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Court : Chennai

Decided On : Dec-21-2015

Judge : Satish K. Agnihotri & The Honourable Dr. Justice P. Devadass

Appeal No. : W.A.Nos. 1332 to 1350, 1132 to 1146, 1439 & 1637 of 2015 & M.P.Nos. 1 of 2015 (36 Nos.)

Appellant : N. Sivakumar

Respondent : Puducherry Housing Board, represented by its Chairman, Puducherry and Another

Advocate for Def. : Mr. T.P. Manoharan

Advocate for Pet/Ap. : Mr. S. Mahimai Raj

Judgement :

(Prayer: Writ Appeals are preferred under Clause 15 of Letters Patent against the common order dated 13.2.2015 passed in W.P.Nos.25643, 27086 to 27100, 27468, 28561 to 28571, 28758, 28795, 28796, 29109, 29793, 32070 to 32074 of 2014.)

Common Judgment

Satish K. Agnihotri, J.

1. The instant intra-Court appeals arise from the common order dated 13th February, 2015 passed in W.P.Nos.25643, 27086 to 27100, 27468, 28561 to 28571, 28758, 28795, 28796, 29109, 29793, 32070 to 32074 of 2014. Except the writ petitioners in W.P.Nos.29109 and 29793 of 2014, the other writ petitioners have filed the instant writ appeals assailing the aforesaid common order.

2. For the sake of brevity, clarity and convenience, the parties are referred to as per their arraignment in the instant appeals.

3. The instant writ petitions were preferred by the appellants seeking to quash the proceedings dated 18th August, 2014 passed by the second respondent / Secretary, Puducherry Housing Board, Anna Nagar, Puducherry, whereunder, the appellants were directed to pay the difference between the revised final cost and the tentative cost in two installments, as indicated in the said proceedings, on or before 20 October 2014.

4. The indisputable facts are that a housing scheme was formulated by the first respondent-Puducherry Housing Board. The respondent-Housing Board had constructed 40 HIG flats, 77 MIG flats and 64 LIG flats. Since the respondent-Housing Board was unable to sell flats at concessional rates under the hire purchase lease-cum-sale agreement scheme, it was decided to sell the flats on outright sale basis ?. Accordingly, the respondent-Housing Board issued a paper publication in Daily Thanthi on 1st February, 2010, inviting applications for allotment of flat on lot basis. The initial tentative cost fixed was Rs.34,57,500/-. As there was no proper response, the respondent-Housing Board again issued an advertisement for allotment of flats in November, 2011. The appellants participated in the drawal of lots and allotments were made to them. The possession of flats was also handed over to the appellants.

5. While so, a communication dated 26th May, 2014 was issued, informing that the final cost of the flat is fixed at Rs.47,68,085/- and that the appellants are required to remit the differential sum of Rs.13,10,585/- [Rs.47,68,085/- (-) Rs.34,57,500/-]. The appellants made representations to the respondent-Housing Board, stating

that the demand for the difference between the tentative cost and the final cost is unilaterally made and the same is exorbitant and untenable and thus, requested to waive the differential amount and to execute the sale deed in their favour. Thereafter, the Board, by the impugned proceedings dated 18th August, 2014, revised / reduced the final cost to Rs.41,76,055/- and calling upon the appellants to remit a sum of Rs.7,18,555/- being the difference between the revised final cost and the tentative cost, [i.e. Rs.41,76,055/- (-) Rs.34,57,500/-] in two installments. Thereagainst, the writ petitions were preferred by the appellants.

