

Awasan Mandal Parijat Uch Ayawarg Sangharsh Samiti Through President

Vs

Rajasthan Housing Board and Others

Civil Appeals Nos. 2114 to 2119 of 1997

(M. K. Makherjee, S. P. Kurdukar JJ)

20.03.1997

JUDGMENT

S. P. KURDUKAR, J. –

1. Leave granted.

2. The dispute in all these connected civil appeals is confined to the cost of the land. The appellants in these appeals belonged to the second, third and fourth quarters of allotment of the houses constructed by the Rajasthan Housing Board under the scheme called "Parijat Scheme" (for short "the scheme") floated in the year 1987. These appeals can be disposed of by this I (judgment since they arise out of a common judgment dated 8-8-1995 passed 7 by the Division Bench of the Rajasthan High Court.

3. The facts which are relevant for disposal of these appeals may be briefly summarised as under :

The Rajasthan Housing Board with a view to make available houses to the eligible persons floated the scheme in the year 1988. The registration under the scheme was open for whole of the year 1988. It was a self financing scheme. By draw of lots, the names of the applicants in the scheme were finalised and they were grouped into four quarters meaning thereby as and when the construction of the houses would be completed and would be ready for possession, the possession thereof will be released to the successful applicants in accordance with their placement in these four quarters. There is no dispute that the appellants have deposited the initial deposit money according to the terms and conditions of the scheme. It was made clear in the scheme that costing of the houses of each quarter will be made separately taking into account the cost of the land, construction cost etc. The total cost of the house was to be worked out on the basis of costing principles which were finalised by the Rajasthan Housing Board and the copy thereof was made available to the court during the course of hearing. These costing principles were made applicable from 1-4-1988 and no dispute was raised by any of the parties at any stage.

4. The appellants who were the writ petitioners in the High Court alleged that the houses for the applicants of the first and second quarters were ready by November 1990 and the letters of allotment were accordingly issued to the applicants of both these quarters on or about 29-1-1991. The grievance of the appellants who were the applicants of the second quarter was that possession of the houses were given to the allottees of the first quarter in March 1991, but, however, the possession of the houses in respect of the second quarter was given to the appellants about nine months later i.e. in December 1991. The houses to be allotted to the applicants of the third and a fourth quarters were also ready much before March 1992 and accordingly the allotment letters were

issued to them in November 1991 but the Rajasthan Housing Board sometime in February 1992 issued demand-cum-possession letters to them. It was the grievance of the appellants before the courts below that the Rajasthan Housing Board had discriminated against them while determining the cost of the land in respect of all these four quarters. For the first quarter, the cost of the land was determined at Rs. 38,178 whereas the land cost charged from the allottees of the second, third and fourth quarters was increased to Rs. 72,765. They also made a grievance as regards the increase in the construction cost but, however, that issue does not survive in these appeals. The appellants made representations to the Rajasthan Housing Board complaining about the discriminatory treatment meted out to them while determining the cost of lands vis-a-vis the applicants of the first quarter. According to them, land costing should not differ as the chunk of the land was purchased in one lot and, therefore, there was no justification to increase the land cost in respect of the appellants who belonged to second, third and fourth quarters. They further made a grievance that for no fault of theirs, if the development of the land and construction of the houses thereof were delayed by the Rajasthan Housing Board, they should not be made to pay higher land cost. They, therefore, prayed that the land cost should be the same in respect of second, third and fourth quarters of 1988 as fixed for the allottees of the first quarter of 1988. This request of the appellants was turned down by the Rajasthan Housing Board by relying upon the costing principles which they had adopted. The appellants, therefore, filed three separate writ petitions challenging the action of the Rajasthan Housing Board.

