

Nitin S/O Rameshchandra Shraogi Vs State Of Maharashtra And Others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: March 31, 2021

Acts Referred: Constitution Of India, 1950 " Article 12
Maharashtra Housing And Area Development Act, 1976 " Section 2(3), 18

Hon'ble Judges: A. S. Chandurkar, J; Pushpa V. Ganediwala, J

Bench: Division Bench

Advocate: R. L. Khapre, D. R. Khapre, Tajwar Khan, A. S. Jaiswal, H. N. Verma, Dr Anjan De, G. Kandhari

Final Decision: Dismissed

Judgement

A. S. Chandurkar, J

1. Since both these proceedings have been directed to be decided together, the same are taken up for final disposal.

The facts in brief giving rise to Writ Petition No.4383/2019 are that pursuant to an advertisement dated 05/04/2011 issued by the respondent No.3-

Amravati Housing and Area Development Board (for short, the Amravati Board) through its Executive Engineer inviting applications from persons

interested in purchasing tenements of various dimensions, the petitioner applied for a residential row-house in the high-income group. The price of that

house was indicated to be Rs.14,90,000/-. On the petitioner's application dated 28/04/2011 being favourably considered the petitioner made initial

payment to the respondent No.2. On 01/10/2012 the petitioner was informed by the respondent No.5-Estate Manager of the Amravati Board that

there was an escalation in the price of the house purchased by the petitioner. The enhanced price was quoted to be Rs.21,85,000/-. Pursuant thereto

the petitioner on 13/10/2012 forwarded his affidavit/consent form indicating his willingness to pay the escalated price. It was also stated that the

revised price that would be quoted by the Amravati Board while taking possession would also be paid by him. By April 2014 the petitioner had paid an

amount of Rs.17,77,800/- towards the said house. It appears that the petitioner was not satisfied with the quality of construction undertaken by the

Amravati Board respondent and hence on 06/01/2014, 04/12/2014 and 27/08/2015 the petitioner made various complaints in that regard. The petitioner

thereafter approached this Court seeking redressal of the aforesaid grievances by filing Writ Petition No.4936/2016. This Court permitted the

petitioner to withdraw the said writ petition with a liberty to make a representation to the Amravati Board for expeditious completion of the housing

project. The petitioner thereafter made the representation as directed on 06/09/2016. On 09/03/2017 the Chief Officer of the Amravati Board

adjudicated the representation of the petitioner and directed the Executive Engineer of the Amravati Board to deliver possession of the said house

booked by the petitioner by 31/03/2017. The petitioner was directed to complete all formalities and the Executive Engineer was also directed to

prepare structural audit of the building.

2. Thereafter on 31/10/2017 the petitioner filed Writ Petition No.7579/2017 before this Court praying that the Amravati Board be directed to

implement the order dated 09/03/2017 by delivering possession and conducting the structural audit. During pendency of the writ petition, on 23/03/2018

a letter was issued by the Executive Engineer of the Amravati Board stating therein that the work of construction would be completed within four

months. After completion of the work the Board was to make an application to the Municipal Corporation, Akola for being issued the Occupancy

Certificate. After receiving the Occupancy Certificate steps for issuing the allotment letter and delivering possession were to be taken. It was also

stated that the structural audit would also be done. On 02/04/2018 the aforesaid letter dated 23/03/2018 issued by the Amravati Board was placed

before the Court in the aforesaid writ petition. The statements made in the said letter were accepted by way of an undertaking and Writ Petition

No.7579/2017 came to be disposed of.

3. Thereafter on 05/11/2018 the Estate Manager of the Amravati Board issued an offer letter to the Petitioner in which the total cost of the house

allotted to the petitioner was shown as Rs.24,21,082/-. The petitioner was therefore called upon to pay the balance amount of Rs.6,48,704/-. Being

aggrieved by issuance of this offer letter dated 05/11/2018 the petitioner has challenged the same in Writ Petition No.4383/2019 contending that having

revised the initial price to Rs.21,85,000/- further escalation was not permissible. The petitioner also seeks damages from the Amravati Board on

account of the delay in handing over possession. By amending the writ petition the petitioner has raised a challenge to Resolution dated 15/12/2015

passed by the Maharashtra Housing and Area Development Authority as being violative of Clause-22 of the Maharashtra Housing and Area

Development (Estate Managements, Sale, Transfer and Exchange of Tenements) Regulations, 1981 (for short, the 1981 Regulations). It is also prayed

that the defects as indicated in the structural audit be also directed to be removed and damages at 18% per annum from 04/12/2014 on the amount of

Rs.17,77,800/- paid by the petitioner be awarded till delivery of possession.