6. Shorn of the unnecessary particulars, the necessary facts germane for the disposal of the instant appeals are that the appellants are allottees of 3 bedroom flats (HIG flats). The said allotment was made under General conditions of allotment read with Terms and conditions for allotment of three bed room flats at Sudhanthira Ponvizha Nagar Composite Housing Scheme Puducherry (for short Terms and Conditions for allotment of three bed room flats ?) and Conditions regarding sale price of a flat and terms of its payment (for short Conditions regarding sale price of a flat ?). Vide intimation dated 30 January 2012, the tentative price fixed under Clause (p) of General conditions of allotment was Rs.34,57,500/- with a rider under Clause (o) that the final cost of the flat shall not exceed the tentative cost by more than 5%. Sub-clause (iii) of Clause 10 of the Terms and conditions for allotment of three bed room flats at Sudhanthira Ponvizha Nagar Composite Housing Scheme Puducherry ?, envisages handing over of possession of flat to the allottee on completion of construction and the allottee having completed the payment of the entire tentative price of the flat to the respondent-Housing Board. Clause 10 of the Conditions regarding sale price of a flat and terms of its payment provides that the final cost of the flat should be arrived at and intimated to the allottee within twelve months from the date of occupation. Clause 14, *ibid*, enables the respondent-Housing Board to revise the cost of the flat at any time for any reason which discloses that the price fixed tentatively is less than what it should be and it is also stated that the decision of the respondent-Housing Board in this regard is final. Clause 15 provides that the respondent-Housing Board may intimate the revised cost before the issue of final allotment order and the allottee should remit the same before occupation of the flat.

7. Indisputably, the appellants were informed vide intimation dated 30 January 2012 that the tentative cost of a flat was Rs.34,57,500/-. The appellants were handed over possession of the flats between 12 April 2012 and 02 May 2014. After handing over possession of the HIG flats, the appellants were informed vide intimation dated 26 May 2014 that the final cost in respect of HIG flats has been fixed as Rs.47,68,085/- and by the said intimation, they were also called upon to pay the differential amount of Rs.13,10,585/- within 60 days. Pursuant thereto, the appellants made representations to the respondent-Housing Board to re-consider the final determination, inasmuch the cost determined subsequently, after handing over of the flats, was not permissible. However, by intimation dated 18 August 2014 issued by the respondent Housing Board, the appellants were informed that the final cost, as determined earlier, has been revised/reduced from Rs.47,68,085/- to Rs.41,76,055/-. By the said intimation, the appellants were further informed that if the amount of Rs.7,18,555/- is not paid in two instalments on or before 20 October 2014, the same will entail interest at the rate of 10.50% for the belated payment. This intimation prompted the appellants to file the instant writ petitions seeking quashment of the same as being unsustainable and for a direction to execute sale deeds in their favour.

8. Mr. AR.L. Sundaresan, learned Senior Counsel representing Mr.M.Vaikunth and Mr. Prakash Adia Padam, learned advocates for the appellants and also Mr. S. Mahimai Raj, learned counsel for the appellants, would contend that the allotment of HIG flats to the appellants is governed by the terms and conditions. The tentative price of a flat was fixed at Rs.34,57,500/-. Under the General conditions of allotment, the respondent-Housing Board was competent to determine the final price by exceeding the tentative cost only by 5% and not more than that. They would further contend that the respondent-Housing Board is competent to determine the sale price finally before transferring the flat. Once possession of the flat has been handed over the allottees, determination of price comes to an end. Subsequent determination was beyond the power and authority of the respondent-Housing Board under the General Conditions of allotment and also Conditions regarding sale price of a flat.

9. The learned counsel for the appellants would next contend that regard being had to the tentative price fixed by the respondent-Housing Board, the appellants could garner courage to seek allotment under the said price. Had it been more than what has been informed, the appellants could not have even considered for making applications. After handing over possession of the flats, the appellants may not be forced to shell out more amount as a condition precedent for execution of the sale agreements. The sale agreements are consequential to the payment of tentative cost with 5% rise, if any, coupled with handing over of possession of flats. Thus, the intimation dated 18 August 2014 is liable to be quashed.

10. The other submission of the learned counsel for the appellants is that indisputably, in the initial round, there was no response from the intended applicants for purchasing HIG flats. However, subsequently, on the revised/reduced tentative price, the appellants submitted their applications. The purpose which the respondent-Housing Board could not achieve in the first round of advertisement is being attempted to be achieved, after allotment of flats. The re-determination of cost is unjustifiable, unreasonable and beyond the terms of the contract.

