

(2000) 02 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5009 of 1992

Kuldip Singh

APPELLANT

Vs

Chandigarh Housing Board

RESPONDENT

Date of Decision: Feb. 29, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2000) 126 PLR 127 : (2000) 2 RCR(Civil) 408

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Vinod Sharma, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.

Retired Chief Engineer Kuldip Singh has filed the present writ Under Article 226/227 of the Constitution of India for issuance of a writ of certiorari, mandamus or any other writ order or directions against the respondents for quashing of the impugned part of the allotment letter fixing the price of Rs. 4.93 lacs in stead of Rs. 3.52 lacs as decided earlier by the respondent, while allotting the dwelling unit No. 91/2 of HIG Category I in Sector 45-A. Chandigarh. The petitioner has also sought the directions of this Court that the respondent be directed to fix the price of Rs. 3 lacs as done in the case of others.

2. The case set up by the petitioner is that he is a retired Chief Engineer from the Punjab P.W.D. (B&R) Branch and retired from Govt. service on 30.4.1989. The petitioner did not own or possess any plot or house either in his name or in the name of his dependent family members. He made an application for allotment of a HIG flat out of the discretionary quota on 7.4.1989 and his application was forwarded by the U.T. Administration vide letter dated 2.5.1989. The request of the petitioner was accepted and the respondent decided to allot one house out of

discretionary quota out of 1750 Flat Scheme HIG Category I, revised design (hereinafter referred to as "the Scheme"), on second floor vide the Board letter dated 17.11.1989. In pursuance of the said, letter, the petitioner submitted an application on the prescribed form along with all the documents including a bank draft for Rs. 20,000/-, which was received by the respondent on 24.11.1989. Under the Scheme, it was decided to construct 180 flats, in Sector 45-A out of which 12 were of original design and 168 were of revised design. The price of 168 flats was fixed at Rs. 3.52 lacs each. Out of 168 flat which were to be constructed as per the revised design, 126 plots were constructed and allotted in the year 1990 at the rate of Rs. 3.52 lacs each and the monthly instalment was fixed at Rs. 2,982/- along with interest at the rate of 13-1/2%. The remaining houses under the Scheme could not be constructed on account of land encroachment by unauthorised occupants and the respondent took some time to get the same vacated and these 12 houses were constructed in the year 1991. As per the Scheme and the allotment made, the price of the each flat was to be fixed at Rs. 3.52 lacs but the respondent in an arbitrary manner fixed the price of these 12 houses, even though constructed under the same Scheme, at Rs. 4.94 lacs, i.e. Rs. 1.42 lacs more than the original declared price. The petitioner was issued the letter of allotment for dwelling unit No. 91/2 in Sector 45-A and was asked to deposit a sum of Rs. 1,64,256/-. The petitioner deposited the amount as demanded and possession of the house was given to him on 9.1.1992. It was further mentioned therein that the petitioner would have to pay the instalment of Rs. 4,760/- per month and the rate of interest to be charged was 16-1/2%. The petitioner also paid the four instalments. However, the petitioner came to know that though he and 11 others have been allotted these flats at the rate of Rs. 4.94 lacs each and with a condition that the balance amount after deducting the initial deposit, is payable at monthly instalments of Rs. 4,760/- alongwith interest at the rate of 16-1/2%, but the other allottees under the same Scheme have been allotted similar type of accommodation at the rate of Rs. 3.52 lacs each and they are required to pay the monthly instalments of Rs. 2,982/- with interest at the rate of 12-1/2%. The petitioner has alleged that this action on the part of the respondent is illegal, arbitrary and unconditional and the petitioner is entitled to the allotment of the plot at the rate of Rs. 3.52 lacs, inter alia, on the ground that the enhanced price is arbitrary, violative of Article 14 of the Constitution because under the same Scheme two sets of prices cannot be fixed by the respondents. The delay in the construction of the house was entirely on account of the default of the Board and, therefore, for this delay, the petitioner cannot be compelled to pay Rs. 1.42 lacs more than the original price fixed.

3. With the above broad allegations, the petitioner has filed the present writ petition.

4. Notice of the writ petition was given to the respondent, who filed the written statement and denied the allegations of the petitioner. According to the respondent, the price of the dwelling unit allotted to the petitioner was fixed strictly according to

