

SUPREME COURT OF INDIA

Ishwar Dass Nassa & Ors.

Vs.

State of Haryana & Ors.

C.A.No.4211 of 2004

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya,JJ.,)

12.12.2011

JUDGMENT

G.S.Singhvi,J.,

1. Whether the Haryana Housing Board (for short, 'the Board') could ignore the time limit of 7 years specified in clause 2(w) of the Hire Purchase Tenancy Agreement executed by the appellants as per the requirement of Regulation 11(4) of the Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations, 1972 (for short, 'the Regulations') framed by the Board in exercise of the power conferred upon it under Section 74 of the Haryana Housing Board Act, 1971 (for short, 'the Act') and demand additional price from them after 10 years of the allotment of tenements is the question which arises for consideration in these appeals filed against the orders passed by the Division Bench of the Punjab and Haryana High Court whereby the letters patent appeals filed by the appellants were dismissed and the order passed by the learned Single Judge declining their prayer for quashing the demand of additional price was upheld.

2. In response to an advertisement issued by the Board in 1975, the appellants applied for the houses proposed to be constructed at Sonapat for Economically Weaker Sections (EWS), Lower Income Group (LIG) and Middle Income Group (MIG). After scrutiny of the applications, the competent authority allotted tenements of different categories to the appellants. The allotment letters were issued in their favour in November/December 1978. For the sake of reference, the allotment letter issued in favour of one of the appellants, namely, Dharam Pal is reproduced below:

"HOUSING BOARD HARYANA HOUSING BOARD COLONY SONEPAT DATED 9.12.78 REGD. No.830 Sh.Dharam Pal c/o Mangat Ram Redy, Model Town , Smalkha (Karnal) Reference: Your application for registration No.64/EWS 2. EWS/LIG|MIG Tenement No.285 Area 49.94 S.Yds. The Housing Colony at Sonapat is allotted to you on hire-purchase basis on a tentative price noted below:

i) Price of House (Normal area)	Rs.8000/- (Tentative)
ii) Cost of additional land, if any	-----
iii) Additional charges for preferential (corner) plot	_____
TOTAL	Rs.8000/-

3. The detail of the amount deposited by you as per your application etc., is given below:

a) Registration deposit	Rs. 500/-
b) Amount deposited for preferential allotment	----
c) Amount deposit for preferential (corner) house.	----
d) ----	

4. You are requested to deposit the following amounts and take possession of the house within 30 days of the issue this letter:-

i) Cost of additional land	----
ii) Additional charges for (corner) preferential plot	----
iii) Initial instalments/Ist yearly instalment	Rs. 700/-
iv) Cost of H.P.T.A.form	Rs. 2.25

Total Rs.702.25/- “

5. The balance price of the house is payable in monthly/yearly instalments of Rs. 481/- each over a period of 18 years. Sd/- Estate Manager Housing Board Haryana Sonapat
CONDITIONS

“1. The allottee shall be bound by the Haryana Housing Board Act, Rules and Regulations thereunder.

2. If the allottee fails to execute the agreement and to take possession of the house within 30 days of the issue of this letter his name shall be removed from the allotment

register and any amount upto 50% of the earnest money deposited by him shall be forfeited.

3. Possession of the tenement will be given after the Hire

-Purchase Tenancy Agreement is duly executed as prescribed under the rules and the allottee has paid the initial deposit, first instalment and such other dues as shall have been demanded by the Board.

4. xxxx xxxx xxxx

5. xxxx xxxx xxxx

6. xxxx xxxx xxxx

7. xxxx xxxx xxxx

8. The conveyance deed will be executed after the entire amount due is paid by the allottee. All expenses for the registration etc. shall be borne by the allottee."

3. The appellants deposited the amount in accordance with the stipulations contained in the allotment letters and executed Hire Purchase Tenancy Agreements. The relevant portions of the Hire Purchase Tenancy Agreement executed by the Board and Dharam Pal are extracted below:

"Hire Purchase Tenancy Agreement This Indenture Made This 7th day of December One thousand nine hundred and seventy eight (7.12.78) Between Housing Board Haryana constituted under the Haryana Board Act 1971 (Act. No. 20 of 1971) (Hereinafter called the owner and includes its successors and assigns) of the one part and Shri Dharam Pal (Hereinafter called the hirer which expression shall, unless inconsistent with the context of meaning, includes, as hereinafter provide, the nominees approved and failing which is heir, executors, administrators, legal representatives and permitted assigns) of the other part.WHEREAS in pursuance of the Housing Board Haryana Act Rule & Regulation (hereinafter called the regulations) the hirer has apparently applied to the owner for allotment of a house under the Hire-Purchase Scheme and the owner has agreed to allot a house to hirer upon the terms and conditions hereinafter set forth."

