

Devender Kandhari Vs. Dda

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Court : Delhi

Decided On : Nov-07-2005

Reported in : 129(2006)DLT243

Judge : Pradeep Nandrajog, J.

Acts : Delhi Development Authority (Management and Disposal of Housing Estates) Regulations 1968; Sections 57 of the Delhi Development Act 1957 - Regulations 2(13), 7 and 13

Appeal No. : WP(C) No. 886/2004

Appellant : Devender Kandhari

Respondent : Dda

Advocate for Def. : Anil Sapra, ; Sangeeta Chandra and ; Indrani Ghosh, Adv

Advocate for Pet/Ap. : R.K. Saini,; Richa Kapoor and; Nageshwar Pandey, Advs

Disposition : Petition dismissed

Judgement :

Pradeep Nandrajog, J.

1. Whenever a market is constructed by DDA certain percentage of shops is set aside for direct allotment, by draw of lots, at a fixed price to various reserved

categories (SC/ST, physically handicapped persons, ex-servicemen etc.). Remaining are sold in the open market through tender and auction. Usually 57% of the shops are sold by auction or tender and 43% are put in the reserved category.

2. The price fixation committee of DDA determines the reserve price, i.e., the minimum price above which bids have to be made if shop is sold in the open market. It also determines the price at which shops are offered for sale by draw of lots in the reserved category. Needless to state, when sold in the open market, bids/quotations commence at the reserve price and go up if the bidders submit bids. Market forces come into play and consequently determine the final price. Per force, this price fluctuates from shop to shop. The intending purchaser is guided by the location of the shop, user prescribed, area of the shop, proximity to the residential houses etc. But in case of allotment in the reserved category all these factors are missing. There is no bidding. The reserve price is fixed. If there is only one applicant, he gets the shop. If there is plurality, he/she who is lucky at the draw of lots gets the shop at the reserved price.

3. Disposal of properties built up by DDA is governed by Delhi Development Authority (Management & Disposal of Housing Estates) Regulations 1968, framed under Section 57 of the Delhi Development Act 1957. Regulation 2(13) defines disposal price of a property to mean such price as may be fixed by the authority for said property.

4. From time to time DDA passed resolutions dealing with costing of commercial built up units (shops). Implementation of these was creating a problem as the guidelines (stipulated under the resolutions) did not give much lee-way to the price fixation committee in fixing the reserved price. By 2002, this resulted in a stock pile of nearly 2000 unsold units (Shops to be sold in the open market). Besides, shops to be allotted in the reserved category also remained unallotted as none applied for allotment at the reserved price.

5. To put it briefly, reserve price was fixed on the basis of average auction/tender price in the area fetched in the previous year, less 10% (formula fixed vide resolution No. 28 dated 12.3.1992). To tackle the problem of huge stock-pile which

had accumulated, in the year 2000, vide file No: 25(29)2000/CE a decision was taken to auction these shops by fixing the reserved price calculated on cost plus basis. As was informed to the court at the hearing, cost plus basis was the cost incurred by DDA and some interest on blocked capital. Inter alia, policy decision taken, recorded as under :

The proposal which was put up to him by CLD/VC on page 21-25/N was to put to tender about 2000 such properties which have been put to auction earlier at least once and not disposed off....

(Note : 'him' refers to the Lt. Governor, Delhi)

6. Unfortunately for DDA some units did not even get offers at the price determined at cost plus basis which was determined @ Rs. 9830/- per sq. metre in the year 2000.

7. Vide resolution No. 53/2001, DDA decided to club units put to auction/tender six times or more with the existing inventory of old and undisposed properties.

8. Problem continued. It was obvious that there was a mismatch between the market forces and reserve price fixed by DDA as some of the units could not be sold. Perhaps the location of these shops was not attracting buyers. (I may note that not a single instance of an entire market being unsold was pointed out by counsel).