4. In the reply filed on behalf of respondent Nos.2 to 5 an objection is raised to the maintainability of the writ petition on the ground that the alleged

rights of the petitioner that are claimed to have been infringed were purely contractual in nature. It is stated that for various reasons the construction

work took some time which resulted in enhancement in the cost of the said tenements which was done in accordance with resolution dated

15/12/2015. The tentative sale price was fixed at Rs.24,21,082/-. All applicants except the petitioner had paid the amount as demanded and they were

allotted their respective tenements. It is further stated that the various documents executed by the petitioner indicated the acceptance of the terms and

conditions that were made applicable as well as indicated the readiness of the petitioner to pay the escalated price. It is thus stated that considering the

nature of reliefs sought in the writ petition the same would require adjudication of disputed facts and therefore the petitioner should be relegated to

approach the Civil Court. By filing an additional affidavit it has been stated that the defects pointed out in the structural audit had been carried out by

the Authorities. Allotment letter to various other allottees who had paid the escalated price are also placed on record. It is thus stated that the writ

petition was not liable to be entertained.

5. Shri R. L. Khapre, learned Senior Advocate for the petitioner at the outset submitted that no disputed questions on facts are sought to be raised in

the writ petition. Since the action of the Estate Manager in enhancing the price of the tenements was challenged being illegal and contrary to Clause-

22 of the 1981 Regulations, the prayers made in the writ petition could be adjudicated. Referring to various provisions of the Maharashtra Housing and

Area Development Act, 1976 (for short, the Act of 1976) it was submitted that the Boards constituted under Section 18 of the Act of 1976 were

statutory Boards and were "State" within the meaning of Article 12 of the Constitution of India. It was his contention that it is only the Amravati

Board that had the authority and jurisdiction under Clause-22 of the 1981 Regulations to increase the price of tenements. Neither the Authority as

defined by Section 2(3) of the Act of 1976 nor the Estate Manager had the authority to revise the price of the tenements. While increasing the price of

tenements the conditions stipulated in Clause-22 (1) ought to exist and the allottee ought to be noticed before making any such increase. Referring to

the order dated 09/03/2017 passed by the Chief Officer of the Amravati Board it was submitted that the possession of the tenement ought to have

been delivered by 31/03/2017 but the directions issued were not complied with. The delay was caused by the Amravati Board in completing the

construction. The revision of price was made thereafter and thus it was not liable to be accepted. Moreover the Amravati Board did not indicate the

manner in which the escalated price of Rs.24,21,082/- was arrived at. It was his contention that before enhancing the price, the Amravati Board ought

to have furnished relevant information regarding the necessity of such enhancement to the petitioner. By submitting that such unilateral modification in

the price of the tenement amounting to novation of the contract was not permissible, the learned Senior Advocate placed reliance on the decisions in

Delhi Development Authority, N.D. and anr. vs. Joint Action Committee, Allottee of SFS Flats and ors. AIR 2008 SC 1343, The D.F.O. South Kheri

& Ors. vs. Ram Sanahi Singh AIR 1973 SC 205, K. Channappa & Ors. vs. Union of India and ors. AIR 1991 Karnataka 2018, M. C. Mehta and

Anr. vs. Union of India and ors. AIR 1987 SC 1086 and Indian Explosives Ltd and Anr. vs. Coal India Ltd and ors. AIR 2018 SC (Supp) 1445. It was

urged that the escalation clause was required to be read along with Clause-22 of the 1981 Regulations and the escalation was required to be effected

only in the manner prescribed. It was not permissible for the Amravati Board to deviate from the established procedure. For said purpose he placed

reliance on the decisions in Zuari Cement Ltd. vs. Regional Director, E.S.I.C., Hyderabad and ors. AIR 2015 SC 2764, Smt Nisha Singhal vs. M. P.

