SUPREME COURT OF INDIA

Kar.Indust. Areas Dev.Board & Anr.

Vs.

Prakash Dal Mill & Ors.

C.A.No.5406-5445 of 2005

(B.Sudershan Reddy and Surinder Singh Nijjar,JJ.,)

06.04.2011

JUDGMENT

Surinder Singh Nijjar, J.,

1. The instant appeals are preferred against the final order and judgment of the High Court of Karnataka at Bangalore in W.A. Nos. 2183 to 2221 of 2000 & W.A. No. 1492 of 2000 dated 18th February, 2003 whereby the Division Bench of the High Court allowed the writ appeal by setting aside the judgment of the High Court in W.P. Nos. 23578 to 23617 of 1999 dated 7th July, 1999.

2. We may now briefly notice the relevant facts which are necessary for the adjudication of the present case. The Karnataka Industrial Areas Development Board (hereinafter referred to as `appellant No.1) had formed an industrial layout at Tarihal village in the year 1983, pursuant to which, it invited interested purchasers to make applications for allotment of industrial sites. Pursuant to the same, the respondents herein, applied for the allotment of sites. It is a matter of record that the respondents had applied for the allotment of sites at different points of time. Consequently, the appellant issued letters of intent, indicating that it had resolved to allot all respondents the sites shown in their cause titles at Tarihal Industrial Estate. The said letter also indicated the tentative price at which the land was sought to be allotted.

3. In response to the offer made by the appellant No.1, the respondents being desirous of purchasing their respective plots indicated their willingness for the abovementioned site. Accordingly, they affirmed their interest to purchase the same. Thereafter, the letters of allotment were issued in favour of the respondents incorporating the terms and conditions of allotment. Subsequent thereto, lease-cum-sale agreements were executed in favour of the respondents on their complying with conditions of allotment.

4. One of the conditions mentioned in the lease-cum- sale agreement reads thus:-

"7(b) As soon as it may be convenient the Lessor will fix the price of the demised premises at which it will be sold to the Lessee and communicate it to the Lessee and the decision of the Lessor in this regard will be final and binding on the Lessee. The Lessee shall pay the balance of the value of the property, if any after adjusting the premium and the total amount of rent paid by the Lessee, and earnest money deposit within one month from the date of receipt of communication signed by the Executive Member of the Board. On the other hand, if any sum is determined as payable by the Lessor to the Lessee after the adjustment as aforesaid, such sum shall be refunded to the Lessee before the date of execution of the sale deed."

5. The lease-cum-sale agreement, entered into between the Board and the respondents, contained covenants that the respondents shall pay 99% of the allotment price immediately and remaining 1% in 10 equal yearly installments plus lease premium alongwith the interest at 12.5%. The respondents claim to have complied with all the stipulations and the conditions incorporated in the lease-cum-sale agreements. It seems that the appellants even after a lapse of 11 long years did not execute the regular sale deeds in favour of the respondents. On the contrary, the appellants after a gap of 6 months from the date of expiry of the lease period, issued letters to the respondents, raising therein the demands with regard to the final allotment price and also directed the respondents to pay the balance of final allotment price within a stipulated period. The appellants vide its Board meeting dated 18th September, 1997 resolved to fix the final price of the land as follows:

Allotment made at the Basic final prices basic tentative rates as fixed per acre (in Rs.) per acre (in Rs.)

1. 40,000/- 1.08 lakhs

2. 60,000/- 1.27 lakhs

3. 1.00 lakh to 1.25 lakhs 2.01 lakhs

4. 1.50 lakhs to 1.60 lakhs 2.61 lakhs

6. On receipt of the aforesaid demand, respondents filed their objections individually putting forth their grievances and declined to pay the increased amount. It was contended by them that the final allotment price was unreasonable, arbitrary, unjust and contrary to what was legitimately expected and assured by the appellant, i.e., only marginal increase, based on the cost of land acquisition. Pursuant to the objections filed individually by the respondents, the appellant invited them to Bangalore for a discussion. According to the respondents, during the course of discussions, they had sought for the detailed break up, based on which the enhanced claim was made. The board had furnished them a statement showing the basis for enhancement of the price. In the break-ups statement, as provided by the appellant, it was shown that Rs.34.17 lakhs were indicated to be the cost of future development. The respondents having expressed their inability to pay the hiked prices, once again brought to the notice of the appellants that the proposed enhancement was unjust and arbitrary.