"2(w) If after the receipt of the final bills for the

construction of tenements or as the result of land award or arbitration proceeding or enhancement in cost of land on any account, the Board considers it necessary to revise the price, already specified, it may do so and determine the final price payable by the hirer who shall be bound by this determination and shall pay dues, if any, between final price so determined and price paid by him including the price paid in lump sum, provided that no change in the price shall be made after 7 years from the date of allotment."

4. After about 10 years, the Estate Manager, Sonapat issued notices to the appellants and directed them to pay additional price in lieu of the enhanced compensation allegedly paid by Improvement Trust, Sonapat for the land which was sold to the Board. The appellants challenged the notices by filing writ petitions under Article 226 of the Constitution. They pleaded that in view of clause 2(w) of the Hire Purchase Tenancy Agreement, the Board cannot demand additional price after 7 years of the allotment of tenements. The appellants further pleaded that most of them had already paid the installments of price specified in the allotment letters and many of them had also obtained no dues certificates. They relied upon Resolution dated 10.05.1989 passed by the Board not to recover the additional cost of land from the allottees and prayed that in view of the decision taken by the Board, the demand notices should be quashed. In the written statement filed on behalf of the respondents it was not denied that the Board had decided not to charge additional price from the allottees but it was averred that they were under a moral obligation to share the burden of additional cost paid to the Improvement Trust.

5. The learned Single Judge rejected the appellants' challenge to the demand of additional price by making the following observations:

"Where judgments are passed by the Court of Competent jurisdiction increasing the amount of compensation awarded to the land owners, whose land was acquired for development of these projects at a much subsequent stage, cannot be hit by this clause as the increase in the basic cost of the land is a compulsion imposed upon the acquiring as well as on the authority for the benefit of which the same was acquired. The judgments of the Court are obviously not controlled either by the acquiring body or by the Board. If the cost of acquisition is increased by the Court of Competent jurisdiction, it will be unfortunate that the general public is called upon to pay such increased costs, while the land for the flats/plots has been acquired for the benefit, utilization and enjoyment by the petitioners exclusively. Such an interpretation in fact would be opposed to public policy. Every contract or instrument should be construed harmoniously so as to fall in line with the principles of public policy rather than be opposed to it. A Bench of this court in the case of Subhash Chander Arora and others

versus Housing Board, Haryana, Chandigarh through its Chief Administrator and others - 1991-2 P.L.R. 698, relating to the same clause held as under:-

"As far as the first point is concerned I find no merit in the same. No doubt, the tentative price had been made final but the increase in the price was due to the enhancement in the compensation of the land which was done by a Court of Law. It was not at the instance of the Board that the prices were being increased. Since the Board had to pay more compensation, naturally the burden will fall on all the allottees of the land of which the compensation has been enhanced. Accordingly the Board was right in demanding enhanced price. However question arises as whether the burden of enhanced compensation should be borne only by allottees of residential area or by all persons including who have commercial property, like Cinema, shops etc."

Even otherwise, the language of the Letter of Allotment or clause 2(w) does not suggest the interpretation as put forward by the petitioners. Every contract or document of this kind must be read in its entirety and construed to give it a meaning permissible in Law. The power of the Board is whether it intends to revise the price payable by an allottee, allottee should be bound by such determination. Obviously, this clause would operate where there is increase in the price by the act or deed of the Board in relation to construction or any other factor. But if there is increase in the price for circumstances beyond the control of the Board and in furtherance to the Judgment of a Court of Law, there appears to be least scope for the Board to apply its mind. Application of mind is a well accepted canon of administrative law, but it must have some basis or field to be operated upon. The judgments of the Court are binding on the parties and the concerned Govt. or authority is obliged to pay the compensation awarded to the land owners for acquisition of their respective lands except where such Judgments is set aside by the highest Court of Competent jurisdiction which admittedly is not the case here. The judgments of the Courts have attained finality and have directed the Government of Haryana and HUDA to pay enhanced compensation to the land-owners-claimants. As a result of this compulsive directive of the Court over which the State of Haryana, the HUDA or the Board had no discretion to exercise, HUDA had issued the Letters for recovery of the enhanced amount from the Board to whom the land was given with the condition of recovery of enhanced amount. All that the Estate Officer has done is to raise the letter of demand, forward the demand of HUDA with added interest for the interregnum period of HUDA's letter and recovery, more particularly in the background that it had already paid amounts to HUDA. The argument of the petitioners has an inherent and inbuilt fallacy. If such interpretation, as suggested by the petitioners is accepted, it will be opposed to public policy. In other words, the lands which are to be enjoyed and are being enjoyed by the petitioners, higher compensation would have to be paid by the State from the money of the ordinary income tax payer, who is neither the beneficiary nor even remotely connected with such land. Such welfare schemes of the State are founded on the principles of fairness and to meet the general requirements of the Society at large. Such schemes cannot act detrimental to the very basis of State Welfare policies."