Housing Board, Bhopal and ors. AIR 1996 MP 212. Since it was clear that the escalation was effected not in the manner prescribed by Clause 22 of

the 1981 Regulations the same was bad in law. Moreover, the resolution dated 15/12/2015 passed by the Authority was also liable to be set aside.

Referring to the decisions in M/s O.C.L. India Ltd Vs. State of Orrissa and ors. AIR 1987 SC 1086 and State of Rajasthan vs. Mohinuddin Jamal Alvi

and Anr. AIR 2016 SC 2386 it was submitted that the Authority having delegated the power to increase the price of the tenements to the Amravati

Board, it could not have exercised that power by passing the impugned resolution He also sought to invoke the public trust doctrine by relying upon the

decision in M. L. Builders vs. Radhyeshyam (1999) 6 SCC 464 and contended that the Amravati Board ought to have acted fairly in the matter.

Reference was also made to the decisions in Mrs Manju Bhatia & Anr vs. New Delhi Municipal Council and Anr. 1997 AIR SCW 4190, Pullar

Chettiar and ors. vs. The Commissioner Connor Municipality and Anr. AIR 1994 Madras 37, Raman vs. Uttar Haryana Bijli Vitran Nigam and ors.

AIR 2015 SC (Supp) 506 and State of T.N. and anr. vs. P. Krishnamurthy and anr. AIR 2006 SC 1622. It was thus submitted that the prayers made

in the writ petition were liable to be granted.

6. On the other hand Shri A. S. Jaiswal, learned Senior Advocate for the respondent Nos.2 to 5 opposed the prayers made in the writ petition. At the

outset he submitted that considering the nature of reliefs sought in the writ petition the same did not deserve to be entertained. The petitioner was not

raising any grievance with regard to infringement of any right conferred by the Act of 1976 on the petitioner. The rights of the petitioner merely arose

from contractual obligations and the parties were governed by the offer letter given by the Amravati Board to the petitioner. In absence of any

element of public interest being involved and the power to escalate the price of the tenement being purely contractual in nature, there was no

exceptional case made out to exercise writ jurisdiction. For said purpose he placed reliance on the decision in Joshi Technologies International Inc. vs.

Union of India and ors. (2015) SCC 728. Referring to various clauses of the 1981 Regulations it was submitted that the same indicated that the final

price of the tenement was always made subject to revision. Referring to the initial application made by the petitioner and thereafter the

affidavit/consent letter dated 13/10/2012 submitted by the petitioner, he submitted that the petitioner had accepted to pay the price that would be

applicable on the date of taking possession of the tenement. Though the petitioner was issued the allotment letter, there was no concluded contract

insofar as its final price was concerned. Referring to Clause-22 of the 1981 Regulations, it was submitted that the power of the Board to increase the

price of the tenement could be exercised notwithstanding anything contained in the notice inviting applications or in the agreement extended by an

allottee. It was thus submitted that the Board was within its competence in passing the Resolution dated 15/12/2015 and the same was not liable to be

set aside. The powers of effecting an escalation were conferred on the Estate Manager as per provisions of Clause-3 of the 1981 Regulation.

Reference was also made to the decision in Bihar State Housing Board and ors. vs. Radha Ballabh Health Care and Research Institute Private

Limited (2019) 10 SCC 483 to urge that the Board had acted within its right in fixing the final price of the tenement. It was thus submitted that since

the action taken by the respondent Nos.2 to 5 was in accordance with law there was no reason to exercise writ jurisdiction. The petitioner was free to

approach the Civil Court for seeking damages in the facts of the case. He thus sought dismissal of the writ petition.