5. The first respondent, the Rajasthan Housing Board, filed a detailed reply justifying the increase in the cost of the land in respect of second, third and fourth quarters and pleaded that they have strictly adhered to the costing principles which they have applied uniformly. They further pleaded that the cause for delay in completing the construction of the houses was beyond their control. In the meantime, the development cost also increased and accordingly they had no option but to refix the land cost in accordance with the costing principles which they had followed. Neither any discrimination while fixing the land cost was resorted to nor any profit was made by them by enhancing the land cost. There is no substance in any of the contentions raised on behalf of the appellants/writ petitioners and, therefore, no relief could be granted to them.

6. Both the parties in support of their rival contentions produced several documents before the learned Single Judge. After hearing the parties, the learned Single Judge by his common judgment dated 16-11-1992 disposed of all the writ petitions holding that the land of all the four quarters of 1958 had been utilised by March 1991 and, therefore, there was no justification for charging higher land cost from the allottees of the second, third and fourth quarters (the appellants). The learned Single Judge, however, held that the Housing Board had not violated the rules framed by it on 9-3-1988. It further held that the land cost forms a distinct and different head from "Developmental Cost" and that para 6 of the scheme which permitted increase in cost with the passage of time on account of rise in prices governed only the cost of construction material and labour but not the land cost. As regards the increase in the construction cost, the learned Single Judge did not grant any relief to the appellants because it involved disputed questions of facts which cannot be gone into in the writ petition. Aggrieved by this judgment and order passed by the learned Single Judge, both the contesting parties filed special appeals in the Rajasthan High Court and the learned Division Bench after hearing counsel for the parties vide its judgment and order dated 8-8-1995 allowed Special Appeals Nos. 12, 13 and 14 of 1993 filed by the Rajasthan Housing Board and others and dismissed the Special Appeals Nos. 83, 84 and 85 of 1993 filed by the writ petitioners/appellants before us. The net result, therefore is that the writ petitions filed by the appellants came to be dismissed.

7. Dr. Rajeev Dhavan, learned Senior Counsel appearing in support of these appeals, urged that the

Rajasthan Housing Board had failed to give sustainable reasons as to why the land cost should be different in respect of the allottees of the second, third and fourth quarters than the allottees of the first quarter, particularly, when it is undisputed that houses of the first quarter as also of the second quarter were ready much before 29-1-1991. The houses in respect of both these quarters were constructed simultaneously and if this be so, there was no justification whatsoever to increase the land cost and issue demand notices thereof to the allottees of the second quarter. As regards allottees of the third and fourth quarters, counsel urged that when the entire chunk of land was purchased at one time for the scheme, there was no question of increasing the land cost in respect of the second, third and fourth quarter houses. The land was the same but while determining the land cost in respect of these three quarters, an artificial enhanced price structure thereof was resorted to without any sustainable justification. The counsel, therefore, urged that there is patent discrimination and violation of the Rules and Regulations framed by the Board while promoting the scheme. The counsel drew our attention to the reasoning adopted by the learned Single Judge and urged that the same was supported by Rule 4.1.1 and there was no reason whatsoever for the Division Bench to upset the said reasoning.

8. Mr. Ganguli, learned Senior Counsel appearing for the Rajasthan Housing Board, took us through the brochure and the relevant Rules and Regulations framed by the Rajasthan Housing Board in respect of costing principles. He drew our attention to the Rules and in particular to the caption titled as "Cost of Undeveloped Plan" containing various Rules from 4.1 to 4.28. He reiterated that the Rajasthan Housing Board had worked out the land cost in respect of the first, second, third and fourth quarters in terms of these Rules and there is nothing on the record to indicate that the Rajasthan a Housing Board had tried to make any profit by increasing the land cost. He urged that the Rajasthan Housing Board had to borrow loans from various financial institutions on interest and in order to square up all developmental charges, construction, interest, etc., it was necessitated to increase the land cost in respect of the second, third and fourth quarters. He further urged that under the brochure itself, it was made quite clear that the price of houses in respect of these four quarters will be determined at the time of issuance of letter of allotment and handing over of possession with reference to the quarter in which such letter of allotment/possession would be issued. The appellants having accepted the terms and conditions set out in the brochure, they cannot be now heard to say that the Rajasthan Housing Board has resorted to discrimination thereby offending Article 14 of the Constitution while fixing the land cost differently in respect of the second, third and fourth quarters. The counsel, therefore, urged that the view taken by the Division Bench of the Rajasthan High Court is the correct view and cannot be assailed on any premiss.

