

CASE NO.:
Appeal (civil) 176 of 2007

PETITIONER:
STATE OF RAJASTHAN & ANR.

RESPONDENT:
H.V. HOTELS PVT. LTD. & ANR

DATE OF JUDGMENT: 12/01/2007

BENCH:
H.K. SEMA & P.K. BALASUBRAMANYAN

JUDGMENT:

JUDGMENT
(Arising out of SLP(C) No. 12611/2006)

P.K. BALASUBRAMANYAN, J

1. Leave granted.

2. The Government of Rajasthan issued a public notice advertising sale by auction of a plot of land measuring 10,490 square metres. The purchaser was to use the plot for construction of a hotel. The auction took place on 14.2.1996. The first respondent, acting through its Director, the second Respondent, entered the highest bid. The said bid was accepted. The bid amount was deposited by the respondent on 4.5.1996. The State of Rajasthan \026 the appellant herein, executed a sale deed in favour of the second respondent in his capacity as the Director of the first respondent on 26.3.1997. The sale deed stipulated that out of the total extent, an extent of 1,510 square metres will be surrendered by the purchaser free of cost for widening of an existing road and that the purchaser will be given the benefit of the floor area ratio calculated on the basis of the original plot size of 10,490 square metres. The parameters of construction were set out and the floor area ratio was given as 1.0. There was also a stipulation that consequent upon any change in Building bye-laws framed by the local authorities including the Jaipur Development Authority, if the buyer got additional floor area ratio or any relaxation, the State would have no objection, so long as the same are permitted by the bye-laws prevailing from time to time.

3. Possession was delivered to the purchaser on 26.7.2000. According to the purchaser, there was a shortage of 263 square metres in the area. The purchaser, therefore, applied to the Government for redressal of his grievance regarding the shortage in extent. On 22.3.2000, the Government agreed to adjust the said extent of 263 square metres as against 1,510 square metres the purchaser had to surrender free of charge for the widening of the road. On 17.8.2001, the purchaser sought permission to change the user of the land and for permission to construct a multi purpose commercial complex and multi complex instead of a hotel. On 27.11.2001, permission for such changed user was given

by the State.

4. Meanwhile on 1.2.2001, new Building bye-laws were promulgated by the Jaipur Development Authority. The bye-laws of 2000 thus promulgated permitted a larger floor area ratio than the one prevalent at the time of auction in which the respondent bid. The purchaser applied on 27.4.2004 for increasing the floor area ratio so as to enable him to have the floor area ratio of 1.75 instead of 1.0. The purchaser relied upon the clause in the sale deed that the seller would have no objection if the buyer gets additional floor area ratio or any relaxation if so permitted by bye-laws as prevailing from time to time and the fact that as per the bye-laws of 2000 the permissible floor area ratio was 1.75. The State rejected the claim of the purchaser relying upon by law 19.8 of the Jaipur Development Authority (Jaipur Region) Building Bye-Laws of 2000. Feeling aggrieved, the purchaser approached the High Court with a writ petition, CWP No.5617 of 2004. In that writ petition, the purchaser impleaded only the State of Rajasthan and the Secretary (Estate), General Administration Department of the Government of Rajasthan. The purchaser did not implead the Jaipur Development Authority which was the sanctioning authority, concerned with the sanctioning of the floor area ratio.

5. The State of Rajasthan and the Secretary (Estate), opposed the writ petition. It was pointed out that the relief prayed for in the writ petition could not be granted without the Jaipur Development Authority being on the party array and that even otherwise, the claim of the purchaser was unsustainable for the reason that in the building bye-laws of 2000 there was a specific provision confining all the parameters of construction including the floor area ratio, to the one as specified at the time of auction and the floor area ratio specified in the case of the writ petitioner-purchaser, was only 1.0 and the same could not be altered as claimed by the purchaser.

6. The learned Single Judge brushed aside the objection that in the absence of the Jaipur Development Authority from the party array, the relief sought for could not be granted, by stating that the Jaipur Development Authority was not a necessary party because the order impugned in the writ petition was one passed by the State and not by the Jaipur Development Authority and since no relief was being claimed against the Jaipur Development Authority. The learned judge further held that the relevant date, in the light of the decisions of the Supreme Court, for considering the parameters was the date on which the construction plan was being sanctioned by the sanctioning authority and consequently, the Building bye-laws as on the date of the sanction, would prevail and the purchaser was entitled to the floor area ratio as per the bye-laws operative at that time. The learned Judge ended up by directing the State and the Secretary (Estate) to grant the benefit of additional floor area ratio of 1.75 to the purchaser forthwith, overlooking that sanction has to be given by the Jaipur Development Authority and the said authority was not on the array of parties. The State and the Secretary (Estate), filed an appeal before the Division Bench. It was pointed out that the Single Judge had ignored the effect of bye-law 19.8 of the bye-laws and had mis-directed himself in allowing the

writ petition and in issuing a writ of mandamus even without the Jaipur Development Authority being on the array of parties. The Division Bench, though it noticed bye-law 19.8 of the bye-laws, proceeded to hold that the State could not rely on the same for rejecting the claim of the purchaser based on the new bye-laws. It proceeded to say that the Jaipur Development Authority was at best a proper party and could not be held to be a necessary party. Thus, the Division Bench affirmed the decision of the learned Single Judge and dismissed the appeal. The decision, thus, rendered is challenged by the State of Rajasthan and the Secretary (Estate) in this appeal.

