

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 18.02.2013

+ LPA 520/2003

**BHAIRWA BHARTI COOP GROUP
HOUSING SOCY**

..... Appellant

Through : Mr. Ravi Gupta, Sr. Advocate with Mr. Ankit Jain,
Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through : Ms. Meera Bhatia, Adocate for UOI.
Mr. Pawan Mathur, Advocate for DDA.

AND

LPA 521/2003

**KANAK DURGA COOP GRP. HOUSING
SOCY.**

..... Appellant

Through : Mr. Ravi Gupta, Sr. Advocate with Mr. Ankit Jain,
Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through : Ms. Meera Bhatia, Adocate for UOI.
Mr. Pawan Mathur, Advocate for DDA.

AND

WP(C) 5269/2003 & CM No. 9236/2003

**DHAN POTHOWAR COOP GRP HOUSING
SOCY**

.... Petitioner

Through : Mr. Sumit Bansal with Ms. Sumi Anand, Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through : Ms. Meera Bhatia, Adocate for UOI.
Mr. Pawan Mathur, Advocate for DDA.

AND

WP(C) No. 2890/2002 & CM Nos. 5044/2002, 9392/2002

UDYOG VIHAR COOP GRP. HOUSING
SOCY.

..... Petitioner

Through : Mr. Ravi Gupta, Sr. Advocate with Mr. Ankit Jain,
Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through : Ms. Meera Bhatia, Adocate for UOI.
Mr. Pawan Mathur, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. This judgment will dispose of a batch of appeals and writ petitions. The appeals are directed against the judgment and order of a learned Single Judge, dismissing the writ petitions filed by the appellants. The writ petitions, filed by group housing societies, which were, along with the appellants, registered with the Delhi Development Authority (DDA), for allotment of land. A common

seniority list was prepared and allotment has been made from time to time by the DDA. The present judgment would dispose of the appeals and writ petitions, since they involve decisions on common questions of fact and law.

2. In 1992, certain co-operative societies had approached this Court, disputing increase in the rates of the land allotted to the societies; that petition, and others (CWP No. 4184/1992 and connected petitions) were decided by a judgment, reported as *Federation of Coop. G/H Society & Ors. v Union of India & Ors.* 1993 (26) DRJ 156; the Court turned down the challenge and dismissed the petitions. The Division Bench held that the policy of differential pricing adopted by the DDA and sanctioned by the Central Government was not arbitrary. It was, *inter alia*, held that:

"...For the State to make provisions to provide for or subsidise settlement or re-settlement of poor people is a desirable thing. It has taken a policy decision that squatters should not be made homeless and that they should be re-settled in a developed colony. There is nothing wrong in requiring the more affluent to look after or pay for the less fortunate people. For accommodating squatters the DDA will get 50% of the break-even cost and the balance of 50% of the break-even cost will be distributed amongst the other allottees in the Project. In any case this is a matter of policy and, in the exercise of judicial review, it will not be appropriate for this Court to hold that the squatters, who represent the poor section of the society should not be settled/re-settled in this Project."

3. The petitioners/Appellants question a charge levied by virtue of the notification ("the impugned notification") issued by the Union

Ministry of Urban Development, dated 03.06.1999 under Section 11A(2) of the Delhi Development Act, 1957 (hereafter “the Act”) modifying some group housing norms in the Master Plan, MPD - 2001. The notification imposed a levy on all Group Housing societies as contribution towards housing for Economically Welfare Sections (of the people, or “EWS”) by way of a “EWS fund” @ Rs.25,000/- per dwelling unit with more than 1000 sq. ft. plinth area. The challenge is essentially on the ground that once the land rates fixed included the 50% cost loaded for the purpose of EWS contribution, charging any amount – by whatsoever name called, be it fee or charge- for the same head, is unjustified, and arbitrary. In other words, once the *Federation of Coop 's case (supra)* was complied with, and the total amounts, including EWS charges, recovered (as part of cost of land) it cannot be claimed twice over in some other form. The appellant-petitioners contend that the calculation method of loading some new charges, in fact, amounts to an illegal levy unrelated to any provision of law or statute.

4. The impugned notification, dated 3rd June, 1999, issued by the Central Government, reads as follows:

“S.O. 428(e).- Whereas the guidelines dated 5-3-99 had been issued by this Ministry revising the Group Housing norms for Delhi. However, certain clarifications had been sought for by the local bodies/agencies. Some modifications in the said guidelines have also been suggested. The matter was discussed in detail in the Ministry when local bodies, Govt. of NCT of Delhi, NCR Planning Board, representative of builders, architects and members of

2. Now, Therefore, after careful consideration, in super-session of this Ministry's guidelines dated 5-3-99 and in partial modification of Notification dated 23rd July, 1998, the Central Government in exercise of the powers conferred by sub-section (2) of Section 11A of Delhi Development Act, 1957, hereby make certain modifications in MPD-2001 to the Group Housing norms in Delhi and lay down guidelines for taking up Group Housing by both co-operative societies and private builders as per Annexure. These guidelines will come into effect from the date of publication of this notification in the Gazette of India.

