(1988) 06 P&H CK 0005

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 447 of 1987

Residents Welfare Association (Regd) Housing Board Colony, Faridabad and others		APPELLANT
	Vs	
Housing Board, Haryana and another		RESPONDENT

Date of Decision: June 3, 1988

Hon'ble Judges: Amrit Lal Bahri, J

Bench: Single Bench

Advocate: Pardeep Gupta, for the Appellant; V.K. Vashista, for the Respondent

Final Decision: Allowed

Judgement

A.L. Bahri, J.

This revision petition is on behalf of the plaintiffs against the order dated December 23, 1986 passed by District Judge, Faridabad whereby an appeal filed by the defendant Housing Board, Haryana was allowed.

2. The plaintiffs brought a suit for declaration with consequential relief of permanent injunction as well as mandatory-injunction restraining the defendant Housing Board from claiming enhanced price of the houses from the plaintiffs.

3. The plaintiffs are allottees of different houses situated in Sector 23, Faridabad. Suddenly the defendant-Housing Board enhanced the price of the houses and called upon the plaintiffs to pay the same by enhanced instalments. This action of the Housing Board was challenged in the suit. An application for the grant of temporary injunction was filed in the suit. On the same allegations that the demand of enhanced price of the houses was illegal. The application was contested. Sub Judge 2nd Class, Faridabad vide order dated June 11, 1916 directed the defendant-Board to accept the instalments from the plaintiffs at already settled instalments. This

would be without prejudice to the rights of the defendants to recover the difference in prices retrospectively if on merits the case is decided in favour of the defendants. An appeal was taken to the Court of the District Judge against the said order which was accepted and the application for grant of temporary injunction was dismissed.

4. Shri Pardeep Gupta, Advocate for the petitioners, has argued that the lower appellate Court did not take into consideration the plea of the defendant-Board in the written statement that while determining the enhanced rates of the price of the houses, the administrative charges, interest, cost of the land and nominal profits were taken info consideration. On going through the judgment of the lower appellate Court, I find that the plea of the defendant-Board was generally taken that the Haryana Urban Development Authority had raised the compensation for the land and consequently the defendant-Board was forced to raise price of the houses A similar matter was earlier considered by G.C. Mital J. in C.W.P. No. 381 of 1981 (Ravinder Rastogi v. The Housing Board Haryana C.W.P. No. 381 of 1981) wherein while justifying the enhancement in the price, eleven items were taken into consideration and it was held that only enhanced compensation awarded and interest on the enhanced compensation could be taken into consideration. It may be stated here that the other items which were not allowed related to administrative charges, conservancy charges, development cost etc. In the present case, as already stated above, apart from interest and cost of the land, other charges taken into consideration are administrative charges, nominal profits etc. These items obviously could not be taken into consideration while enhancing the price of the houses under clause 2(w) of the agreement entered between the parties which is as under:-
If after the receipt of the final bills for the construction of tenements or as the result of land award or arbitration proceedings etc., 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 the final price to be 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.

It was the duty of the defendant-Board to explain in detail all the items taken into consideration for enhancing the price of the houses. Thus, there is prima facie case in favour of the plaintiffs and they would suffer irreparable loss if they are forced to pay enhanced price of the houses. The lower appellate court was thus not justified in declining the relief to the plaintiffs.

5. For the reasons recorded above, this appeal is accepted with costs. The order of the lower appellate Court is set aside and that of the trial Court is restored. Counsel''s fee is fixed at Rs. 200/-.