SUPREME COURT OF INDIA

Defence Enclave Residents Society

Vs

State of Uttar Pradesh

Writ Petition (Civil) 344 of 2000, With Writ Petitions (C) Nos. 185/ 2001, 349/2002 and 303/2003

(Shivraj V.Patil and B.N.Srikrishna)

20/09/2004

JUDGMENT

B.N.SRIKRISHNA, J.

These four writ petitions under Article 32 of the Constitution, though slightly differing on facts, raise the same issue of law and, therefore, can be conveniently disposed of by a common judgment.

Writ Petition No. 344 of 2000:

This writ petition is by a society of the residents of a colony known as 'Defence Enclave' in Meerut. The respondents to the writ petition are the State of U.P., the Meerut Development Authority and the Special Land Acquisition Officer, Meerut, U.P.

The second respondent, Meerut Development Authority (hereinafter referred to as 'the authority') is a statutory authority constituted under Section 4 of the Uttar Pradesh Urban Planning and Development Act, 1973 (hereinafter referred to as 'the Act'). The objectives of the authority are securing the development of the development area according to plan and for that purpose the authority has the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection thereto for

such development and for purposes incidental thereto. Under Section 17 of the Act, the State Government is empowered to acquire any land, if land is required for the purpose of development, or for any other purpose of the Act and State Government, having taken possession of the land, is empowered to transfer it to the Authority on payment by the Authority of the compensation awarded under the Act and the charges incurred by the Government in connection with the acquisition. Under Section 18 of the Act, the Authority may dispose of the land acquired by the State Government after undertaking or carrying out such development as it thinks fit, to such persons, in such manner, and subject to such terms and conditions as it considers expedient for securing the development of the development area according to plan. Under sub-Section (2) of Section 18 the Authority is empowered to dispose of the land by sale, exchange or lease or by the creation of any easement, right or privilege or otherwise.

One of the main functions of the second Respondent authority is urban development. Pursuant to this objective, the second Respondent formulated a scheme known as "Defence Enclave". The scheme envisaged allotment of land on long lease for 90 years to retired and serving Defence personnel. For the purpose of implementing the scheme, the first Respondent, State of U.P., acquired land by invoking its powers under the Land Acquisition Act, 1894. The Land Acquisition Officer awarded compensation for the acquired lands @ Rs. 50/- per sq. yard to the land holders. The land holders sought a reference under Section 18 of the Land Acquisition Act and the reference Court enhanced the compensation from Rs. 50/- per sq. yard to Rs. 240/- per sq. yard by an award dated 11.5.1992. First and second Respondent carried the matter in appeal before the High Court of Judicature at Allahabad. The claimants also filed cross appeals. The High Court by its judgment dated 12.1.1995 reduced the compensation from Rs.240/- per sq. yard to Rs.75/- per sq. yard.

The claimants filed special leave petitions in this Court which came to be disposed of by an Order dated 30.4.1997. This Court enhanced the compensation payable to the claimants from Rs. 75/- per sq. yard to Rs. 175/- per sq. yard. While disposing of the special leave petitions, this Court observed as under:

"The appeals are, accordingly allowed. The judgment of the High Court stands set aside. The award and decree of the reference Court in respect of villages stand modified. In view of the facts and circumstances of the case, parties are directed to bear their own costs. If the amount has already been deposited as per the award of the reference Court to the extent of variation, the Meerut Development Authority is entitled to restitution.

It is open to the Meerut Development Authority to enforce the award for seeking restitution. In view of the increase in the case of valuation of the lands, necessarily, enhanced compensation would form a component for charging the said amount from the purchaser in respect of the respective plots on buildings, as the case may be, towards the developmental expenses." *

Although, originally, the 'Defence Enclave' scheme formulated by second Respondent contemplated allotment of plots at fixed rate of Rs.600/- per sq. meter, on which basis the petitioner and others had taken possession during the period March, 1995 to December, 1995, pursuant to the order of this Court dated 30.4.1997, second Respondent decided that the plot holders would have to pay an

additional amount of Rs. 694/- per sq. meter.

Accordingly, the second Respondent addressed a letter to the Secretary of the petitioner Society on 9.7.1997 calling upon the petitioner-Society to collect the additional amounts from its members, who had been allotted the plots, and remit the same on or before 31.7.1997, failing which interest @ 15% per annum would have to be paid by the petitioner-Society up to the date of actual payment.

The petitioner-Society has impugned the action of second Respondent by the present writ petition under Article 32 of the Constitution on the following, amongst other, grounds:

"(iii) That the MDA now has record out of the concluded contract between the Petitioner Society and the MDA and the demand, therefore, is not sustainable.

