

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1950 of 2016 with

CWP No. 15160 of 2016

Date of Decision: 30.09.2026

1. CWP No. 1950 of 2016

Resident Welfare Association

.....Petitioner

Versus

Himachal Pradesh House & Urban Development authority

... Respondent

2. CWP No. 15160 of 2016

Rekha Bansal & another

.....Petitioners

Versus

Himachal Pradesh House & Urban Development authority & others

... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner(s): Mr. Suneet Goel, Senior Advocate with Mr. Vivek Negi, Advocate, for the petitioner in CWP No. 1950 of 2016.

Mr. Anubhav Bansal, Advocate (through video conferencing) for the petitioners in CWP No. 15160 of 2016.

For the Respondents: Mr. C.N.Singh, Advocate, for the respondent in CWP No. 1950 of 2016 and for respondents No.1 and 2 in CWP No. 15160 of 2016.

¹ Whether the reporters of the local papers may be allowed to see the judgment?

Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for respondent No.3-State in CWP No. 15160 of 2016.

Sandeep Sharma, Judge(oral):

Since common question of facts and law are involved in both the above captioned cases, this Court, after having clubbed the same, heard them together and now being disposed of vide common judgment.

2. Precisely, the question which needs to be determined in the case at hand, is “whether the Himachal Pradesh Housing and Urban Development Authority (**for short ‘Authority’**) is entitled to acquire enhanced cost of land and claim from the petitioners additional amount towards notional interest, which it would have earned had it invested the payment received from such allottees in FDRs earning interest to the enhanced cost in respect of plots, which were allotted to them in the year 2009 under Partial Self Financing Scheme in Housing Board Colony at Bharolian Khurd, Una, Phase IV.

3. Quintessential facts, as emerge from the pleadings as well as other material adduced on record by the respective parties, are that in the year 2002, respondent-Authority proposed to develop New Housing Colony at Bharolian Khurd Una, District, Una, Phase-IV under Partial Self Financing Scheme and invited applications under

demand survey from eligible persons for houses/plots with initial deposit of Rs. 10,000/- vide advertisement dated 31.10.2002 (Annexure P-2). Tentative cost of the plots based on price index on the date of advertisement was kept at Rs. 1665/- (Rupees One Thousand Six Hundred and Sixty Five only) per square meter. Last date of submission of applications under the aforesaid scheme was 31.10.2002. Number of eligible persons, including petitioner applied for plots of various categories under the aforesaid scheme on prescribed format alongwith initial deposit of Rs. 10,000/- and subsequently, their names alongwith other eligible persons were provisionally registered under demand survey of Bharolian Khurd, Una, Phase IV Scheme.

4. Pending allotment of plots, Award No. 1 of 2004 came to be passed by Land Acquisition Collector for acquisition of land for the aforesaid housing scheme. After acquisition of land, eligible persons whose names had been provisionally registered were called upon to get themselves registered for the Partial Self Financing Scheme on prescribed format and to pay balance earnest money (after adjustment of initial deposit made at the time of demand survey). The tentative cost of plots was revised to Rs. 1900/- per square meter.

5. On 12.09.2005, draw of lots was conducted by the respondent and on 22.09.2005, allotment letters qua plots of various

categories as per result of draw of lots were issued to the members of petitioner association. One of members was allotted Category 1-B, Plot No. 13 measuring 320 square meters at a tentative cost of Rs. 1900/- per square meter. The payment schedule based on the tentative cost was also set out by the respondents in the allotment letters. On 27.05.2009, letters for taking over possession of the plots after making requisite payment as calculated by the respondent and executing the Hire Purchase Agreement/Conveyance Deed was also issued and in such letters, final cost of plot on the basis of expenditure incurred/to be incurred on the completion of development works of the colony was also worked out, as a result thereof, final cost of plot was further revised to Rs. 2400/- per square meter, which included all developmental, administrative and other charges. On 02.07.2010, Conveyance Deed was executed by certain members of petitioner and possession of the plots was handed over to such members of petitioner association.

6. In the year 2010, learned District Judge, Una and learned Additional District Judge (Fast Track Court), Una, respectively passed awards dated 21.04.2010 and 31.12.2010, enhancing the compensation with respect to land acquired for the purpose of aforesaid housing colony, whereby rate of the land came to be determined as Rs. 888.31/- per square meter.

