SUPREME COURT OF INDIA

Kerala State Housing Board

Vs.

Grace Joseph

C.A.No.6097 of 2008

(R.V.Raveendran and Lokeshwar Singh Panta JJ.)

03.10.2008

ORDER

1. Leave granted. Heard both parties.

2. The appellant, Kerala State Housing Board (`Board' for short) allotted a premises (land and building) to the respondent in terms of agreement of sale dated 8.4.1992.

> "Clause (4) of the agreement fixed a sum of Rs.31260/- as the tentative land value and tentative service charges (for providing amenities). The said clause also fixed the (final) cost of the structure as Rs.86992/-. Clause 10 enabled the Board to re-fix of the final price of the land and service charges, on account of enhancement of compensation for acquisition of the land and increase in the cost of amenities. Clause 11 provided for the interest payable on the difference between the tentative price and the final price fixed. The said Clauses 10 & 11 are extracted below :
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> "10. It is agreed that the Kerala State Housing Board shall be entitled to re-fix the final price of the land and service charges thereon taking into account inter alia the enhanced compensation awarded by Courts and Tribunals. The cost incurred by the Board or and its predecessors in interest for prosecuting such proceedings in courts and tribunals and also the increased cost of development works and amenities undertaken with respect to the scheme after a final settlement of accounts in connection therewith.
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> It is agreed that the decision of the Board in fixing the revised price of the land and service charges shall be conclusive and final.
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> 11. It is expressly agreed between the parties hereto that after the finalization of the price of the land and service charges by the Board the party of the second part shall pay to the Board together with interest at 15.5% and 13% per annum, the difference between the tentative price fixed therefor and the price finally fixed for both the land and service charges by the Board, within thirty days of the date of a registered notice

demanding the payment thereof or in such instalments such rate of interest to be determined by the Board."

Clause 12 provides that the allottee shall be entitled to get a registered sale deed conveying the premises on payment of all the amounts due in terms of the said agreement and after complying with all the terms and conditions of the said agreement."

3. It is stated that the respondent has paid the tentative land value and tentative service charges aggregating to Rs.31260/- as also the cost of structure being Rs.86992/- by 1994 and secured possession of the premises. More than a decade after the agreement, the Board send a demand notice dated 7.1.2004 claiming Rs.13406/- as the difference in building cost (with interest) and Rs.163821/- as additional land value (with additional development and LAR) in all Rs.177227/-.

4. Feeling aggrieved, the respondent approached the High Court contending that no particulars of the increased cost were furnished to her and that she was not liable to pay the additional amount claimed by the Board. A learned Single Judge of the Kerala High Court, by order dated 14.6.2005 disposed of the writ petition by directing the appellant Board to furnish a detailed statement of account (showing the actual cost and the interest) to the respondent. Learned Single Judge also observed that if on receiving the statement of account the respondent wanted to dispute any part of the claim, she may have to approach the civil court, as that was in the nature of a civil dispute.

5. The order of the learned Single Judge was challenged by the respondent in a writ appeal before the Division Bench. The Division Bench found that in so far as cost of the structure, the sum of Rs.86992/- mentioned in the agreement was not a tentative but final figure and neither clause 10 nor clause 11 of the agreement enabled the Board to make a claim for increase in the cost of construction.

"The Division Bench was therefore of the view that increase of Rs.13406/- claimed in regard to the cost of the structure was unwarranted. In so far as the increase in land cost and service charges, the Division Bench found that the Land Acquisition Officer had made an award in regard to the acquired land (where the project was executed) on 25.11.1981 and the reference court had enhanced the compensation by its award dated 5.12.1989. The Division Bench held that as the said increase by the Reference Court was more than two years prior to the agreement, the said increase would have been already worked into land cost and service charges shown as Rs.31260/- under the agreement dated 8.4.1992. The Division Bench also noted that the award of the Reference Court was not challenged by the land owners and therefore, there was no question of any increase after 8.4.1992; and that the award of the Reference Court was challenged by the Board before the High Court and the High Court had reduced the amount awarded by the Reference Court and that had attained finality. The Division Bench was therefore of the view that there was no justification for demanding any increase in cost towards land. It held that the increase in cost, if any,

that could be demanded was only in regard to the development work and amenities. In view of its findings, the Division Bench allowed the appeal, by its judgment dated 22.6.2006, set aside the judgment of the learned Single Judge and quashed the demand notice dated 7.1.2004.

It however left it open to the Board to make a fresh demand only in regard to service charges (that is the increased cost of development work and amenities undertaken in regard to the scheme)after final settlement of account. The Division Bench also directed that the title deed should be issued to the respondent on execution of an undertaking that she will pay the amount due towards increased cost of development work and amenities. The Board sought review, which was rejected on 13.10.2006."

6. The said judgment and order are challenged by the Board in this appeal. The Board is not able to challenge the quashing of the demand for Rs.13406/- towards extra cost of structure, as the contract shows that Rs.86992/- paid by the respondent was the final price and the contract did not provide for any increase therein. In regard to the land cost, the Board submitted that the sum of Rs.31260/- shown as tentative land value and service charges in the agreement dated 8.4.1992 did not take into account the compensation enhancement granted under the award dated 5.12.1989 of the reference court as the said amount had not been paid to the land-owners by then and, the final cost was worked out after payment to the land-owners and after the litigation ended. It was further submitted that the Division Bench could not have assumed that the enhanced land cost had been taken into account in the tentative price shown in the agreement.

7. We find considerable force in the contention of the appellant. The appeal filed against the award of the Reference Court, by the Board, was pending till 1996 and therefore the land price mentioned in the agreement dated 8.4.1992 could not be said to be final. We also find that the Division Bench, before passing the impugned judgment, did not secure the working sheets in regard to the price of the land nor examined the accounts. The agreement (clause 10) specifically stated that the land price was tentative and any increase demanded was payable. If the entire cost of land including enhancement had already been taken into account while fixing the cost of land mentioned in the agreement, it would not have stated that the land price was tentative and subject to increase in final settlement. The fact that the cost of construction was shown as the final price and the cost of land and development was shown as tentative clearly demonstrate that the amount shown in the agreement towards land cost and service charges was not the final cost. The Division Bench could have at best directed the Board to give actual calculation/break up of the increased amount (as was directed by the learned Single Judge). If the Division Bench did not want to refer the parties to a civil court in the event of any part of the calculation being disputed, it ought to have examined the accounts, considered the objections of the respondent and finally decided the issue. The direction issued by the High Court in regard to the tentative service charge should equally apply to the tentative land cost also.

8. We therefore allow this appeal in part and set aside the judgment of the High Court in so far as it relates to the cost of land and service charges. The matter is remanded to the High Court with the following directions:

> "(a) The Board shall furnish to the respondent the calculation-sheet in regard to Rs.177227/- claimed as the increased cost of land and service charges (for development and amenities) within two months from today;
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> (b) If the respondent agrees with the calculation and pays the amount, the Board shall execute the sale deed within one month from the date of payment;
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> (c) If the respondent disputes the amount claimed by the Board, either in regard to land cost or service charges, she may file objections to the calculations and the Division Bench shall decide the same.
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> (d) If there is any delay in the disposal by the High Court, it is open to the respondent to furnish a bank guarantee for the amount claimed by the Board, without prejudice and obtain the sale deed.
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> (e) The quashing of the demand in respect of increase in cost of construction is upheld.