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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA-439-1990 (O&M)
Date of decision: 01.08.2024

Housing Board, Haryana

...Appellant

Versus

K.C. Gupta and others

...Respondents

2. RSA-440-1990 (O&M)
Date of decision: 01.08.2024

Housing Board, Haryana

...Appellant

Versus

Narain Singh and others

...Respondents

3. RSA-445-1990 (O&M)
Date of decision: 01.08.2024

Housing Board, Haryana

...Appellant

Versus

Daryao Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Deepak Balyan, Advocate and
Mr. Sushant Sharma, Advocate for the appellant
(In all three cases)

Mr. Ashok Gupta, Advocate and
Mr. Eklavya Gupta, Advocate for the respondents
(In all three cases)

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VIKAS BAHL, J. (ORAL)

1. The present order would dispose of three Regular Second Appeals filed by the Housing Board, Haryana under Section 41 of the Punjab Courts Act, 1918 as common questions of law and facts arise in the same and a common judgment has been passed by the trial Court as well as by the First Appellate Court in all the three appeals.

2. Brief facts of the present case are that eight civil suits were consolidated by the order of the trial Court and all the said eight suits were decided by a single judgment of the trial Court dated 19.09.1988. RSA-445-1990 is arising from Civil Suit No.294/1 of 08.04.1983, RSA-439-1990 is arising from Civil Suit No.33 of 24.01.1984 and RSA-440-1990 is arising from Civil Suit No.1404/1 of 20.10.1984.

3. The Housing Board, Haryana-appellant-defendant No.1 (hereinafter to be referred as defendant No.1) had invited applications from the persons who were willing to acquire the houses built up by it under three categories of houses which are as follows:-

(a) Middle Income Group (MIG)

(b) Lower Income Group (LIG)

(c) Economical Weaker Section (EWS)

4. All the plaintiffs (respondents herein) are stated to have applied for one or the other type of houses and the price of all the three categories of the houses at the time of agreement was as under:-

(i) MIG Rs.46,200/-

(ii) LIG Rs.18,000/-

(iii) EWS Rs.8,000/-

5. It was the case of the plaintiffs that the price was enhanced to Rs.56,200/- for MIG type houses, Rs.23,100/- for LIG type houses and Rs.11,800/- for EWS type houses and it is against the said enhancement of price that the plaintiffs had filed the civil suits and terming the said increase as arbitrary and against natural justice and equity. It is further the case of the plaintiffs that the price of MIG type houses was raised at the time of execution of the agreement and the enhanced price included all the items used in the construction of houses and the price could not be raised for a second time.

6. Defendant No.1-Housing Board, had raised several objections and had further submitted that the plaintiffs had entered into Hire Purchase Tenancy Agreement with defendant No.1 and as per Clause 2(w) of the same, the defendant No.1 was permitted to determine the final price and enhance the sale price of the buildings within a period of seven years from the date of allotment and it was thus, pleaded that the defendant could certainly review the price from time to time and could do so even after completion and occupation of the houses by the plaintiffs. It was further averred that there had been an enhancement in the compensation of the land awarded under the order of the court and thus, the enhanced amount was liable to be recovered from the allottees.

7. The trial Court had dismissed the suits of the plaintiffs vide judgment and decree dated 19.09.1988.

8. Against the said judgment, three appeals were filed by several plaintiffs who are respondents in the present three Regular Second Appeals. The First Appellate Court had allowed the set of all the three appeals. Relevant portion of the judgment passed by the First Appellate Court is reproduced hereasunder:-

"9. The sole point debated before me is whether the Board is justified in enhancing the price which it has done by the notices under challenge. We have seen above that the mainstay of the Board's case is clause 2(w) of Hire Purchase Tenancy Agreement reproduced above.

