

Sanjay Place Group Housing Association and others

Vs

Agra Development Authority and others

Civil Appeal No. 1127 of 1992

(L. M. Sharma, M. M. Punchhi, A. S. Anand JJ)

24.03.1991

JUDGEMENT

SHARMA, J.:-

1. Special leave is granted.

2. Appellants Nos. 2 to 55 are allottees of flats constructed by the Agra Development Authority-respondent, in Sanjay Place in the town of Agra under a self-financing housing scheme. The appellant No. 1 is an association registered under the Societies Act of which the other appellants are members. The flats in question were, on completion of the construction, allotted to the appellants during the period 1986-88. In accordance with the terms of the agreement, the total cost of the flats were paid and thereupon the possession was delivered to the appellants. In April and May, 1990 the Agra Development Authority-respondent No. 1, made additional demands which the appellants challenged by a writ petition before the Allahabad High Court. By the impugned judgment the petition has been dismissed holding that the application was made after an undue delay of 13 months and that a suit would be an appropriate remedy.

3. We have heard learned counsel for the parties at length on merits.

4. The learned counsel for the appellants has rightly contended that the writ petition was not liable to be thrown out on the ground of laches. He referred to paragraph 7 of the counter-affidavit filed in this Court wherein respondent No. 1 inter alia has taken a plea that since the objections raised on behalf of the appellants are still to be finally decided by the Chairman, the special leave petition is not maintainable and is premature. If the objections raised by the appellants are still pending for consideration as stated by respondent No. 1, how is it proper to accuse the appellants of undue delay in approaching the Court? The appellant could not, therefore, be non-suited on that account. The High Court also observed that since the matter requires accounting, the remedy by a suit would be more appropriate. This approach again to our mind is not quite proper. What the appellants have been asking for is to determine the right of the respondent No. 1 to make fresh demands, and for deciding this issue one way or the other, it is not necessary to enter into accounting or arithmetical calculations.

5. Mr. Jaitley, appearing in support of the appeal, has contended that the impugned additional demand includes the assumed profit which the Agra Development Authority would have earned as indicated in the break-up detailed in Annexure H to the special leave petition. A perusal of the contractual terms on which the flats were booked and allotments made clearly indicates that the Authority was entitled to receive the actual cost. Paragraph 11 (A) of the Annexure A- 1 dealing

with the Sanjay Place Group Housing Scheme, describes the scheme as a Self-Financing Scheme. Paragraph 11 (B) provides that the actual cost of the flat will be intimated prior to handing over of the possession to be paid in the manner indicated in paragraph 11(C). Accordingly the appellants paid the entire actual cost before getting possession of the flats and they are objecting to any further demand. However, we have examined the circumstances including the fact that the project undertaken by the Authority with reference to the Sanjay Place Scheme involving administrative expenditure did not come to an end with the construction and delivery of possession of the disputed flats, but continued until the other flats were also ready for delivery. It was just a matter of chance that the appellants were allotted flats which were made ready earlier than the others. The other items included in the additional demand cannot, therefore, be set aside as prayed for in the writ petition and Mr Jaitley was reasonable not to press this part of the claim seriously.

6. So far the profit part of the additional demands is concerned it cannot be sustained on any logic. The terms of the agreement referred to above are not consistent with such a demand, and the learned counsel for the respondents was unable to suggest any rational basis to support this part of the demand. We, therefore, allow the objections of the appellants partly and quash the profit part of the impugned additional demands as also interest (payable if any) thereon. The appeal is disposed of in the above terms. The parties will bear their own costs.

Order accordingly.

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