

Nar Singh Jain and ors. Vs. Union of India and ors.

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Court : Delhi

Decided On : Jul-23-1999

Reported in : 1999VAD(Delhi)29; 80(1999)DLT742

Judge : Arun Kumar and; D.K. Jain, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writs No. 858/94, 3072/91, 793, 1118, 2209, 3423, 4163, 4306, 4436, 4542, 4976, 5402/93, 166,

Appellant : Nar Singh Jain and ors.

Respondent : Union of India and ors.

Advocate for Def. : Mr. Ravinder Sethi, Senior Adv. and ; Mr. Munish Bhatnagar, Adv.

Advocate for Pet/Ap. : Mr. V. Sekhar and; Mr. A.K. Chhabra, Advs

Judgement :

ORDER

D.K. Jain, J.

1.After the full bench decision of this court in Sheelawanti & Anr. Vs . DDA & Anr. : AIR1995 Delhi212 , we for once had thought that litigation with regard to the

pricing of flats being constructed by the Delhi Development Authority (for short the DDA) under its various scheme will come to an end but that was not to be and this is yet another batch of writ petitions under Article 226 of the [Constitution of India](#) wherein registrants/allottees under 5th Self Financing Housing Registration Scheme, 1982 again assail the price of flats being demanded from them by the DDA.

2. Since the issue involved is common in all the matters, these are being disposed of by this common judgment. To appreciate the controversy, we shall treat the facts in Civil Writ Petition No. 858/94 as illustrative.

3. Like its earlier self financing schemes, seeking financial participation of the intending purchasers during the process of construction of flats, the DDA announced its 5th such scheme and the petitioners herein got themselves registered under the scheme by depositing the prescribed amount of Rs.15,000/- for category III and Rs.10,000/- for category II flats. The terms and conditions, including the mode for payment of cost of flat, in installments at regular intervals, were enumerated in the brochure. Clause 11 of the scheme, relevant for these cases, reads as follows:-

'The estimated cost of flats offered for each scheme would be announced from time to time whenever specific schemes have been prepared taking into consideration the location of each scheme, specifications and design of flats, cost of construction prevailing at the time of the execution of the scheme, fluctuations in other cost factors etc.'

4. Sometime in July 1990, the petitioners received demand-cum-allocation letters from the DDA informing them that they have been declared successful for allocation of flat under the scheme. The letters contained details of locality, flat No. estimated cost of the flat and terms of payment. The estimated cost of flat under category II was Rs. 3,89,200/- and for category III it was Rs. 5,01,700/-. The petitioners claim to have paid 90% of the said estimated cost in installments in terms of these letters. In November, 1993 the petitioners received demand letters against 5th and final instalment, wherein the final price of flats demanded under category II ranged between Rs. 5,78,000/- and Rs. 6,15,000/- and category III it

ranged between 7,60,000/- to 8,25,000/-. The petitioners protested against the said enhancement of cost of flats and in their representations they also sought details of the actual costing of the flats. Being unsuccessful, the petitioners have filed these writ petitions.

5. The main grievance of the petitioners [as in Sheelawanti's case (supra)] is that instead of Realizing the price quoted in the demand-cum-allocation letters, the DDA has now issued demand letters requiring them to pay amounts much in excess of the estimated cost indicated earlier, which amounts are highly exorbitant and arbitrary. They seek an appropriate writ, order or direction quashing the demands made by the DDA with a further direction to the DDA to deliver possession of their respective flats allotted to them by accepting the balance 10% of the estimated cost as conveyed to them in July 1990.

6. The petitioners challenge the fresh costing of flats as being illegal and arbitrary, inter alia, on the grounds that: (i) the land being already available with the DDA and its cost having been already included in the estimated cost reflected in the demand-cum-allocation letter and the cost of construction in three years having not gone up beyond 30%, astronomical hike in the final cost, is without any basis; (ii) the DDA has failed to disclose the details of actual cost; and (iii) the DDA is bound by the estimates of cost given by it in the letter of allocation and must adhere to it.