[No. K-13011/17/96-DDB]

MODIFICATIONS AND GUIDELINES

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(v) Levy on additional FAR i.e. the difference between FAR of 167 and FAR earlier provided vide MPD - 2001 will be collected @ Rs.450/- per sq. m. or as revised from time to time, at the time of sanction of building plans.

(vi) All Group Housing while applying for sanction of plan will henceforth make contribution of Housing for EWS Fund. The contribution will be @ Rs.25,000 per dwelling unit of size 1000 sq. ft. (92.90 sq. m.) or more plinth area. The amount will be paid to the DDA. A separate escrow account for this purpose will be opened by the DDA. Funds available in the account will be utilised for

construction of houses for the EWS. The Fund will be operated by DDA under specific direction of this Ministry.

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(ix) All other Master Plan norms will be adhered to. The above guidelines will not apply to cooperative group societies where the constructions stand completed. The guidelines will also not apply to such cooperative group housing societies building plans stand approved. In all other cases, the above guidelines will be applicable. For group housing taken up by private builders, all applications will be covered under the above norms including those which are under process by the local bodies. In all such cases, the applicant shall apply afresh after fulfilling the above norms."

5. The respondents argue that the impugned charges are justified. To say so they rely on an amendment of the Building Bye-Laws, 1983 by notification dated 23.07.1998 in terms of which, MPD – 2001 norms were made in exercise of the power under Section 11A (2) of the Act. This notification permitted additional FAR and resulted in benefit to Group Housing Societies. Reliance is placed on the affidavit of the Union of India to contend that though Group Housing Societies had come up, no provision for housing of supporting staff existed. Considerable amounts had to be spent for shifting and relocation of *jhuggi jhompri* clusters, which sprung up. The said affidavit stated as follows:

"11.. That over a period of time number of Cooperative Group Housing Societies have come up in the NCT of Delhi, however, no provision was made for houses for essential supporting staff e.g. sweeper, carpenter, plumber, electrician, maid servant, security guard, etc. This dichotomy resulted into large undeveloped housing clusters around Group Housing Societies thereby affecting planned development. The Government has to make provision for enormous amount for shifting / relocation of these jhuggi jhompr clusters. On one side the planned development was the casualty and it resulted into unhygienic, unwarranted clusters creating tremendous pressure on the civic infrastructure and causing nuisance to the residents of the Cooperative Group Housing Societies.

... ..

14. That at the time when increased floor area ratio and dwelling units were given to the cooperative societies and to all housing societies by amended notification of March, 1999, it had been agreed to by all persons that in reciprocation in increase in number of dwelling units as well as floor area ration allowed to them, they would contribute to the provision of EWS shelter and housing as increase in number of dwelling units would also lead to increase in density and greater stress on need for services and infrastructure."

6. The respondents contend that there is no overlapping in terms of the charges levied. It is stated that the charge under clause (v) operates in a different field, since it uniformly applies to all units as a result of increase in FAR. The respondents argue that clause (vi) applies only to units of dwelling sizes of 1000 sq. ft or more; the charge is justified because such flats are occupied by a particular segment of society which needs support services including manpower,

who would occupy the EWS housing. Counsel also relied on a Full Bench judgment of this Court in *Smt. Sheelawanti & Anr. v. D.D.A. & Anr.*, AIR 1995 Delhi 212 for the contention that in such costing exercises, the scope of judicial review is limited.

7. The learned Single Judge, who heard and decided the writ petitions filed by the appellants, observed in the impugned judgment that the earlier Bench ruling in *Federation* had held that the State was entitled not only to cater to the demands for land and housing of the middle income and higher income groups, but also to provide for the needs of the lower income groups and it is within the powers of the State to make provisions to provide for or subsidise the accommodation meant for such persons. Thereafter, the impugned judgment narrowed the scope of the dispute highlighted by the appellants, to the levy or collection of Rs.25,000/- on account of EWS housing for dwelling units of size of 1000 sq. ft. and above. It was thereafter held that:

“....a material fact is the notification dated 23.07.1998 by which the Building Bye-Laws and the Master Plan were relaxed providing for increased FAR in dwelling units. On that account, an extra benefit was extended to the members of the petitioners inasmuch as on the same land area a larger area could be covered and units constructed. Thus, per dwelling unit cost in respect of the land would decline. However, on this account, a charge is provided for in the notification under clause (v), which is a specific levy on account of the additional FAR.

18. The levy in clause (vi) is undoubtedly on a different count, which is on account of contribution to EWS fund.

There is force in the contention of the learned counsel for the respondents that apart from the increase of dwelling units and the direct benefit from the increase in FAR, a consequence would also flow on account of the increase in support staff, which would be required and cause for an increase in the EWS shelter cost. This would result in increase in the density and greater stress on services and infrastructure including EWS shelter on a per unit basis. Thus, the consequence of the notification is not only that there is a benefit of increased FAR, but an increase in the requirement of EWS housing on a per unit basis. A reading of the notification dated 03.06.1999 itself shows that it is the consequence of the notification dated 23.07.1998, which has resulted in the notification and guidelines have been provided in respect of the notification dated 03.06.1999. It is not in every case that this levy of Rs.25,000/- per dwelling unit is sought to be charged unlike the charges on account of additional FAR. Clause (vi) is made applicable to dwelling units of the size of 1000 sq. ft. and above. Thus smaller dwelling units are outside the purview of this charge and it is only applicable to a certain strata of society.