Thereafter, the appellant No.1, on consideration of the objections raised by the respondents reduced the final allotment price marginally and issued demand notices to the respondents as follows:

Basic final prices fixed Reduction in the final in the meeting held on prices approved 18.9.1997 (Rs. in lakhs)

1. 1.08 lakhs 0.95 lakhs

2. 1.27 lakhs 1.10 lakhs

3. 2.01 lakhs 1.80 lakhs

4. 2.61 lakhs 2.40 lakhs

7. Aggrieved by the same, the respondents filed a writ petition W.P. No. 23578-23617 of 1999 before the High Court of Karnataka at Bangalore and prayed for a writ in the nature of certiorari for quashing the letters enhancing the price and for a direction to the appellant to execute the sale deeds on the basis of the price indicated in the lease deed. The High Court in its judgment dated 7th July, 1999 dismissed the writ petition. The Division Bench of the High Court in writ appeal vide its final order and judgment dated 18th February, 2003 allowed the same and quashed the enhanced demands as proposed by the appellant. Hence the instant appeals by special leave before us.

8. We have heard the learned counsel for parties. Ms. Kiran Suri, learned counsel appearing for the appellants submits that the High Court committed a grave error in holding that Clause 7(b) of the lease-cum-sale agreement doesn't confer power on the appellants to revise or alter the tentative price. She submits that the appellant No.1 is an industrial board established for the purpose of establishment of industrial areas. Section 13 of the Karnataka Industrial Areas Development Board stipulates functions of the Board which includes establishing, maintaining, developing and managing industrial estates within industrial areas. Thus, power of fixation of price of the land vested with the appellant.

9. She further submits that enhanced price was fixed after taking into consideration, the cost of acquisition, the development expenditure, statutory charges and interest. The price fixed at the time of the allotment was only tentative since the appellants could not foresee the quantum of land acquisition compensation that would be fixed in future. The price so fixed was uniform to all allottees. She further submits that the High Court was not right in holding that the allottees of the site in one industrial area cannot be regarded as persons belonging to same class. The final price fixed was much less than the actual market price and hence the High Court erred in holding that it was arbitrary, unjust and unfair. The appellant No.1 was entrusted with the responsibility to develop the industrial area as a whole and it had nothing to do with any class of allottees. She also submitted that the present matter was not one of escalation of price but the fixation of the final price.

10. Learned counsel further submitted that the final price fixation is in accordance with the allotment letters issued to the respondents. As per the allotment letter, the tentative price of the land had been fixed at Rs.40,500/- per acre in Tarihal Industrial Area. The allottees were to exercise option with regard to the mode of payment of the purchase price. The letter clearly indicated that the price was only tentative. The final price was fixed taking into account the cost of acquisition, development expenditure, statutory charges and interest. On the basis of the above criteria, the cost of land per allotable acre worked out approximately to 2.61 lakhs per acre. Therefore, the break-ups of the same was as follows:-

"Rs. in Lakhs

a) Cost of acquisition 0.20

b) Development expenditure: Already incurred (as on 31.12.96) 0.88
Future development (as estimated 0.98 on 31.12.96)

c) Statutory Charges: 0.23

d) Interest 0.32 2.61 Therefore, keeping the above cost per acre as the basis, the appellant Board, at its Board Meeting dated 18th September, 1997 resolved to fix the final price of the lands as follows:-

Allotment made at the Basic final prices basic tentative rates as fixed per acre (in Rs.) per acre (in Rs.)

