

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

1. RSA No.1776 of 1992 (O&M)  
Date of decision : 26.06.2018

Housing Board Haryana

...Appellant

Versus

S.K. Malhotra and others

...Respondents

2. RSA No.1777 of 1992 (O&M)  
Date of decision : 26.06.2018

Housing Board Haryana

...Appellant

Versus

Pushpa Kumari and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. Balwinder Singh, Advocate,  
Mr. Prateek Mahajan, Advocate and  
Ms. Chitwan Kaur, Advocate for the appellant.

Mr. Sanjay Vij, Advocate for the respondents.

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**ANIL KSHETARPAL, J.**

By this judgment, RSA Nos.1776 and 1777 of 1992 shall stand  
disposed of as common issue needs consideration and the trial Court and the  
First Appellate Court also decided both the suits by a common judgments.

The issue which needs consideration is whether in the absence

of any evidence, the Civil Court is bound to uphold the notices given by the Haryana Housing Board to its allottee seeking enhanced price of the houses allotted. Initially, the tentative cost of the MIG Houses, Gurgaon was notified as ₹40,000/- per house. However, at the time of advertisement, cost was increased to ₹42,000/- per house. In the year 1978, when the allotment was made, cost was notified as ₹46,200/-. As per Clause 2(w) of the Allotment letter, Haryana Housing Board was entitled to enhanced cost in three eventualities:-

- (i) Final Bill
- (ii) Arbitration award
- (iii) Enhancement of the compensation for compulsorily acquisition of the land.

Haryana Housing Board issued notices to its allottees demanding the payment of extra amount of ₹8300/- each, thus, the enhancing price of the houses to ₹54,500/-. The allottees through repeated communications, request letters and notices, demanded the details of the enhanced amount and also sought to know how the price of ₹54,500/- has been worked out. Since, the allottees failed to get any response, therefore, they filed two suits.

On notice being issued, the appellant-Housing Board filed written statement pleading that the final cost of the MIG House has been worked out at ₹54,500/-. The details of the manner in which the cost has been worked out was not disclosed. During the pendency of the suits, the Housing Board did not produce any evidence to justify the demand of the enhanced cost made. The plaintiffs even filed an application before the

Court directing the defendants-appellant to provide the details at least to the Court. The defendants chose not to disclose the said information to the Court as noticed by the First Appellate Court in para 13 of its judgment. On the basis of the aforesaid factual position, both the Courts drew adverse inference under Section 114 of the Indian Evidence Act, 1872 against the Housing Board-defendant/appellant, and decreed the suits filed by the allottees.

These appeals were admitted and have come up for final disposal after a period of 26 years. Even during the pendency of the second appeals, no attempt has been made by the Haryana Housing Board to produce any material in support of the demand for enhanced cost of the houses.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the records.

Learned counsel for the appellant-Housing Board has relied upon few judgments of this Court while asserting that the Housing Board has power to enhance the price of the houses. There is no dispute about the aforesaid fact.

Both the Courts have also not held that the Housing Board does not have power to enhance the price of the houses allotted. However, the question is whether in the absence of any evidence, the demand made by Housing Board, Haryana can be upheld by the Court or not. Housing Board, Haryana is created under a State Act. It is a public authority. It was required to justify before the Court at least prima facie that the enhancement as

demand is on account of some justifiable reason, however, in the present case no material has been brought on the file of the Court. A public authority cannot be allowed to act in such an arbitrary manner. A public authority is certainly answerable to its allottees. In the present case, the allottees before filing the suit, demanded the information which was not responded to. Notices issued were also not answered. When the suit was filed, in the written statement, but for asserting that when the final cost has been worked out, the price of the plot comes to ₹54,500/-, no other information was disclosed. Even no evidence supporting the plea in the written statement has been filed.

Learned counsel for the respondents has relied upon the judgment passed by Hon'ble the Supreme Court in the case of **Sanjay Gera Vs. Haryana Urban Development Authority and another, (2005) 3 SCC 207**, to contend that it is the duty of the allotting authority to justify before the Court the demand for enhanced price. Reference can be made to the discussion made in para 5 of the judgment, which is extracted as under:-

*“5. We have heard learned counsel for the parties and perused the records. There is no gainsaying that as per condition No.9 of the allotment order the price in question was only tentative. But the condition is qualified that in case any award is given by the Land Acquisition Officer the price can be enhanced. Condition No.9 reads as under:*

*" The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act shall be payable proportionately as determined by the authority. The additional price determined shall be paid within thirty days of its demand."*

*As per this condition enhancement could be made on the cost of the land as per the award by the competent authority under the Land Acquisition Act. But no such award was given by the Land Acquisition authority. In a suit a duty is cast on the defendants to lead evidence to show that increase on the cost of the land is necessitated because of enhancement of paying higher rate of compensation to the Animal Husbandry Department. But no such evidence was led in the suit. D.W.1 nowhere stated that this enhancement was warranted because Animal husbandry Department had to be paid compensation at higher rate for acquisition of this land. It may be that because of decision given by the Punjab & Haryana High Court, it enabled the defendants to claim higher price for allotted plot. In a civil suit all facts have to be pleaded and proved. But in the present case there is no evidence to substantiate the allegation. It was incumbent on the part of the Haryana Urban Development Authority to substantiate the same by leading proper evidence that the enhancement was effected on account of increase in the price of acquisition of land. But the statement of D.W.1, the only evidence which has been led by the defendant-respondents is significantly silent on this issue. In civil matters, the rights of the parties cannot be determined just on the basis of any other judgment on questions of fact. It is the duty of the defendants to specifically plead and prove their case by leading proper evidence in the matter. As per the evidence led by the defendant-respondent i.e. the documentary evidence as well as the oral evidence, the allegations made by the defendants are not substantiated. So far as condition No.9 of the allotment letter is concerned, there is no dispute that the defendants can demand additional price as the price at the time of allotment was tentative. But in order to justify the*

*enhancement of the price as per condition 9 of the allotment letter, the defendants had to lead proper evidence to substantiate the allegation. There is no such evidence produced by the defendants. Therefore, the trial court has rightly approached in the matter and this is a case of total misreading of the evidence by the learned Additional District Judge as well as by learned Single Judge of the High Court.”*

In view of the aforesaid undisputed facts, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**26.06.2018**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                      Yes/No**