

Avtar Singh Sahi and others *v.* State of Haryana and another
(S. S. Sodhi, J.)

quashed by accepting this writ petition. The Board shall be at liberty to boat fresh tenders prescribing technical eligibility conditions for the tenders. It is further clarified that the Board shall also have option to consider the tender of any of the present tenderers except Respondent No. 2 provided they fulfil the eligibility test of experience and the cost of installation of the plant are considered reasonable. In view of the peculiar circumstances of the case, there will be no order as to costs.

R.N.R.

Before : S. S. Sodhi, M. R. Agnihotri and J. B. Garg, JJ.

AVTAR SINGH SAHI AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 8122 of 1987.

15th May, 1990.

Punjab Town Improvement Act (IV of 1922)—Panipat Improvement Trust Land Disposal Rules, 1976—R. 24—Indian Contract Act, 1872—S. 23—Sale or allotment of residential plots acquired by Improvement Trust for Scheme—Demand for enhanced price due to increase in compensation awarded under the Land Acquisition Act—Offer of plots at tentative price subject to revision and enhancement of compensation etc.—Relationship between vendor and vendee is contractual and governed by terms of contract—Improvement Trust entitled to recover compensation enhanced by courts.

Held, that once the Improvement Trust enters into the field of contract by making allotments on terms and conditions set forth in the application for allotment, sale-deed and other documents, it acts purely in its executive capacity, and, constitutional provisions thus no longer govern its relations with those to whom it has allotted or sold plots.

(Para 6 & 7)

Held, that rule 24 requires the agreement for sale to be in Form 'D' & 'F'. Form 'F' being specifically for agreement for sale of residential plots, it is this Form in terms of which the agreement for sale was required to be executed. There is ample reference there also

to tentative price. The petitioner can not, therefore, say that mention of tentative price of the residential plots in the agreement was, in any manner, contrary to law.

(Paras 12 & 13)

Held, that the Improvement Trust is not a charitable trust and surely, therefore, where additional cost of land is sought to be recovered, no occasion is provided for branding the stipulation to this effect, in the agreement, to be contrary to public policy. The provisions of Section 23 of the Contract Act consequently do not apply.

(Para 15)

Held, that there would be no legal or constitutional bar upon an Improvement Trust demanding enhanced price for plots sold or allotted by it consequent upon increase in the compensation awarded to the owners of the acquired land in proceedings under the Land Acquisition Act, if according to the terms and conditions of such allotment and sale, it is empowered to do so.

(Para 18)

Constitution of India, 1950—Art. 14—Improvement Trust originally fixing the price of residential plots at Rs. 72 per sq. yard—Part of same land sold to Government for Telephone Exchange at Rs. 35 per sq. yard—Reasonable classification—No discrimination.

Held, that residential plots and land for Telephone Exchange are categories apart. A Telephone Exchange provides a facility and amenity which has now to be looked upon as almost a necessity in any developing town and this by itself constitutes an inherent justification for concession in land price for it.

(Para 10)

Writ Petition under Articles 226/227 of the Constitution of India praying that after calling for the records of the case:

- (a) *a writ in the nature of Certiorari quashing the orders passed by the respondent—Trust for enhancing the prices of plots and consequence notices of penalty and resumption; be issued;*
- (b) *any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper may also be issued;*
- (c) *filing of certified copies of Annexures P-1 to P-5 may be dispensed with;*
- (d) *prior service of notices upon the respondents may also be dispensed with;*
- (e) *costs of the petition be also awarded.*

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It is further prayed that during the pendency of the petition, recovery of enhanced amount from the petitioners may kindly be stayed. The respondent-Trust may further be directed so as not to charge penalty or resume the plots.

V. K. Bali, Sr. Advocate, for the Petitioner.

S. C. Mohunta, A.G. Haryana, for Respondent No. 1.

Arun Jain, Advocate, for Respondent No. 2.