7. The petition is resisted by the DDA, mainly, on the grounds that: (i) the dispute raised in the writ petition is in the realm of a contract and no case of arbitrariness or discrimination having been made out, it is not a case for interference by the court in exercise of writ jurisdiction under Article 226 of the [Constitution of India](#); (ii) the cost announced and indicated in the letter of allocation was based on the expenditure estimated at the time of announcement of scheme and the final cost could not be worked out then, which could be done only after completion of construction of flats and after tabulation of the expenditure incurred by various branches; (iii) the costing policy of the DDA is based on a rational and scientific basis and the price of each flat has been arrived at after meticulous calculations taking into account all relevant factors and (iv) it was clearly stated in the brochure

that the DDA had reserved its right to alter the terms and conditions of the allotment and the costing of flats constructed at different times and allotted at different periods of time, the petitioners as such could not now complain of enhancement in the final cost of flats and at any rate the disputes raised by the petitioners have already been considered and decided in a number of decisions of this court, particularly in Sheelawanti's case (supra) and, therefore, need not be gone into afresh. Along with the affidavit, charts showing estimated expenditure and final costing have been filed.

8. During the pendency of the petition, an application (CM 4447/97) was filed by the petitioners, seeking a direction to the DDA to deliver the possession to all the petitioners who have made the full payment demanded by the DDA excluding the equalisation charges, the conversion charges and the interest being claimed by the DDA on both these charges.

9. Vide order dated 10 April, 1995, it was directed that in case the petitioners make full payment along with up to date interest the possession of the allotted flats be given to them without prejudice to the rights of the parties and subjects to the result of the writ petitions. This order was modified on 28 November, 1996 and it was ordered that the petitioners will be entitled to the delivery of possession subject to their making payment as per the impugned allotment cum demand letter, with interest calculated @ 12% per annum for the first month of delay and 18% per annum for the subsequent period.

10. The petitions have now come up for final hearing.

11. We have heard Mr. V. Sekhar and Mr. A.K. Chhabra, counsel for the petitioners and Mr. Ravinder Sethi, learned senior counsel for the DDA.

12. The parameters of interference by courts in exercise of their writ jurisdiction in areas where the domains of private contracts and public duties intersect have been enunciated in numerous judicial pronouncements. The scope of judicial review in cases involving fixation of price for land and flats, like in the present cases, also came up for consideration before a full Bench of this Court in Sheelawanti's case (supra). The full Bench, in which one of us (D.K. Jain, J.) was

a member, while observing that the scope of the judicial review in such cases being very much limited, held that a public body entering in the realm of contract acts merely in its executive capacity and thereafter the relations are no longer governed by constitutional provisions but by contracts, which apply in these type of cases. The Court reiterated the consistent view of this Court that the escalation in pricing of flats constructed by the DDA under different schemes could not be challenged under Article 226 of the Constitution unless it was shown that the price of flats demanded by the DDA for different categories of allottees was whimsical or arbitrary.

13. Although in Sheelawanti's case, the Court was examining the question of final pricing of flats allotted under the 'Registration Scheme on New Pattern-1979', wherein the likely cost was in fact indicated in the brochure itself but with a note that these do not represent the final cost, but in our view, the statement of law adumbrated in the said decision, while interpreting the clauses in the brochure of that scheme, notifying the registrants that price quoted was not final, applies with full vigour in the instant case also, where clause 11 of the scheme, extracted above, itself uses the expression 'the estimated cost' of the flats and like under that scheme, in the present scheme also, the intending purchasers were put to notice that 'the costs indicated in the brochures issued for the specific allotment of flats, would be provisional and liable to revision' (clause 16(v)).

14. In view of this authoritative pronouncement, followed in CWP No. 3065/91 (J.P. Gupta v. DDA), wherein a similar challenge to the costing of flats allotted under the same self-financing scheme was repelled, we are not inclined to go into the merits of the fixation of the price done by the DDA for the flats allotted to the petitioners more so when it has not been shown to us how the determination of various components, like the cost of land, cost of development, construction and certain other expenses, which, according to the DDA, have gone into the actual costing of the flats or the formula applied by it for including these elements in the cost of flats is arbitrary or discriminatory.

15. Faced with the situation, learned counsel for the petitioners, did not seriously contest the formula adopted by the DDA for pricing the flats. However, relying on

the decision of the Supreme Court in D.D.A v. Self Financing Residents Association & Ors. (Civil Appeal No. 4402/85) they vehemently contend that the petitioners are neither liable to pay the equalisation charges and the transfer charges nor interest thereon as part of cost of the flats allotted to them.