6. The Division Bench of the High Court summarily dismissed the letters patent appeals filed against the orders of the learned Single Judge and thereby approved the demand of additional price.

7. Shri Harish Chander, learned senior counsel appearing for the appellants argued that in view of the express bar contained in para 2(w) of the Hire Purchase Tenancy Agreement against change in the price after 7 years, the Board did not have the jurisdiction to demand additional price simply because it was required to pay additional cost for the land purchased from the Improvement Trust. He submitted that the reasons assigned by the learned Single Judge for upholding the demand of additional price are legally untenable and the Division Bench committed serious error by summarily dismissing the letters patent appeals.

8. Shri T.V. George, learned counsel for the Board argued that the terms and conditions incorporated in the Hire Purchase Tenancy Agreement are not applicable to the cases in which the Board is required to pay additional cost for the land on which the tenements are constructed. He submitted that if the State Government or the Board is required to pay higher compensation to the landowners in compliance of the direction given by the competent Court or an award of the Arbitrator, the burden thereof is bound to be passed on to the allottees of plots/houses/tenements. Learned counsel emphasized that the demand notices were issued to the appellants because Improvement Trust, Sonapat had asked the Board to pay additional cost for the land in lieu of the enhanced compensation payable to the landowners. He submitted that time bound adjudication of the landowners' claim for higher compensation is not within the control of the State Government or the Board and the fact that the appeals filed by the landowners are decided after considerable time cannot be a ground to relieve the allottees of their obligation to share the burden of additional cost.

9. We have considered the respective submissions. For deciding the question arising in these appeals, it will be useful to notice the extracts of agenda item Nos.109-113 of the Board's meeting held on 10.5.1989, resolution passed in that meeting and Clauses 10(1) and (2) and 11(1), (3) and (4). The same are reproduced below:

“AGENDA ITEM AND RESOLUTION OF THE BOARD "To consider and accord ex-post-facto sanction to the payment of enhanced land compensation for the land purchased by Board at Sonapat Phase I & II from Improvement Trust, Sonapat. The Board purchased the land from I.T.S. during 1972-75 @ Rs.3/- per sq. yard. As per agreement executed with ITS in respect of land allotted for Phase I, the land enhancement was payable by Board as and when demand raised by Improvement Trust. The land of Phase-II was allotted on the same terms of Phase-I, its agreement could not be executed reasons for which are not available in the record. As per the advise obtained from the Advocate, the term applicable in agreement of Phase-I was so applicable in case of Phase-II in respect of execution of agreement of Phase-II. Improvement Trust, Sonapat vide its letter No.279, dated 24.3.86 informed that the land owner filed a writ in the court for land enhancement and as per judgment of A.D.J. Sonapat dated 3.10.85 the land sale has been enhanced from Rs.3/- per sq. yard

to Rs.22/- (Rs.25/- per sq. yard) in respect of the adjoining 100 wide road in the scheme. As per H.P.T.A. executed with allottees of Phase-I the cost of houses once fixed cannot be enhanced to disadvantage of allottees, similarly as per H.P.T.A. executed with allottees of Phase-II to whom houses were allotted in 1978-79 the enhanced out of the house cannot be recovered from the allottees after expiry of 7 years from the date of allotment. Hence State Govt. was requested vide Housing Board Officer letter No.1100 dated 15.1.87 to pay the amount from State Govt. fund as Board was not in a position to pay such huge amount. However, State Govt. decided vide letter No.6/1/87-IHG dated 4.2.87 that the Board should meet with this expenditure from its overall budget. Board is further requested to approve the raising the demand from allottees of Sonapat Phase I & II at the tentative recovery rate of Rs.229/- per sq. yard.

The following resolution passed by the Board on dated 11.5.89.

- 1) The consider & accord ex-post-facto sanction to the payment of enhance land compensation for the purchase of land phase I & II from Improvement Trust, Sonapat.
- 2) The Board accorded ex-post-facto sanction for the payment of Rs.53,98,091-00 the Improvement Trust, Sonapat and State Govt. may be approached for reimbursing this amount as demand from allottees cannot be raised at this stage."

(emphasis supplied)

THE REGULATIONS

10. Allotment letter, conditions of allotment etc.- (1) After the allotment of tenements is finalized the Estate Manager shall issue an allotment letter informing the allottee that it is proposed to allot to him the tenement on the terms and conditions specified in the letter, and asking him to call at the concerned office of the Board and take delivery of the authority letter and to take over possession of the tenement within the period specified in the letter.