9. DDA had a re-look. Vide resolution No. 69/2002 dated 18.6.2002, the guidelines pertaining to costing were consolidated, with modifications. Preamble to the resolution reads as under :-

There are different resolutions dealing with the costing of the commercial built up units (shops) passed by the Authority from time to time. These includes Authority Resolution Nos.429 dated 28.8.1978, 81 dated 25.7.1991, 105 dated 19.9.1991, 28 dated 12.3.1992, 177 dated 1993, 91 dated 28.10.1998 and 53 dated 2001. We need to consolidate these instructions and make the pricing policy more simple, transparent and realistic. Hence this proposal.

At present we have the following categories of cases :-

(i) Old Undisposed Units.

To reduce the huge inventory of more than 2000 old and undisposed units have been put to auction/tender earlier, a decision was taken vide Authority Resolution No. 10/2000 to dispose them off on a cost plus basis. Further vide Authority Resolution No. 53/2001, a decision was taken to club units put to auction/tender six times or more with this inventory of old and undisposed properties.

(ii) New Units.

New units are those which are undisposed other than the units which are covered under Para (i) above.

2. As per current pricing policy, while the reserve price of old and undisposed shops has been fixed at Rs.9830/- per sq.mtr, the reserve price (RP) for new units is fixed on the basis of Average auction/Tender price of an area in the previous year minus 10% (Authority Resolution No. 28). This policy has a basic flaw, as prices fetched by DDA for units sold in the auction/tender becomes the basis of pricing of units which remain unsold. As a result, the units do not sell (due to existing pricing policy leading to unnecessary stock piling of inventory. For example, based on the ATR fetched in the November 2001 tenders, the reserve price for all units which remained undisposed was fixed and 800 units put to sale again in February/March 2002. However, since these rates were unrealistically high, only about 50 units sold.

10. Noting the preamble aforementioned the resolution passed was to the following effect :

In supersession of all existing orders/resolutions regarding pricing of commercial built up units, pricing of commercial built up units would be determined by the price fixation committee for both new and old undisposed units, as per guidelines (Appendix A) to the resolution.

11. Guidelines (Appendix A) provided as under :

(i) New Units

Any shop which has not been put to tender or has been put to Auction/Tender up to five times may be treated as a New Unit. The Price fixation committee may recommend the reduction of reserve price for these units up to 30% of the auction/tender price of the preceding year subject to the condition that the reserve price is not below cost price of the unit as per Authority's Resolution No. 429. In view of this, the reserve price so fixed may also hold good for the allotment of built up shops to the reserve category persons also without any reduction by 10%, as being done at present.

Keeping in mind the market trends, the prices fetched by DDA in the previous year zonal rates and other factors, the Committee would recommend a reserve price of each market. All units in one market would be priced similarly as detailed in Para 2 & 3 below. Market may be defined as the CSC, LSC, Community Centre or District Centre as the case may be.

So as to avoid delay in computing the reserve prices for different markets for a financial year (i.e., 1st April to 31st March), the Committee shall take into consideration the rates fetched by DDA from disposal of shops through auction/tender in these markets during calendar Year (i.e., 1st January to 31st December) immediately preceding the financial year for which the reserve prices have to be fixed so as to ensure that the reserve price for every market is finalized by 1st of April.

(ii) Old and Undisposed Unit

The Committee would also recommend from time to time the reserve price for the old and undisposed units to be worked out at a cost plus basis (at present Rs.9830 per sq.mtr.) as per Authority Resolution No. 10/2000.

Units, which have been put to auction/tender 5 times or more and remain unsold may be added to the already existing inventory of old and undisposed shops by the Committee.

All allotments to Staff Widows, Project Affected persons etc. would be made from out of this inventory, provided that the units have been put to auction/tender at the reserve price worked out on cost plus basis (at present Rs.9830/- per sq.mtr.). This is in accordance with the Authority Resolution No. 53/2001. The date of draw would form the basis of pricing in all such allotment cases.

12. Guidelines, further stipulated as under :

'Further in cases where in a particular market some units remain undisposed but have not been put to auction/tender for 5 times and some remain undisposed after having been put to auction 5 times or more the Committee shall recommend with reasons whether ALL the units in that particular market be shifted to the set of old and undisposed inventory or be retained in the set of new properties. However, in such a situation, in case the Committee opts to recommend that all the undisposed units in a particular market be shifted to the inventory of old and undisposed units, it must ensure that all these units have been put to tender/auction at least thrice. In other words, the Committee would have to make its recommendations for the market as a whole (rather than unitwise) so as to ensure that units in the same market are not priced differently.

