

Delhi Development Authority vs Ashok Kumar Behal And Ors on 20 August, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2940, 2002 AIR SCW 3436, 2002 (4) SLT 806, 2002 (7) SCC 135, 2002 (3) LRI 724, 2002 (6) SCALE 20, 2002 (8) SRJ 346, (2003) 1 ALLINDCAS 21 (SC), (2002) 6 JT 182 (SC), 2003 ALL CJ 1 17, 2002 (3) BLJR 2454, (2004) ILR (KANT) (2) 1573, (2002) 3 LANDLR 234, (2002) 4 SCJ 13, (2002) 5 SUPREME 398, (2002) 3 RECCIVR 740, (2002) 6 SCALE 20, (2002) WLC(SC)CVL 714, (2002) 49 ALL LR 213, (2003) 96 CUT LT 141, (2002) 99 DLT 284

Bench: V.N. Khare, Shivaraj V. Patil, Ashok Bhan

CASE NO.:

Appeal (civil) 9802-9807 of 1995

PETITIONER:

DELHI DEVELOPMENT AUTHORITY

RESPONDENT:

ASHOK KUMAR BEHAL AND ORS.

DATE OF JUDGMENT: 20/08/2002

BENCH:

V.N. KHARE & SHIVARAJ V. PATIL & ASHOK BHAN

JUDGMENT:

JUDGMENT 2002 Supp(1) SCR 622 The Judgment of the Court was delivered by BHAN. J. Appellant - Delhi Development Authority (hereinafter referred to as 'the Authority') formulated a Scheme known as "Registration Scheme on New Pattern - 1997" (for short 'the Scheme') to build and sell MIG/L1G and Janta flats so as to be within the reach of the common man.

Registration for the scheme opened on 1st September, 1979. in the scheme the illustrated price of various categories of flats were mentioned . The likely cost of MIG flats with which we are concerned in these appeals was indicated to be Rs. 42,000. On 30th of September 1979, registration was closed. About 1,70,000 persons registered themselves in the scheme. In 1981, allotment started taking place by draw of lots based on randomised allotment. The cost of flats was worked out after taking into account the prevailing rate of land by the Lt. Governor. The cost of construction was worked out by dividing the cost incurred in construction of a pocket of flats by a number of flats in that pocket. Clauses 13& 14 of the brochure are as follows:

Clause 13. The plinth area of the flats to be constructed under new pattern is likely to be as under :-

M1G Between 60 to 65 Sq. Mtrs. LIG About 38 Sq. Mtrs. Janta Upto 24 Sq. Mtrs.

The accommodation in the flats under different categories will be as under :-

MIG One Living Room, 2 Bed Rooms, Kitchen, Bath Room and W.C. and Open Court-yard.

LIG 2 Rooms, Kitchen, Bath Room and W.C. Janta One room, Kitchen, Bath Room and W.C. The likely cost of flats constructed under this scheme will be as under- MIG Rs. 42,000 LIG Rs. 18,000 Janta Rs. 8,000 The prices are indicative and do not represent the final cost.

14. It may please be noted that the plinth area of the flats indicated and the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies or lay out, cost of construction etc." [Emphasis supplied] Due to certain reasons with which we are not concerned at the moment, the allotments could not be made. On 6th of December, 1990 fresh rates of land to be taken into account for costing of flats were approved by the Lt.

Governor. Whereas in 1979 the prevailing land rate was fixed at Rs. 62 per sq. meter, the same was revised in 1990 to Rs. 870 per sq. meter for MIG flats, Rs. 660 per sq. meter for LIG flats and Rs. 500 per sq. meter for EWS (Janta flats). The increased rate was approved after taking into consideration all the relevant factors involved.

The respondents-writ petitioners (hereinafter referred to as 'the respondents') whose turn for allotment came in 1991 were allotted flats in Jahangirpuri. The demand letters were sent to them. Respondents filed the writ petition No. 3267 of 1991 along Civil Writ Nos. 3198, 3456, 3645, 3795 and 3796 of 1991 respectively in Delhi High Court challenging the rate at which the flats were being allotted. The case put up by them was that the amount being charged for the flats was much higher than what was indicated in the scheme itself.

Writ Petition Nos. 3876 of 1992 titled Prem Chand v. Union of India and Anr. CWP 2787 of 1990 J.K. Dhingra v. DDA, CWP 728 of 1991 Vinod Kumar Gupta v. DDA and CWP 1327 of 1991 Maha Nand Sharma v. DDA also filed on the same grounds and for the same were dismissed on 24th May, 1993, 16th May, 1991, 22th October, 1991 and 15th January, 1992 respectively.