16. The short order, dated 28 November, 1996, passed by the Supreme Court reads as follows:

'The lengthy and elaborate judgment of the High Court under appeal makes instructive reading in prohibiting the D.D.A. from adding to the prices of the named flats an escalation termed as 'equalisation and ad hoc charges'. From the terms of the model contract entered into by the D.D.A. with the people who opted for the self-financing scheme, charging of the said equalisation and ad hoc charges is evidently totally missing. The D.D.A. in support thereof has banked upon the justness of its cause and demand and has nowhere been able to project that to begin with, it was part and parcel of the cost factor. The High Court has seen through its design and has termed the venture as a camouflage. We see no reason to take a different view than the one taken by the High Court.'

17. The Apex Court has thus held that the equalisation charges cannot be said to be part of cost of the flat. In the light of the said decision, which we respectfully follow and hold that the equalisation charges, admittedly included in the cost of the flats, being demanded, are not payable by the petitioners.

18. The only issue which now survives for consideration is whether the charges towards conversion being demanded by the DDA for allotting the flats on freehold basis in terms of its general policy instead of on leasehold basis under the original scheme could be recovered as cost of the flat. The stand of the petitioners is that transfer charges cannot form part of the cost of flat and, therefore, its inclusion in the price of flat being demanded amounts to refixing the price of the flats on a different criteria, not enumerated in the scheme and is thus, liable to be struck down on the doctrine of promissory estoppel. In support, reliance is placed on a decision of this court in P.N. Verma & Ors. v. U.O.I. & Ors. AIR 1985 Delhi 417 and the afore-extracted order of the Supreme Court. On the other hand, Mr. Sethi, learned Senior counsel for the DDA submits that since the scheme for conversion

of lease hold flats/lands into freehold flats/lands is for the benefit of the allottees, and is being universally applied in all future allotments, whereby they will acquire all freehold rights in the property for all times to come, the demand of transfer charges as one time uniform levy, cannot be held to be arbitrary. It is pointed out that the transfer scheme has also withstood the judicial scrutiny.

19. Under the scheme, an allottee is bound to pay to the DDA the cost of the flat, or in other words the price of the flats because, according to the dictionary meaning, the term 'cost' is nothing but the 'Price' paid or to be paid for something'. 'Price' is the consideration which a purchaser is to pay to acquire a commodity, a flat in the instant case. 'Price' comprises of cost of the product to the seller, i.e., what has gone out of his pocket to acquire it and may be something more by way of his margin of profit. The transfer charges, which are sought to be recovered from the petitioner are, strictly speaking, not in the nature of an expense, liable to be charged by the DDA, spent on the flats and thus includible as cost of the flats. It is an ad hoc charge under an independent transfer scheme, being charged on leasehold properties for converting these into freehold.

20. Nonetheless, the question for determination is whether the DDA'S action in applying the transfer scheme uniformly on all the allottees of flats at the time of allotment itself and asking them to pay the charges prescribed under the said scheme could be said to be arbitrary or discriminatory. We feel that since the transfer scheme is in the larger public interest and is being applied universally in all future allotments by the DDA, the policy decision taken by the DDA in this behalf cannot be held to be arbitrary or discriminatory warranting interference by this Court in writ jurisdiction.

21. The upshot of the above discussion is that the DDA is not entitled to include in the cost of flats allocated/allotted to the petitioners, in this and in other connected writ petitions, the equalisation and conversion charges and consequently the interest element on the amounts charged under these two heads. The DDA will, however, be entitled to impose and recover the transfer charges prescribed under the transfer scheme from all the allottees in terms of the said scheme if it proposes to continue with the scheme. Accordingly, we direct the DDA to re-compute the

price of each of the flats allotted to all the petitioners herein in terms of this judgment and issue fresh/final demand letters within four weeks from today. Since it is stated before us that majority of the allottees have already made payments in terms of the aforementioned interim orders, it seems that in view of the exclusion of the said two components as cost elements and interest thereon, some amount may become refundable to such allottees. If that be so, the refund shall accompany the fresh demand letter. It is, however, clarified that if any of the petitioners' has not made full payment in terms of the said interim orders, the DDA will be entitled to charge interest at the normal rate, which it is charging in other cases of non-payment or delayed payment, except on the afore-mentioned two components and these allottees will make payment within four weeks of the receipt of fresh demand letters, failing which, the DDA will be at liberty to take action in accordance with the terms and conditions of allotment.

22. For the foregoing reasons, all the writ petitions, except to the limited extent indicated above, fail and are accordingly dismissed. Rule is discharged There will be no order as to costs.