(v) That the impugned demand of Rs. 694/- per sq. meter over and above Rs. 600/- per sq. meter as per the terms of allotment is tantamount to violation of the contract between the petitioner and the MDA and is, therefore, not sustainable.

(vi) That all acts of the public authority must be public oriented as this sovereignty ultimately lies in the people. The demand clearly infringes the fundamental right to property of the Members of the Petitioner Society." *

The respondents have opposed the writ petition inter alia on the ground that the writ petition is an abuse of the process of law; that the brochure published by second Respondent had clearly stated that:

"the site, size and price of the proposed property under this scheme is provisional. Vice-Chairman, MDA has right to make any alteration. In case of any dispute, the decision of Vice-Chairman, MDA shall be final and binding on the applicants/allottees." *

It is also pleaded by the second Respondent that the sale deeds executed by various purchasers contained an enhancement clause to the effect that the cases regarding enhancement of compensation were pending, and, in the event of such enhancement being granted by the court, second Respondent reserved the right to realize the additional amount from the purchasers. In the copy of the model sale deed placed on record, this clause finds place, which reads as under:

"2. That although the first party has realized the sale consideration from the second party before the execution of this deed, but since the house is constructed on the land, with respect of which the cases regarding compensation are pending before different courts and, in case, in future, the amount of compensation is enhanced in the cases relating to land acquisition, in that case, the first party shall have a right to issue demand letter with respect to enhanced amount and the second party shall be bound to pay the enhanced amount and shall have no objection in its recovery along with 18%

annual interest with other expenses, as arrears of land revenue. Any supplementary deed, with respect of the additional amount taken from the second party shall be executed later." *

The petitioner pleads in the writ petition that, in view of this concluded contract, the members of the petitioner Society, who were purchasers/allottees of the plots, could not be called upon to pay any additional price, irrespective of the fact that the land holders whose lands were acquired by second Respondent had to be paid higher compensation under the order of this Court as it would "tantamount to violation of the contract between the Petitioner and the MDA". It is also pleaded that the action of the second Respondent "clearly infringes the fundamental right to property of the members of the petitioner society".

In our view, this writ petition is entirely misconceived. A perusal of the grounds on which relief is sought makes it clear that what is really a contractual dispute is sought to be masqueraded as breach of fundamental rights under Articles 14, 19 and 21 of the Constitution.

In the first place, a fundamental right to property no longer exists by reason of the deletion of Clause (f) from Article 19(1) of the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 2, (w.e.f. 20.6.1979).

Secondly, it is not possible to accept the contention that Article 21 has been infringed or that there is a violation of Article 21 by reason of a dispute which has arisen between the two parties to a contract with regard to price payable for land allotted to the members of one of the parties.

Finally, as to the allegation of breach of Article 14, we find that this issue cannot be adjudicated unless the full facts of the contractual dispute are ascertained and the contractual rights of the parties are adjudicated. We also find that, as a matter of fact, one of the associations had filed civil suit before the Civil Court at Meerut, being Original Petition No. 845 of 1999, and sought for an injuction therein. We are informed that, though the injunction order was not granted, the suit is still pending.

In these circumstances, we called upon the learned counsel for the petitioner to satisfy us as to why we should entertain a writ petition directly under Article 32 of the Constitution, in what appears to be a purely contractual dispute.

The learned counsel for the petitioner contended that the second Respondent was constrained to move this writ petition under Article 32 of the Constitution only because of the observations of this Court made in Order dated 30.4.1997, which we have quoted supra. He contends that, in view of these observations, all courts including the High Court would feel bound by these observations and it would be futile for the petitioner to move in a civil court or even attempt to claim relief under Article 226 of the Constitution before the concerned High Court.

In our view, the apprehension voiced for the petitioner is unjustified and misplaced. In the first

place, the allottees of lands, the members of the petitioner Society, were not parties to the special leave petitions in which the said Order of this Court was given. Secondly, the above observations appear to be more in the nature of general observations and not intended as a direction, as assumed by the second Respondent. A reading of the said Order dated 30.4.1997 does not disclose that individual sale deeds executed between the allottees and the second Respondent authority were either adverted to or considered. The above observations appear to proceed on the tacit assumption that there were individual contracts under which the liability for increased compensation could be passed on to the allottees of lands. A careful perusal of the said order does not indicate that the issue as to whether the increased burden on account of the increase of the compensation was to be borne by the authority or if it could be passed on to the purchasers/allottees of land, was neither pleaded, nor raised, nor adverted to in the order. Except by way of a passing reference to the effect "In view of the increase in the case of valuation of the lands, necessarily, enhanced compensation would form a component for charging the said amount from the purchaser in respect of the respective plots on buildings, as the case may be, towards the developmental expenses" there does not appear to be any discussion on this issue in the entire order.