11. In oppugnation, Mr. T.P. Manoharan, learned counsel for the respondents would submit that the land in question was acquired by the respondent-Housing Board way back in 1998. A portion of the said land bearing R.S. No.300/2 admeasuring 850 sq. m. was transferred to the Puducherry Slum Clearance Board to construct flats for allotment to economically weaker sections of the masses. The remaining land to an extent of 12,750 sq. m. is situated at Sudanthira Ponvizha Nagar in a posh area. It was decided to develop the said land for construction of 40 HIG flats, 77 MIG flats and 64 LIG flats. At the relevant point of time, the respondent-Housing Board was facing financial crunch. In fact, as a result, the respondent-Housing Board had to avail loans from Housing and Urban Development Corporation Ltd., even for paying salary to its officers and other staff members. The respondent-Housing Board was unable to construct and allot flats at a concessional rate under the hire purchase lease-cum-sale agreement scheme. When things stood so, a decision was taken by the respondent-Housing Board to sell off those flats on outright sale at the market value. Under the outright

sale, the respondent-Housing Board is entitled to fix the sale price at the market value and sell the flats. Accordingly, as per the lay out plans, building plans, structural designs, structural drawings, etc., construction of 40 HIG flats, each measuring 1,692 sq. ft., with Earthquake Resistance Capacity, was commenced by the respondent-Housing Board on 04 August 2008, with all amenities like lifts, separate covered parking sheds, compound wall, inner roads, parks, water pumping station with over head tanks, electricity transformers, drinking water connection, sewerage connection, etc.

12. The learned counsel for the respondent would further submit that the respondent-Housing Board is competent to revise and fix the correct tentative price, if it comes to know that the earlier tentative sale price fixed by the Board, had not taken into consideration, the actual land cost, incidental expenses and cost towards development of infrastructural facilities. The condition to fix the final sale price by not exceeding 5% more than that, would be applicable only after fixation of tentative price. The tentative price fixed by the earlier body had not taken into account, the actual land cost and other additional incidental expenses. Further, the respondent-Housing Board was not able to fix the correct tentative sale price based on the prescribed methods and procedures. The tentative sale price fixed earlier, based on the valuation report from a Chartered Accountant, who is not a competent person, is invalid and incorrect. Thus, the tentative sale price was only approximate and liable for revision and correct fixation by the respondent-Housing Board before issuance of the final allotment order to the allottees.

13. It is next contended that the respondent-Housing Board had handed over possession of HIG flats to the respective allottees between 12 April 2012 and 02 May 2014. only on their request. Thus, the same cannot be construed as final handing over of HIG flats. The allottees continue in the flats as tenants of the respondent-Housing Board, till final sale price is determined and sale deeds are executed in their favour. No sale deed has been executed till date in their favour, inasmuch as the respondent-Housing Board was in the process of finalising the price.

14. The learned counsel for the respondents would further urge that the final price, having taken into consideration, the actual cost of the land, development cost, construction cost, administrative charges and miscellaneous expenses is determined at Rs.64,44,376/-. After adding 10% towards profit, it comes to Rs.70,88,813/- as on 23 November 2013. As per the Government's guideline value, after adding 10% towards profit, the final price of a 800 sq. ft. flat comes to Rs.55,97,561/-. In the cases on hand, the total area of the flat is 1,692 sq. ft.

15. We have given our anxious thought to the rival submissions of the learned counsel for the parties, perused pleadings and documents appended thereto.

16. The points that emerge for our consideration in the instant appeals are (i)whether the final sale price can exceed more than 5% of the tentative cost informed to the appellants before they make application for allotment;(ii)whether the allotment of flats is governed strictly by the terms and conditions of allotment; and (iii)whether the respondent-Housing Board is competent to determine the land cost and other incidental charges, after handing over possession and occupation of flats in terms of allotment conditions.

