2023 INSC 451

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.2950 of 2023

The Belgaum Urban Development Authority **... Appellant**

Versus

Dhruva & Anr. **... Respondents**

WITH

Civil Appeal No.2951 of 2023

Civil Appeal No.2952 of 2023

J U D G M E N T

Rajesh Bindal, J.

1. This order will dispose of bunch of appeals bearing Civil Appeal Nos. 2950-2952 of 2023. The common judgment of the High Court *vide* which five Regular Second Appeals were decided has been impugned.

2. From the matters listed before this Court, it is evident that the judgment of the High Court has been challenged only

in R.S.A. Nos. 759, 760 and 864 of 2008 and there are no appeals filed in R.S.A. No.758 and 863 of 2008. The learned counsel for the appellant did not point out at the time of hearing that there is any other appeal pending in this Court challenging the common judgment of the High Court with reference to the aforesaid two appeals.

FACTS OF THE CASE:

3. The particulars regarding the present appeals and the respective plot numbers in the individual cases are stated as under:

S.No.	Civil Appeal No.	R.S.A No.	Regular Appeal No.	O.S. No.	Plot No.
1.	2950/2023	760/2008	154/2006	527/2003	550
2.	2951/2023	864/2008	144/2006	525/2003	211
3.	2952/2023	759/2008	146/2006	526/2003	552

4. As common legal issues are involved, the facts have been extracted from Civil Appeal No.2950 of 2023. The undisputed facts of this case are that, Respondent/ Plaintiff in the present appeal made application to Appellant/Defendant No.2 (Belgaum Urban Development Authority, in short 'BUDA') for allotment of residential site. The appellant allotted site to

the plaintiff. The allotment letter was issued on 12.11.1990. Possession of the site was handed over to the plaintiff. Thereafter, lease-cum-sale agreement was executed on 10.05.1991 in favour of plaintiff/respondent.

5. As demand of additional price for the plot was raised from the respondent, suit was filed. The Trial Court decreed the suit. In appeal, the judgment and decree of the Trial Court was reversed. In second appeal filed by the appellant, the judgment and decree of the lower appellate court was reversed. The same is under challenge before this Court. The High Court, in second appeal, directed the appellant to execute the sale deed in favour of respondents in RSA Nos. 864,758 and 863 of 2008 and further directed to refund the additional price paid by the respondents in RSA Nos. 759 and 760 of 2008.

ARGUMENTS:

6. Mr. S.N. Bhat, learned Senior Counsel appearing on behalf of the appellant submitted that plots were allotted to the Respondents-Plaintiffs *vide* allotment letter dated 12.11.1990. The clause contained in the Allotment letter mentions that the cost of the plot is tentative. Hence, demand of additional price

cannot be said to be illegal. It was on account of enhancement of compensation of the land which was utilized for carving out the plots allotted to the Respondents-Plaintiffs. He further referred to the lease-cum-sale agreements executed in favour of Respondent dated 10.05.1991 where no specific amount as such has been mentioned as consideration. It only mentions that the price was negotiated and the Respondents have been allowed to occupy the plot till such time payment of full price is made. The lease-cum-sale agreement further provided that the parties thereto agreed to abide by the terms and conditions as specified in Karnataka Improvement Boards Rules, 1976. While relying upon the judgment of this Court in ***Shimla Development Authority*** v. ***Asha Rani***[1] it was submitted that in the aforesaid case, this Court had allowed the Shimla Development Authority to charge additional amount from the allottees on account of enhancement of compensation for the land acquired.

7. The judgment of this Court in ***Tamil Nadu Housing Board and Others*** v. ***Sea Shore Apartments Owner's Welfare Association***[2] has also been relied upon to submit that

1 (1996) 8 SCC 487
2 (2008) 3 SCC 21

if price mentioned is tentative, additional amount can be demanded.

8. In the case at hand the demand of additional price is fully justified for the reason that the same was on account of enhancement of compensation by the Court for the acquisition of land utilized for carving out the plots. It is further submitted that except the five allottees who were before the High Court, all others had deposited additional price demanded from them on account of enhanced compensation.

9. On the other hand, learned counsel for the Respondents-Plaintiffs submits that neither in the allotment letter nor in the lease-cum-sale agreement there is any clause in terms of which the Appellant could demand additional price from the allottees except on account of variation of size. Clause 5 of the allotment letter only gives an option to the Appellant to re-determine the price in case the size of the plot is finally found to be different than the allotted. To demand additional price from an allottee on any other ground, there has to be specific clause in the allotment letter otherwise the price mentioned is final. Even the clause as mentioned in the lease-cum-sale agreement also does not come to the rescue of the

Appellant for the reason that it talks about the negotiated price between the vendor and the vendee. The same is clearly mentioned in allotment letter otherwise the agreement would be vague with reference to the sale consideration.