9. We have given our careful thought to the rival contentions raised before us and we find that the impugned judgment does not suffer from any infirmity. The Rajasthan Housing Board in its brochure as well as in its Rules and Regulations had made it clear that the cost of the house would differ from each quarter depending upon in which quarter the letter of allotment/possession would be issued to the allottee. How the cost of a house would be worked out is provided under Rules 4.1 to 4.28 falling under the 3 caption "Cost of Undeveloped Land". Under para 4.2.1, the cost of development was determined by the Rajasthan Housing Board by applying the costing principles in the following manners :

- (i) Levelling & dressing of the ground;
- (ii) Construction of bituminous roads;
- (iii) Cost of drains & culverts;

- (iv) Cost of water supply lines;
- (v) Cost of electric lines;
- (vi) Cost of sewer lines;
- (vii) Cost of street lights;
- (viii) Costs of plantation, horticulture & parks;
- (ix) Miscellaneous.

10. In addition to the above heads, the cost development shall also include the cost of constructions of the following items :

- (i) Primary School/Higher Secondary School
- (ii) Hospital/Dispensary
- (iii) Community Centres

11. The total expenditure on development is worked out on the basis of actual expenditure plus anticipated expenditure. In paras II to 16 of the written statement filed by the Housing Board, it was indicated as to how the construction cost was worked out and how the land cost was required to be enhanced to Rs. 315 per square metre. After going through the pleadings of the parties in his behalf, we are of the opinion that the land cost which was determined by the Housing Board is in consonance with the brochure and the costing principles reflected in paras 4.1 to 4.1.5, 4.2.1, 4.2.3, 4.2.5 and 4.2.6. It was urged on behalf of the appellants that although construction of the i houses of the first and second quarters was completed when the possession of the houses was allotted to the allottees of the first quarter and therefore, there was no justification in not issuing the letters of allotment to the allottees of the second quarter. This contention has no merit because the development work was yet to be completed and, therefore, they were not ready for occupation and consequently the possession thereof was delayed by about nine months. Since the allotment letters of the houses of the second quarter fell during the Financial Year 1990-91, the land cost stood enhanced in view of the costing principles. The same was true in respect of the third and fourth quarter houses as the letters of allotment were issued in the Financial Year 1991-92 on different dates i.e. 9-12-1991 and 5-2-1992 respectively. The completion of the construction of the houses in respect of the second and third quarters was delayed beyond the control of the Housing Board. Consequently, the land cost was required to be predetermined on the basis of costing principles. All these factors were very much known to the appellants when they entered into agreements with the Rajasthan Housing Board and they were fully aware of the terms and conditions set out in the brochure and other relevant Rules and Regulations. We have carefully considered the contentions raised on behalf of the parties in this behalf and we find that the Rajasthan Housing Board had committed no error while determining the land cost differently in respect of the second, third and fourth quarters based on the costing principles. It also needs to be stated that the Rajasthan Housing Board had borrowed huge sums from various financial institutions for which it was required to pay the interest thereon. The appellants are unable to demonstrate that the land cost determined by the Rajasthan Housing Board was in violation of any of the terms and conditions mentioned in the brochure and/or Rules or Regulations or it had deviated from the Board's policy of providing houses on no-profit-no-loss basis.

12. For the foregoing conclusions, we are of the opinion that all these appeals are devoid of merit and accordingly dismissed. In the circumstances of this case, the parties are directed to bear their own costs.