10. The two relevant authorities cited on the subject are (1) unreported judgment in Civil Writ Petition No. 381 of 1981 Ravinder Rastogi Vs. Housing Board Haryana, decided by Hon'ble Mr. Justice G.C. Mittal on 15.1.1982 and (ii) Civil Writ Petition No.447 of 1987, decided by Hon'ble Mr. Justice A.L. Bahri on 30.6.88, Residents Welfare Association (Regd). Housing Board Colony Faridabad Vs. Housing Board Haryana and others (:1988 Haryana Rent Reporter 460.

*The aforesaid clause of the agreement was interpreted in these two authorities and **it was held that after the receipt of the final bills, the Board could enhance the price of the houses only to the extent of (i) enhancement in the compensation for the land acquired for these houses and (ii) interest on such compensation. It could not be allowed to include other charges like profits administration charges etc.***

11. Now let us see what are the items included in the present enhancement. These are given in Ex.D5 (at pp.150 to 152). In respect of MIG houses, these details are as follows:

(i)	*Cost of land (30 16-06)*	*Rs.10412.00*
(ii)	*2% Admn. Charges*	*Rs.209.00*
(iii)	*Interest*	*Rs.2157.00*

(Details of dates etc. omitted)

(iv)	*Construction cost as intimated by Xen. Rohtak.*	*Rs.30588.00*
(v)	*10% Admn. Charges*	*Rs.3059.00*
(vi)	*Interest @ 9 on 33647 for half period of construction 9 months*	*Rs.2531.00*
		Rs. 48956.00
(vii)	*Add 5% provision for contingencies*	*Rs.2448.00*
		Rs.51404.00
(viii)	*Add 10% compulsory profit*	*Rs.5141.00*
		Rs.56545.00
		Say Rs.56,600/-

In respect of LIG, these details are as follow:-

(i)	*Payment of land (30 16-06)*	*Rs.5299.00*
(ii)	*2% Admn. Charges*	*Rs.106.00*
(iii)	*Interest (details of dates etc. omitted)*	*Rs.784.00*
(iv)	*Construction cost as intimated by Xen. Rohtak*	*Rs.13816.00*
(v)	*7% Admn. Charges*	*Rs.968.00*
(vi)	*Interest @ 7% on Rs.14784 on half period of construction i.e. 11 months*	*Rs.949.00*
		Rs.21922.00
(vii)	*Add 5% provision for contingencies*	*Rs.1097.00*
		Rs.23019.00
		Say Rs.23,100/-

In respect of EWS, these details are as under:-

(i)	*Cost of land (32 16-06)*	*Rs.2403.00*
(ii)	*2% Admn. Charges*	*Rs.49.00*
(iii)	*Interest (Details of dates etc. omitted)*	*Rs.270.00*
(vi)	*Construction cost as intimated by Xen. Rohtak.*	*Rs.7716.00*
(v)	*7% Admn. Charges*	*Rs.541.00*
(vi)	*Interest @ 5% on Rs.2257 on half period of construction i.e. 7 months*	*Rs.241.00*
		Rs. 11220.00
(vii)	*Add 5% provision for contingencies*	*Rs.561.00*
		Rs.11781.00
		Say Rs.11800/-

12. In view of the above authorities, we can consider items No.(i), (iii) and (iv) only. All other items have to be ignored and rejected straight away.

*13. **Now as to item no.(i), it could be allowed if it were shown that it was on account of enhancement in the compensation awarded for the land in question. But this has not been done. Interestingly, the Board has not filed even the break up of the cost originally fixed from where we could find out whether the amount new being claimed was on account of such enhancement. Therefore, the Board has disentitled itself to claim this item.***

14. As to item No. (iii) and (vi) i.e. interest here too the Board has failed to show that it was incurred on the amount of compensation for land.

15. Thus on these two items also, the Board has fails to bring its case within the parameters of permissibility laid down by the Hon'ble High Court in the judgments quoted above.

15.A. No other point was urged.

