

PETITIONER:
AWASAN MANDAL PARIJAT UCHAYAWARG SANGHARSH SAMITITHROUGH PRE

Vs.

RESPONDENT:
RAJASTHAN HOUSING BOARD & ORS.

DATE OF JUDGMENT: 20/03/1997

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. Kurdukar, J.
Leave granted.

2. The dispute in all these connected civil appeals is confined to the cost of the land. The appellants in these appeals belonged to the second, third and fourth quarter of allotment of the houses Board and the copy thereof was made available to the court during the course of hearing. These costing principles were made applicable from 1st April, 1988 and no dispute was raised by any of the parties at any stage.

3. The appellants who were the writ petitioners in the High Court alleged that the houses for the applicants of the first and second quarter were ready by November, 1990 and the letters of allotment were accordingly issued to the applicants of both these quarters on or about January 29, 1991. The grievance of the appellants who were the applicants of the second quarter was that possession of the houses were given to the allottees of the first quarter in March, 1991, but, however, the possession of the houses in respect of the second quarter was given to the appellants about nine months later i.e. in December, 1991. The houses to be allotted to the applicants of the third and fourth quarter were also ready much before March, 1992 and accordingly the allotment letters were issued to them in November, 1992 issued demand cum possession letters to them. It was the grievance of the appellants before the courts below that the Rajasthan Housing Board had discriminated them while determining the cost of the land in respect of all these four quarters. For the first quarter, the cost of the land was determined at Rs. 38,178/- whereas the land cost charged from the allottees of the second, third and fourth quarters was increased to Rs. 72,765/-. They also made a grievance as regards the increase in the construction cost but, however, that issue does not survive in these appeals. The appellants made representations to the Rajasthan Housing Board complaining about the discriminatory treatment meted out to them while determining the cost of lands vi-a-vis the applicants of the first quarter. According to them, land costing should not differ as the

chunk of the land was purchased in one lot and, therefore, there was no justification to increase the land cost in fourth quarters. They further made a grievance that for no fault of theirs, if the development of the land and construction of the houses thereof were delayed by the Rajasthan Housing Board, they should not be made to pay higher land cost. They, therefore, prayed that the land cost should be the same in respect of second, third and fourth quarters of 1988 as fixed for the allottees of the first quarter of 1988. This request of the appellants was turned down by the Rajasthan Housing Board by relying upon the costing principles which they had adopted. The appellants, therefore, filed there separate writ petitions challenging the action of the Rajasthan Housing Board.

4. The first respondent-the Rajasthan Housing Board filed the detailed reply justifying the increase in the cost of the land in respect of second, third and fourth quarter and pleaded that they have strictly adhered to the costing principles which they have applied uniformly. They further pleaded that cause for delay in completing the construction of the houses was beyond their control. In the meantime, the development cost also increased and accordingly they had no option but to refix the land cost in accordance with the costing principles which they had followed. Neither any discrimination while fixing the land cost was resorted to nor any profit was made by them by enhancing the land cost. There is no substance in any of the contentions raised on behalf of the appellants/writ petitioners and, therefore, on relief could be granted to them.

5. Both the parties in support of their rival contentions produced several documents before the learned Single Judge. After hearing the parties, the learned Single Judge. After hearing the parties, the learned Single Judge by his common judgment dated 16th November, 1992 disposed of all the writ petitions holding that the land of all the four quarters of 1988 had been utilised by March, 1991 and, therefore, there was no justification for charging higher land cost from the allottees of the second, third and fourth quarter (appellants). The learned Single Judge, however, held that the Housing Board had not violated the rules framed by it on 9th January, 1988. It further held that the land cost forms a distinct and different head from "Developmental Cost" and that paragraph 6 of the scheme with permitted increase in cost. As regards the increase in the construction to the appellants because it involved disputed questions of facts which cannot be gone into in the writ petition. Aggrieved by this judgment and order passed by the learned Single Judge, both the contesting parties filed Special Appeals in the Rajasthan High Court and the learned Division Bench after hearing counsel for the parties vide its judgment and order dated August 8, 1995 allowed special appeal Nos. 12/93 and 14/93 filed by the Rajasthan Housing Board and others and dismissed the special appeals Nos. 83/93, 84/93 and 85/93 filed by the writ petitioners/appellants before us. The net result, therefore is that the writ petitions filed by the appellants came to be dismissed.

6. Dr. Rajiv Dhawan, Learned Senior Counsel appearing in support of these appeals urged that the Rajasthan Housing Board had failed to give sustainable reasons as to why the land cost should be different in respect of allottees of second, third and fourth quarter then the allottees of the first quarter, particularly, when it is undisputed that housed of the first quarter as also of the second quarter were ready much before 29th January, 1991. The houses in respect of both these quarters were constructed

simultaneously and if this be so, there was no justification whatsoever to increase the land cost and issue demand notices thereof to increase the allottees of the second quarter. As regards allottees of the third and fourth quarter, counsel urged that when the entire chunk of the land was purchased at one time for the scheme, there was no question of increasing the land cost in respect of second, third and fourth quarter houses. the land was the same but while determining the land cost in respect of these three quarters, an artificial enhanced price structure thereof was resorted to without any sustainable justification. Counsel, therefore, urged that there is patent discrimination and violation of the Rules and Regulations framed by the Board while promoting the scheme. Counsel drew our attention to the reasoning the scheme. Counsel drew our attention to the reasoning adopted by the learned Single Judge and urged that the same was supported by Rule 4.1.1. and there was no reason whatsoever for the Division Bench to upset the said reasoning.