7. We have heard the learned counsel for the parties at length and we have also perused the documents placed on record. The challenge raised in the

writ petition is to the Resolution dated 15/12/2015 passed by the Authority as being without jurisdiction and violative of Clause-22 of the 1981

Regulations. Further challenge has been raised to the offer letter dated 05/11/2018 issued by the Amravati Board demanding an amount of

Rs.24,21,082/- as the price of the tenement offered to the petitioner. An objection had been raised on behalf of the respondent Nos.2 to 5 that since

the dispute raised by the petitioner arises out of the contract entered into between him and the Amravati Board, the petitioner could not be permitted to

invoke writ jurisdiction. The forum for seeking such relief would lie before the Civil Court especially when the petitioner was also claiming damages on

account of the alleged delay in completion of the construction and handing over possession. On the other hand according to the petitioner since the

Amravati Board constituted under provisions of the Act of 1976 is a statutory Board and while allotting and selling tenements it discharges a statutory

duty being duty bound to act fairly, the petitioner is justified in approaching this Court in writ jurisdiction for seeking relief. A challenge has also been

raised to the Resolution dated 15/12/2015 on various grounds and such relief can be granted by this Court. It is urged that there are no disputed

questions that are required to be adjudicated and on the basis of documentary material available on record such adjudication could be done.

It is true that one of the challenges raised by the petitioner is to the offer letter dated 05/11/2018 issued by the Amravati Board calling upon the

petitioner to pay the increased cost of the tenement allotted to him. One of the grounds urged in that regard is that such enhancement has been made

in a manner contrary to the provisions of the Act of 1976. There is also a challenge raised to the Resolution dated 15/12/2015 passed by the Authority

on the ground that it is without jurisdiction and violative of Clause-22 of the 1981 Regulations. This Resolution is in the nature of policy decision taken

by the Authority. By said Resolution the Authority by way of policy had sought to revive the rates applicable on the amount of interest, establishment

expenses, management expenses, unforeseen matters etc. The rates revised are in two parts, one applicable to the Mumbai Board and other

applicable to all other remaining Boards except the Mumbai Board. The revision has been made applicable to all projects where the final sale price has

not been fixed. In the light of the observations made in paragraph 60 of Delhi Development Authority and the observations made in Indian Explosives

Ltd., D.F.O. South Kheri and ors. and Smt Nisha Singhal (supra) we are inclined to examine the challenges as raised in the writ petition. This would

of course be subject to the limitations as prescribed in paragraph 69 of the decision in Joshi Technologies International Inc. (supra).

8. Before considering the challenges as raised a reference to certain relevant aspects would be necessary. Advertisement dated 05/04/2011 came to

be issued by the Amravati Board calling for applications from persons interested in seeking allotment of tenements of various sizes in various income

groups. As per Clause-7 of that advertisement it was stated that the price of the tenement indicated in the advertisement was tentative and a change

in the area of the tenement as well as its final price was possible in future. Such change was indicated to be binding on an applicant and no grievance

in future in that regard was to be entertained. The petitioner pursuant to the aforesaid advertisement applied for a tenement in the high income group

on 28/04/2011. After complying with the necessary requirements and depositing the initial amount the petitioner was informed on 01/10/2012 that the

price of the tenement that was allotted to him was revised to Rs.21,85,000/-. Consent of the petitioner was sought in that regard in writing. The

petitioner responded to the same by issuing letter dated 13/10/2012. Alongwith that letter he submitted an affidavit/consent letter. The petitioner gave

his consent to the revision in the cost of the tenement and indicated his willingness to deposit that amount in the said consent letter. It was further

stated that "While taking possession of the tenement the proposed revised price of the said tenement would be acceptable to me and I would not

make any complaint in that regard." This was followed by another communication dated 03/01/2013 and the balance payment as indicated at that

stage was made. After the aforesaid revision the Authority passed Resolution dated 15/12/2015 that has been referred to above revising various rates

by way of a policy decision. The policy decision was made applicable to all Boards in the State. Thereafter on 05/11/2018 an offer letter was issued to

the petitioner indicating the price of the tenement to be Rs.24,21,082/-. This amount was directed to be paid after which possession was to be handed

over to the petitioner. With the aforesaid factual matrix the challenges raised by the petitioner can be considered.