Writ Petitions filed by the respondents were allowed by the High Court despite the fact that several similar writ petitions had already been dismissed on merits. By the impugned judgment the High Court struck down the revision in the rate of land. The Authority was directed to make allotment of flats at a tentative price of four and a half time of the price offered in the year 1979. Further the Authority was directed to constitute an Expert Committee to go into the costing of the flats taking

the land rate at Rs. 62 per sq. meter. The Expert Committee was to work out the price after taking into account the actual cost of construction made by it for the construction of the flats. If the Expert Committee after working out the cost on the basis of aforesaid works out cost to be more than the price that was provisionally fixed then the Authority was put at liberty to revise the cost and intimate to the respondents requiring them to make the payment within a month of such intimation.

Another set of writ petitions 1121/91, 1102/93, 1059/94, 874/94, 1008/ 94, 1019/94, 1451/94 and 1628 of 1994 which were for similar relief came up for hearing before another Division Bench. Arguments were heard and orders were reserved. A miscellaneous application being CM No. 6491 of 1993 was filed in writ petition No. 1121 of 1991 to report that another Division Bench had pronounced judgment in Writ Petition No. 3267 of 1991 (writ petition filed by the respondents) on August 25, 1993 which had a direct bearing on the controversy involved, in which similar issues had been considered and decided. The relief similar to the one claimed in petition had been granted. A prayer was made that the writ petitions be disposed of in terms of the said judgment. On notice, the authority resisted the application swaying that important decisions vital to the issue raised had escaped attention of the Court in CWP 3267 of 1991 and as such the same was not binding. Keeping in mind the divergent views expressed by different Benches of equal strength, the Division Bench felt it appropriate that the matter be decided by a larger bench and in particular the following questions :

- "1. Whether under Article 226 of the Constitution of India, this Court can interfere in the matter of pricing/costing of flats including escalation in cost of land particularly in view of Clause No. 13 and 14 of the brochure regarding the Registration Scheme on New Pattern-1979 under which the petitioners are registrants for allotment of flats?
2. Is the impugned revision of cost of land by the Lieutenant Governor of Delhi illegal and arbitrary?"

Thus, on their recommendation, a Full Bench was constituted to decide the aforesaid questions.

The fact that the matter had been referred to a larger Bench doubting the correctness of the view expressed in the impugned judgment was brought to the notice of this Court in the present appeals. This Court on 7th February, 1994 adjourned the case sine die to await the decision of the Full Bench and passed the following order. "We are told at the bar that the instant decision under appeal has been doubted by another Division Bench of the High Court. Apparently there exists a conflict of opinion raging in the High Court on the question raised herein. It appears that CWP No. 1121/91 Sheela Wanti v. Delhi Development Authority and Ors. batch cases stands referred to a Full Bench by a order of a Division Bench dated 22nd September, 1993. We feel that in this situation it would be appropriate that the High Court itself puts to order its own views. We, therefore, send a request to the Chief Justice of the High Court to constitute a Full Bench, if possible, within 3 weeks and have the matter listed and heard as expeditiously as possible. We on our part hold over this matter awaiting the decision of the Full Bench.

The matter is adjourned sine die with the liberty to mention."

The authority filed a detailed affidavit before the Full Bench along with the documents explaining as to how likely cost of the flats mentioned in 1979 was arrived at, the component of land price in the said cost, the basis thereof and increase in the land price, if any, between 1979 and 1990. The basis on which the price was enhanced was also indicated which ultimately resulted in the issuance of the notification by the Lt. Governor of Delhi dated 6th December, 1990 fixing the revised rates which was impugned in the writ petitions filed in the High Court. The points which were referred to the Full Bench were answered in the negative, i.e. in favour of the authority and against the allottees. It was held that the scope of judicial review in the cases involving costing and fixation of prices was very much limited.

In the concluding portions, the two points referred to the Full Bench were answered in the following terms :

"We may now advert to the questions referred to the Full Bench. In keeping without observations and findings recorded above, we are of the opinion that in view of Clauses 13 and 14 of brochure and the transaction being contractual, this court cannot interfere under Article 226 of the Constitution in the matter of pricing/costing of flats, including escalation of cost of land, etc. The answer to the first question has to be in the negative.

As regards the second question referred to the Full Bench, as noticed above, we are of the view that the impugned revision of by the Lieutenant Governor of Delhi is neither illegal nor arbitrary."

The decision of the Full Bench was challenged in this Court by filing Special leave petition (C) No. 13508 of 1995 and the same was dismissed on 14th July, 1995.

Special leave petitions in the present appeals were listed before the Bench on 20th October, 1995. Counsel for the respondents raised an argument that since the special leave petitions against the Full Bench judgment were dismissed in limine, he would like to challenge the correctness of the Full Bench judgment. Keeping in view this submission, this Court granted the leave to file the appeals. The order passed by the Court is in the following terms:

"Learned counsel for the petitioner submits that the impugned judgment by a Division Bench of the High Court is contrary to the subsequent Full Bench decision of the same High Court against which special Leave Petition has been dismissed by this Court. Learned counsel further submits that other similar SLPs were also dismissed by this Court which amounts to affirmance of the Full Bench decision dated 3th February, 1995 (at page 143-79 of the paper book). On the other hand, learned counsel for the respondent submits that the dismissal of the SLPs being in limine, he would like to challenge the correctness of the Full Bench judgment and therefore the hearing will take some time.