1. 40,000/- 1.08 lakhs
2. 60,000/- 1.27 lakhs
3. 1.00 lakh to 1.25 lakhs 2.01 lakhs
4. 1.50 lakhs to 1.60 lakhs 2.61 lakhs"

11. According to the learned counsel, the aforesaid exercise carried out by the Board would clearly indicate that the decision has been taken upon consideration of all the relevant parameters for determination of the final price. Learned counsel further submitted that the respondents have wrongly claimed that they had been allotted plots in fully developed area. The development work had just begun in 1982. These allotments have been made at a heavily subsidized rate. The final price has been fixed to put all allottees at par, irrespective of the date, area/phase/segment of the allotment. The development costs had been worked out as a whole and the allottees had not been segregated into separate groups. The respondents having voluntarily entered into lease agreement can not now be permitted to question the power of the Board to fix the final price. She relied on *Premji Bhai Parmar & Ors. Vs. Delhi Development Authori ty & Ors.*[1] *and Centre for Public Interest Litigation & Anr. Vs. Union of India & Ors.*[2] .

12. The learned counsel further submits that it is a settled proposition of law that price fixation is beyond the scope of judicial review in writ petitions.

The High Court, therefore, exceeded its jurisdiction in allowing the writ appeal in favour of the respondents. She relied on the judgment of this Court in the case of *Meerut Development Authority Vs. Association of Management Studies*.[3] She then brought to our notice that if the impugned judgment prevails then it would cause a loss of Rs.1,66,000/- for allotment of every acre.

13. On the other hand, Mr. Basava Prabhu S. Patil, learned senior counsel appearing for the respondents submitted that the allotment letters have been issued by the appellant Board in exercise of its powers under Section 41 of the Karnataka Industrial Area Development Act, 1966. Section 41 empowers the Board to make regulations consistent with the Act and the Rules made there under, to carry out the purposes of this Act. Sub-section 41(2) provides that the Board can make regulations with regard to "(b) the terms and conditions under which the Board may dispose of land". In exercise of this power, the Board has framed Karnataka Industrial Area Development Board Regulations, 1969. Under Regulation 7, the Board has to notify the availability of land for which applications may be made by the intending purchaser. The notice has to specify the manner of disposal, the last date for submission of application and such other particulars as the Board may consider necessary in each case by giving wide publicity through newspapers, having circulation in and outside Karnataka State. Upon receipt of the applications, the allotment letter has to be issued in terms of Regulation 10. According to the learned senior counsel, the exercise of power with regard to the fixation of price by the Board has to be within four corners of the aforesaid statutory provisions. He further pointed out that the lease agreement between the applicants/lessee and the Board has to be executed in terms of Form IV contained in the third schedule. The Form is issued in terms of Regulation 10(c). The form being statutory, it was necessary to strictly comply with the aforesaid provisions. However, in the contracts entered into between the appellant Board and the allottees, Clauses 7(a) and 7(b) have been introduced without amending the applicable Regulations or Form IV. Therefore, according to the learned senior counsel, the final price fixation is without any statutory basis. Learned senior counsel further submitted that in calculating the final price, the respondents have not only included the cost of land acquisition which is not disputed, but also included future development costs and interest on investments. According to the learned counsel, the Board had no power to levy such amounts either under the contract or under the regulations. Learned senior counsel submitted that the difference between the so called tentative price and the final price is excessive and unquestionable. The increase in price can not be said to be marginal as the allottees are now required to pay double the amount which was initially indicated. Under Clause 7 of the Regulations, the appellants were required to fix the final price as soon as possible. In the present case, the price has been finalized after a period of 13 years.

14. Learned senior counsel further submitted that the respondents were not entitled to such an arbitrary increase in price. This itself shows that the decision making process was totally flawed. The respondents had taken into consideration factors which were not permissible

under the Statute or the Regulations. Thus, the decision has been rendered arbitrarily. This is evident from the fact that a sum of Rs.237.14 lakhs is sought to be calculated for future development. Learned senior counsel submitted that the Division Bench, considering the entire issue has recorded the correct conclusions and, therefore, does not call for any interference.