DISCUSSION:

10. Heard learned counsel for the parties and perused the relevant referred record.

11. The relevant clauses of the allotment letter and the Lease-cum-Sale Agreement, as have been referred to by the Appellant, are extracted below:

> ***"Allotment Letter:***
>
> ***"Clause 5**: The dimensions noted are approximate subject to verification at the time of handing over possession and allottees will have to pay proportionate increase price according to actual measurements.*
>
> *The value of the site is Rs.50,000/-+10% Augmentation of water supply charges is Rs.5,000/- Tentatively =Rs.55,000/-."*

"Lease-cum-Sale Agreement:

> *"whereas there were negotiations between the lessee/purchaser on the one hand and the lessor/ vendor on the other for allowing the lessee/ purchaser to occupy the schedule property as lessee until the payment in full of the price of the schedule property as might be fixed by the lessor/ vendor as hereinafter provided;"*

12. In ***Ishwar Dass Nassa & Ors.*** v***. State of Haryana & Ors.***[3] this Court considered similar issue. There was hire-purchase agreement executed by Haryana Housing Board in favour of the allottee. The clause as contained in hire-purchase tenancy agreement, as referred to in para no.3 of the judgment, is extracted below:

> *"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*

3 (2012) 1 SCC 753

> *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."*

13. Demand was raised by the Estate Manager, Housing Board Haryana, Sonepat after about 10 years directing them to pay additional price on account of enhanced compensation pertaining to the land on which the tenements were constructed. Interpreting the aforesaid clause, this Court held that as per the condition provided for in the hire-purchase tenancy agreement, the cost of the tenements can be increased either on account of cost of construction or enhancement of compensation for acquisition of land. However, interpreting the clause further it was held that the demand raised from the allottees was not justified for the reason that the clause itself provided that such a demand could be raised within seven years of allotment. Relevant paragraphs therefrom are extracted below:

> *"10. 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.

11-12. x x x x x x x x x x

13. 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 negatived 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 thought it 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."

(***emphasis supplied***)

14. The issue was also considered by this Court in ***Preeta Singh (Km) and others*** v. ***Haryana Urban Development Authority and Others***[4]. The challenge in the aforesaid case was also regarding the demand of additional

4 (1996) 8 SCC 756

price on account of enhanced compensation for the land. Referring to the Section 2(aa) of the Punjab Urban Estate (Sale of Sites) Rules, 1965 which defines “additional price”, as the allotment was in terms of the aforesaid rules, demand of additional price on account of enhanced compensation for the acquisition of land which was utilized for carving of the plots was upheld by this Court.

15. In ***Tamil Nadu Housing Board’s*** case (supra), Clause 18 of the Agreement therein clearly provided that after the finalization of the total cost of construction of flats in case the value of the land is increased in terms of the enhancement of compensation by the Court, the allottee shall be liable to pay the difference. The relevant clause as referred to in the aforesaid judgment is extracted below:

> *“19. **Clause 18** of the agreement entered into between the parties and signed by all allottees is extremely important and reads thus:*
>
> > *“18. It is expressly agreed between both the parties that after the finalisation of the total cost of construction of flats and the value of the land in accordance with the award*

> *of compensation declared by the Tribunals and courts, the purchaser shall pay to the vendor on demand before the registration of the sale deed the difference between the amount already paid by the purchaser as per Clause 2 above and the price amount finally fixed by the Chairman, the vendor."*

16. There is no such clause in the allotment letter or the lease-cum-sale agreement signed between the parties.

17. Coming to the judgment cited by learned counsel for the Appellant. In ***Shimla Development Authority's*** case (supra), allotment of flat was made under the 'Self Finance Scheme'. The price informed was tentative. The first demand was raised on account of increase in the cost of construction and the second demand was raised on account of increase of compensation for the acquired land utilized for construction of flats. This Court held that the land of a private owner was acquired for construction of flats under the Self Finance Scheme, hence, the allottees are bound to pay the increased cost on account of acquisition of land. In addition, the allottees

are also bound to bear the burden of escalation in the cost of construction.

18. The relevant clause of the allotment letter for the hire- purchase tenancy agreement entered into between allottee and Shimla Development Authority as such has not been extracted in the aforesaid order passed by this Court. However, we have perused the paper book in that case. The allotment letter dated 14.07.1995 which is in favour of the Respondent therein contains a specific clause regarding payment of enhanced compensation in terms of decision of this Court. The relevant clause is extracted below:

> *"The amount of enhanced compensation shall be payable as per decision of court. 30,780/-"*

19. It was in terms of the aforesaid clause in the agreement specifically providing for payment of enhanced compensation by the allottee that demand thereof was upheld by this Court.

20. A perusal of clause-5 in the allotment letter shows that option has been given to vary the price of the plot in case there is change in the size of plot. The entire clause has to be read in totality and no part in isolation. This clause does not talk about demand of additional price on account of any other factor specially the one raised in the present appeals, namely, on account of enhancement of compensation on account of acquisition of land for carving of the plots.

21. Even the clauses as contained in the lease-cum-sale agreement also does not come to the rescue of the Appellant for the reason that it talks about the negotiated price between the vendor and the vendee. The vendor in the case at hand is the Appellant and the vendee is the Respondent. Sale consideration as such has not been mentioned in the lease-cum-sale agreement, however, the price as negotiated between the parties is clearly mentioned in the letter of allotment and

the same has to be read as part of the lease-cum-sale agreement.

22. For the reasons mentioned above, we do not find any merit in the appeals. The same are dismissed. However, we make it clear that in case any other allottee who has deposited the amount, initiates any litigation now, the same shall be considered keeping in view the delay and laches and principles of acquiescence.

_____, J.
(Abhay S. Oka)

_____, J.
(Rajesh Bindal)

New Delhi
April 28, 2023

//vj-pm//