ORDER

S. S. Sodhi, J.

(1) When an Improvement Trust acquires land for a development scheme and proceeds thereafter to allot/sell residential plots therein, is it empowered to demand enhanced price for such plots consequent upon the increase in the compensation awarded to the owners of the acquired land in proceedings under the Land Acquisition Act ? Herein lies the controversy raised in this bunch of writ petitions

(2) The Improvement Trust Panipat prepared a Development Scheme for a residential/commercial complex under the relevant provisions of the Punjab Town Improvement Act, 1922 covering an area of over 68 *bighas* of land within the Municipal Limits of the town. The Land Acquisition Collector by his Award of November 6, 1975 (Annexure P/1) assessed the market value of this land at Rs. 55,584 per acre. This rate works out to about Rs. 11 per square yard. The Improvement Trust, after taking into account also the development and other charges fixed the price of land for residential plots at Rs. 72 per square yard and invited applications for allotment of such plots in the prescribed form (Annexure R/1). This Form contains a specific clause to the effect that the price fixed was tentative and further that the present tentative price is subject to revision and enhancement at any time due to enhancement of compensation, interest and the cost allowed or Award by any appellate court or for any other reason. Not only this, even in the letter of allotment issued to the petitioners (Annexure R/2), there is pointed mention of this Rs. 72 per square yard being only the tentative price.

(3) Further, in the documents executed after the allotment of plots had been accepted on the terms and conditions referred to earlier, there is a clear stipulation to the effect that in the event of additional price being determined as payable by the transferees, such additional price shall be paid within 30 days of the demand. Reference, in this behalf, is invited to the terms of the agreement and surety bond for sale (Annexure R/3). A similar clause is also to be found in the sale-deed and affidavit executed by the petitioners. Illustrative of this being the sale deed (Annexure R/5) and the affidavit (Annexure R/6).

(4) Now, by virtue of the enhanced compensation awarded by the courts to the owners of the land acquired, the Improvement Trust has had to pay them an additional sum of Rs. 26,00,000 as price of their land. It is the payment of this amount that has now impelled the Improvement Trust to enhance the price of the plots sold and demand additional sale price from the allottees/purchasers of such plots.

(5) According to the counsel for the petitioners, transfer of plots by the Improvement Trust, whether by sale or allotment, is governed by the provisions of the Panipat Improvement Trust Land Disposal Rules, 1976 (hereinafter referred to as 'the 1976 Rules') and that neither in these rules nor in the Punjab Town and Improvement Act, 1922 is there any provision conferring power and jurisdiction upon the Trust to increase the price of plots on account of any enhanced compensation being awarded by the courts to the land-owners for their land acquired by it for the scheme in question and therefore, in the absence of legislative sanction for it, no enhanced price can be demanded for the plots sold, even when the price of the land stands increased by the subsequent Award of the court.

(6) The inherent implausibility of this stance stands writ large. There is no gainsaying that the Improvement Trust is not intended to be nor indeed is a charitable trust. This being so, where lies the rationale of denying it the right to recover the price of the land as eventually determined by the court ?

(7) Looking to the strict legal aspect of it too, once the Improvement Trust enters into the field of contract, as in the present case, by making allotments on terms and conditions set forth in the application for allotment, sale-deed and other documents, it cannot

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but be taken that it acts purely in its executive capacity and constitutional provisions thus no longer govern its relations with those to whom it has allotted or sold plots. The relevant judicial precedent is provided by the judgment of the Supreme Court in *Bareilly Development Authority and another vs. Ajay Pal Singh and others*, (1), where a similar question arose with regard to enhancement in the price of flats constructed by the Bareilly Development Authority. The brochure inviting applications for purchase of such plots contained the clause that the cost shown therein was only an estimated cost and it would increase or decrease according to the rise or fall in the price at the time of the completion of the flats. The Bareilly Development Authority also reserved to itself the discretion to change, alter or modify any of the terms and/or of the conditions of allotment given in the brochure. On the cost of the flats, subsequently being revised, enhanced price was demanded from the allottees. In dealing with the challenge to this demand, it was held that even if the Bareilly Development Authority is taken to be a State under Article 12 of the Constitution, while determining the price of flats constructed by it after entering into the field of ordinary contract, it acts purely in its executive capacity, "thereafter, 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*". Further, it was observed that "the allottees after voluntarily accepting the conditions imposed by the BDA have entered into the realm of concluded contract pure and simple with the BDA and hence the respondents can only claim the right conferred upon them by the said contract and are bound by the terms of the contract unless some statute steps in and confers some special statutory obligations on the part of the BDA in the contractual field."

(8) Earlier too, in *Premji Bhai Parmar and others vs. Delhi Development Authority and others*, (2), in dealing with the challenge to the surcharge on the price of MIG flats, constructed by the Delhi Development Authority and after holding that even if this Authority is taken to be 'other Authority' for the purposes of Article 12, while determining the price of flats constructed by it, it acts purely in its executive capacity. It was in the same vein observed, after the State or its agents have entered into the field of

(1) A.I.R. 1989 S.C. 1076.