7. Learned senior counsel for the appellants contended that the learned Single Judge and the Division Bench have completely misled themselves into an erroneous line of reasoning and conclusion. He submitted that assuming that bye-laws of 2000 has to be applied, the court could not ignore bye-law 19.8 of the bye-laws, pinning down the parameters of construction in cases of auction held, to the respective dates of auction and issue a direction for permitting floor area ratio as per the amended bye-laws. Counsel also pointed out that bye-law 19.5 relied on by the Division Bench was only a provision permitting relaxation and the same could not have been used to nullify the effect of bye-law 19.8. He also submitted that the reasoning of the High Court was totally untenable. He further submitted that the mandamus issued had the effect of preventing the Jaipur Development Authority from exercising its power of sanctioning the plan adhering to the requisite parameters and such a direction without the Jaipur Development Authority on the array of parties, was clearly unsustainable since it would amount to fettering the powers of the authority to pass appropriate orders under the Building bye-laws. He further urged that the judgment of the High Court calls for interference by this Court. The writ petition filed by the respondent was liable to be dismissed.

8. Learned counsel for the respondents, on the other hand, contended that on the terms of the relevant clause in the sale deed and the law laid down by this Court that the relevant date is the date of sanctioning the building plan, the High Court was justified in issuing a direction as prayed for by the respondents. He further submitted that the order now passed was an equitable one and there was no reason for this Court to interfere with the same. He emphasized that under bye-law 19.5 read with the relevant clause in the sale deed, the State could not take any objection to the fixation of the floor area ratio as 1.75.

9. It is clear that the auction took place on 14.2.1996. The bye-laws of 2000 came into force only on 1.2.2001. There is no case that the said bye-laws had retrospective operation. The sale deed stipulated the floor area ratio as 1.0. This was in terms of the bye-laws then existing. However, the sale deed further stated that if consequent upon any changes in Building bye-laws framed by local authorities including the Jaipur Development Authority, if the buyer gets additional floor area ratio or any relaxation, the State shall not have the objection whatsoever so long as they are permitted by the bye-laws as prevailing from time to time. This, at best, would mean that the bye-laws of 2000 which were in

operation when the purchaser applied for an approval of the plan or fixation of parameters, might be applicable notwithstanding the parameters specifically stipulated in the sale deed executed in favour of the purchaser. But then, the court has necessarily to consider the effect of all the relevant clauses in the new bye-laws. It is not open to it to ignore one clause and place undue reliance on another clause. It may be true that the Building Bye-Laws of 2000 fixed a floor area ratio as 1.75 in general, but the question is whether the same could be applied in the case of the present purchaser ignoring bye-law 19.8 of the bye-laws. Bye-law 19.8 reads:
"005.. for the plots sold in the auction, parameters will remain the same as specified at the time of auction."

10. Here, obviously, the parameters at the time of the auction, fixed the floor area ratio as 1.0. This is also emphasized by the sale deed in favour of the purchaser. The effect of bye-law 19.8 is clearly that the relevant date for fixing the parameters will be the date of auction, notwithstanding that the new bye-laws might have provided for a higher floor area ratio. The effect of bye-law 19.8 cannot get obliterated by the principle recognized by this Court that normally the relevant date is the date of sanctioning of the plan. Of course, going by that ratio, the bye-laws applicable may be the bye-laws of 2000. The floor area ratio may be 1.75 but for the specific provision in the very bye-laws relied on by the purchaser, that in cases of plots sold by auction, the parameters will remain the same as specified at the time of auction. The decisions of this Court have not laid down that such a clause cannot have operation or that such a clause cannot prevail against a general principle that the relevant date is the date of grant of sanction. Therefore, nothing turns on the decisions of this Court relied on by the High Court. The decisions do not enable the purchaser or the court to ignore a relevant and vital clause of the bye-laws. All that the decisions indicate is that the bye-laws on the date of sanction would apply. If the bye-laws are so applied, bye-law 19.8 will have equal operation and on a plain understanding of bye-law 19.8, it would have to be held that the purchaser is entitled to the floor area ratio prevalent only as at the time of the auction. This is also the effect of bye-law 19.5. In fact, the Division Bench itself has noticed that on a plain reading of the bye-laws this was the position, but has proceeded to overrule the contention of the State on the basis that the State cannot rely on a part of the parameters and reject the other part. It is not very clear, what exactly is meant by the High Court by this observation.