15. We have considered the submissions made by the learned counsel. It is true that under Clause 7(b), the Board reserved to itself the right to fix the final price of the demised premises as soon as it may be convenient to it and communicate the same to the concerned lessee. Upon communication of the price, the lessee is required to pay the balance of the value of the site. Determination of the price by the Board is binding on the lessee. In our opinion, the aforesaid clause would not permit the Board to arbitrarily or irrationally fix the final price of the site without any rational basis. The power of price fixation under Clause 7 being statutory in nature would have to be exercised, in accordance with statutory provisions; it can not be permitted to be exercised arbitrarily. Undoubtedly, as observed by this Court in the case of Premji Bhai Parmar (supra), Courts would not reopen the concluded contracts. Ms. Suri had placed reliance on the observations made by this Court in Paragraph 10 of the judgment, which are as follows:-

> "Pricing policy is an executive policy. If the Authority was set up for making available dwelling units at reasonable price to persons belonging to different income groups it would not be precluded from devising its own price formula for different income groups. If in so doing it uniformly collects something more than cost price from those with cushion to benefit those who are less fortunate it cannot be accused of discrimination. In this country where weaker and poorer sections are unable to enjoy the basic necessities, namely, food, shelter and clothing, a body like the Authority undertaking a comprehensive policy of providing shelter to those who cannot afford to have the same in the competitive albeit harsh market of demand and supply nor can afford it on their own meagre emoluments or income, a little more from those who can afford for the benefit of those who need succour, can by no stretch of imagination attract Article 14. People in the MIG can be charged more than the actual cost price so as to give benefit to allottees of flats in LIG, Janata and CPS. And yet record shows that those better off got flats comparatively cheaper to such flats in open market. It is a well recognized policy underlying tax law that the State has a wide discretion in selecting the persons or objects it will tax and that the statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection the law operates unequally, and this cannot be justified on the basis of a valid classification, that there would be a violation of Article 14 (see East India Tobacco Co. v. State of A.P.). Can it be said that classification income-wise- cum-scheme-wise is unreasonable? The answer is a firm no. Even the petitioners could not point out unequal treatment in same class. However, a feeble attempt was made to urge that allottees of flats in MIG scheme at Munirka which project came up at or about the same time were not subjected to surcharge. This will be presently examined but aside from that, contention is that why within a particular period, namely, November, 1976 to January, 1977 the policy of

levying surcharge was resorted to and that in MIG schemes pertaining to period prior to November, 1976 and later April, 1977 no surcharge was levied. If a certain pricing policy was adopted for a certain period and was uniformly applied to projects coming up during that period, it cannot be the foundation for a submission why such policy was not adopted earlier or abandoned later."

16. In our opinion, these observations would not be applicable in the facts of this case. The appellants are required to fix the price within the stipulated parameters contained in the Statute and the Board Regulations. Ms. Suri has also relied on a judgment of this Court in the case of *Indore Development Authority Vs. Sadhana Agarwal (Smt.) & Ors.*[4] in support of the submissions that since the allotment letters indicated only the tentative price, the respondents could not demand that they be allowed the sites at the original price. In that case, this Court observed as follows:-

"Although this Court has from time to time, taking the special facts and circumstances of cases in question, has upheld the excess charged by the development authorities over the cost initially announced as estimated cost, but it should not be understood that this Court has held that such development authorities have absolute right to hike the cost of flats, initially announced as approximate or estimated cost for such flats. It is well known that persons belonging to middle and lower income groups, before registering themselves for such flats, have to take their financial capacity into consideration and in some cases it results in great hardship when the development authorities announce an estimated or approximate cost and deliver the same at twice or thrice of the said amount. The final cost should be proportionate to the approximate or estimated cost mentioned in the offers or agreements. With the high rate of inflation, escalation of the prices of construction materials and labour charges, if the scheme is not ready within the time-frame, then it is not possible to deliver the flats or houses in question at the cost so announced. It will be advisable that before offering the flats to the public such development authorities should fix the estimated cost of the flats taking into consideration the escalation of the cost during the period the scheme is to be completed. In the instant case the estimated cost for the LIG flat was given out at Rs 45,000. But by the impugned communication, the appellant informed the respondents that the actual cost of the flat shall be Rs 1,16,000 i.e. the escalation is more than 100%. The High Court was justified in saying that in such circumstances, the Authority owed a duty to explain and to satisfy the Court, the reasons for such high escalation. We may add that this does not mean that the High Court in such disputes, while exercising the writ jurisdiction, has to examine every detail of the construction with reference to the cost incurred. The High Court has to be satisfied on the materials on record that the Authority has not acted in an arbitrary or erratic manner."