*16. Therefore, in view of the facts brought on the record the terms of the agreement, and the interpratation placed on these terms by the Hon'ble High Court, **I am of the opinion that the Board is not justified in enhancing the prices of the various types of houses involved in this case**. In other words, the notices issued by it are illegal and void. It is held so and the findings of the trial court to the contrary are reversed. In result, the judgment and decrees of the trial court in so far as they dismiss the suits of the present appellants (minus those who have withdrawn their appeals as mentioned in paragraph No. 3 above) are set aside and the suits of these appellants are decreed. They are granted injunction restraining the defendants from implementing the impugned notices or claiming enhanced price in pursuance thereof. However, the parties are left to bear their own costs throughout. Decree sheet be drawn accordingly and file be consigned to records after completion."*

A perusal of the abovesaid judgment would show that it was observed by the First Appellate Court that in view of the settled law, the Board could enhance the price of the houses only to the extent of (i) enhancement in the compensation for the land acquired for these houses and (ii) interest on such compensation and not with respect to other charges. The breakup of the enhancement amount sought was also reproduced in para 11 of the judgment. In para 12, it was observed that all items except item Nos. (i), (iii) and (vi) (wrongly typed as (iv) in para 12 as has been affirmed by learned counsel for the appellants as well as by learned counsel for the respondents that it is apparently a typographical error) were outrightly rejected in view of the settled law. With respect to item No.(i), it was observed that the same could be allowed in case it was shown that the said amount was due on account of enhancement in the compensation awarded for the land in question and since the same had not been done thus, the Board had disentitled itself to claim the item. It was further observed that the Board had not even provided the details as to the breakup of the cost originally fixed from where it could be found out whether the amount now being claimed was on account of such enhancement. Similar observations were made with respect to item No.(iii) and (vi) and accordingly, the appeals were allowed.

9. Learned counsel for the appellants has submitted that the said order of the First Appellate Court should not be construed to mean that the appellant-Board did not have the right to recover the said amount since as per said Clause 2(w), the right to recover was there and it is only in the peculiar facts and circumstances of the present case and on account of non-

production of the relevant records that the three appeals had been allowed. It is submitted that the said order should not be treated as a precedent restraining the Board from recovering the enhanced money in other case once the Board is able to meet the parameters of the law laid down in the judgment which has been mentioned in para 10 of the judgment passed by the First Appellate Court.

10. Learned counsel for the respondents has submitted that there is no dispute with respect to the proposition propounded by the appellants but since in the present case, the said parameters have not been met thus, the present appeals have to be decided in accordance with the facts and circumstances and the record produced before the Court in the present three cases and on the basis of the same, all the three appeals filed by the present appellants deserve to be dismissed. It is further argued that a delay of more than 30 years has occurred and thus, even on the principle of equity, any interference by this Court would cause serious prejudice to the rights of the poor allottees.

11. This Court has heard learned counsel for the appellants as well as respondents and has perused the paper book.

12. The findings of the First Appellate Court which have been reproduced hereinabove are in accordance with law and call for no interference. The findings have not been shown to be perverse or illegal in any manner and have not been challenged before this Court and only an apprehension has been raised and a limited prayer has been made that the same be not treated as a precedent. It is apparent that the First Appellate Court has held that with respect to the two aspects which have been

mentioned in para 10 of the judgment of the First Appellate Court, the Board could seek enhancement and it is on account of the facts and circumstances of the present case which have been mentioned in paras 13 and 14 of the abovesaid judgment that it has been rightly held that the appellants are not entitled to claim the amount and the first appeals have been allowed. The abovesaid observation would also remove the apprehension raised on behalf of counsel for the appellants-Board to the effect that the said judgment should not be construed as an estoppel on the Board to claim enhancement in accordance with said Clause 2(w) in other cases where the necessary parameters are proved on record. Moreover, the present case has been decided in view of peculiar facts and circumstances and on the basis of the record produced before the Court.

13. Keeping in view the abovesaid facts and circumstances, all the three Regular Second Appeals are dismissed and the judgment of the First Appellate Court dated 16.10.1989 is upheld.

14. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

01.08.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

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

Whether reportable:- **Yes/No**