11. Bye-law 19.5 re-emphasizes that the permission for construction of the plots sold in auction before the application of the rules, will be under the conditions specified at the time of the auction. It further provides that if necessary, the conditions will be relaxed in the building to be constructed. The sale deed recites that if parameters are relaxed as per the then existing bye-laws, the State will have no objection. This does not enable the High Court to ignore the effect of bye-law 19.8 or to nullify the effect of the earlier part of bye-law 19.5 itself and to say that since there is a power to relax, and the State cannot have objection, the whole parameters could be changed notwithstanding the relevant provisions in that

behalf. The reasoning adopted by the High Court is, therefore, found to be unsustainable.

12. The High Court could have interfered with the order of the Government refusing the request of the purchaser, only if that order was vitiated by an error of law apparent on the face of the record. As we see it, there is no error in the impugned order of the Government. Even going by the reasoning adopted by the Division Bench, it could not be said that the Division Bench was able to find a ground for the issue of a writ of certiorari to demolish the order of the Government.

13. The purchaser bid the property in auction knowing fully well, the conditions of the auction with a view to commercially exploit the site. He was aware of the parameters. He was a businessman, an adept in his field. It is not open to the purchaser to get out of the obligations incurred by him by relying on a vague plea of estoppel. The recital in the sale deed does not estop the State from pointing to bye-law 19.8 and taking up the position that going thereby, the purchaser has to fulfill the parameters available at the time of the auction. No principle of estoppel can prevent the State from adopting that stand. We find no merit in the plea of estoppel sought to be raised. There is also no representation in the sale deed acted upon to his detriment by the purchaser on which a plea of estoppel can be founded.

14. The High Court has failed to remember that the power of exemption is not to be exercised freely. The power to relax a Building Rule, Regulation or requirement is an exception to the rule and it is to be used with caution and to justify or condone minimum bona fide violations or deviations. The purchaser bid at the auction with eyes open and with the knowledge that the floor area ratio, as one of the parameters applicable, was 1.0 at the relevant time. The purchaser in fact was able to get the land user changed, notwithstanding the original stipulation. It is not necessary now to consider whether it was proper to permit such change of user. But, merely because subsequently the bye-laws have been amended, it does not mean that the parameters should be relaxed in favour of the purchaser. That would be clearly an erroneous approach to the question of relaxation and assumption of such a power would mean the nullification of Building rules themselves and the object sought to be achieved by the Building rules and the need to have planned development of cities and towns in the interests of posterity. Therefore, in our view, there is no merit in the plea based on the power to relax contained in the amended bye-laws.

15. We do not see anything inequitable in the purchaser being pinned down to his obligation under the sale by auction. Building Regulations are in public interest. Courts have a duty to protect public interest particularly when they do not interfere with any of the fundamental rights of the purchaser. The plea based on alleged equity cannot be accepted.

16. The High Court was in error in holding that in the nature of the reliefs claimed by the writ petitioner, the Jaipur Development Authority was not a necessary party but was only a proper party. It failed to notice that the effect of the direction issued by it, is to fetter the statutory power granted to the Jaipur Development Authority and to compel it to sanction a particular floor area ratio, without enabling it to examine whether such a claim of the

purchaser should be permitted or not in the light of the bye-laws of 2000 and the relevant clauses in the sale deed in favour of the writ petitioner. But, in the view we have taken on the merits of the claim of the respondents, it is not necessary to further pursue this aspect of non-joinder.

17. After we have reserved judgment, the learned counsel for the respondents submitted, what he called, short submissions in writing in which an attempt is seen to be made to raise contentions based on Section 54 of the Jaipur Development Authority Act and Section 102A of the Rajasthan Land Revenue Act. We must say that these were contentions that were never put forward either in the Writ Petition or before us at the time of arguments. Moreover, the respondents, who are the Writ Petitioners, have not produced the materials with the Writ Petition or here, to establish that the provisions relied on by them in the short submissions are really attracted to the case. What is the nature of the land and what are the terms of the auction have not been disclosed by the respondents either in the Writ Petition or before us. The recital in the sale deed relied on, does not enable us to uphold this plea or to find any substance in it. The new plea sought to be put forward in the written submissions is a plea which has to be established on the facts to be proved and in the absence of relevant pleadings cannot be upheld. This question cannot also be decided in the absence of the Jaipur Development Authority. We therefore do not find any merit in the new contention sought to be put forward after the hearing was concluded. We overrule the said contention.

18. For the reasons stated above, we allow this appeal and setting aside the decisions of the Division Bench and that of the Single Judge, dismiss the writ petition filed by the respondents. However, in the circumstances, we direct the parties to suffer their respective costs through out.