

PETITIONER:
SHIMLA DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:
ASHA RANI

DATE OF JUDGMENT: 26/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
1996 AIR 1591 JT 1996 (3) 400
1996 SCALE (2)841

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NO. 4389 OF 1996

(Arising out of SLP (C) No.18293 of 1995)
O R D E R

Leave granted.

We have heard the counsel on both sides.

These appeals by special leave arise from the order of the High Court of Himachal Pradesh at Shimla made on June 6, 1995 in W.P. No.88/95. The admitted facts are that the respondent had applied under Self-Finance Scheme in 1986 for allotment of the flats. The respondent had deposited a sum of Rs.13,800/- for 'A' type house. On November 13, 1986, the respondent was informed that she had to pay a tentative cost of Rs.1,44,000/- which included earnest money of Rs.13,800/- already deposited. In other words, she was required to deposit Rs.1,30,200/- in installments stated in the letter. Thereafter, she was informed by letter dated November 1991 that cost of construction had been increased, on account of the hike in prices of the material, to Rs.2,73,332/- as against Rs.1,44,000/-; and she was directed to pay the balance amount in the manner indicated in the letter. On reference under Section 18 of the Land Acquisition Act, the District Judge by his award and decree dated April 30, 1993 enhanced the compensation payable to the land acquired for the construction of flats under the Self Finance Scheme. Consequently, by the letter dated April 12, 1993 respondent was called upon to pay the escalated charges. Respondent, as stated earlier, approached the High Court challenging the demand. The High Court allowed the writ petition and directed the appellant Authority not to recover the amount from the respondent. In view of the letter written by the appellant on two occasions earlier, the only question is: whether the High Court is right in its direction not to recover the amount from the respondent? The admitted

position, as stated earlier, is that the land of a private owner was acquired under the Land Acquisition Act for the Self Finance Scheme. As a matter of fact, when scheme is for construction and allotment of the houses to the allottees is initiated, allottee is bound to bear the cost of the value determined by the civil Court under Section 26 of the Land Acquisition Act by award and decree or thereafter if an appeal is filed and further increase is made under Section 54 of the Act. In this case, admittedly, on reference under Section 18, the Court had determined the compensation by award and decree made under Section 26 on April 30, 1993. Therefore, the earlier demand was required to be modified, consistent with the escalation in the cost of the value of the land as a result of determination of the compensation by the civil Court.

Shri Bagga, learned counsel for the respondent placed reliance on the judgment of this Court in D.D.A. vs. Pushpendra Kr. Jain [JT 1994 (6) SC 292]. Therein the cost of the value was increased by the DDA between the date of the draw by the DDA and the date of communication to the respondent and the respondent was called upon to pay the difference of the amount. In that case, the draw was made on October 12, 1990 and the intimation of the successful draw in favour of the respondent and allotment was given on January 13, 1991. In the meanwhile, land price was unilaterally increased by DDA. Under those circumstances, this Court had held that unless otherwise provided in the scheme, the allottee is liable to make payment of the price as on the date of the communication of the letter of allotment. The ratio therein is inapplicable to the facts in this case. As held earlier, the allottee is to bear the burden of not only the escalation in construction costs but also of the escalation of the value of the land when the Court enhanced the compensation under provisions of the Land Acquisition Act at various stages. Otherwise, who would pay the escalation cost value of the land etc. The appellant is not a private builder for profit.

The appeals are accordingly allowed. The order of the High Court is set aside. The writ petition stands dismissed. No costs.