the contract between the parties and, therefore, the writ petition is not legally maintainable. The allotment of the flat was made to the petitioner vide letter dated 13.11.1991 at the total provisional price of Rs. 4.94 lacs. The petitioner has accepted the allotment by way of filing an affidavit duly attested by an Oath Commissioner and further executed a Hire-Purchase Tenancy Agreement with the Board at the said price. According to clause-6 of the Hire-Purchase Tenancy Agreement, which was accepted by the petitioner, the consideration money of the dwelling unit was fixed at Rs. 4.94 lacs and this price was subject to revision by the Board from time to time and whenever it is revised, the manner in which it will be payable, shall be determined by the Board and such determination shall be final. As per clause-8 of the Hire-Purchase Tenancy Agreement, the petitioner was liable to pay a monthly instalment of Rs. 4,760/-. The petitioner took the possession of the house in January, 1992 and started making the monthly instalments in terms of the allotment letter and as per the terms of the contract and, therefore, the petitioner cannot wriggle out from the same. It is further pleaded by the respondent that the construction of some of the flats cannot be taken up earlier due to encroachment at the site in the form of Jhuggies and, as such, the area could not be demarcated. Therefore, the Board prepared a revised layout plan and forwarded the same to the Chandigarh Administration in the year 1988 for supplying the area list and non-encumbrance certificate. Later on, the matter was referred to the Administration for allowing cutting of the trees standing on the site since as per the Govt. Policy, the trees could not be cut. The Administration ordered cutting of only four trees and asked for revising of lay-out plan to save the rest of the trees and, accordingly, a revised lay out plan was forwarded to the Administration for issuing revised area list which the Administration did in December, 1989, and clarified about the area list due to modification in the size of some of the blocks in the lay-out plan in the month of May, 1990. In this manner, the Board was able to invite tenders for the construction of the houses only in the month of May, 1990 and allotted the work for construction in August, 1990. The encroachments were removed in the month of January, 1991 when the contractors started construction of the houses and the construction was completed in the month of October, 1991. The house which were constructed earlier, their price is always bound to be lesser as compared to those completed later, since the prices of building materials, labour charges, land as also rate of interest went on increasing upon which the Board had no control. The Board had two sets of prices; one for the applicants who are registered in the scheme when the same is floated and make advance payments as per the terms of the scheme and the 2nd in respect of persons who get the flats out of discretionary quota and do not make advance payment along with registered applicants of the scheme. The persons who applied for the allotment of the houses through discretionary quota were supposed to make the payment of Rs. 4.94 lacs in respect of first/second floor flats.. In short, the respondent has stated that the price has been correctly calculated. Similarly, the rate of interest; viz. 16-1/2%, is also correct. With these broad allegations, the respondent has prayed for the dismissal of the writ petition.

5. In support of his contention, the petitioner has placed the allotment letter, Annexure P-1, on the record, in which there is a clear indication that the proposal was for the allotment of the house on a provisional consideration of Rs. 4.94 lacs.

6. I have heard the counsel for the petitioner and gone through the record of this case.

7. Learned counsel for the petitioner submitted that there is a clear discrimination on the part of the Board when it had fixed two yardsticks for the same category of houses, i.e. HIG Category-1. For one category of houses, the Board has charged the price of Rs. 3.52 lacs and for the others, it has charged the price of Rs. 4.94 lacs. Moreover, there is discrimination with regard to charging of interest and such an action on the part of the Board is discriminatory and is violative of Article 14 of the Constitution of India. Reliance has been placed upon a judgment reported in *Surinder Singh v. State of Punjab and Anr.* 1997(2) P.L.J. 477, wherein in paras 15 and 16, it was held as follows:-

"15. We have gone through the record and eschewing any expression of opinion on merits with respect of the mode of distribution/spreading of the enhanced compensation only on the plot-holders, granting of exemption from the enhanced price to the institutional plot-holders or public authorities or on the public utility plots or the vacant land or the right to charge additional price only once and not again and again, the circumstances under which the additional price could be charged, the right to charge interest terminus quo, the date from which the interest to be charged, the consideration of the same price irrespective of the situation or nature of plots, the process of determining the additional price, the statistics and the basis of the figures arrived at and the liability of a particular class or section of persons. The writ petitions are disposed of with the observations that the respondent would observe the principle of natural justice i.e. additional price would be determined by the respondent after granting an opportunity of hearing.

16. In our considered view, though the penal action of resumption etc. is the consequence of the non payment of the demand made, minimum it can be envisaged that the same raised against an individual allottee and the demand notice is served on him. While determining the additional price, to observe the principle of natural justice keeping in view the number of allottees and others circumstances notice may be service through a general publication."

8. On the contrary, the respondent in its written statement submitted that the writ of the petitioner should be dismissed because he is seeking the directions with regard to the alleged breach of contract. Moreover, as per the privity of contract between the petitioner and the Board and as per the terms of the allotment letter, the total consideration (provisional) of the flat which was allotted to the petitioner was Rs. 4.94 lacs and with regard to the payment of interest, again, there was a stipulation. The counsel submitted that earlier, the flats were allotted against a

consideration of Rs. 3.52 lacs but those flats were completed prior in time. The flats out of which a flat was allotted to the petitioner were constructed subsequently because the Board could not get the possession of the site in question due to the encroachments of the jhuggi dwellers, therefore, the same yardstick cannot be applied in the present case.

9. There is merit in the contention of the counsel for the respondent. The privity of contract has to prevail. As per the condition of allotment of the flat allotted in favour of the petitioner, he was supposed to pay a total consideration of Rs. 4.49 lacs and this is so indicated in the terms of allotment letter, Annexure P-1. The petitioner has accepted these terms and he even acted upon them. He cannot say that he has been discriminated or that the fixation of the price by the Board is arbitrary. It is stated in the written statement of the respondent that the flats out of which a flat was allotted to the petitioner were constructed subsequently and with the passage of time, the cost of building material, labour charges, etc. had gone up and the rate of interest had also increased. Even if it is assumed for the sake of arguments that the flat in question was constructed along with those flats which were allotted at the price of Rs. 3.52 lacs, still the petitioner has no case. It depends upon the location of that flat. Supposing some flats are constructed in one Sector and some flats of the same Scheme and same type and constructed in a different sector which is at a distance of 4/5 kilometres, the cost of building material, etc., is likely to increase with the distance because the building material, etc. has to be dumped at a site which is farther from the earlier site. In such a situation, the Board will be justified in fixing the enhanced price keeping in view the actual expenditure incurred by the Board with regard to the construction of a particular flat. Such a decision of the Board cannot be held to be discriminatory or arbitrary. The ratio of the judgment relied upon by the counsel for the petitioner is not applicable to the facts in hand as the same has been given in a different context.

10. I do not see any merit in this appeal and the same is hereby dismissed. There shall also be no order as to costs.