For the above reason, we grant special leave in all the special leave petitions. In the meantime operation of the impugned judgment shall remain stayed."

From the facts narrated above, it is evident that there was a difference of opinion between co-equal benches of the High Court regarding fixation of the price of MIG flats in the same scheme. Since there was a divergence of opinion, the matter was referred to a Full Bench to resolve the conflict in the views expressed. The conclusion arrived at by the Full Bench run contrary to the view expressed by the Division Bench in the impugned judgments.

Shri Hardev Singh, senior advocate appearing for the respondents strenuously contended that the view expressed in the impugned judgment before us was not overruled by the Full Bench, rather the same was approved. Relying upon the following observations :

"The consistent view of this Court thus, was that escalation in prices of the flats constructed by the DDA under different schemes, including the present scheme, could not be challenged under Article 226 of the Constitution till the decision in *Ashok Kumar Behl v. DDA* 52 (1993) DLT 153, in which the Court went into the question of pricing and quashed the escalated price of the flats allotted under the scheme. It appears that the Court did so apparently for the reason that despite specific directions in that behalf the DDA had failed to place the relevant material before the Court to explain how the price fixation had been done and on what basis. Court queries in this behalf were not answered, which led to the belief that the DDA was suppressing something and had acted arbitrarily to the prejudice of the writ petitioners. These significant factors put the case out of the ambit of the ratio of the *Bareilly Development Authority's* case."

It was stressed that since the DDA had failed to produce the relevant material before the Court to explain how the price fixation had been done ratio of this Court's Judgment in *Bareilly Development Authority v. Ajai Pal Singh*, [1989] 1 SCR 743, was not applicable. That the Division Bench in the impugned judgment decided the case on the peculiar facts of the case and therefore the same would not be governed by the ratio of the decision of the Full Bench judgment. The contention put forth by the counsel for the respondents cannot be accepted either on facts or in law. Keeping in mind the divergence of views expressed by the co-equal benches the matter was referred to the Full Bench. The Full Bench expressed the view that revision of price by the Lieutenant Governor of Delhi in the year 1991 was neither arbitrary nor illegal, in the other words, the price fixed by the Lieutenant Governor in the year 1991 was upheld whereas the Division Bench in the impugned judgment has taken a dramatically opposite view. In the impugned judgment it has been held that the price fixed by the Lt. Governor in the year 1991 was arbitrary and illegal. The Court after fixing a tentative price directed to constitute an Expert Committee to go into the question of pricing and determine the same after taking the land rate at Rs. 62 per sq. meter and actual cost of construction made by it for the construction of the flats. The Full Bench did not approve the view expressed by the Division Bench in the impugned judgment, it simply stated that the Division Bench may have come to this conclusion because the Authority failed to place the relevant material before the Court to explain how the price fixation had been done and on what basis. Court queries in this behalf were not

answered, which led to the belief that the DDA was suppressing something and had acted arbitrarily to the prejudice of the writ petitioners. The relevant material had been placed before the larger Bench and the Bench after taking into consideration the material placed before it came to the conclusion that the price fixed by the Lt. Governor of Delhi was neither arbitrary nor illegal. The inconsistency of the views expressed in the impugned judgment and the larger Bench of Delhi High Court is self evident. Delhi High Court has resolved the conflict of views expressed by the Division Benches of co-equal strength by constituting a larger Bench and the special leave filed against the judgment of the larger Bench has already been dismissed.

Inconsistency and contradiction in the orders passed by the same Court on the same point regarding the same scheme cannot be allowed to be continued or perpetuated. If contention of the learned counsel is accepted then an anomalous situation would arise by which the price fixed for few of the MIG flats in the scheme would be much less than the price fixed for the remaining flats allotted in the same year which cannot be permitted. The law laid down by the Supreme Court is binding on all courts within the territory of India and the law laid down by a High Court is binding on all courts within its jurisdiction. It is a cardinal principle of rule of law of that inconsistency and contradiction in the orders has to be avoided at all costs to bring about a certainty in the mind of the Subordinate courts and the litigant public. This principle would stand violated in case two binding principles on the same point of the same Court are allowed to operate simultaneously.

We put an end to the controversy by setting aside the impugned judgment and dispose of the writ petitions filed by the respondents in terms of the order passed by the Full Bench of the Delhi High Court in Sheelaswanti and Ors. decided on 3rd February, 1995, We agree with the view expressed by the larger Bench in Sheelawanti and Ors. Case (supra).

The appeals, accordingly, stand disposed of with no order as to costs.