(2) A.I.R. 1981 S.C. 738.

ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties *inter se*. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract."

(9) These observations provide a complete answer also to the further plea of discrimination and violation of the provisions of Article 14 as raised by the counsel for the petitioners. The argument being that whereas the Trust had originally fixed the price of residential plots at Rs. 72 per square yard, it had sold an acre of land to the government for setting up a Telephone Exchange at only Rs. 35 per square yard.

(10) In dealing with this aspect, besides the rule enunciated by the Supreme Court in *Bareilly Development Authority and another*; and *Premji Bhai Parmar and others* cases (*supra*), it must also be appreciated that residential plots and land for Telephone Exchange are, at any rate, categories apart. A Telephone Exchange provides a facility and amenity which has now to be looked upon as almost a necessity in any developing town and this by itself constitutes an inherent justification for concession in land price for it.

(11) Faced with this situation, counsel for the petitioner sought to contend that the contract for the allotment/purchase of plots was statutory, inasmuch as, its format had been prescribed in the 1976 Rules. Adverting in this behalf to rule 24 thereof, it was argued that in the terms of this Rule the agreement for sale has to be executed in form 'D' and what is required to be stated there is the price of the plot and not any tentative price. It was thus contended that any agreement providing for payment of enhanced price would be contrary to these provisions and therefore, not binding.

Rule 24 reads as under :—

"In the case of sale by allotment or tender/bid an agreement for sale in form 'D' or 'F' as the case may be shall be

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executed. The purchaser shall be required to deposit 5 per cent of the total value of the plot subject to a maximum of Rs. 500 and minimum of Rs. 100 as a security for the due fulfilment of these conditions. The trust may forfeit the above security or any part thereof, if the purchaser, fails to complete the building within the prescribed period to be fixed by the Trust in each scheme or extended period and or in accordance with the conditions set-forth in the agreement. The above security shall be refunded to the purchaser, without interest, only when the building is completed within the prescribed or extended period and in accordance with the conditions of agreement for sale/allotment and when the sale money has been paid in full with penalty and interest, if any. After all payments have been made the Trust shall execute sale deed in form 'E'.

(12) It will be seen that this rule requires the agreement for sale to be in form 'D' or 'F' as the case may be.

(13) Form 'F' being specifically for agreement for sale of residential plots, it is clearly this form in terms of which the agreement for sale was required to be executed in the present case. There is ample reference there also for tentative price. The petitioners cannot, therefore, be heard to say that mention of tentative price of the residential plots was, in any manner, contrary to law.

(14) Next, there was an attempt to press in aid the provisions of Section 23 of the Contract Act founded upon the contention that the clause in the relevant agreements and documents pertaining to enhancement of price was against public policy, inasmuch as, it enabled the Improvement Trust to arbitrarily demand any price from the allottee/purchaser. Reliance being placed, in this behalf, upon the judgment of the Supreme Court in *Central Inland Water Transport Corporation Ltd. and another v. Brojo Nath Ganguly and another* (3). There, by a scheme of arrangement, a government company "Rivers Steam Navigation Company Ltd." was dissolved and in terms thereof, most of the existing staff of this Company was taken over as employees of the Corporation. The letters of appointment given to such employees provided that they

(3) A.I.R. 1986 S.C. 1571.

would be subject to the service rules and regulations of the Corporation. One such rule provided for termination of the employment of a permanent employee on three months' notice on either side or payment of an amount equal of three months' basic pay and dearness allowance in lieu of such notice. It was the validity of this rule in the contract of service that was called in question, on the touch-stone of the provisions of Section 23 of the Contract Act. In dealing with this, the Court observed that in consonance with the right and reason intended to secure social and economic justice, inconformity with the mandate of the equality clause in Article 14 of the Constitution, "the courts will not enforce and all when called upon to do so, strike down an unfair and unreasonable clause in a contract entered into between the parties, who are not equal in bargaining power". It was consequently held that in accepting the said service rule, namely; of termination with three months' notice, the employees had no real choice. Had they not accepted the appointment, they would have received some meagre compensation and then faced the hazard of finding another job. This rule was thus opposed to public policy and consequently void under Section 23 of the Contract Act.

