THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION Nos.661, 574, 3124, 3093, 670, 1780, 1781, 1792, 1802, 1805, 1807, 1813, 1826, 1842, 1852, 1929, 2315, 4124, 4126, 4192, 4200, 4773, 4549, 4917, 6250, 6464, 6483, 5844 and 7478 of 2015

COMMON ORDER :

In this batch of writ petitions, the petitioners have been allotted houses by the Andhra Pradesh Housing Board (for brevity "the Board") under the category of MIG and MIG-II, under Phase-V at Proddatur, YSR Kadapa District. As per the agreement, the cost of MIG-II houses was fixed at Rs.17,24,000/- each and the cost of MIG houses was fixed at Rs.16,58,000/-. The petitioners have paid the entire amount as per the said agreement and they were waiting for a call to take possession of the respective houses allotted to them. But, surprisingly, the 3rd respondent – Executive Engineer (Housing) of the Board has issued Letters/Notices dated 16.12.2014, informing that the final cost of the houses have been fixed at Rs.21,62,500/- for MIG-II and Rs.20,75,100/- for MIG. The said fixation of price of the houses is without following the norms enumerated in G.O.Ms.No.35, Transport, Roads and Buildings (R.I) Department, dated 30.01.2009 and against the terms and conditions stipulated in the agreements, which are executed by and between the petitioners and the Board while allotting the said houses in Phase-V of the Housing Board Colony, Proddatur, YSR Kadapa District. Soon after receipt of notices fixing the final cost of the houses, the petitioners have obtained a separate estimation from the Mandal Engineering Officer, Mandal Parishad, Proddatur, on 24.12.2014, wherein it is specifically stated that the SSR rate for the year 2011-12 costs, estimates, prepared for the project commenced on 01.06.2012 and completed on 30.11.2014 i.e., nearly after 30 months. It is the case of the petitioners that the works executed by the respondents are of poor quality and the houses have developed cracks in some places and that the 4th respondent has not complied with the specifications proposed as per the agreement, therefore, enhancement of cost of the houses as shown by the 3rd respondent is not based on any policy, facts on the ground and without any authority or jurisdiction. It is also their case that Clause-3 of the agreement clearly specifies that the price of the house as fixed by the seller and as agreed by the buyer shall not be changed, except as stated in the following circumstances:

(i) cost of the site if increased in the land acquisition proceedings;

(ii) Change in the cost due to the court proceedings;

(iii) Incurring additional costs due to any changes in the design and area and changes in SSR rates.

(iv) Payment of extra amount to the contractors, on account of the decrees/awards for settlement with contractors.

2. Further, the notices issued by the 3rd respondent do not contain any reasons for enhancing the final cost of the houses abnormally, exceeding the normal limits prescribed in G.O.Ms.No.35, dated 30.01.2009, which itself indicates the collusion between the management of the Board and the 4th respondent for exploiting the allottees in the name of final cost of the houses. It is the further alleged that they made a representation dated 05.01.2015 to the 2nd respondent requesting to execute individual sale deeds for the price fixed in the agreement and the same is pending consideration. Hence, the petitioners have filed the present writ petitions contending that the impugned notices enhancing the cost of the houses allotted to them as illegal, arbitrary and against the norms in the agreement.

3. A counter affidavit is filed on behalf of respondent Nos.2 and 3 stating that the writ petitions are not maintainable and are liable to be dismissed in *limini,* for the reason that it is now well settled that a writ petition seeking enforcement of Contractual Rights is not maintainable. In support of the said contention, several authorities of the Apex Court as well as this Court have been cited. In the counter affidavit, it is stated that the respondent Board has issued Demand Survey Notification dated 31.07.2010, which was published in the Newspapers on 01.08.2010, announcing its proposal to take up the Housing Scheme at Proddatur, Phase-V, under its 'Self Financing Housing Scheme' and inviting applications from the interested persons. The details and the tentative

costs of the houses mentioned in the said Notification are as follows:

Category	Plot size (in Sq.Yards)	Plinth Area (in Sq.Ft.)	Tentative cost (Rs. in Lakhs)
MIG-II	950	264.44	17,24,000-00
MIG	950	213.88	16,58,000-00

