarpur, District Faridabad". Of course, this proposal was subject to the following conditions :

- (i) fulfilment of the conditions laid down in Rule 11,
- (ii) executing of a bank guarantee of Rs 109.30 lakhs as required under Rule 11(a); and
- (iii) to give an undertaking to the effect that the petitioner shall pay the proposed developmental charges to be determined by the Director.

21. No doubt, he could not comply with these conditions in spite of two extensions one on April 5, 1984 and the other on July 5, 1984 for four weeks respectively. However, on December 12, 1987, the petitioner did make it clear that he was willing to abide by all the conditions. There is no justification for the respondent to keep silent in spite of repeated requests made in several communications by the petitioners. It was only on September 25, 1989, the petitioner was informed that his requests for revalidation could not be considered as he had failed to fulfil the stipulated conditions. But the matter did not rest there, as the petitioner did approach the Governor. It was suggested that licence could be revalidated should the petitioner be willing and ready to pay interest at bank rate on Rs 109.30 lakhs, with effect from 1984. Though the respondent denies the submission of this letter dated May 4, 1991 to the Governor, we cannot agree with the respondent as if the document is introduced for the purpose of this case. Even otherwise, as rightly contended by the petitioner what is the prejudice caused to the respondent so long as the petitioner is willing to comply with each and every condition ? As stated by the learned counsel, after all, the object is to provide a housing colony and help the weaker sections of the society. It cannot be turned away by contending that the houses or flats, if constructed, would be beyond the reach of the weaker sections. Equally, the contentions are fallacious that the petitioner is a big industrialist and it is not expected that after investing crores of rupees in the scheme, it will provide cheaper houses to the poorer people even beyond the cost price. These arguments proceeded on hypothetical lines. Hence, we reject them. We are firmly of the view that having regard to the undertaking given by the petitioner's counsel as stated above, it is a case in which the petitioner is entitled to succeed. Accordingly, we allow this writ petition, subject to the following conditions :

- (i) The petitioner shall comply with all the conditions stipulated in Rule 11 of the Haryana Development of Rural and Urban Areas Act, 1976.
- (ii) He shall execute the agreement in Form LC-IV(A) as prescribed under Rule 11 of Haryana Development and Regulations of Urban Act, 1976 within 6 weeks from today.
- (iii) Initially a bank guarantee shall be furnished to the satisfaction of respondent 2 for a sum of Rs 2.20 crores within 6 weeks which includes interest on Rs 109.30 lakhs from 1984.
- (iv) Fifteen per cent of the constructed house shall be reserved only for the weaker

sections.

As to who constitute the weaker sections will be decided by the Director of Backward Classes or the Director, Social Services, Government of Haryana.

On fulfilment of the above conditions there shall be a revalidation of the licence/permission granted by respondent 2 in his letter dated 'nil' vide Memo No. 1823-5DP-84.

22. We make it clear that this permission required to be granted only for an area to the extent of 21.15 acres.

23. There will be no order as to costs.

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