13. Before noting the contentions raised by learned counsel for the petitioners and response thereto by counsel for DDA pertaining to the issue of costing which requires interpreting the resolution aforementioned, I may note the salient features of the policy resolution 69/2002.

14. Firstly, the policy resolution is in supersession of all existing orders/resolutions regarding pricing of shops. Secondly, it applies to both new and old units. Thirdly, price fixation committee has been empowered to determine the reserve price. Fourthly, appendix A is the framework within which the price fixation committee has to determine the reserved price. Fifthly, a unit which has been auction/tender up to five times may be treated as an old unit, i.e., unit not sold as aforesaid automatically does not become an old unit.

15. The salient features of the guidelines (appendix A) within which the price fixation committee has to function are; firstly, the committee can fix the reserved

price on the basis of average auction/tender price fetched for the previous year less up to 30% subject to the condition that the reserved price is not below the cost price of the units as per authorities resolution No. 429. Secondly, the reserved price so fixed may also hold good for allotment in the reserved category. Thirdly, units which have been put to tender/auction 5 times or more and remain unsold may be added to the inventory of old shops. (Use of the word 'may' clearly shows that the power is discretionary). Fourthly, for old units the price cannot be below the price worked out on cost plus basis, and fifthly if decision taken is to shift the units in category of old units the committee would have to make recommendations for the market as a whole and not unit wise so as to ensure that units in the same market are not priced differently.

16. With the backdrop aforesaid, factual features of the writ petitions be noted. I may place the writ petitions in 3 categories.

CATEGORY I

(i) WP(C) Nos. 865/04, 886/04, 1280/04, 1347/04, 8904/04 and 5880/04 fall in this category. Petitioners pray that they applied under the reserved category for allotment of a shop. They got one. They challenge the rate. They pray that the unit allotted to them be charged @ Rs. 9830/- per square metre. They rely on DDA's decision in file No. 25(29)2000 CE. They state that said decision requires that a unit put to auction at least once and not disposed of above the reserved price has to be charged for on the price fixed on cost plus basis. Alternatively they plead that the shop allotted to them having been put to auction 5 times and not sold, i.e., not even having fetched the reserve price must be put (as per resolution No. 69/2002) in the inventory of old shops and sold at price fixed on cost plus basis, i.e., Rs. 9830/- per square metre.

(ii) Petitioner of WP(C) 1280/04 had applied for allotment of a shop under the reserve category. Vide allotment letter dated 30.5.2003 shop No.15, CSC Narela, Site-2, Sector A-10, Narela was offered to the petitioner at a premium of Rs. 4,09,500/-. It is not in dispute that the premium demanded was @ Rs. 42,000/- per square metre.

(iii) As per the petitioner the shop is in a market which has been declared as an old market. Petitioner places reliance upon a notice inviting tender issued by DDA in February 2003 inviting offers from the general public for shops in the same market. The said tender shows that the reserve price notified for shop Nos. 1 to 7 was @ Rs. 9830/- per square metre. Accordingly, petitioner prays that mandamus be issued to DDA to raise a demand on the petitioner @ Rs. 9830/- per square metre.

(iv) Response of DDA is that whereas shop allotted to the petitioner is on the ground floor, shops for which notice inviting tender was issued in February 2003 are on the first floor. Further, the shops for which notice inviting tender was issued in February 2003 were put in the category of old inventory as they were not being sold. Qua the shop allotted to the petitioner it is stated that it was placed in the reserve category when the market was constructed.

(v) It is stated by DDA that whenever a market is ready 57% shops are put up for sale through auction or a tender and 43% are reserved for allotment in the reserve category. It is further pleaded that the price of the shop allotted to the petitioner has since been reduced to Rs. 28,000/- per square metre. It is stated that there is no concept of entire market being treated as an old market. It is stated that policy requires, if decision is taken, to place all unsold units in a market as old units, i.e., if not sold inspire of being put up for sale 5 times; all units to be classified as old units but this being discretionary.