17. To appreciate the entire controversy, it is apposite to extract the relevant clauses in the General conditions of allotment, Terms and conditions for allotment of three bed room flats and Conditions regarding sale price of a flat. Thus, the relevant clauses are extracted as under:

General conditions of allotment:

(o) The final cost of the flat shall not exceed the tentative cost by more than 5%.

(p) The tentative cost of the flat is Rs.34,57,500/- (Rupees Thirty Four Lakhs, Fifty Seven Thousand and Five Hundred only).

(q) Flats are allotted on Outright Sale basis only and payment shall be made within the stipulated period.

(r) Applicants in their own interest are advised to retain a photocopy of completed application, as a matter of caution.

(s) The allottee shall continue as a tenant of the Board till such time the flat is conveyed to him/her through a registered sale deed.

(t) On payment of sale price as finally fixed, the flat shall be transferred in the name of the allottee by the Board, by executing a Sale Deed at his/her own cost.

Terms and conditions for allotment of three bed room flats at Sudhanthira Ponvizha Nagar Composite Housing Scheme Puducherry ?

2(b) Allottee means the person to whom a flat is allotted under these terms and conditions and includes his/her legal heirs.

10 iii The possession of the flat will be handed over to the allottee on completion of the construction of the flat and the allottee having completed the payment of the entire tentative price of the flat to the Board.

iv The allottee shall pay all rates, taxes, cesses or other charges payable to the Government or Local Authority as demanded by them from after allotment.

v The allottee shall continue as a tenant of the Board till such time the flat is conveyed to him/her through a registered sale deed.

vi The allottee shall not make any additions or alterations or sublet, transfer, mortgage, etc. of the flat without the permission of the Board.

vii If there is any contravention by the allottee of any of the terms expressed or implied under these terms and conditions or in the application, it shall be lawful to the Board to evict the allottee or as the case may be, the occupant of the flat by duly cancelling the allotment and resuming the flat.

viii Any allottee, who has been allotted a flat is permitted to mortgage the said flat in favour of the Central Government, the State Government, the Life Insurance Corporation or any other Government recognized loan advancing institution, as the case may be, with the permission of the Chairman or the Secretary of the Board. In such an event, the Board shall have the first lien on the said flat. ?

Conditions regarding sale price of a flat and terms of its payment:

1 The flats are sold on Out-right sale basis.

2 The sale price at which flats are offered is tentative and subject to revision by the Board.

3 The tentative rate of sale price per sq. ft. of super built up area of a flat in each scheme will be indicated in the notification published by the Board, calling for applications for allotment.

10. The final cost of the flat should be arrived at and intimated to the allottee within twelve months from the date of occupation.

14. The Board is competent to revise the cost of the flat at any time for any reason, which discloses that the price fixed tentatively is less than what it should be. The decision of the Board in this behalf is final.

15 The Board may intimate the revised cost before the issue of Final allotment order and the allottees should remit the same before occupation of the flat. ?

18. The allotment of the said flats is conditioned by Clauses (o), (p) and (t) of General Conditions of Allotment read with Clause 10 (iii) and (iv) of the Terms and Conditions for allotment of three bed room flats, read with Clauses 10, 14 and 15 of the Conditions regarding sale price of a flat.

19. Clause (o) of General Conditions of Allotment stipulates determination of final cost of the flat by revising the tentative cost by not more than 5%. Clause (p), ibid, finally determines the tentative cost of the flat to the tune of Rs.34,57,500/-. Clause (t), ibid, provides for the mode of payment.

20. Clause 10(iii) of the Terms and Conditions for allotment of three bed room flats prescribes handing over of the flat to the allottee and also payment of the total tentative price of the flat. It is also prescribed under Clause 10(iv), ibid that the allottees shall be liable to pay all rates, taxes, cesses or other charges payable to the Government or local authority.