4. In the Notification, it is clearly stated that the 'Tentative Costs' mentioned in the notification are subject to change, which will be intimated before completion of the scheme. In response to the same, the petitioners have submitted their applications, which contains the declaration that they have read the terms and conditions of allotment and agreed to be bound by them and the Regulations. In pursuance of the said Notification, the applicants were selected by conducting draw of lots on 12.12.2012 and the successful applicants were issued allotment letters dated 26.12.2012, whereunder, while intimating the tentative cost and the schedule of payment, it was once again informed that it is only a tentative cost and the final cost will be informed after completion of the scheme and the allottees have to accept and pay the difference, if any, between the tentative cost and the final cost with operational interest from the date of agreement with the Board. In the said letters, it is also mentioned that the allotment letter was issued as per the terms and conditions in the A.P. Housing Board Act and Regulations and subject to the changes that may be made therein from time to time. Accepting the allotment on such terms and conditions, the allottees have entered into "Agreements of Sale" with the Board. Clause-3 of the Agreement of Sale entered into between the Board and the allottees also provide for escalation of the price. Sub-clause (ii) thereof specifically provides that the additional cost due to additional cost incurred due to any change in design, plot area, provision of any additional amenities, services, facilities, etc., not originally contemplated either on the request of the allottees or due to the decision of the higher authorities, or other Laws and rules or due to any other reason, like change in SSR rates etc., shall be added to the cost of the houses proportionately and that the purchaser agrees to pay the same, even though the purchaser himself may not have asked for or agreed for change of design, additional amenity, services, facilities etc., and the agreement is binding on the allottees and they cannot seek for sale of the

houses at the tentative cost contrary to the Agreement.

5. The reason for the difference in the tentative cost and the final cost is also mentioned in the counter affidavit stating that the tentative cost is only an estimate, whereas the final cost is fixed on the basis of actual expenditure incurred based on the final bills after completion of construction of houses. It is further stated that while the estimated/tentative cost was arrived at based on the estimates as per 2010-11 SSR rates, as the construction commenced on 01.06.2012 i.e., during 2012-13 and completed on 15.05.2014 i.e., during 2013-14 and there were 3 S.S.R's i.e., 2011-12, 2012-13 and 2013-14, which came into force after fixation of tentative costs and as per Clause-46 of the Agreement between the Board and the Developer, the price adjustment will be allowed as per G.O.Ms.No.94, dated 16.04.2008, G.O.Ms.No.109, dated 24.04.2008 and G.O.Ms.No.35, dated 30.01.2009. It is further stated that though the construction had to be completed in 12 months as per the agreement, it could not be completed within the said stipulated period due to non-availability of sand on account of ban on quarrying of sand by this Court, non-availability of good gravel and non-availability of filling sand and therefore, E.O.T. was granted till 30.10.2013 with price escalated and without L.D. as per the terms of the agreement, but the construction could not be completed even by the extended date also due to various reasons, like (1) scarcity of sand; (2) heavy rains; and (3) Samaikyandra agitation, during which period it is difficult to obtain and transport materials such as cement, steel, bricks and other materials to the site and hence E.O.T. was granted upto 31.03.2014 with price escalation and without L.D. as per the terms of the Agreement as the delay was due to the reasons beyond the control of the contractor. Thereafter, providing C.C. Roads over the W.B.M. Roads, which is an additional work as per the request of the allottees, further time was granted till 15.05.2014 for C.C. Roads and that the increase in the price also occurred due to the additional cost incurred due to change in design of the foundation as per the Soil Testing Report as, such provisions were not originally proposed in the Agreement. Further, providing of R.C.C. Roads as against the Wet Mix Macadam Roads originally proposed, 3/4' CPVC water pipes, as against 1/2' G.I. pipes, changes

in the type of wiring, switch boards, switches, actual betterment charges to the Municipality, building plans and other approval charges etc., being more than the cost originally provided for, filling up low areas, rainwater drains etc., the difference between the tentative costs and the final costs are reasonable and the same is based on actual costs and hence, sought for dismissal of the writ petitions.

6. Heard Sri Naguru Nagaraju, learned counsel for the petitioners, as well as Sri D. Ranganath Kumar, learned Standing Counsel for the respondent – A.P. Housing Board and perused the material available on record.

7. It is the contention of the learned counsel for petitioners that after paying the entire amount as fixed by the Board in the Notification, the respondent – Board cannot increase the cost of houses and such increase is arbitrary, illegal and in violation of the principles of natural justice and Section 29 of A.P. Housing Board Act, 1956.

8. On the other hand, the learned Standing Counsel for the respondent Board submits that the writ petitions are not maintainable, since the agreement entered into between the petitioners and the Board is a non-Statutory contract and the price of the houses fixed is based on the terms and conditions in the agreement. He would further submit that the tentative cost fixed in the Demand Survey Notification is not final, which fact was informed to the petitioners in the allotment letters and also the agreements entered into between the petitioners and the Board. The Demand Survey Notification clearly mentions about the said fact and having accepted the same, the petitioners cannot now turn around from the terms and conditions of contract and file writ petitions.

9. In support of the said contentions, the learned Standing Counsel relied upon the judgments in BAREILLY DEVELOPMENT AUTHORITY v. AJAY PAL SINGH AND OTHERS[1] and M.V.B. SARMA AND OTHERS v. A.P. HOUSING BOARD[2] and also an unreported judgment rendered by a learned single Judge of this Court in W.P.No.18457 of 2014 and W.P.No.1041 of 2015, dated

18.03.2015.