(vi) Petitioner of CW No. 886/04 had applied for allotment of a shop under the reserve category. Vide allotment letter dated 30.5.2003 shop No. 4 (GF), CSC GH 5 & 7 ZN G-17, Paschim Vihar, Site-1 was offered to the petitioner at a premium of Rs. 42,06,660/-. It is not in dispute that the premium demanded was @ Rs. 27,000/- per square metre.

(vii) As per the petitioner the shop is in a market which has been declared as an old market. Petitioner places reliance upon a notice inviting tender issued by DDA in February 2003 inviting offers from the general public for shops in the same market. The said tender shows that the reserve price notified for shop Nos. 35 to 41 and 43 was @ Rs. 9830/- per square metre. Accordingly, petitioner prays that mandamus be issued to DDA to raise a demand on the petitioner @ Rs. 9830/-

per square metre.

(viii) Response of DDA is that whereas shop allotted to the petitioner is on the ground floor, shops for which notice inviting tender was issued in February 2003 were partly on the first floor and partly on the ground floor. Further, the shops for which notice inviting tender was issued in February 2003 were put in the category of old inventory as they were not being sold. Qua the shop allotted to the petitioner it is stated that it was placed in the reserve category when the market was constructed.

(ix) It is further pleaded by DDA that whenever a market is ready 57% shops are put up for sale through auction or a tender and 43% are reserved for allotment in the reserve category.

(x) In view of the averments made in the counter affidavit, petitioner filed CM 10044/04. Vide said application petitioner pleaded that the entire market was put to tender in the year 2000 at the reserve rate of Rs. 9830/- per square metre. Only 8 units were sold at an average price of Rs. 13,625.71/- per square metres. It was further pleaded that the shop in question was put up for sale at least 6 times and could not be sold. According to the petitioner this required the shop to be put in the category of old inventory and accordingly, rate to be charged had to be @ Rs. 9830/- per square metre.

(xi) In response to the averments in CM 10044/04 it is stated by DDA that the shop was offered in the SC/ST category for allotment in 1993 and 1998. Offers were not received. Inadvertently in the year 2001 and 2002 the shop was notified for sale in the general category. It was again put in a draw for SC/ST category in the year 2003 and was allotted to the petitioner.

(xii) Petitioner of CW 865/04 had applied for allotment of a shop under the reserve category. Vide allotment letter dated 30.5.2003 shop No. 41, CSC Suvidha Bazar No. 2, Sector 5, Rohini Phase-I was offered to the petitioner at a premium of Rs. 9,08,795/-. It is not in dispute that the premium demanded was @ Rs. 46,000/- per square metre.

(xiii) As per the petitioner the shop is in a market which has been declared as an old market. Petitioner places reliance upon a notice inviting tender issued by DDA in February 2003 inviting offers from the general public for shops in the same market. The said tender shows that the reserve price notified for shop Nos. 17 and 38 was @ Rs. 9830/- per square metre. Accordingly, petitioner prays that mandamus be issued to DDA to raise a demand on the petitioner @ Rs. 9830/- per square metre.

(xiv) Response of DDA is that the shops for which notice inviting tender was issued in February 2003 were put in the category of old inventory as they were not being sold. Qua the shop allotted to the petitioner it is stated that it was placed in the reserve category.

(xv) It is further pleaded by DDA that whenever a market is ready 57% shops are put up for sale through auction or a tender and 43% are reserved for allotment in the reserve category. It is further pleaded that the price of the shop allotted to the petitioner has since been reduced to Rs. 27,000/- per square metre.

(xvi) Petitioner of CW 1347/04 had applied for allotment of a shop under the reserve category. Vide allotment letter dated 30.5.2003 shop No. 10, Suvidha Bazar Hindustan CHBS Paschim Vihar-I, was offered to the petitioner at a premium of Rs. 3,27,766.60. It is not in dispute that the premium demanded was @ Rs. 48,000/- per square metre.

(xvii) As per the petitioner the shop is in a market which has been declared as an old market. Petitioner places reliance upon a notice inviting tender issued by DDA in February 2003 inviting offers from the general public for shops in the same market. The said tender shows that the reserve price notified for shop Nos. 8, 38 on the ground floor and shop No. 103 and 106 on the first floor was @ Rs. 9830/- per square metre. Accordingly, petitioner prays that mandamus be issued to DDA to raise a demand on the petitioner @ Rs. 9830/- per square metre.