We, therefore, do not think that the aforesaid observations were intended to bind and operate against persons who were not parties to the special leave petitions before this Court without consideration of the complete facts and circumstances in respect of such persons.

In our view, what is projected before us, **though under the camouflage of an infringement of fundamental right, is really a contractual dispute pure and simple. As to whether there is a right reserved in the second Respondent to pass on the additional liability to the purchasers, is determined by the terms of the contract between the parties. Though, a model sale deed has been placed on record before us, we think it necessary that the facts in each case have to be investigated, the terms of the contract between the second Respondent and the allottee be determined on evidence and construed, before the dispute can be satisfactorily adjudicated. #**

In our view, a writ petition under Article 32 of the Constitution is neither an occasion, nor an appropriate remedy, for such a dispute. Without expressing anything further on the merits of the dispute between the parties, we decline to exercise our jurisdiction under Article 32 of the Constitution in view of the peculiar facts and circumstances of the case before us.

Writ Petition No. 185 of 2001:

The facts here are almost the same as in the case of writ petition No. 344/2000. In this case, the land was acquired for the Society known as Shradhapuri, Phase-II at Meerut, U.P. The special leave petitions came to be disposed of by the same Order dated 30.4.1997, by which the compensation was increased. Pursuant thereto, second Respondent authority issued demand notices to the individual members of the society claiming increased compensation of Rs.654/- per sq. meter. In view of the fact that writ petition No. 344/2000 was already admitted in somewhat similar circumstances, this writ petition came to be admitted.

Although, the learned counsel tried to impress upon us that there was some distinction between this case and that in writ petition No. 344/2000, we find there is hardly any material difference between the two.

Writ Petition No. 303 of 2003:

The second Respondent floated a scheme for residential plots. For the rest, the facts are same as in case of writ petition No. 344/2000. Here also, the compensation payable to the land owners was increased by the same Order dated 30.4.1997 of this Court and, following thereupon, the second Respondent authority issued notices demanding additional payments.

The petitioner contends that, once having fixed the price in the brochure, the authority was not empowered by any law to pass on the liability of additional charges in any form whatsoever, "not stipulated under the contract or the law governing the same". In this case, the authority has not allotted land by way of sale, but granted long leases of residential plots.

It is alleged that while the price was charged initially Rs. 176 per sq. meter, the authority is now demanding Rs.850/- per sq. meter, which, according to the petitioner, is unreasonable and arbitrary. The petitioner also pleads that

"it is immaterial so far as the purchasers and the allottees were concerned, what amount the authority was liable to pay for acquisition under Section 17. So far as the disposal of the land is concerned, it is governed by the terms and conditions entered into between the Development Authority and the allottees or the purchasers." $ * (emphasis by court)

It is averred in the writ petition that one of such associations has filed a civil suit before the Civil Court at Meerut numbered as Original Petition No. 845 of 1999 which is pending before the said court. However, in the meanwhile 'Defence Enclave' society had filed a writ petition before this Court, which is admitted and numbered as WP 344/2000. Hence, this writ petition is filed and came to be admitted.

In our view, there is no substantial difference between the case of this writ petitioner and the other writ petitioners in the group. Here also, it is not possible to ascertain as to what are the exact terms of the contract between the individual members of the society and the second Respondent. Writ Petition No. 349 of 2002:

This is another writ petition arising from the same set of facts. The members of the petitioner's association are said to be senior citizens for whose welfare a residential scheme was floated.

Here also, it is contended in the petition that second Respondent is "bound by the terms" $ (emphasis by court) and demanding the enhanced compensation amount on the part of second

Respondent is "tantamount to violation of the own extent contract in between the petitioner as well as the MDA." $ (emphasis by court) What is true of the other writ petitions is also true of this. In any event, whether the second Respondent authority could pass on the increased liability consequent upon the additional compensation payable to the land owners of the acquired land, and, if so, how much of it could be passed on to the purchasers/allottees of the land, is a matter requiring careful investigation of the facts and circumstances, including the detailed terms of the contract between the second Respondent authority and the individual flat purchaser/allottee of sites. It would also require an examination of the basis on which the cost of each site was worked out. These are matters requiring detailed evidence, without which a satisfactory adjudication of the dispute is not possible. A writ petition under Article 32 of the Constitution is hardly an occasion for such exercise.

Writ Petitions Nos. 344 of 2000, 185 of 2001, 349 of 2002 and 303 of 2003:

For the aforesaid reasons, we are of the view that these writ petitions are liable to be dismissed. Hence, all the four writ petitions are dismissed leaving open all the rights and contentions of the parties to be agitated before any other appropriate forum.

No order as to costs.