

Before : G. C. Mital, A.C.J. & H. S. Bedi, J.

CHANDIGARH HOUSING BOARD, CHANDIGARH,—Appellant.

versus

BALDEV SINGH DHANJU AND OTHERS,—Respondents.

Letters Patent Appeal No. 2282 of 1989.

23rd April, 1991.

Constitution of India, 1950—Art. 226—Initial scheme for allotment of flats modified—Allottee accepting terms of modified scheme—Such allottee later on challenging the scheme in the High Court—Writ jurisdiction of the High Court—Scope of such jurisdiction.

Held, that there was no attempt by the Board to revise the price upwards and the Board was only insisting that the price as accepted by the allottees should be paid, whereas, the case of the allottees is that they are not liable to pay price which they have specifically accepted and the Board should be bound down to the tentative price advertised in the year 1977. The allottees herein accepted the offer of allotment, executed document to that effect and were thereafter put in possession on that basis. The contract entered into between the Board and the allottees was a complete one and both the parties were bound by it. The jurisdiction of High Court while exercising its powers under Article 226 of the Constitution of India in cases of non-statutory concluded contracts was limited.

(Para 4)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the learned Single Judge (Mr. Justice A. L. Bahri), dated 30th August, 1989, in the above mentioned writ petition.

Anand Swaroop, Sr. Advocate with Rajiv Vij, Advocate, B. M. Lal, Advocate, Rajiwar Singh, Advocate, Shri J. S. Sathi, Advocate, for the Appellants.

Ashwani Kumar Chopra, Advocate, Shri Ravinder Jaswal, Advocate, for the Respondents.

JUDGMENT

Harjit Singh Bedi, J.

(1) The present Letters Patent Appeal is directed against the judgment of the learned single Judge, dated 30th August, 1989, rendered in C.W.P. No. 4482 of 1986. This judgment will also dispose of L.P.A. Nos. 2283 to 2294 of 1989 and 1374 to 1377 of 1990 filed by the Chandigarh Housing Board, Chandigarh, as well as Cross appeals L.P.A. Nos. 986 and 1370 of 1990, L.P.A. Nos. 22 and 23

of 1991 filed by the petitioners of the aforesaid civil writ petition, as questions of law and fact involved in them is common. The facts for purposes of disposal, however, are taken from L.P. No. 2282 of 1989.

(2) The Chandigarh Housing Board (hereinafter called the "Board") floated a scheme in the year 1976 for the construction of flats of different categories for allotment to different categories of residents of Chandigarh. Applications for allotment were invited and the tentative prices were also advertised. In the year 1977, fresh applications for allotment were invited and the said applications were registered from 1st December, 1977 to 15th January, 1978. It was stipulated that the houses were to be constructed within a period of three years and were to be allotted by draw of lots. A copy of the advertisement is annexed to the writ petition as Annexure P-1. The tentative price of various categories of flats were once again made known to the prospective applicants. The mode and manner of payment, initial deposit and the likely completion time schedule was also communicated. It is stated that the petitioner in response to the advertisement published in the Tribune in December, 1977 and January, 1978, submitted applications for the allotment of LIG (Upper) flats and on the applications having been found to be in order, they were duly registered. It appears that in the year 1980, there was some change in the policy of the Board and it was decided to allow flats to be built for LIG (Upper) Category for allotment to the persons, who had applied for MIG (Lower) Category of flats i.e. the Board decided to club together both the **aforementioned categories into one category**. The Board thereafter issued letters to the respondent in September, 1980 indicating the change of plan and also the tentative price now determined for the flats of various categories, and called upon them to exercise their option for various categories of flats offered. Pursuant to the offer, the petitioners gave their option for MIG (Duplex) flats. It appears that the policy of the Board for allotting flats and the price fixed did not find favour with the petitioners and they filed a representation before the Board, and on no action having been taken they filed Civil Writ Petition No. 2412 of 1982 (*Baldev Singh Dhanju and others v. Chandigarh Housing Board*) which was disposed of on 9th May, 1986, with the following observations :

"It is needless to say that the Board while considering the representation of the petitioners shall keep in mind the

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plea of the petitioners that if the houses had been allotted to them at the proper time, they would have paid the price prevalent at that time and shall also take into account the statutory provisions and the law and, more especially, the decision of the Madhya Pradesh High Court in Smt. Sadhna Aggarwal and others v. Indore development Authority, Indore, AIR 1986 M.P. 88.

In this view of the matter, both the writ petitions stand disposed of with no order as to costs".

