Andhra High Court
Pattanabhi Vrudhi Nivasha ... vs Govt. Of A.P. And Ors. on 22 January, 2004
Equivalent citations: AIR 2004 AP 215
Author: L N Reddy
Bench: L N Reddy
ORDER L. Narasimha Reddy, J.

1. Vijayawada, Guntur, Tenali Urban Development Authority, the second respondent herein, had acquired vast extent of land of Chenchupet village of Tenali Mandal in the year 1980 for the purpose of developing the same and dividing it into plots. After proper lay out, it has carved out 1328 plots meant for three categories of people viz. Economically Weaker Sections (EWS), Low Income Group (LIG) and Middle Income Group (MIG). Initially, the cost was fixed at the rate of Rs. 54/-, Rs. 60/- and Rs. 80/- per square yard for the plots meant for EWS, LIG and MIG categories respectively. This determination was on the basis of the valuation fixed by the Land Acquisition Officer in the Award passed under the Land Acquisition Act. The petitioners and several others were allottees of the plots in different categories. The petitioners paid the EMD as well as the amounts fixed for their respective plots.

2. The owners of the land sought for reference of the matter for enhancement of the compensation. The reference Court through its judgment, dated 22-2-1991, enhanced the compensation from Rs. 21,700/- to Rs. 1,00,000/- per acre, This necessitated the second respondent to enhance the cost of the plots also. Since the matter had to be carried in further appeals, the second respondent decided that an amount of Rs. 10/-per square yard be collected from the allottees towards security for enhanced consideration of the plots and Rs. 5/-, Rs. 6/-and Rs. 7/- respectively from the allottees of EWS, LIG and MIG category towards development charges. Though some of the allottees paid the amount, the others did not pay the same.

3. The land owners carried the matter to this Court seeking further enhancement of compensation. Through its judgment, dated 3-3-1994, this Court enhanced the compensation from Rs. 1,00,000/- to Rs. 1,13,740/-per acre. Aggrieved thereby, the second respondent carried the matter to the Supreme Court. Through its judgment, dated 29-4-1997, the Supreme Court reduced the market value to Rs. 50,000/- per acre.

4. In the meanwhile, the second respondent cancelled the allotments in favour of the petitioners and various others through its proceedings, dated 7-1-1993, on the ground that the amounts towards security as well as the betterment charges were not paid by them. Subsequent to the Judgment of the Supreme Court, several discussions took place between the second respondent on the one hand and the representatives of the allottees on the other. Taking into account the variation of market value of the land as ordered by the Supreme Court and this Court from time to time, the cost of the plots has been refixed at Rs. 194/-, Rs. 214/- and Rs. 234/- per square yard for EWS, LIG and MIG plots respectively, at the meeting held on 23-9-1997. A further decision was taken to the effect that such of the allottees, who have committed default in payment of the amounts towards security and betterment charges, be given an opportunity to pay the balance of the consideration at the revised rates. A condition was also Imposed that the amount already paid by the allottees shall not carry

interest.

5. The matter was once again considered by the second respondent at its meeting held on 5-11-1997. The decision taken on 23-9-1997 was materially varied in two respects. Firstly, the cost was slashed down by Rs. 20/- per square yard, for all the categories of plots. Secondly, allottees were extended the benefit of payment of interest at the rate of 15% on the amounts paid by them towards consideration excluding the EMD. The cumulative effect of these two decisions is that the allottees, who committed default in payment of the amounts demanded in 1988, shall be entitled to be transferred the respective plots on payment of balance of consideration worked out at new rates and that they shall be entitled for the benefit of interest at the rate of 15% on the amounts paid by them.

6. The second respondent issued letter, dated 24-8-1999, directing the petitioners to, deposit the balance of consideration together with a penal fee of Rs. 5,000/- so as to enable them to get the plots transferred. The benefit of 15% interest on the amounts already paid by them was not extended to them. The petitioners challenge the action of the second respondent in demanding the penal fee and denying the benefit of interest as provided for in the resolution dated 5-11-1997. The petitioners urge that the second respondent had allotted plots as late as in 1997 and 1998 at the rate fixed in the resolution, dated 5-11-1997, without levying an additional amount and that the petitioners cannot be burdened with the penal fee and denial of the benefit of interest.

7. In the counter-affidavit, filed on behalf of the respondents, it is stated that the cost of the plots had to be varied from time to time in view of the judgments rendered by various Courts. It is also stated that though the petitioners are given several opportunities to pay the consideration, they did not avail the same. The respondents further contend that the benefit under the Resolution, dated 5-11-1997 is available only to those allottees, who have paid the entire consideration and not to others.