17. These observations make it clear that the High Court has the jurisdiction to satisfy itself on the material on record that the authority has not acted in an arbitrary or erratic manner. In our opinion, the High Court, in the present case, has not acted beyond such jurisdiction. Ms. Suri then relied on the case of *Kanpur Development Authority Vs. Sheela Devi (Smt.) & Ors.*[5]

In the aforesaid case, this Court reiterated the jurisdiction of the High Court to satisfy itself, that there was material on the record to justify the escalation of cost of a house/flat. The Court can take notice as to whether the delay was caused by the allottee or the authority itself. In our opinion, the judgment of the High Court is within the parameters of the jurisdiction vested in it under Article 226 of the Constitution of India.

18. The Board being a State within the meaning of Article 12 of the Constitution of India is required to act fairly, reasonably and not arbitrarily or whimsically. The guarantee of equality before law or equal protection of the law, under Article 14 embraces within its realm exercise of discretionary powers by the State. The High Court examined the entire issue on the touchstone of Article 14 of the Constitution of India. It has been observed that the fixation of price done by the Board has violated the Article 14 of the Constitution of India. It is correctly observed that though Clause 7(b) permits the Board to fix the final price of the demised premises, it cannot be said that where the Board arbitrarily or irrationally fixes the final price of the site without any basis, such fixation of the price could bind the lessee. In such circumstances, the Court will have the jurisdiction to annul the decision, upon declaring the same to be void and non-est. A bare perusal of Clause 7(b) would show that it does not lay down any fixed components of final price. Clause 7(b) also does not speak about the power of the Board to revise or alter the tentative price fixed at the time of allotment. The High Court has correctly observed that Clause 7(b) does not contain any guidelines which would ensure that the Board does not act arbitrarily in fixing the final price of demised premises. Since the validity of the aforesaid Clause was not challenged, the High Court has rightly refrained from expressing any opinion thereon.

19. Even though the Clause gives the Board an undefined power to fix the final price, it would have to be exercised in accordance with the principle of rationality and reasonableness. The Board can and is entitled to take into account the final cost of the demised premises in the event of it incurring extra expenditure after the allotment of the site. But in the garb of exercising the power to fix the final price, it can not be permitted to saddle the earlier allottees with the liability of sharing the burden of expenditure by the Board in developing some other sites subsequent to the allotment of the site to the respondents. The respondents have placed on record sufficient material to show that acquisition and development of land in the industrial area has been in phases. Some areas and segments are fully developed and others are in different stages of development. Sites and plots have been allotted at different times and locations. Thus, it cannot be said that all the allottees form one class. Earlier allottees having sites in fully developed segments cannot be intermingled with the subsequent allottees in areas which may be wholly undeveloped. Such action is clearly violation of Article 14. We are also of the opinion that the Board can not be permitted to exercise its powers of fixing the final price under Clause 7(b) at any indefinite time in the future after the allotment is made. This would render the word "as soon as" in Clause 7(b) wholly redundant. As noticed earlier, in the present case, the Board has sought to fix the final price after a gap of 13 years. Such a course is not permissible in view of the expression "as soon as" contained in Clause 7(b).

20. In our opinion, the High Court correctly concluded that the fixation of final price by the Board is without authority of law. It violates Article 14 of the Constitution of India being arbitrary and unreasonable exercise of discretionary powers.

21. In view of the above, we find no merit in these appeals. The appeals are accordingly dismissed.

[1]*(1980) 2 SCC 0129*
[2]*(2000) 8 SCC 0606*
[3]*(2009) 6 SCC 0171*
[4]*(1995) 3 SCC 0001*
[5]*(2003) 12 SCC 0497*