7. Being aggrieved and dissatisfied with aforesaid awards passed by learned District Judge, Una and learned Additional District Judge,(Fast Track Court), Una, respondent-Authority filed Regular First Appeal No. 154 of 2010 alongwith other connected matters in this Court, which ultimately came to be dismissed vide judgment dated 30.03.2016. However, after passing of awards dated 21.04.2010 and 31.12.2010 by learned District Judge, Una and learned Additional District Judge, Fast Track Court, Una, respondent-Authority raised additional demand from the members of petitioners association, as a result thereof, petitioners were called upon to deposit sum at the rate of Rs. 2,956/- per square meter in addition to Rs. 2400/- per square meter already paid by them, as determined on 27.05.2009 vide communication dated 23.08.2014 (Annexure P-7) alongwith 14% interest. Though, members of petitioner association made certain inquiries with regard to enhancement on 02.09.2014, but fact remains that respondent-Authority vide communication dated 21.10.2014 (Annexure P-9) justified its decision to demand additional amount. Some of the members of petitioner association deposited the enhanced amount, but some of them have not deposited till date. In the aforesaid background, petitioner association has approached this Court in the instant proceedings praying therein for the following reliefs:-

- “a. That this Hon’ble Court may be pleased to issue writ of certiorari quashing the demand notices(Annexure P-63) vide which members of the petitioner society have been directed by the respondent-Authority to pay additional amount of Rs. 2,956/- per sq. mts., alongwith interest @ 14% p.a.”**
- b. That this Hon’ble Court may be pleased to issue a writ of mandamus directing the respondents to produce the entire record pertaining to the case and also to furnish records as to how the amount of Rs.2, 956/- per. Sq. mts has been arrived at;**
- c. That this Hon’ble Court may be pleased to hold that clause of Hire Purchase Tenancy Agreement/ Conveyance Deed quoted in the writ petition, is a dotted line Clause and quash and set aside the unconscionable term in the High Purchase Tenancy Agreement/ Conveyance Deed which is being made the basis of illegal, arbitrary, unjustified, unreasonable and oppressive demand and in the alternative has been novated by the subsequent unilateral acts on the part of the respondent and is not binding upon the members of the petitioner society; and.”**

8. Pursuant to notices issued in the proceedings, respondent-Authority has filed reply, wherein facts as have been noted hereinabove have not been disputed. However, an attempt has been made to refute the claim of petitioners association on the ground that it was specifically mentioned in the lease agreement executed at the time of handing over of possession of the plot that in the event of increase in acquisition cost, allottees would be liable to pay the enhanced amount.

9. I have heard learned counsel for the parties and gone through the record carefully.

10. Precisely, the grouse of the petitioner association, as has been highlighted in grounds of petition and further canvassed by Mr. Suneet Goel, learned Senior Counsel duly assisted by Mr. Vivek Negi, Advocate, learned counsel representing the petitioner, is that no doubt in terms of lease agreement, members of petitioner association are liable to pay enhanced amount of compensation, but since there was a huge delay on the part of respondent-Authority to deposit the award amount before this Court in pending RFAs, members of petitioner association cannot be compelled to pay amount, if any, on account of interest, which accumulated on account of delay in deposit of award amount.

11. Mr. Goel, learned Senior counsel further argued that it is not in dispute that at the time of carving out of plots, which subsequently came to be allotted under Partial Self Financing Scheme, number of open spaces were kept for use of the allottees, but now majority of such open spaces and facility areas have been sold out. Mr. Goel submitted that since respondent-Authority has earned substantial amount by selling 16 plots of 12 marlas each, which were actually meant for educational/sports and health facilities and one plot measuring 510.75 square meters to Bharat Gas

Resources Limited for a sum of Rs. 1, 10, 00,000/- vide letter dated 17.08.2021 members of petitioner association are also entitled to share of the same for the reason that in the event of non sale of such spaces, they would have used the same. Mr. Goel further submitted that since respondent-Authority is a no profit no loss organization, profit, if any, earned on account of sale of plots actually meant for providing facilities to the allottees is required to be shared with the allottees, who otherwise are now deprived of facilities, which were otherwise agreed to be provided to them at the time of their making application for allotment of plots. While making this Court peruse documents adduced on record, Mr. Goel submitted that one plot measuring 510.75 square meters has been sold to Bharat Gas Resources Limited for a sum of Rs. 1,10,00,000/-, which is required to be set off against the enhanced cost of the plots alongwith an area of 12236 sq.metr, which was reserved as area for educational facilities for which change of land use has been granted vide letter dated 15.09.2018.