21. Clause 10 of the Conditions regarding sale price of a flat prescribes the time limit for determining the final cost and intimation of the same to the allottee within

twelve months from the date of occupation. Thus, the date of handing over/occupation is relevant for the purpose of reckoning of the time for determination of final cost.

22. As evinced from the aforestated, the allottees were informed that the final cost shall not exceed the tentative cost by more than 5%. Thus, the final cost, at the most, may determine the tentative cost and the five percentage of the tentative cost.

23. The issue of revision of cost price beyond the specified time and also the time schedule for revision came into consideration in Delhi Development Authority and another vs. Joint Action Committee, Allottee of SFS Flats and Others ((2008) 2 SCC 672), wherein, the contract was statutory and governed by the provisions thereof. It was observed by the Supreme Court that the superior court ordinarily would not interfere in the price fixation, particularly, in a case, where, there does not exist any absolute ban. In the said case, the Supreme Court held as under:

62. It is well-known principle of law that a person would be bound by the terms of the contract subject of course to its validity. A contract in certain situations may also be avoided. With a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout. A party to the contract cannot at a later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and which were based upon unilateral issuance of office orders, but not communicated to the other party to the contract and which were not even the subject-matter of a public notice. Apart from the fact that the parties rightly or wrongly proceeded on the basis that the demand by way of fifth instalment was a part of the original Scheme, DDA in its counter-affidavit either before the High Court or before us did not raise any contra plea. Submissions of Mr Jaitley in this behalf could have been taken into consideration only if they were pleaded in the counter-affidavit filed by DDA before the High Court.

80. A definite price is an essential element of binding agreement. A definite price although need not be stated in the contract but it must be worked out on some premise as was laid down in the contract. A contract cannot be uncertain. It must

not be vague. Section 29 of the Contract Act reads as under:

29. Agreements void for uncertainty Agreements, the meaning of which is not certain, or capable of being made certain, are void. ?

A contract, therefore, must be construed so as to lead to a conclusion that the parties understood the meaning thereof. The terms of agreement cannot be vague or indefinite. No mechanism has been provided for interpretation of the terms of the contract. When a contract has been worked out, a fresh liability cannot be thrust upon a contracting party. ?

CASE ARISING FROM

Haryana High Court in Ishwar Dass Nassa and Others vs. State of Haryana and Others ((2011) 16 (ADDL) SCR 301), the relevant clause, viz., Clause 2(w) of the Hire Purchase Tenancy Agreement was under consideration. The said clause provided for revision of the cost price on receiving the final bills for the construction of tenements or as a result of an order of the Court or an award made in Arbitration proceedings or enhancement of cost of land or any account, capping the time limit of 7 years from the date of allotment. In the said case, the Supreme Court held as under:

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. However, in these cases, the Boards 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 the 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. ?

25. In *Ishwar Dass Nassa* (supra), the scope of revision under the concerned clause was very wide. There was no restriction or capping on the limit of revision as is the case on hand, i.e., 5% and also the period provided in the aforesaid case was 7 years. In that event, it was held, as aforesaid, that the enhanced cost was not recoverable from the allottees after seven years from the date of allotment.

26. The learned counsel for the appellants cited the decision of a Division Bench of the Madhya Pradesh High Court in *Nisha Singhal. vs. M.P. Housing Board, Bhopal and others* (AIR 1996 MP 212), wherein, it was held that in view of the specific stipulation in the terms of contract, if at all any extra price was demanded for increase in cost of raw material or cost of construction, the notice in that behalf ought to have been served on the allottee well before the due date for payment of second instalment as per the terms of the agreement.

27. Applying the well settled principles of law, as aforesaid, to the facts of the case, it is eloquent that the tentative cost was fixed which was revisable within a period of one year from the date of occupation after handing over possession of the flat and the revision was to be increased by a maximum of 5%. Thus, the respondent Housing Board is not competent to recover the cost after a period of two years when the construction was completed before allotment and there is no specific condition to revise the cost even after handing over and occupation of the flats, re-calculating the construction cost and other infrastructural development

charges.