(2) On receipt of an allotment letter, the allottee may, within the period specified in the letter, accept the allotment of a tenement and shall execute a hire purchase tenancy agreement if required by the Board and shall comply with the terms and conditions of such agreement.

11. General liability of allottees.--(1) Every allottee shall regularly pay to the Board the instalments due from him in respect of the purchase price of the tenement allotted to him. He shall also pay municipal taxes, water and electricity charges, ground rent, his share of common services (e.g., common lights, sweeper, watchman and the like) and other public charges, due in respect of the land and the building occupied by him to the authorities to whom such taxes and charges are due. (3) The hirer shall make full and regular payment of all the dues that are required to be made by him in pursuance of these presents or the Regulation. If any such payment is delayed, he shall be liable to pay a penalty at the rate of one per cent per month. In case of defaults of more than two months, the tenancy shall stand determined and the hirer shall be liable to be evicted. All the outstanding dues of the owner

shall be recoverable as arrears of land revenue. The proceedings of eviction shall be governed by the provisions of Chapter VI of the Act. Provided further that in the case of eviction, the amount already deposited by the hirer shall be utilised for recovering all dues whatsoever of the owner as the first charge and all the dues of the public bodies as the second charge and only the remainder shall be refunded to the hirer on his demand. (4) On payment of the first instalment and such other dues as shall have been demanded by the Board, the hirer shall execute a hire-purchase agreement in the form "A".

12. A conjoint reading of the allotment letter and clause 2 (w) of the Hire Purchase Tenancy Agreement, which every allottee is required to execute makes it clear that the price of the tenement specified in the allotment letter is tentative and the Board can revise the price after receiving final bills representing the cost of construction or if as a result of an order of the Court or an award made by the Arbitrator it is required to pay higher cost for the land used for construction of the tenements. In either case, the allottee is bound to pay the additional amount which would represent the final price of the tenement. If the cost of land is enhanced for any other similar reason then too the Board can revise the price and ask the allottees to pay additional price. In a given case, the Board may revise the tentative price more than once and the allottees are bound to share the burden of additional cost. However, in these cases, the Board's power to revise the price of the tenements is hedged with the limitation of 7 years contained in clause 2(w) of the Hire Purchase Tenancy Agreement. That clause contained an express bar against the change in price after 7 years of the allotment of tenement. To put it differently, in view of the bar contained in clause 2(w) of the Hire Purchase Tenancy Agreement, the Board could not revise the price after 7 years of the allotment of tenement, irrespective of the justification for such revision. The Board's understanding of the prohibition contained in clause 2 (w) of the Hire Purchase Tenancy Agreement is evinced from Resolution dated 10.5.1989 wherein it was clearly mentioned that enhanced cost is not to be recovered from the allottees after 7 years from the date of allotment. This is also the reason why the Board accorded ex post facto sanction for payment of Rs.53,98,091/- to Improvement Trust, Sonapat.

13. While preparing the format of Hire Purchase Tenancy Agreement, the Board must have taken into consideration various factors which could lead to an increase in the cost of tenements and consciously incorporated a prohibition against change in the price after 7 years from the date of allotment of tenements. The rationale of this embargo was that once the allottee pays the total price, he may not be subjected to the burden of additional cost after a number of years. Surely, adjudication of the landowners' claim for higher compensation is not within the domain of the Board or the allottees but once the Board has, after due deliberations, incorporated a prohibition against change in the price after a period of 7 years from the allotment of tenements, there is no reason why it should not be asked to honour the commitment made to the allottees that they will not live under the fear of being asked to pay additional price after an indefinite period. Unfortunately, the learned Single Judge and the Division Bench of the High Court did not give due weightage to the prohibition contained in Clause 2(w) of the Hire Purchase Tenancy Agreement and negated the appellants' challenge to the demand of additional price by assuming that the Board is vested with the power to revise the price at any time. The use of the expression `or enhancement in cost of

land on any account' after the expression 'the receipt of the final bill for the construction of tenements or as the result of land award or arbitration proceeding' shows that while framing the regulations, the Board had kept in view all the eventualities which could lead to an increase in the cost of land made available for construction of the tenements and yet it thought proper to put an embargo against the revision of price after 7 years. Therefore, the learned Single Judge and the Division Bench of the High Court were not right in deciding the writ petitions and the writ appeals on the premise that once the cost of land gets increased on account of payment of higher compensation to the landowners the Board is entitled to demand additional price from the allottees.

12. In the result, the appeals are allowed. The impugned order as also the one passed by the learned Single Judge are set aside and the demand notices issued by Estate Manager, Sonapat requiring the appellants to pay the additional price are quashed. The parties are left to bear their own costs.