10. In BAREILLY DEVELOPMENT AUTHORITY's case (supra 1), the Apex Court held as under:

> "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."

11. In M.V.B. SARMA's case (supra 2), 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."

12. It is to be noted that on 31.07.2010, the respondent – Board has issued a Demand Survey Notification for construction of independent houses under Self-Financing Scheme, fixing the tentative costs for MIG-II and MIG category of houses with the following conditions.

Sl. No.	Place	Cate-gory	No.of Houses	Plinth Area (for Houses/ Flats) in Sq.Ft.	Plot Area in Sq.Yds.	Tentative costs (in lakhs)	Name Registra- tion Fees to be paid along with Appli-cation	Income Limit per month
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	Prodda-tur Phase-V	MIG-II	17	950	264.44	17,24,000/-	20,000/- (+300/- appli-cation cost)	20,000/- & above
2.		MIG	47	950	213.88	16,58,000/-	15,000/- (+300/- appli-cation cost	20,000/- & above
3.	Nand-yala Phase-IX	MIG-II	105	950	233.33	17,41,000/-	20,000/- (+300/- appli-cation cost)	20,000/- & above
4.		MIG-I	19	530	111.11	9,09,000/-	10,000/- (+300/- appli-cation cost)	10,000/- to 25,000/-

13. The above distribution is purely tentative and can be changed on the basis of layout approved by D.T. & C.P. 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.

14. Further, the allotment letters dated 26.12.2012 issued to the petitioners also indicate the same, the relevant portion of which is extracted hereunder:

> "This is only a tentative cost. He/She has to accept final cost which will be informed on completion of the scheme and He/She has to accept the final cost and to pay difference if any arises on finalization before registration with accrued operational rate of interest from the date of concluding agreement for sale with A.P. Housing Board. The agreement form for sale will be supplied on payment of Rs.500/- in any 'E'-Seva along with 2nd down payment and he/she will be requested to conclude agreement with A.P. Housing Board.
>
> This allotment letter is issued in pursuance of terms and conditions, stipulated in the A.P. Housing Board Act, 1956 and A.P. Housing Board Regulation, 1997 and subject to changes that may be made from time to time."

15. Clause 3(ii) of the agreement entered into between the petitioners and the respondent – Board on 11.12.2013 reads as follows:

> "3 (ii) The additional cost due to any change in design, plot area, provision of any additional amenities, services, facilities etc., not originally contemplated, either on the request of the allottees or due to decision of the higher authorities or other laws and rules or due to any other reason like change in S.S.R. rates etc., shall be added to the cost of the houses proportionately and the Purchaser agrees to pay the same, even though he himself may have not asked for or agreed for such change of design, additionally amenity, services, facilities etc."

16. All these facts would go to show that the cost fixed for the houses is only tentative and there is a chance of increase in the cost of houses for various reasons.

17. Further, the Demand Survey Notification, allotment letters and the Agreement specifically provide that there is a likelihood of change in the cost of houses and the final cost will be informed on completion of the scheme and the

allottees have to accept the final cost and to pay the difference, if any. The petitioners herein, being the allottees, knowing fully well, accepted the allotment letters and signed the Agreements.

18. All these would go to show that the petitioners are bound by the terms and conditions specified in the Agreement entered into between them and the respondent – Board. A perusal of the copies of the Agreements of Sale and the allotment letters filed along with the counter affidavit would go to show that both the petitioners and the respondent – Board are bound by the contract and it is only a non-Statutory contract. Therefore, the ratio laid down by the Apex Court and this Court in the aforesaid judgments applies to the facts of the cases on hand and the same principle has been followed in several other judgments rendered by this Court expressing the very same view.

19. The facts in those cases are exactly similar to the facts in the present cases, to which the respondent – Board is also a party.

20. Even otherwise, the respondent - Board has justified its action in enhancing the cost of the houses due to various factors, which cannot be gone into by this Court by exercising the power of Judicial Review. The petitioners have not brought to the notice of this Court as to the violation of any Statutory Rule, except Section 29 of the A.P. Housing Board Act, 1956.

21. Section 29 of the A.P. Housing Board Act cannot come to the rescue of the petitioners, since the petitioners have consciously accepted the terms and conditions of the Agreement and allotment letters and made applications for allotment of houses in pursuance of the Demand Survey Notification wherein stipulation for enhancement of cost is provided.

22. In view of above facts and circumstances, I do not see any merit in these writ petitions warranting interference by this Court.

23. For the aforesaid reasons, all these writ petitions are dismissed. As a sequel, miscellaneous petitions pending, if any, in these writ petitions shall stand closed. No order as to costs.

A. RAJASHEKER REDDY, J

22.06.2016.
Msr

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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Msr

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[1] AIR 1989 SC 1076

[2] 2001 (1) ALT 228