28. The sole contention of the learned counsel for the respondent-Housing Board is that the respondent-Housing Board is in the red as the Housing Board has obtained loan even for payment of salary to its staff members. The financial condition of the Board cannot be the criteria for determination of the final cost.

29. The learned counsel for the respondent-Housing Board, referring to the Audit Report dated 14 December 2012, submits that the respondent-Housing Board had suffered huge loss due to incorrect and low fixation of the land cost, construction cost, etc in the tentative sale price fixed by the then political Chairman. According to the learned counsel, the calculation is as under:

Each HIG flat will get a proportionate undivided share in the land at 1355.68 sq. ft. Hence, the cost of undivided share in the land for each HIG flat (Rs.1800 x 1355.68 sq. ft is Rs.24,40,231.

The Board has incurred development cost, construction cost, administrative charges, miscellaneous expenditure and additional construction cost till the completion of the construction in May 2015 as follows:

a	Development Cost	1,94,824
b	Construction cost	32,82,635
c	Administrative Charges	4,62,608
d	Miscellaneous expenditure	64,078
e	Additional construction cost	3,00,000
	Total	43,04,145

The Executive Engineer's letter of expenditure, work bills and its payments produced by the Board would prove the above development cost, construction cost, administrative charges, miscellaneous expenditures and additional construction cost incurred by it for construction of the HIG flats. Therefore, the

actual cost of each HIG flat is Rs.67,44,376/. (the land cost + development cost, construction cost, etc.)

The Hon'ble Court was pleased to grant time to the above details of land cost, development cost, construction cost, etc and the documents produced by the Board in proof of the same. However, the appellants have not filed their response and not denied or disputed the correctness of any of the said details. Therefore, they have admitted the same.

On the above actual cost of each HIG flat of Rs.67,44,376/- as per the Principal Accountant General's Audit Report, the respondent Board is entitled to charge a profit of 10% i.e., at Rs.6,74,436/-. But, the Board has waived the said profit and issued intimation of final sale price dt. 01.06.2015 to all the appellants/allottees, furnishing the above details of land cost, development cost, construction cost, administrative charges, miscellaneous expenditures and additional construction cost, fixing the correct tentative sale price of each HIG flat at Rs.67,44,376/- and the final sale price and requesting them to pay the same in instalments. ?

30. It is further contended that the allottees were sent intimation of final sale price on 01 June 2015 to the tune of Rs.67,44,376/- and the same is not denied or disputed by the allottees.

31. It is next contended that in fact, the final cost of each HIG flat was initially determined at Rs.67,44,376. However, the same was reduced to Rs.43,04,145/- on the representations made by the allottees. Thus, it was a case of miscalculation and also a deliberate mischief made to cause loss to the respondent Housing Board in personal interest of the then political Chairman.

32. Needless to state that no action has been initiated either against the Chairman or other functionaries who were involved in the alleged fixation of low cost, as pleaded by the learned counsel for the respondent-Housing Board.

33. On a perusal of the documents, it is noticed that in the Board Meeting held on 22 February 2010, the tentative cost was determined, taking into consideration, land development cost, construction of flats, etc. as under:

After perusing all the related records viz., documents relating to land acquisition, development of land, construction of flats and other details, they have arrived at the tentative cost in each schemes, floor-wise, as tabulated below:

Three Bed Room Flats (40 HIG, G+3 with lift) at S.P. Nagar		One Bed Room Flats (32 LIG, G+3, without lift) at Munugapakkam		One Bed Room flats (24 LIG, G+2, without lift) at Valatheru KKL	
Floor	Tentative Cost	Floor	Tentative cost (Rs.)	Floor	Tentative cost (Rs.)
Ground	34,57,500	Ground	10,31,000	Ground	10,28,000
First		First	9,95,400	First	9,98,200
Second		Second	9,72,200	Second	9,85,200
Third		Third	9,58,200		

Hence, the proposal was placed before the Board for approval of the fixation of tentative cost and also the notifications issued, calling up applications of the said schemes in anticipation of the Board's approval.