(xviii) Response of the DDA is that the shops for which notice inviting tender was issued in February 2003 were put in the category of old inventory as they were not being sold. Qua the shop allotted to the petitioner it is stated that it was placed in

the reserve category.

(xix) It is further pleaded by DDA that whenever a market is ready 57% shops are put up for sale through auction or a tender and 43% are reserved for allotment in the reserve category. It is further pleaded that the price of the shop allotted to the petitioner has since been reduced to Rs. 27,000/- per square metre.

(xx) Petitioner of CW No. 5880/04 had applied for allotment of a stall under the reserve category. Vide allotment letter dated 30.5.2003 stall No. 5, near Safdarjung Bus Terminal, Road No. 5 was offered to the petitioner at a premium of Rs. 14,66,920/-. It is not in dispute that the premium demanded was @ Rs. 2 lac per square metre.

(xxi) As per the petitioner DDA had fixed reserve price of shops in South Delhi in prime locations at Bhikaji Cama Place, Sarita Vihar, Sukhdev Vihar etc. between Rs. 34,000/- to Rs. 96,000/- per sq. metre. Petitioner prays that DDA be directed to charge premium from the petitioner at said rate.

(xxii) Response of DDA is that vide notice published in the newspapers it was intimated that for the stall in question admeasuring 8.6 square metres price fixed was Rs. 14,66,290/-. This price was fixed keeping in view that for kiosks auctioned in Vikas Sadan in November 2002 price received was @ Rs. 1,82,000/- per square metre. That before draw of lots was held on 8.5.2003 the price was again notified. Petitioner opted for his name being put in the draw of lots. He is estopped from questioning the price.

(xxiii) Petitioner of WP(C) No. 8904/04 had applied for a shop under the reserved category. Shop No. 8, Hindustan C.H.B.S. Paschim Puri was offered to him. Premium in sum of Rs.8,72,430/- was charged. He claims that he is entitled to the shop @ Rs.9830/- per square meter. He points out that when offered for sale in a public auction it fetched a highest bid of Rs.3,12,000/-.

(xxiv) As per the respondent the shop was inadvertently put to auction when it fetched the highest bid in sum of Rs.3,12,000/-. The shop was never notified as an old shop. It is further stated that the price has since been reduced to Rs.27,000/-

per square meter. In respect of the auction through general tender it is stated that when it was realized that it was wrongly put in the general tender, allotment was withdrawn from Smt. Sunita Sethi who had bid for the shop.

(xxv) Petitioner thereafter filed CM No. 8440/2005. Material has been placed on record to show that the shop was put to auction more than 3 times i.e. 5 times. It is prayed in the CM that the counter affidavit is patently false and action under Section 340 Cr.P.C. be taken against the deponent of the counter affidavit.

(xxvi) While responding to the CM filed by the petitioner, it is reiterated by DDA that a shop does not become an old unit merely because it was put to auction 5 times. It is stated that there is no automatic categorization.

CATEGORY II

17. CW No. 14333, 14336 and 14361 to 14363/04 fall in this category. They had earlier filed writ petitions where DDA was directed to supply to them a complete list of old units, i.e., those which had to be offered at the reserve price of Rs. 9830/- per square meter. They allege that all units put up for sale 5 times and remaining unsold automatically become old units. They allege that there cannot be discrimination in pricing of units located in the same market and reserve price for a market as a whole has to be uniform. It is stated that after 2002 no unit has been put in category of old units. They pray that DDA should be directed to give them a list of all units lying unsold (having been offered for sale 5 times) so that they can opt for a unit. They further pray that DDA be directed to charge price @ Rs. 9830/- per square metre. Response of DDA is that as per resolution 69/02 it is within the discretion of DDA to put or not on unsold unit in the inventory of old shops and that shops put in the inventory of old shops has been disclosed to the petitioners.