Thereafter, the Board considered the representation filed by the petitioners and rejected it,—*vide* order Annexure P-7 on the ground that price for the flats had been fixed on the basis of actual cost of construction plus the other charges fixed according to the HUDCO guidelines. It may also be noted that during the pendency of the aforementioned writ petition, the petitioners were allotted the flats,—*vide* Annexure P-4. The writ petitioners have now challenged the validity of Annexure P-7. The learned single Judge allowed the writ petition and directed the Board to refix the price of the flats under the guidelines issued by HUDCO and the observations made in the judgment. The present letters patent appeal is directed against the judgment of the learned single Judge.

(3) Mr. Anand Swaroop, learned Senior Advocate, appearing for the appellant-Board, has contended that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India, should not have interfered with the matter as the offer made to the respondents,—*vide* Annexure P-4 with regard to the price and also other conditions had been accepted by the respondents which led to the creation of a valid contract between the parties. To highlight his argument he has drawn our attention to clause (3) of the letter of allotment in which the total price and the payment schedule has been laid down. He has stressed that in pursuance of the aforesaid letter, the petitioners filed affidavits and entered into formal agreements with the Board accepting all the stipulated conditions. He has also cited *Bareilly Development Authority v. Ajay Pal Singh* (1), in support of his case,

(4) After hearing the counsel for the Board and the respondents, we are of the view that the judgment reported in *Bareilly Development Authority's case* (supra) fully covers the matter in hand and keeping in view the ratio of this judgment, the present Letters Patent Appeal (with some exceptions which will hereinafter be dealt with) has to be allowed. In the case mentioned above, the Bareilly Development Authority had allotted various categories of flats on the advertised prices. The letter of allotment issued by the Authority clearly stated that the price shown in the letter of allotment was only tentative and could be increased or decreased according to rise in prices at the time of completion of the property. The offer of allotment on the stipulated terms and conditions was accepted by the allottees. Thereafter the Bareilly Development Authority sought to revise the prices of the flats which led to the filing of a writ petition before the Allahabad High Court. The writ petition was allowed by the High Court and it was held that the revised price as also the revised quantum of instalments fixed by the Bareilly Development Authority were arbitrary and liable to be struck down. The matter was taken by the Bareilly Development Authority to the Supreme Court and the Hon'ble Supreme Court allowed the appeal holding that the applicants had accepted the terms of allotment and one of the terms of allotment was that the price advertised was only tentative and could be revised. It was held that "where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple". The Supreme Court further held that the scope of a High Court while exercising its powers under Article 226 of the Constitution of India in cases of non-statutory concluded contracts was limited and a finding that the action of the authorities was arbitrary and unreasonable, could not be recorded under this jurisdiction. It will be seen that in the present case there was no attempt by the Board to revise the price upwards and the Board was only insisting that the price as accepted by the respondents when they executed the affidavits and the agreements accepting the terms and conditions of the allotment letter) should be paid, whereas, the case of the respondent is that they are not liable to pay the price which they have specifically accepted and the Board should be bound down to the tentative price advertised in the year 1977. The respondents, herein accepted the offer of allotment, executed document to that effect and were

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thereafter put in possession on that basis. The contract entered into between the Board and the respondents was a complete one and both the parties were bound by it. As observed by the Supreme Court no order or writ can be issued in this situation.

(5) The case of respondent Nos. 1 and 9 i.e. Baldev Singh Dhanju and Krishan Lal Miglani is, however, slightly different as they were petitioners in the earlier writ petition No. 2412 of 1982. The Hon'ble Judge while disposing of that writ petition had directed that the case of the petitioners be considered in the light of the observations made in the judgment. It appears that while deciding the representation.—*vide* Annexure P-7, the observations of the learned single Judge which were inter parties between Baldev Singh Dhanju and Krishan Lal Miglani aforementioned and the Board, were not kept in view. The present letters patent appeals *qua* these two is, therefore, liable to be dismissed.

(6) In view of the position of law discussed above, no other point need be gone into. The present appeal is, therefore partly allowed and the judgment of the learned single Judge set aside. However, the letters patent appeal *qua* respondents Nos. 1 and 9 is dismissed. Letters Patent Appeals Nos. 986 and 1370 of 1990 and 22 and 23 of 1991 filed by the writ petitioners are hereby dismissed.

S.C.K.

Before : I. S. Tiwana & B. S. Nehra, JJ.

RANJIT KAUR,—Petitioner.

versus

PAVITTAR SINGH,—Respondent.

Criminal Misc. No. 5684-M of 1990.

29th May, 1991.

Code of Criminal Procedure, 1973 (II of 1974)—S. 125—Right to maintenance—Wife surrendering right to maintenance in divorce proceedings—Subsequent claim for maintenance u/s 125 cannot be defeated by any agreement to the contrary—Right u/s 125 is statutory.