19.It cannot be seriously disputed that on account of increase in EWS charges, it was open to the respondents to increase the multiplier of 1.50. This was one option available to the respondents. However, instead of exercising this option, the respondents have chosen to add a fixed amount for each of the dwelling units. The consequence, in my considered view, is the same.

20.If the petitioners are benefiting from increase in the FAR, additional units and consequently there is increase in requirement of EWS facilities for which charges are to be levied, the increased cost must be borne by the petitioners in the larger interest of the society and as a social obligation. Further, matters like this are really outside the purview of judicial scrutiny and the only aspect to be considered is whether such a levy has been made in accordance with law.

21.I consider it also appropriate to note that a reading of clause (vi) shows that the funds so collected by the respondent No. 2 - DDA on account of this levy of Rs.25,000/- per dwelling unit is to be kept in a separate escrow account to be opened by the DDA and to be utilised for construction of houses for EWS. This fund is to be operated by the DDA under the specific directions of the relevant Ministry of the Union of India. Needless to say that this should be strictly observed, as this is a specific charge levied for a specific purpose and must be used for that purpose alone.

22.This is also relevant in the context of the problem of non-availability or planning for such EWS housing shelter in colonies which have been developed. This has also resulted in clusters and jhuggi jhompri coming up, which are occupied by persons who have to render such services. If such housing for EWS sections is provided, I am of the considered view that the problem of occupation of public land and jhuggi jhompri occupied by persons giving such services would come down, at least from the extent and scale at which it is at present.”

8. It is argued in the appeals, that the learned Single Judge fell into error in upholding the collection of the impugned amount, under clause (vi) after noticing that EWS charges had been loaded to the cost of land. It is argued by the Appellant’s senior counsel, as well as counsel for the writ petitioners (who had challenged that condition - clause (vi)) that double levy is not authorized by law, and besides amounts to hyper classification, which is not permitted by Article 14 of the Constitution of India. It is argued that having allotted the land – the possession of which was taken over by the petitioner/ appellant societies, in terms of the cost, which too had been deposited, the respondents could not make a distinction and further classify the members of the societies on the basis of the floor area of the flats to

be allotted to them. It was emphasized that neither does the Act, nor any Rules or Regulations framed under it authorized collection of such amounts, which are in fact illegal extractions.

9. This Court has considered the submissions. The *rationale* for demanding the extra amounts from societies, in respect of flats or units constructed by them which exceed 1000 sq feet, brought out by the learned Single Judge, is neither arbitrary nor unreasonable. The impugned notification, containing the condition challenged in this case, i.e. Clause (vi) was brought close in the heels of the notification of 1998 revising the floor area ratio norms upwards. This resulted in benefits to some societies (though not to all), in that the plinth or floor area coverage increased. The reason given by the respondents to collect this special levy of Rs. 25,000/- per flat in those cases where the plinth area was 1000 square feet or more cannot be termed arbitrary, if seen from the context of the concern voiced in counter affidavit, which found acceptance by the learned Single Judge. It was that increased FAR would enure to the benefit of some, who in all probability would rely on services to be rendered by economically disadvantaged people. The respondents gave a thought to the additional housing needs of this latter section, and directed payment of this extra amount from a limited class of flat owners in each society. This cannot be termed as over-classification or hyper classification. The differentia is not only rational; it has a direct nexus with the object of the policy, i.e. additional housing for the poor. One has to view the policy from an overall perspective; it applied to all

societies and was part of the amendment to the Master Plan, made under Section 11-A of the Act. The charge of arbitrariness or illegality therefore is without merit.

10. So far as the issue of the charges not being authorized by law is concerned, this Court notices that the amounts are sought to be collected as consideration, not as tax levies. Sections 56(1) and 57(1) empower the Central Government and the Delhi Development Authorities, respectively, to frame rules and regulations. The latter parts of these provisions enumerate, by way of illustration, matters for which such rules or regulations can be made. The enumeration of such subject matters, however does not detract from the generality of these powers, highlighted by the use of the expression “*without prejudice to the generality*” of the basic power of rule or regulation making. Moreover, no provision prohibiting collection of such consideration in the absence of rules was shown to the court. The impugned notification, this court notices, is a statutory one, under Section 11A of the Act; it amends a Master Plan, prepared under Section 7 of the Act. Section 7(3) confers powers of the broadest nature to provide for other matters, under the Master Plan. The amendment under Section 11A, in this case, does precisely that, i.e. provide for other matters (relating to development norms). The condition requiring payment of Rs. 25,000/- for the flats with an area in excess of 1000 sq feet is, therefore, authorized by the provisions of the Act.

11. In the light of the above discussion, this Court holds that the Appeals and the writ petitions are unmerited; they are accordingly dismissed. No costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUDERSHAN KUMAR MISRA
(JUDGE)**

FEBRUARY 18, 2013