

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.18457 OF 2014 & W.P.No.1041 of 2015

COMMON ORDER:

The 1st petitioner is a registered association consisting of members/allottees of houses/house plots at Raviryal Village, Maheswaram Mandal, Ranga Reddy District. The other petitioners are allottees of houses by the A.P. Housing Board.

The petitioners in these writ petitions and the prayers are connected to one another. The prayers read as follows:

W.P.No.18457 OF 2014:

..... to issue any writ, order or direction more particularly one in the nature of writ of mandamus to declare the increase of the cost construction value up to 40% as against the notification dated 08.11.2013 issued by the respondents as illegal, arbitrary, and in violation of Article 14 and 300-A of the Constitution of India and also in violation of principles of natural justice and set aside the same and consequently direct the respondents not to cancel the allotments of houses of the petitioners by setting aside the notices dated 03.02.2014 and 06.06.2014 and pass....

W.P.No.1041 of 2015:

.....to issue any writ, order or direction more particularly one in the nature of writ of mandamus to declare the impugned orders passed by the respondents to the petitioners' association members vide orders of HIG 109, 88, 115, 114, 125, 104, 174, 105, 90, 55, 173, 147, 53, 118, 130, 89, 100, 75, 97, 42, 8, 2, 103, 74, 47, 39, 6, 77, 1, 36, 3, 57, 127, 20, 126, 146, 4, 48, 76, 37, 148, 149, 24, 25, 52, 62, 124, 102, 17, 171, 72, 40, 79, 156, 108, 7, 137, 15, 16, 18, 94, 67 II/PH-1/Raviryal/EE/(S)/2014, vide I-HG 35, 19, I/PH-1/Raviryal/EE/(S)/2014, and vide MIG 32, 2, 25, 142, 176, 123, 61, 181, 180, 78, 19, 139, 28, 135, 82, 158, 86, 40, 25, 136, 140, /PH-I/Raviryal/EE/(S)/2014, and also orders to the petitioners' Association members namely: Saurabh Kumar, Mohd. Waseem Ahmed, Arun Arjun, Swathi, M., Y. Sai Varsha, N. Preethi, Mohd Mateen Shareef,

Swaroop Reddy, Brijesh Kumar, Syed Abdul Aziz, G. Venkat Reddy, Manoj Kumar Jaiswal, Hema Malini, all dated 12.01.2015 as illegal, arbitrary, and in violation of Article 14 and 300-A of the Constitution of India besides in violation of conditions mentioned in earlier notification Demand Survey Notification for independent house at Ravirala Maheswaram Mandal, R.R. District dated 27.06.2013 and also in violation of principles of natural justice and set aside the same and consequently direct the respondents not to cancel the allotments of houses of the members of petitioners association and pass ...

The circumstances referred in W.P.No.18457 of 2014 are adverted to and would suffice for the disposal of both the writ petitions. It is made clear that this Court is not embarking upon roving enquiry into various issues presented by the petitioners in these writ petitions.

The writ petitions are opposed primarily on the ground that the relationship between the allottees and the Housing Board is governed by a contract. The subject matter of writ petition viz., intimation of escalation of price etc., is not examined at the instance of association for enforcement of individual grievances and it is not maintainable.

On 27.06.2013, the Andhra Pradesh Housing Board issued demand survey notification for construction of independent houses at Laxmiguda (Phase-5), Rajendranagar Mandal and Raviryal, Maheswaram Mandals, Ranga Reddy District. In the present writ petitions, the members of 1st petitioner association claim to be the allottees of HIG-II at Raviryal, Phase-1. The notification dated 27.06.2013 contains the following condition:

“The total cost to be repaid within 18 months from the date of allotment. The above distribution is purely tentative and can be changed on the basis of layout approved by HUDA. Similarly, tentative cost can change which will be informed before commencement of construction/allotment. The final cost will be determined after completion of the

scheme.”