CATEGORY III

18. Remaining petitions i.e. WP(C) Nos. 2318/04, 2319/04, 8398/04, 8579/04, 14823/04, 14840/04 and 14847/04 fall in this category. They claim relief at par with petitioners in Category II. Only difference is that they had earlier not filed writ petitions. Few pray that units allotted to them be charged @ Rs. 9830/- per square

metre. Response of DDA is as per response to the writ petitions in category II.

19. All petitioners are claiming a right to be allotted a shop in the reserved category. None is asserting a right for allotment of a shop in the general category.

20. As noted above, prior to resolution No. 69/02, DDA was fixing the reserve price for all the shops at 10% less than the average auction rates in an area for the previous year. For the shops to be sold through auction or tender, the reserve price fixed was the minimum price at which bids had to commence. Depending upon market forces, location of the shop, user prescribed, bidders would bid for the shops offered for sale through auction or tender. At what price a shop would be sold was uncertain, of course it had to be higher than the reserve price. The highest bidder would take the shop. As distinct from sale in the general category, in the reserved category, reserve price fixed was known and shop was to be allotted at reserve price. If there was one applicant, he got the shop. If there were more than one, allotment was made by way of draw of lots.

21. Ex-facie, determination of the reserve price on the basis of the average auction rates in the previous year, less 10% cannot be labelled as arbitrary or discriminatory. Besides, being a matter of economic policy, it is open to DDA to determine a fair and a reasonable criteria on basis of which the reserve price would be fixed.

22. Problem arose, as noted in the preamble to the policy resolution 69/02, when market forces resulted in depression of the price. Treating the average sale price received in the previous year, less 10%, as the reserved price for the ensuing year, DDA was unable to sell few shops even at this price. Inventory of unsold units piled up. DDA decided that on case to case basis, reserve price could be lowered by up to 30% of the average auction price for the previous year subject to the minimum price calculated on cost plus basis. I find no infirmity in the said decision. As observed by their Lordships of the Supreme Court in the report published as : AIR 2000 SC3313 , Netai Bag and Ors. v. State of West Bengal and Ors. (Para 20), the Government is entitled to make pragmatic adjustments in policy decision which may be necessary or called for under the prevalent peculiar circumstances. The Court cannot strike down a policy decision taken merely

because it feels that another decision would have been fairer or wiser or more scientific or logical.

23. It is trite that a policy decision can be interfered with by the Court only if such decision is shown to be patently arbitrary, discretionary or malafide. (See : [1987]1SCR1 , State of M.P. v. Nand Lal Jaiswal).

24. Ms. Richa Kapoor, learned Counsel appearing for the petitioners urged that units which were put to auction once and were not sold were required to be treated as old units and had to be offered at cost plus basis. Counsel relied upon the decision taken by DDA in file No. 25(29)2000/CE in the year 2000. The relevant noting has been noted by me in para 5 above.

25. A perusal of resolution No. 69/02 shows that it was in supersession of all existing orders/resolutions (Para 10 above). Argument of learned Counsel based on the note in the files of DDA of the year 2000 is therefore without any substance. The claim of all petitioners is in respect of offers made by DDA in the year 2003 save and except writ petitioner in CW 8579/2004.

26. The alternative submission that all shops which were put to sale for 5 times and could not be sold automatically had to be treated as old units and as a consequences offered at the reserve price of Rs. 9830/- per square metres is equally fallacious. Firstly, resolution No. 69/02 clearly records 'any shop which has not been put to tender or has been put to auction/tender up to 5 times may be treated as a new unit'. Further, the resolution stipulates 'units which have been put to auction/tender 5 times or more and remain unsold may be added to the already existing inventory of old and undisposed shops by the Committee'.

27. Use of the word 'may' in the policy decision is relevant. DDA has consciously used a word which signifies discretion and not a mandate. It is within the discretion of the price fixation committee to treat an unsold unit as an old unit or not. The resolution does not automatically convert a unit which remains unsold for 5 times as an old unit. Secondly, the reserve price of Rs. 9830/- per square meter, determined on cost plus basis was of the year 2000. This cost plus basis price does not hold good for the year 2003. The claim of the writ petitioners of Category

II and III that DDA be directed to treat all unsold shops which have been put up for sale 5 times as old shops and list be furnished to them is thus rejected. DDA has notified all shops put by it in the inventory of old shops.