The Board, after deliberations, accorded approval for the above fixation of tentative cost of each scheme and ratified the advance action taken by the Chairman, PHB, in this regard. ?

which was duly approved and passed on to the intending purchasers/allotees.

34. In the cases on hand, no opportunity of hearing was afforded to the allottees before re-determining the cost. According to the respondent-Housing Board, all the documents were re-audited and it was found that there was mis-calculation by way of under valuation, which had caused loss and damage to the respondent-Housing Board, a public utility authority. In that event, as observed by the Supreme Court in Delhi Development Authority (supra) and by the Madhya Pradesh High Court in Nisha Singhal (supra), it is open to the respondent-Housing Board to issue a show cause notice, pointing out the irregularity and after hearing all the parties, to come to a definite conclusion before recovering the price, which, allegedly, was obtained

on extraneous considerations.

35. The learned counsel for the respondent-Housing Board has relied on a decision of the Supreme Court in U.P. Financial Corporation and others vs. Naini Oxygen and Acetylene Gas Ltd. and another ((1995) 2 SCC 754), wherein, recovery of loan installment was involved. It was held that it is open for the appellant-Corporation to take a decision and is not subject to challenge unless action is based on mala fides. Thus, the said decision is of no assistance, as it is misplaced in the facts of the case.

36. In Tamil Nadu Housing Board, Chennai - 35 and 3 others vs. Avadi Thaniraivu Veetumanai Thittamani Othukeepduthararkal Nalavazhvu Sangam, represented by its President and another (2007 (5) CTC 439) cited by the learned counsel for the respondent-Housing Board, Clause 14 of the allotment order was under consideration, wherein, it was prescribed as under:

The final cost of the plot cannot be determined now. The price fixed by the CMDA after allotment alone will be the final cost of the plot. After such notification, the difference in cost should be paid with interest by the allottees. ?

In that view of the matter, it was observed that the Board was competent to revise the cost after, discovering the mistake during audit. This decision is also not of any help to the respondent Board in the facts of the case.

37. The decision in Union of India and another vs. Narendra Singh ((2008) 2 SCC 750), cited by the learned counsel for the respondent-Housing Board emanates from service jurisprudence and as such, the same is not relevant at all.

38. The last aspect of the contention of the learned counsel for the respondent-Housing Board is that the respondent is competent to determine the final cost before execution of the sale deed as is evident from Clauses 14 and 15 of Conditions regarding sale price of a flat and Clause (t) of General Conditions of Allotment.

39. No doubt, sale deeds have not been executed and the process of re-determination was undertaken by the respondent-Housing Board, after handing

over possession and occupation of the flats. However, Clause 10 of the Conditions regarding sale price of a flat puts a cap on re-calculation beyond 12 months from the date of occupation. The time schedule of 12 months is not to be reckoned from the execution of sale deed or till the sale deed is executed.

40. For the reasons mentioned hereinabove and also regard being had to the terms and conditions of allotment, we are of the considered opinion that the tentative cost is revisable within a period of 12 months from the date of occupation/handing over of possession, subject to 5% increase only. The respondent-Housing Board is not competent to enhance price of the flat unilaterally, arbitrarily. However, in the cases on hand, it appears to have been discovered that the tentative cost was fixed deliberately on the lower side, ignoring the actual cost of land and also, construction cost and development charges and as such, the respondent-Housing Board is entitled to re-determine the final cost even after completion of 12 months, after affording hearing to all the parties. As a sequitur, it is open to the respondent Board to initiate fresh proceedings, if so advised.

41. Resultantly, the impugned orders dated 18th August, 2014 passed by the second respondent are quashed. The writ appeals are accordingly allowed. Costs made easy. Connected Miscellaneous Petitions are closed.

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