8. Heard the learned counsel for petitioners and the learned Standing Counsel for respondents 2 and 3.

9. It is not in dispute that the petitioners were allotted plots at different costs, by the second respondent. They paid the consideration for their plots at the rate of Rs. 54/-, Rs. 60/- and Rs. 80/- per square yard, depending on the category of plots viz. EWS, LIG and MIG. The second respondent had to revise the consideration in view of the enhancement of the compensation by the Sub-Court. Since the matter did not assume finality, a tentative decision was taken to collect Rs. 10/- per square yard towards security for enhancement of consideration and Rs. 5/-, Rs. 6/- and Rs. 7/- for the three categories of plots respectively towards development charges. While some of the allottees paid these amounts, the others did not come forward to pay. Allotments were cancelled in January 1993 for non-payment of the revised amount. Admittedly, the second respondent did not refund the consideration paid by the allottees, much less the EMD. In fact, the entire issue was in a state of uncertainty, on account of further enhancement of compensation by this Court and a substantial reduction of the same by the Honourable Supreme Court.

10. It was only after the matter assumed finality with the judgment of the Supreme Court, that the second respondent on the one hand and the allottees on the other started taking steps to sort out the issues. After taking into account the various aspects of the matter, a decision was taken on 23-9-1997 to fix the consideration of the plots at Rs. 194/-, Rs. 214/-, and Rs. 234/- respectively for EWS, LIG and MIG and to enable the allottees to pay the revised amounts. Shortly, thereafter, the second respondent took a decision on 5-11-1997 to slash the rate by Rs. 20/- per square yard for all the categories of plots and to extend the benefit of interest at the rate of 15% on the amounts already paid by the allottees.

11. Though the learned counsel for respondents 2 and 3 attempts to maintain a distinction between the members who defaulted and others, in the matter of extending the benefit under the resolution, dated 5-11-1997, the text of the resolution does not support his contention. A reading of the entire resolution and the note put up before the second respondent for this item discloses that the entire exercise was undertaken to salvage the matter of those allottees, who committed default of the payment of the amounts revised in 1988. Such of the allottees, who have paid the entire consideration including the one revised in 1988, did not need the extension of such benefits. Further, the text of the resolution, dated 5-11-1997, clearly states that the amount paid by the allottees towards consideration except the EMD shall carry interest, at the rate of 15%. Here, the resolution does not indicate that the entire consideration ought to have been paid. The preceding paragraphs indicate that the benefit was intended only for those who did not pay the revised amount,

12. The contention of the petitioners needs to be examined from another point of view. As late as in 1997 and 1998, the second respondent has made allotment of the plots to fresh candidates. The respondents themselves have placed before this Court bunch of proceedings dated 31-10-1997 and 26-3-1998. The first paragraph of these letters of allotment reads as under :

"With reference to your application cited, it is hereby informed that you have been allotted plot bearing EWS/A No. 1, having an extent of 165.80 sq. yards (Approximately) @ Rs. 174/- per sq. yard in Chenchupet, Tenali on payment of 3 quarterly instalment basis."

13. Such allottees are not required to pay any interest on the consideration or additional amounts. The allotments, on the face of it, are made for the first time. Though the learned Standing Counsel for respondents 2 and 3 attempts to submit that these allotments are in favour of persons, who have paid the entire consideration, such a contention does not fit into the very preface of the allotment letters, which is extracted above. It is not in dispute that the second respondent had the benefit of substantial deposits made by the petitioners towards part payment of consideration. The non-payment of the balance was not on account of their refusal. It was on account of the uncertainty that prevailed till 1997 in the matter of fixation of compensation for the land, by the Courts. When the second respondent has chosen to allot the plots afresh at those very rates, levy of penalty fee of Rs. 5,000/- and denial of benefit of interest as provided for under the resolution, dated 5-11-1997, cannot be sustained.

14. The learned Standing Counsel for the respondents submits that the matter involves the ascertainment of disputed questions of fact and adjudication of contractual obligations. Placing reliance upon the judgment, reported In Delhi Development Authority v. Ashok Kumar Behal, , he submits that such a course of action is not permissible in a writ under Article 226 of the Constitution of India. There is absolutely no quarrel with the proposition put forward by the learned counsel. However, this court does not intend to undertake revision of rates or interpretation of clauses in any contract. The second respondent is a statutory authority. It had passed a resolution dated 5-11-1997. The claim of the petitioners is nothing more than implementation of the same. Being a statutory authority, it cannot refuse to honour and implement its own resolutions. Further, being a State within the meaning of Article 12 of the Constitution of India, the second respondent cannot accord differential treatment to the fresh allottees on the one hand and previous allottees on the other, particularly, when the latter had made substantial deposits with the second respondent.

15. Hence, the writ petition is allowed and the impugned proceedings, requiring the petitioners to deposit penal fee, are set aside. The second respondent is directed to finalise the allotment in favour of the petitioners on their payment of the balance of consideration at the rate fixed by the second respondent at its resolution, dated 5-11-1997. The second respondent shall also extend the benefit of interest at 15% as provided in the said resolution on the amounts deposited by the petitioners towards part payment of consideration, excluding the EMD. As and when the second respondent informs the petitioners about the amount to be paid, petitioners shall deposit the same within four weeks from such intimation. No costs.