Okhla Enclave Joint Action Committee

Vs

Union of India and Others

Writ Petitions (C) Nos. 113, 477, 792 and 876 Of 1996

(K. Ramaswamy, D. P. Wadhwa JJ)

07.04.1997

ORDER

1. Applications for impleadment are allowed. All the applicants be treated as the petitioners.

2. This writ petition came to be filed from time to time under Article 32 of the Constitution of India on the premise that the Coloniser, M/s. Durga Builders (P) Ltd., Respondent 6, has not been sincere in the allotment of the plots to the petitioners who, admittedly, had booked their plots with the Coloniser. After the notice was issued and the counters were filed in this Court, we requested Mr. Harish N. Salve, learned Senior Counsel for the Coloniser, to personally look into the matter and assist this Court in resolving the problem. We deeply appreciate and place on record our appreciation for the efforts made by Mr. Salve for the commendable job he has done in this behalf. After consulting the learned counsel appearing for the parties and also looking into the matter personally, he has stated as under :

> "1. Various meetings have been held between the counsel for the petitioners and the counsel for the respondents. The situation which emerges appears to be as under :
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> (i) There are petitioners who have paid in full and have not committed any default. It is the respondent's case that due allotments have been made to these people, some of whom have been put in possession also; registrations, etc., are complete. Some of such names are included in the list of petitioners - however, the respondent insists that these petitioners have been given possession.
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> (ii) The real bone of contention has been the concept of 'defaulter'. The short payments by the subscribers have arisen on three counts, namely :
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> (a) Increase in the price of plot with fixation 'of no profit no loss' by Government, Haryana Town & Country Planning Authority.
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> (b) Increase in the amount payable per plot due to readjustment in the size of the plot (originally proposed size of plots was revised 100 sq. yds. to 121 sq. yds. and 200 sq. yds. to 239 sq. yds.) as sanctioned by the Government of Haryana.
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> (c) General non-payment.

2. There does not appear to be any major dispute as to the identity of petitioners who have made full payment. As regards the petitioners who have refused to pay the revised rates fixed by the

Government of Haryana, the respondent had given an offer that payment of a sum of Rs. 550 (over and above the originally agreed cost of land) would be treated as proper payment if paid on or before 15-9-1995. It is the respondent's case that all petitioners who have paid the due amount have been treated as having made full payment and not in default and, therefore, given due allotments.

3. It is the case of some of the petitioners that they were not given proper advice notice about either the revised demand charges, the basis of the demand, or the revised cost of land (due to increase in land area) and it is for that reason that they did not make payment. The respondent claims that notices have been sent to each and every petitioner.

4. It is conceivable that there being large number of petitioners some of them transferees, whose names may or may not be on the record at the appropriate time, the notices were sent but not received. It is extremely difficult to believe or disbelieve either of the parties on this score. The respondent has mailed copies of letters/some of these petitioners deny receiving the same.

5. It was, therefore, suggested to the respondent that one way of resolving this problem is all those who are defaulters on account of nonpayment of developmental charges or payment for difference in area of land could be treated more or less on a par with their making some additional payment. The respondents are, by and large, agreeable to this proposal provided the following can be safeguarded :

> (a) The actual amount payable should now be paid at the rates fixed by the Haryana Government. The respondent has suffered a loss because they have had to pay the entire amount to the a Government, without petitioners' making the due payment. It is not the case that the respondent has pocketed the money and not paid. The situation is converse. The allotment of the plots would be made upon grant of sanction of the pending schemes. (The respondent has applied for sanction for the scheme to the Haryana Town & Country Planning Authority for an area which is more than enough. The land is in possession of the respondent and is the property of the respondent.) The only problem in the allotment is the clearance of the scheme by the Haryana Government on account of an order imposing a bar on construction within 5 kms from Surajkund area. Now the bar has been reduced to one km. Therefore, this land is clear as far as this Hon'ble Court is concerned. However, some additional safeguards have been provided.
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> (b) In the existing sanctioned scheme, there are a large number of plots available but they are of considerably larger size. The respondent has already allotted smaller plots - larger plots are unsold and in possession of the respondent. The small plots have been allotted to the booking holders and partly given under the commitment to the EWS Scheme.