28. Argument of learned Counsel for the petitioners that a market as a whole has to be treated as an old market and reliance upon the under noted words of the policy decision 69/02 may be dealt with. Reliance was placed on the following words :-

In case the committee opts to recommend that all the undisposed units in a particular market to be shifted to inventory of old and undisposed units, it must ensure that all these units have been put to tender/auction at least thrice. In other words, the Committee would have to make its recommendations for the market as a whole (rather than unit-wise) so as to ensure that units in the same market are not priced differently.

29. The wordings aforesaid have be understood in the context of why unsold units are being offered for sale as old units by fixing their price on cost plus basis.

30. When a market is constructed 57% of the shops are offered for sale to the general public by auction or tender. 43% are offered by allotment in the reserved category. In both cases, reserve price is fixed. Prior to policy resolution 69/02, the reserve price was 10% less than the average sale price fetched in the previous year when DDA sold shops in the area. Since the market went into a depression in the year 2001 and 2002, DDA realized that fixation of the reserve price as aforesaid was not attracting enough buyers. It armed itself with a new pricing policy. As per the policy, on case to case basis, price fixation committee was empowered to determine the reserve price up to 30% less than the average sale price received by DDA in the previous year. Unfortunately, some units could not be sold even at this reduced price. I may note that this reduced price was to hold good (as the minimum price) when units were offered for sale in the open market and when offered for sale in the reserved category. An inventory of unsold units got accumulated. DDA's capital got blocked. It was thereforee decided to offer these units at the cost plus basis price by DDA, i.e., amount actually incurred by DDA in construction of the shops plus a reasonable interest on blocked capital.

There could be a variety of factors which resulted in this inventory of unsold units getting accumulated. The location of the shops being disadvantageous. The size may be of not to the liking of the buyer. Accessibility from the residential areas being such that a prospective buyer felt that he/she would not attract enough customers. The user of the shop etc. It was not the case of the petitioners that the shops being offered for sale were in markets where no units whatsoever were sold. It would be relevant to note that most of the units in the various markets have been sold at the reserve price fixed by DDA, meaning thereby, that when offered for sale in the open market, bids above the reserve price were received and when offered for sale in the reserved category, one or more applicant opted to take the unit at the reserve price. Inherently, units, which in spite of being offered for sale along with other units remained unsold must have some disadvantages.

31. It is not within my jurisdiction to determine as to what the disadvantage was. It is not even necessary to embark upon the said exercise. I am not to substitute my opinion for the bonafide opinion of DDA. I am also not concerned with the ultimate decision. I am only concerned with the fairness of the decision making process. If some units cannot be sold and capital gets blocked, (efforts, by reducing the reserve price failing to get an attractive offer), decision to lower the price to recover the cost incurred by DDA for these units is due to the peculiar circumstances in which DDA finds itself. This price cannot be claimed to be the bench price for other units.

32. A challenge on the ground of discrimination to succeed, it must be shown that equals are being treated as unequal. I find a rational basis to put certain shops as old inventory. Shops which are placed as old inventory constitute a class by themselves and their reserve price cannot be equated as (a matter of right) with the reserve price in the other category of shops. To put it differently, shops offered for sale in the reserved category do not constitute a homogeneous class with the shops put in the inventory of old category. As noted above, there is certainty of price in the reserve category vis--vis the open market. In the reserve category an applicant is not subjected to the market forces. He/she get the units at the reserve price, which as per policy resolution 69/02 can be up to 30% less than the overall sale price received by the DDA in the previous year. In this context, I may note the

decision of the Hon'ble Supreme Court reported as : AIR 2003 SC4536 , Chairman & M.D., BPL Limited v. S.P. Guru Raja and Ors. Challenge was to sale of land to a private party at Rs. 3,72,324/- per acre. The State had received consideration in sum of Rs. 8 lacs per acre from other entrepreneurs. Taking note that Regulation 13 of the Regulations governing the disposal of land by Karnataka Industrial Area Development Board empowered it to sell land to an individual or a company and noting that other land was sold at a consideration of Rs. 8 lac per acre and to BPL Limited at Rs. 3,72,324/- per acre, their Lordships held :-