The cost stated through the instant notification for HIG-II is Rs.37,00,600/-. The allotments were made with the following conditions:

- “1. Tentative cost of the H.I.G.II is fixed at Rs.51,23,000/-.
(emphasis added)
2. The allottee has to pay the above tentative cost in the following manner.
 - a. The allottee has to pay 10% difference cost of Rs.1,41,700/- on tentative cost within one month from the date of receipt of this letter and execute the sale agreements failing which the allotment will be cancelled without further notice.
 - b. The allottee has to pay Rs.5,12,300/- towards 10% cost within 3 months from the date of receipt of the allotment order.
 - c. The allottee has to pay Rs.15,36,900/- towards 30% cost within 6 months from the date of receipt of the allotment order.
 - d. The allottee has to pay Rs.10,24,600/- towards 20% cost within 9 months from the date of receipt of the allotment order.
 - e. The allottee has to pay Rs.5,12,300/- towards 10% cost within 12 months from the date of receipt of the allotment order.
 - f. The allottee has to pay Rs.5,12,300/- towards 10% cost within 15 months from the date of receipt of the allotment order.
 - g. The allottee has to pay Rs.5,12,300/- towards 10% cost within 18 months from the date of receipt of the allotment order.
 - h. If the allottee fails to make above payment or withdraw from the scheme within 45 days allotment will be cancelled duly forfeiting the EMD paid.
 - i) The possession will be given after completion of the scheme who have paid the full cost within prescribed time.
3. The allottee has to pay the differential cost between the tentative cost and final cost after fixation of the final cost with interest from the due date of the last installment of down payment.

4. The NOC will be issued to the allottee for obtaining the loan from the banks/other loan agencies on their request and they can get the loan sanction and release in accordance with the payment schedule prescribed at their risk and responsibility.
5. In all the matters the decision of Vice Chairman and Housing Commissioner is final and binding on the allottee.”

Reference to one of the allotment letters dated 03.02.2014 is made for better appreciation of the *lis* between the parties.

“I am to inform that as per the terms and conditions of notification, your application is scrutinized and found eligible and you are selected for allotment of one HIG-II house in this scheme. The house number will be assigned through drawl of lots before giving physical possession of the said house.

Further, I am to inform that the Board issued Demand Survey Notification on the line estimate of SSR 2012-13 keeping the notified cost as Rs.37,06,000/-. Now the tenders are being finalized and after the finalization of tenders, the tentative cost will be arrived and will be informed.”

After accepting the allotment letter, majority of the allottees have paid the 1st installment etc. Through the allotment letter dated 06.06.2014, it has been informed to allottees that the tentative cost of HIG-II is fixed at Rs.51,23,000/-. The allottees were called upon to confirm the allotment and plan for payment of installments as stated in the letter dated 06.06.2014. Hence, W.P.No.18457 of 2014 is filed questioning the enhancement of cost by 40% as illegal and arbitrary.

This Court through order dated 04.07.2014 granted stay of communication dated 03.02.2014 and 06.06.2014 subject to petitioners' paying the pre-revised installments as per the stipulated dates. The petition to vacate the stay order is filed.

As a few allottees did not even make the payments, as directed by this Court, the Housing Board issued letter No.88/HIG-II/PH-I/Raviryal/EE/(S)/2014 dated 12.01.2015 cancelling the allotment in favour of the defaulters in payments of installments.

Assailing the cancellation order dated 12.01.2015, W.P.No.1041 of 2015 is filed.

The case of petitioners, as contended by Mr.Mukheed, learned counsel, is that the escalation of cost by 40% is arbitrary, illegal and contrary to the notification dated 27.06.2013 and the escalation has been facilitated only to benefit the executing agency/contractor. The petitioners, briefly stated, prayed for setting aside the 40% escalation of cost and consequently the cancellation order dated 12.01.2015.

Sri S.R.Ashok, learned Senior Counsel for the respondents/ Housing Board, takes preliminary objection to the maintainability of writ petition and contends that the Housing Board entered into sale and purchase of a house and appurtenant plot. The contract is non-statutory. The remedy under Article 226 of the Constitution of India is misconceived. On merits, the learned Senior Counsel submits that the understanding of petitioners that the cost informed through demand survey notification dated 27.06.2013, as final cost, is incorrect. According to the procedure in vogue, the Housing Board takes up housing projects through demand survey notification and the details stated in the notification are not firm and final. Further, there is no room for ambiguity to assume that the final cost of HIG-II house is Rs.37,06,000/-. On the contrary, the tentative cost is intimated before the commencement of construction/allotment and the final cost after completion of the scheme. The allottees have received allotment letters with these conditions, accepted the tentative cost determined by the Housing Board and nearly 85% have agreed to the tentative cost and paid the installments to the Housing Board. The escalation or tentative cost under a non-statutory contract is not justiciable under Article 226 of the Constitution of India. The ground that the allotments of houses are made with the acceptance of tentative cost by the allottees renders the objection of association in cost escalation as meaningless. There is