12. To the contrary, Mr. C.N. Singh, learned counsel representing the respondent-Authority, while justifying the action of the respondent-Authority in demanding additional amount, submitted that members of petitioner association are bound by terms and conditions of lease agreement, which clearly provides that in the event

of enhancement in acquisition cost, they shall pay the enhanced amount. He submitted that since members of petitioner association, despite repeated calls, failed to pay the enhanced amount of compensation, there was a delay in depositing the amount in the Registry of this Court and as such, they are also liable to pay amount, if any, towards interest on account of delayed deposit. He submitted that sum of Rs. 18, 97, 61,829/- was deposited in the Registry of this Court on 21.08.2010, 24.05.2011 and 31.05.2013 in 10 numbers of appeals by raising loans. While fairly admitting that certain plots which were kept for sports, educational and health facilities were sold subsequently, Mr. C.N.Singh submitted that since respondent-Authority had no requisite funds to pay the enhanced amount of compensation, it had no option, but to sell the plots. He further submitted that otherwise also, interested parties were not coming forward to purchase such plots.

13. Having heard learned counsel for the parties and perused material available on record, this Court finds that first issue with regard to entitlement of respondent-Authority to claim additional amount towards notional interest has already been decided by Division Bench of this Court in its judgment dated 30.11.2023 passed in bunch of LPAs, i.e. LPA No. 144 of 2012 titled **Himachal Pradesh Housing and Urban Development Authority versus Sushil Kumar**

Gupta and another alongwith connected appeals. It is not in dispute that aforesaid judgment has attained finality. Aforesaid judgment clearly reveals that certain persons were allotted plots at Shimla under fifth and sixth Partial Self Financing Scheme on 99 years leasehold basis with renewal after 33 years in Shimla. In the lease executed by allottees in aforesaid cases, they had undertaken to pay the enhanced amount of compensation, but since they were being compelled to pay additional amount towards notional interest which respondent-Authority would have earned had it invested payment received from such allottees in FDRs earning interest/ opportunity cost, they approached this Court by way of civil writ petitions filed under Article 226 of the Constitution of India. Learned Single Judge of this Court allowed the writ petitions and judgment of learned Single Judge ultimately came to be upheld by Division Bench of this Court in bunch of LPAs, as detailed hereinabove, vide judgment dated 30.11.2023. Since Division Bench of this Court has already dealt with aforesaid issue elaborately, there appears to be no justification to deal with that question again. Moreover, learned counsel representing the parties are *ad idem* that issue with regard to entitlement of respondent-Authority to claim additional amount towards notional interest stands settled by aforesaid judgment. At this stage, it would

be profitable to reproduce paras of aforesaid judgment, which reads as under:-

“34. While computing the cost of the land, the Authority has included an amount of Rs.2,26,34,054/- on account of notional interest @ 16.5% from April 1991 to March 1996; and further the notional interest of Rs.2,87,00,397/- @ 16.5% for 3 years on account of notional interest.

35 Thus, a total amount of Rs.5,13,36,451/- has been included in the cost of the land on account of notional interest.

36. Counsel for the allottees contended that the allottees had never agreed to this claim anywhere; that it is the admitted case that no such interest on capital investment has ever been paid by the Authority to any third party, and on the contrary they have retained excess amount received from the petitioner in 1997 till 2007, in which year enhanced compensation was paid to the land owners whose lands had been acquired for the Scheme / project. They pointed out that it has not even been entered in its books of accounts.

37. We agree with the said contention of the counsel for the allottees.

38 None of the learned Counsel appearing for the Authority could support the said claim either on the basis of a contract to which the allottees or their transferees were parties, or on the basis of any statute, or any term of the brochure or lease-deed .