9. The principal grievance of the petitioner is that the Amravati Board having revised the prices of the tenement from Rs.14,90,000/- to Rs.21,85,000/-

in October 2012 a further revision as indicated by the demand letter dated 05/11/2018 was illegal as it was not in accordance with Clause-22 of the

1981 Regulations. The 1981 Regulations have been framed with a view to regulate the sale, transfer and exchange of tenements by the Authority. The

Regulations provide for the manner in which sale and management of tenements would be undertaken and payments to be made. The various Boards

constituted under provisions of the Act of 1976 were conferred certain powers by the 1981 Regulations. Under Clause-22 if the Board found that the

expenditure including interest on the amount of loan taken by the Authority and the expenditure incurred on supervision had increased, the cost of the

tenement notwithstanding anything contained in the notice inviting applications or in the agreement executed by an allottee could be revised by the

Board. The allottees were bound by such revision and they had an option of either paying the difference in the price so determined and the price

already paid or they would be entitled to refund of such difference. According to the learned Senior Advocate for the petitioner this increase in the

price of tenement was without any supporting material so as to indicate that expenditure including interest on the amount of loan taken and the

expenditure incurred on supervision had increased so as to warrant revision in the cost of tenement. According to him the petitioner should have been

put on notice prior to making such increase in the price of the tenement. On the other hand the respondent Nos.2 to 5 seek to rely upon Resolution

dated 15/12/2015 passed by the Authority revising the rates of expenditure as a policy matter.

10. It is urged that the Resolution dated 15/12/2015 passed by the Authority was without jurisdiction and violative of Clause-22 of the 1981

Regulations. We are unable to accept this contention. Perusal of the Resolution dated 15/12/2015 indicates that the Authority in its 264th meeting took

a policy decision in the matter of revision of rates of interest applicable to various heads of expenditure such as interest on capital, establishment

charge, unforeseen expenses, emergency expenses, managerial expenses and the ratio of profit. The revision was divided in two groups, particular

rates being applicable only to the Mumbai Board and other rates being applicable to all other remaining Boards in the State of Maharashtra. It is clear

that this Resolution is in the nature of a policy decision taken by the Authority and it is independent of Clause-22 of the 1981 Regulations. The

applicability of Clause-22 would arise when the concerned Board notices any increase in the expenditure that is to be incurred towards the cost of the

tenement warranting revision of the price of the tenements. This clause would apply to a particular project depending upon the expenditure incurred.

While the Resolution dated 15/12/2015 prescribes the rates on the basis of which certain components of the total price of the tenement may be

determined, Clause-22 would apply thereafter by applying the various rates fixed by the Authority as a matter of policy. We do not find that by passing

Resolution dated 15/12/2015 the Authority in any manner has usurped the powers of the Amravati Board as conferred by Clause-22 when it proposed

to increase the price of the tenement allotted to the petitioner. While the policy dated 15/12/2015 had uniform applicability to the entire State except

the Mumbai Board, the power to be exercised under Clause 22 is by a particular Board after noticing increase in the amount of expenditure as stated

therein. The policy decision taken by the Authority on 15/12/2015 and the exercise under Clause-22 operate in different fields and no question of any

delegation by the Authority to the Amravati Board in this regard applies. The ratio of the decisions in M/s O.C.L India and State of Rajasthan (supra)

cannot be applied in the present case. It is therefore held that Resolution dated 15/12/2015 is neither without jurisdiction nor is it violative of Clause-22

of the 1981 Regulations. To put it differently, the Resolution merely indicates the broad parameters within which and under what heads a revision in

the amount of expenditure is to be made while the revision in the price of the tenements as indicated by the Amravati Board on 05/11/2018 is

specifically made applicable to the tenements that were the subject matter of advertisement dated 05/04/2011.