sufficient material for 40% escalation of tentative cost from what is stated through notification dated 27.06.2013. The learned counsel places strong reliance upon the decisions in **BAREILLY DEVELOPMENT AUTHORITY v. AJAY PAL SINGH AND OTHERS**^[1] and **M.V.B. SARMA AND OTHERS v. AP HOUSING BOARD**^[2]. The relevant paragraphs are as follows:

In **BAREILLY DEVELOPMENT AUTHORITY**'s case, this Court observed thus:

"when the contract entered into by the State is non-statutory and purely contractual the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. In this sphere, they could only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the Authority in the said contractual field. It is also settled that no writ or order can be issued under Art.226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple".

In **M.V.B. SARMA AND OTHERS**' case, this Court held as under:

"It is an admitted case that all the petitioners herein and other allottees have agreed for all the terms and conditions and accordingly entered into the agreements at the time of allotment of the houses. The terms and conditions of the said agreement entered into by the petitioners at the time of allotment of the houses would make it clear that each of the allottee is bound to pay the escalated and revised cost that may have become necessary due to the exigencies of the situation arising out of the various factors including the revision in the land cost and the contractors bills. Thus, it is clear that the petitioners are bound by the terms and conditions of the agreement entered into by them voluntarily. The terms and conditions are specified by the regulations."

Adverting to the case on hand, the admitted circumstances are that what is intimated through demand survey notification is not even the tentative cost. The tentative cost is further stated to be informed before construction/allotment of house. The allottees having accepted

allotment with these conditions had the option of either going with the purchase by accepting the tentative cost intimated by the Housing Board or as suggested by the Board

can withdraw the 10% EMD already deposited with the Board.

The allottees, if have accepted the tentative cost, cannot complain the same by filing the present writ petition. Further, the allottees who do not accept the tentative cost informed through communication dated 06.06.2014 are not compelled to purchase a house under HIG-II.

I have perused the material available on record. The association cannot champion the grievance of individual allottees. As rightly contended by the learned Senior Counsel, the association at the instance of a few persons, has erroneously taken up these issues for redressal under Article 226 of the Constitution of India.

In the opinion of this Court and also from the material available on record, firstly a writ petition for enforcement of a non-statutory contract/obligation is not maintainable and secondly the Housing Board has given option to the applicants whether to accept the tentative cost or not. The persons who have accepted the tentative cost cannot turn round and complain. The allottees who have not accepted are not compelled to accept the tentative cost of Housing Board. The acceptance is an individual choice.

I see no illegality or irregularity. W.P.No.18457 of 2014 is, accordingly, dismissed

As a few of the allottees have not paid the allotment amount, the association and one of the members challenges letter dated 12.01.2015 cancelling the allotment. I have perused the reasons given in the cancellation letter dated 12.01.2015. I hardly find any reason to interfere with the cancellation. For the reasons recorded already, W.P.No.1041 of 2015 should also fail and is accordingly dismissed.

At the time of hearing, the learned Senior Counsel has informed the Court that the allottees who are willing to accept the tentative cost communicated through letter dated 06.06.2014 and are interested to abide by the conditions of allotment, and if such allottees make a request within 15 days from the date of dismissal of the writ petition, the Housing Board will positively consider the request and allot the houses. The interested allottees, who are yet to give acceptance pursuant to the communication dated 06.06.2014, are given two weeks' time from today to approach the Housing Board and the Housing Board will consider their cases on par with other similarly situated persons and dispose of the representation.

With the above observations, both the writ petitions are dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

S.V.BHATT, J

18th March, 2015

Note:
CC in two days

B/o Lrkm

[\[1\]](#) AIR 1989 SC 1076

[\[2\]](#) 2001(1) ALT 228