THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.3310 of 2006

ORDER:

Heard the learned Counsel for the petitioners and the learned Standing Counsel for the respondents.

The twelve petitioners before this Court are the allottees of the houses of the Andhra Pradesh Housing Board. Applications were invited in the year 1979 for allotment of houses under three groups i.e., MIG, LIG and EWS. The tentative cost of the houses in respect of economically weaker sections was fixed at Rs.55,000/- per building and the allottees were directed to pay 30% of the fixed amount i.e., Rs.16,500/- and the rest of the amount of Rs.38,500/- in 60 installments at Rs.1,465/- for each installment. The petitioners have been paying the installments regularly and in the meanwhile, in 1993 the construction of the houses was completed and the petitioners were put in possession of the respective buildings. While so, the petitioners received letters in the month of October, 2004, enhancing the cost of the building from Rs.55,000/- to Rs.74,000/- and installments was enhanced from Rs.1,465/- to Rs.2,365/-. The petitioners were directed to pay an amount of Rs.42,300/- along with quarterly differential interest on or before 30th November, 2004. The petitioners submitted a representation expressing their inability to pay the said amount and without considering the said representation, the respondent issued another notice dated 09.12.2005 asking the petitioners to pay Rs.45,900/- on or before 26.12.2005 with a threat of taking action under the regulations of the Andhra Pradesh Housing Board. This Writ Petition was filed challenging the enhancement of the cost of the building.

A counter affidavit is filed by the respondents stating that in view of the decision of the Supreme Court in **Bareilly Development Authority v. Ajay Pal Singh**[1], the present Writ Petition is not maintainable and in any event in view of the decisions of the Supreme Court and this Court, the action of the respondents cannot be found fault. It is also stated that the petitioners entered into an agreement accepting the tentative cost and when the final cost was fixed, they cannot challenge the fixation of final cost. It is further stated that out of 100 houses constructed under Phase-II, the majority of the allottees accepted the final cost and also paid the difference in installments and 11 people got their houses registered by paying the entire balance due and only the 12 petitioners are questioning the same by filing the present Writ Petition. The respondents state that the cost of the houses was fixed tentatively based on the prices in the year 1979 and when the houses were completed in the year 1993, it is not open to the petitioners to insist for retention of the cost of 1979, which was fixed on tentative basis. As stated above, the allottees of 88 houses accepted the same price, but the 12 petitioners herein are challenging it.

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[1] AIR 1989 SC 1076

Learned Counsel for the petitioners submitted that as per Regulation 23(3) of the Andhra Pradesh Housing Board (Allotment, Management and Sale of Low Income Group Houses) Regulations, 1975, the final fixation of the sale price should be done within two years from the date of allotment of the house and though it provides for extension of the time by the Government, since the possession was given in the year 1993 to the petitioners, there is no justification for the respondents to demand higher amount after inviting applications in the year 1979 and making the allotment in the same year.

The point raised by the learned Counsel for the petitioners is no longer *res integra*, as this Court in **M.V.B.Sarma v. Andhra Pradesh Housing Board**[2] by considering the said Regulation observed as follows:

> "It is nobody's case that the Housing board took into consideration any factors other than the factors mentioned in regulation 23 itself in estimating the cost price. It is true, sub-clause (3) of Regulation 23 says that final fixation of sale price should be done within two years from the date of allotment of the house. But at the same time, it also provides for extension of period by the Government in case where the final cost cannot be fixed within the prescribed period because the matters relating to land compensation for payment and the final bills to the Contractors are pending in the Court. The power is given to the Government to extend the period for final fixation of sale price. In my considered opinion, the prescribed period of two years is not mandatory. Sub-clause (3) of Regulation 23 cannot be held to be a mandatory one. It does not prescribe any consequences, if the final fixation of sale price is not done within two years from the date of allotment of the houses. On the other hand, the very fact that the provision is made for extension of the period by the Government would make it clear that the provision is not a mandatory one. At any rate, in the

[2] 2001 (1) ALT 228

> instant case, there is no plea that the Housing Board did not obtain the requisite extension from the Government. The affidavit filed by the petitioners is silent on that aspect of the matter. Therefore, the impugned decision of the respondent- Housing Board cannot be held to be *ultra vires* regulation 23 of the Regulations."

With regard to the right of the respondents to fix the final price, the point was covered by **Bareilly Development Authority**'s case (supra), wherein the Supreme Court made the following observations with regard to the rights of the respondents:

> "Only on the basis of the written acceptance, the name of the first respondent was included in the draw and he has (was) successful in getting the allotment of House No. 37 in MIG type which fact is clearly borne out by the letter from the second respondent (Annexure F). In this connection, it is worthwhile to note that the first respondent, Shri Ajay Pal Singh is the Principal of Shri Guru Govind Singh Inter College and his educational qualifications are MA (Econ. & Hist.), B.Sc. B. Ed. LL.B. From the above, it is clear that all the respondents who have sent their applications for registration with initial payment only after having fully understood the terms and conditions of the brochure inclusive of the Clauses 12 and 13 and Notes 1 and 2 of the General Information Table as per which the BDA has reserved its right to change enhance or amend any of the terms and or conditions as and when felt necessary and also the right to relax any of the condition at its discretion, and that the cost shown in the column 4 of the brochure was only estimated cost subject to increase or decrease according to the rise or fall in the price at the time of completion of the property. This is not only the case of the applicants of MIG scheme but also of the other applicants falling under the other categories i.e. HIG, LIG and EWS. So it cannot be said that there was a mis-statement or incorrect statement or any fraudulent concealment in the information supplied in the brochure published by the BDA on the strength of which all the applicants failing under the various categories applied and got their names registered. In such a circumstance the respondents cannot be heard to say that the BDA has arbitrarily and unreasonably changed the terms and conditions of the brochure to the prejudice of the respondents."

These decisions were followed subsequently in several cases by this Court and it is not necessary to repeat all of them.

As recently as on 22.06.2016 a batch of cases were disposed of in W.P.No.661 of 2015 and batch upholding the right of the respondents to fix the final price differing from the tentative cost in view of the several factors involved in construction of the houses. In view of the same, I see no reason to entertain the present Writ Petition.

The Writ Petition is, accordingly, dismissed with costs of Rs.12,000/- (Rupees twelve thousand only) payable to the respondents. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

(A.RAMALINGESWARA RAO, J)

20.06.2017
vs