11. Coming to the question as to the justification by the Amravati Board for increasing the price of the tenements, it is to be noted that the aspect that

the prices indicated in the advertisement dated 05/04/2011 were tentative which was clearly indicated. The petitioner willingly participated in the draw

of lottery and was successful. He willingly accepted the revision in the price of the tenement that was conveyed to him on 01/10/2012. He further

gave his consent and also expressed his willingness to pay any further amount of enhancement in the price of the tenement. Even the offer letter

dated 05/11/2018 does not compel him to pay the increased price of the tenement in view of the fact that what has been made to him was an offer as

per Clause-17(1) of the 1981 Regulations. This increase in the price of the tenement has been applied uniformly for all tenements in the high income

group and it is informed by the respondent Nos.2 to 5 that all allottees except the petitioner have paid the revised increase and have also received

possession of their respective tenements. We therefore do not find anything arbitrary in the demand for the revised price of the tenement from the

petitioner. Moreover the petitioner is bound by his willingness as indicated in his affidavit/consent letter dated 13/10/2012. The petitioner never sought

to withdraw his consent at any time after 13/10/2012. The revision effected after informing about the same to the petitioner while issuing the allotment

letter cannot amount to novation of the contract as urged. The decisions in Indian Explosives Ltd. and Pullar Chettiar (supra) do not assist the case of

the petitioner.

It is necessary to note that the initial revision of the price of the tenement from Rs.14,90,000/- to Rs.21,85,000/- was intimated to the petitioner by the

Estate Manager on 01/10/2012. This increase was accepted by the petitioner without raising any grievance about the competence of the Estate

Manager. Clause-3 of the 1981 Regulations empowers the Board to act through the Estate Manager. Hence, issuance of the impugned offer letter

dated 05/11/2018 by the Estate Manager would not mean that such increase has been effected by the Estate Manager and not the Amravati Board.

Said contention of the petitioner therefore cannot be accepted.

12. Insofar as the prayer made for seeking damages at the rate of 18% per annum from 04/12/2014 till the delivery of possession on the amount of

Rs.17,77,800/- is concerned, we are not inclined to go into that aspect of the matter. The same would involve resolution of disputed questions including

consideration of the aspect as to whether there was delay caused by the respondent Nos.2 to 5 in completing the construction. It is open for the

petitioner to seek this relief if so advised before any appropriate forum.

13. In that view of the matter we do not find any case made out to exercise writ jurisdiction and grant any relief as prayed for in the writ petition. Writ

Petition No.4383/2019 is accordingly dismissed leaving the parties to bear their own costs.

14. Contempt Petition No.65/2019 has been filed by the petitioner praying that suo motu action be taken against the Executive Engineer as well as the

Estate Manager on account of their failure to complete the structural audit in terms of the communication dated 23/03/2018 that was placed on record

of Writ Petition No.7579/2017 which communication was held to be binding on the said parties. The contempt petition has been filed on 03/01/2019.

15. After notice was issued in the contempt petition, reply has been filed by the respondent Nos.2 and 3 in the contempt petition. It has been stated

that on 31/08/2018 occupancy certificate was issued by the Town Planning Office, Akola. It is further stated that an approved Auditor completed the

structural audit of the construction and submitted a detailed report in that regard to the office of respondent No.2 on 03/01/2019. A copy of said

structural audit report is placed on record along with reply affidavit.

16. In the light of the fact that as indicated in the communication dated 23/03/2018 an application for issuance of occupancy certificate was duly made

and the occupancy certificate has now been granted coupled with the fact that the structural audit that was undertaken to be completed has also been

done, we do not find that there is any case of wilful disobedience of the undertaking given by the Executive Engineer in the communication dated

23/03/2018. We therefore do not find it necessary to proceed further in exercise of contempt jurisdiction.

Contempt Petition No.65/2019 accordingly stands dismissed.

J U D G E

JUDGE

At this stage Shri R. L. Khapre, learned Senior Advocate for petitioner submits that without prejudice to the rights of the petitioner to challenge the

present judgment before the Honourable Apex Court or to avail any other remedy available in law, the petitioner may be permitted to deposit the

balance consideration as demanded.

It is open for the petitioner to deposit the balance consideration in furtherance of offer letter issued to the petitioner. Such deposit would be without

prejudice to the rights of the petitioner of taking any further steps referred to above. If the balance consideration is deposited, the Amravati Board

shall take further steps to deliver possession of the tenement allotted to the petitioner.