20. It is a well-settled principle of law that different considerations arise for the purpose of fixation of price in respect of the price of land, i.e., for a small area vis-a-vis a large area. The allotment price was Rs. 3,72,324/- per acre which, having regard to the policy decision of the State as also the facts and circumstances of the case cannot be said to be wholly arbitrary warranting interference by the court. There cannot be any doubt whatsoever that normally allotment of such industrial plots should be done in terms of Regulation 7 aforementioned. But the same by itself did not preclude the authorities of the Board and the State having regard to the fact situation obtaining herein to take recourse to Regulation 13. Once the court finds that the power exercised by the statutory authorities can be traced to a provision of a statute, unless and until violation of mandatory provisions thereof is found out and/or it is held that a decision is taken for an unauthorized or illegal purpose, the court will not ordinarily interfere either with the policy decision or any decision taken by the executive authorities pursuant to or in furtherance thereof.

33. In the report published as 1994 (6) SCC 651, Tata Cellular v. Union of India, the Hon'ble Supreme Court laid down, amongst others, following principles in the matter of judicial review :-

94. The principle deducible from the above are :-

(i) The modern trend points to judicial restraint in administrative action.

(ii) The Court does not sit as a Court of Appeal but merely review the manner in which a decision was made.

(iii) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision without the necessary expertise which itself may be fallible.

(iv) ...

(v) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere.

34. As I have held above, it is for DDA to decide as to when should shops be put in the category of old unsold stock. However, while doing so DDA has to ensure that all unsold shops put up for sale 5 times are treated at par. As of today, the old inventory stood notified prior to DDA's resolution 69/02 and therefore there is variation in prices but this cannot be helped, however, DDA would be advised to have a re-look at the markets where unsold shops are available and some have been notified as old inventory but others are being sold through auction/tender or allotment at reserve price. The shop which is the subject matter of W.P.(C) No.8904/04 shows that the market forces require the price to be further lowered. Though inadvertently put to sale through tender, but the fact of the matter is that it received a bid in sum of Rs.13000/- only. However I cannot draw much inference from a solitary instance to draw general conclusions. May be this shop has its own peculiar features. Further in a market with say 40 shops, all may not fetch the same price. But fixation of a reserve price inherently requires uniformity and this may result in stray aberrations. Looked at from any angle, none of the submissions made by learned Counsel for the petitioners merits quashing of the action of DDA.

35. Submission of the learned Counsel for the petitioners that in the year 2000, 34 shops were offered at the reserve price of Rs. 9830/- per square metres and only 8 were sold at an average price of Rs. 13,625.71 per square metres and therefore this brings out the patent discrimination qua the petitioners to whom units are being offered at Rs. 27,000/- per square metres to Rs. 28,000/- per square meters is without any basis for the reason petitioners are trying to equate the price of the old and undisposed units vis- -vis the units offered to them.

36. As noted above, various factors determine the price of a unit. Nothing prevents the petitioners from bidding for the old units. Prima facie, argument of learned Counsel for the DDA that the petitioners cannot have a dual benefit, i.e., opt for a shop in the reserve category, thereby insulating themselves from market forces operating and at the same time cannot claim price parity in respect of unsold units is legally sound for the reason the unsold units are the residual units which DDA has not been able to sell. It cannot be lost sight of that a large number of units otherwise sold in the open category have fetched DDA a price much above the reserve price of the average auction rates for the previous year less 10%.

37. Petitioners cannot claim reliance on the decision dated 9.8.2001 in WP(C) No. 5793/02 Narinder Kaur v. DDA. In said case issue pertained to an allotment made on 16.3.2000 and issue arose as per entitlement under DDA's resolution No. 53/01.

38. To end I may note that DDA duly notified about the status of the shops and the fact that the shops were being offered at the reserved price and not price fixed on cost plus basis. Such petitioners who applied for allotment of a shop being aware of the costing/price before they participated cannot be permitted to turn around and claim the shop allotted to them but at a price of Rs. 9830/- per sq. meter.

39. I find no merits in the petitions. The Rule is discharged. Petitions dismissed.

40. No costs.

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