7. Mr. Ganguli, Learned Senior Counsel appearing for the Rajasthan Housing Board took us through the brochure and the relevant Rules and Regulations framed by the Rajasthan Housing Board in respect of costing principles. He drew our attention to the Rules and in particular to the caption titled as "Cost of Undeveloped Plan" containing various Rules from 4.1 to 4.28. He reiterated that the Rajasthan Housing Board had worked out the land cost in respect of the first, second, third and fourth quarter in terms of these rules and there is nothing on the record to indicate that the Rajasthan Housing Board had tried to make any profit by increasing land cost. He urged that the Rajasthan Housing Board had to borrow loans from various financial institutions on interest and in order to square up all developmental charges, construction, interest etc., it was necessitated to increase the land cost in respect of second, third and fourth quarter. He further urged that under the brochure itself, it was made quite clear that the price of houses itself, it was made quite clear that the price of houses in respect of these four quarters will be determined at the time of issuance of letter of allotment and handing over of possession with reference to the quarter in which such letter of allotment/possession would be issued. The appellants having accepted the terms and conditions set out in the brochure, they cannot be now heard to say that the Rajasthan Housing Board has resorted to the discrimination thereby offending Article 14 of the Constitution while fixing the land cost differently in respect of second, third and fourth quarter. Counsel, therefore, urged that the view taken by the Division Bench of the Rajasthan High Court is the correct view and cannot be assailed on any premiss.

8. We have given our careful thought to the rival contention raised before us and we find that the impugned judgment does not suffer from any infirmity. The Rajasthan Housing Board in its brochure as well as in its Rules and Regulations had made it clear that the cost of the house would differ for each quarter depending upon in which quarter the letter of allotment/possession would be issued to the allottee. How the cost of a house would be worked out is provided under Rule 4.1. to 4.28 falling under the caption "Cost of Undeveloped Land." Under para 4.2.1., the cost of development was determined by the Rajasthan Housing Board by applying the costing principles in the following manners:-

- i) Levellingg & dressing of the

- ground;
- ii) Construction of bituminous roads;
- iii) Cost of drains & culverts;
- iv) Cost of water supply lines;
- v) Cost of electric lines;
- vi) Cost of sewer lines
- vii) Cost of street lights;
- viii) Costs of plantation, horticulture & parks;
- ix) Misc.

In addition to the above heads, the cost of development shall also include the cost of constructions of the following items:-

- i) Primary School/Higher Secondary School
- ii) Hospital/Dispensary
- iii) Community Centres

The total expenditure on development is worked out on the basis of actual expenditure plus anticipated expenditure. In paragraph 11 to 16 of the written statement filed by the Housing Board, it has indicated as to how the construction cost was worked out and how the land cost was required to be enhanced to Rs. 315/- per square metre. After going through the pleadings of the parties in his behalf, we are of the opinion that the land cost which was determined of the Housing Board is in consonance with the brochure and the costing principles reflected in paragraphs 4.1 to 4.1.5, 4.2.1, 4.2.3, 4.2.5 and 4.2.6. It was urged on behalf of the appellants that although construction of the houses of the first and second quarter was completed when the possession of the houses was allotted to the allotted of first quarter and therefore, there was no justification in not issuing the letters of allotment to the allotted of second quarter. This contention has no merit because the development work was yet to be completed and, consequently the possession thereof was delayed by about nine months. Since the allotment letters of the houses of second quarter fell during the financial year 1990-91, the land cost stood enhanced in view of the costing principles. The same was true in respect of third and fourth quarter houses as the letters of allotment were issued in the financial year 1991-92 on different dates i.e. 9th December, 1991 and 5th February, 1992 respectively. The construction of the construction of the houses in respect of second and third quarters was delayed beyond the control of the Housing Board. Consequently, the land cost was required to be re-determined on the basis of costing principles. All these factors were very much known to the Rajasthan Housing Board and they were fully aware of the terms and conditions set out in the brochure and other relevant Rules and Regulations. We have carefully considered the contentions raised on behalf of the parties in this behalf and we find that the Rajasthan Housing Board had committed an error while determining the land cost differently in respect of second, third and fourth quarter based on the costing principles. It also needs to be stated that the Rajasthan Housing Board had borrowed huge sums from various financial institutions for which it was required to pay the interest thereon. The appellants are unable to demonstrate that the land cost determined by the Rajasthan Housing Board was in violation of any of the terms and terms and conditions mentioned in the brochure and/or Rules or Regulations or it had deviated from the Board's policy of providing houses on profit on loss basis.

9. For the foregoing conclusions, we are of the opinion

that all these appeals are devoid of merits and accordingly dismissed. In the circumstances of this case, the parties are directed to their own costs.

JUDIS