6. Since the petitioners are insisting for allotment in the present sanctioned scheme, suggestion had been made that a joint application be made by the respondent and the present petitioners to the Haryana Town and Country Planning Authority to consider our request for reduction in the area of the plot by suitably increasing the density norms.

7. In other words, the position is that the land is available - the respondent is willing to take over the land at the originally promised price (although the prices have gone up considerably) on payment of the additional actual amount demanded by the Government. However, the exact possession of the

plot would only be given on clearance of the scheme by the Haryana Town & Country Planning Authority.

8. To sum up, the position is as under :

> (i) It is the respondent's case that there is adequate land in its possession. The respondent is also willing to abide by the original price of land together with such developmental charges as are allowed to it by the Government of Haryana.
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> (ii) The actual possession of the land can be given only on the grant of approval for the revision of density norms by the Haryana Town and Country Planning Authority.
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> (iii) The respondent, in any way, is committed to its original offer to return the money together with interest as this Court may consider just and proper."

3. A reading of the above would clearly indicate how meticulous (sic) analysis of the problem. Two broad issues remain to be solved. Firstly, allotment of the plots either in the existing scheme or the scheme pending approval with the Haryana Town and Country Planning Department, a Respondent 5 (for short "the Department"). A suggestion came that if the Department agrees to increase the density of the area and thereby existing plots are converted into smaller plots, all the petitioners in these writ petitions could be accommodated in the existing scheme. In case the said authority finds it difficult to reduce the plot area in the scheme pending approval, the petitioners could be adjusted therein. In that behalf, we find that there is no intractable difficulty in sorting out the problem. The Department is directed to find out first, whether the increase in density of plots is possible, thereby reduce the plots into smaller sizes in conformity with the existing rules governing the sanction of the scheme. In case there is any difficulty, the Department is free to approach this Court for necessary orders.

4. In case there is any intractable difficulty in adjustment of the same, on necessary sanction being granted to the pending scheme, all the petitioners should be adjusted in the pending scheme.

5. The next area of controversy pertains to the cost of the land. It is seen that the Government of Haryana has decided the pay charges for internal development and external development. As far as cost of the land is concerned, the Coloniser has agreed to abide by the rate which it had contracted for, namely, Rs. 100 to Rs. 200 per square yard depending upon the size of the plots. As far as the development charges are concerned they are now governed by the orders of the Department. As regards internal development, the Government has fixed Rs 878 for the plots of the size, between 135 sq. yards to 170 sq. yards and Rs. 975 for the plots of 171 to 220 sq. yards. Practically, there may not be any difficulty in this behalf for the reason that the matter could be easily verified from the record of the appropriate Department of the Haryana Government. A letter has been placed before us in this behalf. Prima facie, we proceed on the terms of the said letter. If there is any difference, it can be sorted out with reference to undisputed record of the Government. As regards external developments, it is worked out at Rs. 4.7 lakhs per acre that would be borne obviously by the allottees.

6. Mr. Dhavan, learned Senior Counsel, has pointed out that licences held by the Coloniser had lapsed on account of non-compliance of the conditions. Mr. Salve, learned Senior Counsel, has brought to our notice that pending writ petitions the Coloniser has already deposited Rs. 3 crores and the balance amount would be deposited shortly after the disposal of the writ petitions. Under

these circumstances, the necessary licences or renewal thereof would be granted by the appropriate authority according to rules. Thereafter, the above exercise would be done. This would be done within a period of six weeks from the date of receipt of this order.

7. It is then brought to our notice that in case the density is not increased and thereby the plots cannot be converted into smaller plots, it is obvious that the Coloniser should allot necessary plots to all of the petitioners in the pending scheme. Mr. Salve, learned Senior Counsel, has suggested that the record of the Coloniser is open to scrutiny and in case the petitioners have a feeling that the Coloniser is avoiding allotment of the plots, the 4th a respondent is at liberty to look into the matter and it can directly allot the plots to the allottees whose list will be supplied by the Coloniser to it. With this fair stand taken by the Coloniser, we prima facie accept it to be justified. Parties are at liberty to approach this Court in case of any difficulty for further directions.

8. In that view of the matter, the writ petitions are disposed of. No costs.