(15) Clearly, no occasion is provided for invoking this principle in the context of the circumstances and situation here. It was with full knowledge of the terms and conditions of the allotment/sale of the residential plots that the petitioners took them. At any rate, it was only after they had accepted these terms and made the initial payment for registration that the plots were allotted or sold to them. It would be pertinent to note that there is no suggestion here that the petitioners were in any manner mis-led or mis-informed about the terms and conditions for the sale or allotment of plots. The case of the petitioners thus cannot be put at par with those of the employees whose services had been taken over by the Corporation in the *Central Inland Water Transport Corporation Ltd. case* (supra) nor can the clause in the service condition of the employees providing for termination on three months' notice bear comparison with the clause in the present agreement providing for enhanced price payable for the plots. The most important and significant point to note, however, is that what the Improvement Trust is calling upon the petitioners to pay is the additional price of the land acquired by it for the scheme under which the plots had been sold or allotted by it to them. As mentioned earlier, the Improvement Trust is not a charitable trust and surely, therefore

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where additional cost of land is sought to be recovered, as in the case here, no occasion is provided for branding the stipulation to this effect in the agreement to be contrary to public policy. The provisions of Section 23 of the Contract Act are consequently of no avail to the petitioners.

(16) As a last resort, some relief was sought on the plea that the enhanced price of the land acquired which was now sought to be recovered by the Improvement Trust should not have been as much as it was, had it not been for the default on the part of the Improvement Trust in delaying the forwarding of the reference by the land-owners to the Tribunal. The contention being that while the Award of the Land Acquisition Collector had been made in 1975, reference was not made to the Tribunal till 1980 and in this manner this five years' interest had to be paid by the Improvement Trust which it could have avoided, had it made the reference without delay.

(17) The contention raised though attractive on the face of it, cannot, however, stand scrutiny as a reference to the record reveals that the delay that took place is to be attributed, not to the Improvement Trust, but to the State Government. In the first instance, in May 1976, the State Government issued a notification appointing the Deputy Commissioner, Karnal, as the Presiding Officer of the Tribunal. Later, however, when on the advice of the Legal Remembrancer it was discovered that the Deputy Commissioner could not be so appointed, a fresh notification was issued in August 1977 appointing the District Judge as the Presiding Officer of the Tribunal. Sanction for the appointment of a Tribunal was not, however, forthcoming till February 1978. It was only in June that year that the District Judge took charge and he then asked for assessors for the Tribunal. It was then in 1979 that a notification was issued appointing the Presiding Officer and the assessors for the Tribunal. It would be clear from this that no proceedings were possible before the Tribunal from 1975 to 1980. The Improvement Trust cannot, obviously be penalized for any default or inaction on the part of the State Government.

(18) Such being the situation, as it emerges here, the demand by the Improvement Trust of enhanced price for the residential plots allotted/sold by it, cannot, but be held to suffer from no infirmity or illegality. It follows, therefore, that there would be

no legal or constitutional bar upon an Improvement Trust demanding enhanced price for plots sold or allotted by it consequent upon increase in the compensation awarded to the owners of the acquired land in proceedings under the Land Acquisition Act, if according to the terms and conditions of such allotment and sale, it is empowered to do so, as in the present case.

(19) All these writ petitions are consequently hereby dismissed. In the circumstances, however, there will be no order as to costs.

R.N.R.

Before : G. R. Majithia, J.

VIJAY KUMAR AND ANOTHER,—Petitioners.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 3489 of 1988.

15th September, 1989.

Constitution of India, 1950—Art. 226—Writ of certiorari—Scope of such writ—No objection to the jurisdiction of the President of Tribunal raised before Tribunal—Party debarred from raising such objections in the High Court.

Held, that a writ of certiorari can be issued for correcting error of jurisdiction committed by inferior courts or Tribunals; these are cases where the orders passed by inferior courts or Tribunals are without jurisdiction or is in excess or as a result of failure to exercise jurisdiction. A writ can be issued where the Court or Tribunal acts illegally or improperly or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. A finding of fact recorded by the Tribunal cannot be challenged in writ proceedings on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

(Para 7)

Held, that the claimant did not raise objection before the President of the Tribunal that the proceedings could not legally be conducted by him in the absence of the Assessors. They will be deemed to have acquiesced in the jurisdiction of President of Tribunal and the objection cannot be raised in writ jurisdiction.

(Para 8)