39. We are of the view that such a claim is being made unilaterally without any legal basis.

40) For an organization like the Authority which is a “State” within the meaning of Art.12 of the Constitution of India, and

which claims to run business on a 'no profit no loss basis' , to contend that it is entitled to such a claim which has no legal basis, is impermissible in law.

41) While its demand from the allottees amounts towards the cost incurred on account of enhancement of compensation under the Land Acquisition Act, is perfectly justifiable, the Authority cannot be permitted to unjustly enrich itself by making claims which do not have any legal basis.

42) As held by the Supreme Court in **Delhi Development Authority & Another vs. Joint Action Committee & Others (2008)2 SCC 672** , a person would be bound by the terms of the contract subject of course to its validity; a contract in certain situations may also be avoided; with a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout.

The Supreme Court declared that a party to the contract cannot, at a later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and which were based upon unilateral issuance of office orders, but not communicated to the other party to the contract.

It also held that terms and conditions of a contract, though capable of alteration or modification, such alteration or modification cannot be done unilaterally, unless there exists any provision either in contract itself or in law; and new terms of contract cannot be thrust upon the other party to the contract unilaterally."

14. Next question, which needs determination in the case at hand, is "whether members of petitioner association are entitled to set

off qua the amount earned by respondent-Authority from selling of the plots, which were actually kept for facility areas". It is not in dispute that after allotment of plots under Partial Self Financing Scheme, respondent-Authority, without intimating allottees or its association, proceeded to sell 16 plots of 12 marlas each and plot measuring 510.75 square meters to a gas agency for substantial amount. Though, Mr. C.N.Singh, learned counsel representing respondent-Authority, while making this Court peruse Clause 29 sub-clause 15 of Himachal Pradesh Housing and Urban Development Authority (Allotment and Sale of Houses/Plots) Regulations, attempted to argue that respondent-Authority is/was well within its right to sell all the open spaces, parks, parking, lots, public amenities, shopping centers etc. as approved in the layout plan and the same shall be the property of the Authority and the Authority reserves the rights to use such spaces for any other purpose at its discretion as and when required, but once it is not in dispute that, while inviting applications for selling plots in the area concerned, proposed buyers were made to understand that there will be open area for such facilities i.e. area of 12326 Sqm. had been reserved for educational facilities, 8109 Sqm. for health facilities, 2192 Sqm. for community centre, 6515 Sqm. for play areas and 5500 Sqm. as Joggers Park, petitioner and other similar situate persons are well within right to claim share in the amount earned by respondent-

Authority by selling out facilities. Since the respondent-Housing Board had already carved out 16 No. plots measuring 12 Marlas each for the construction of houses of flats from the facility area reserved for educational activities, it could not have sold such area or plots, but since in the case at hand, same have been sold for the reason that nobody was coming forward to buy such facility area, amount generated from such sale deserves to be set off against the amount otherwise being claimed from the members of petitioner association in the name of enhanced amount of compensation. Needless to say, respondent-Authority is a State within the meaning of Article 12 of the Constitution of India and it also claims to run business on no profit no loss basis, as such otherwise cannot be permitted to enrich itself by selling plots, which were actually earmarked as facility area for other allottees.

15. Though, this Court is of the view that demand from the allottees towards the cost incurred on account of enhancement of compensation under Land Acquisition Act, appears to be justifiable in terms of lease agreement, but certainly respondent-Authority cannot be permitted to unjustly enrich itself by making claims of interest which do not have any legal basis.

16. Consequently, in view of the detailed discussion made hereinabove, this Court finds merit in the present petition and

accordingly, same is allowed. The demand notices issued by the respondent-Authority, directing the allottees to pay additional amount of Rs. 2956/- per sq.mts alongwith interest @ 14% per annum is quashed and set-aside and the respondent-Authority is directed to recalculate the cost of the plots allotted to the members of petitioner association after deducting the interest, which has been deposited belatedly in this Court in the appeals filed by the respondent-Authority under the Land Acquisition Act and to set off the amounts received by the respondent-authority from the sale of facility areas by carving out 16 No. plots measuring 12 Marlas and sale of 510.75 sq. mtrs to Bharat Gas Resources for Rs. 1, 10,00,000/-. The respondent-Authority is also directed not to insist upon the allottees to avail OTS Scheme 2026. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

September30, 2026
(shankar)