DELHI DEVELOPMENT AUTHORITY

v.

SHILPA CO-OPERATIVE GROUP HOUSING SOCIETY LTD. ETC.

FEBRUARY 27, 1996

[G.N. RAY AND B.L. HANSARIA, JJ.]

Housing

Housing Society—Allotment of land by Development Authority—Escalation—Refusal to accept allotment—Cancellation of allotment—Forfeiture of earnest money—Extent of—Held on facts 50% of the actual total deposit should be forfeited.

The respondent-Societies were allotted land by the appellant-Authority. In view of the escalation in premium they refused to accept the allotment and the same was consequently cancelled. On the question as to how much of the earnest money deposited by the respondent-Societies should be allowed to be forfeited by the Authority, the High Court held that in view of the judgment of this Court in *Delhi Development Authority* v. *Grihsthapana Cooperative Group Housing Society Ltd.*, it should have forfeited a sum of Rs. 5 lacs only. In appeal to this Court it was contended for the Development Authority that the *Grihsthapana* case was inapplicable to the facts of the present appeals because in that case, the co-operative society had not made any deposit after 10.5.1993 i.e. the date on which this Court had disposed of the petition filed by the Housing Society while the respondent in the present appeals had paid further sum of money after 10.5.1993.

Allowing the appeals, this Court

HELD : 1. The decision in *Grihsthapana's* case was based on the fact that there was no acceptance of the offer given by the appellant-authority on 3.11.1992 at the enhanced premium, whereas the deposits made in cases at hand after the order of 10.5.1993 clearly shows that the offer of 3.11.1992 was accepted. The ratio in *Grihsthapana* case cannot apply. It would have been permissible for the Authority to forfeit the entire earnest money due form the respondents in view of the law laid down in *Grihsthapha* case. If

the Authority is allowed to do so, the amount liable to be forfeited would be on very high side. Keeping in view the many rounds of litigation and the hardship which would be caused to the parties, justice demands that the respondent-Societies may not be burdened with huge sums in this regard. Accordingly it is directed that the Authority may be allowed to forfeit 50 per cent of the amount calculated not on the total amount which the respondents were required to deposit pursuant to the allotment order of 3.11.1992 but on the component of the earnest money out of actual total deposit. [1121-E; 1122-C-E; F-G]

******Delhi Development Authority* **v.** *Grihsthapana Co-operative Group Housing Society Ltd.,* **JT (1995) 2 SC 530, explained and held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3962-64 of 1996.

From the Judgment and Order dated 17.9.94, 14.12.93 and 10-11-94 of the Delhi High Court of Delhi in C.W.P. Nos. 3562/94, 5662/93 and 4664 of 1994.

Arun Jaitley, V.B. Saharya for Saharya & Co. for the Appellants.

Bishwajeet Bhattacharjeet and A. Bhattacharjeet for the Respondents.

Rajeev, for Rakesh Sharma for the Respondent in C.A. No. 3963/96.

The Judgment of the Court was delivered by

HANSARIA, J. Leave granted.

2. The short point which needs determination in these appeals is : How much of the earnest money deposited by the respondents should be allowed to be forfeited by the appellant ? The deposit had connection with the allotment of land made in favour of the respondents by the appellant, which proposal did not ultimately come through because of the escalation of premium, for which reasons the allottees refused to accept the allotment, resulting in cancellation of the same.

3. This Court had occasion to examine this very question in *Delhi Development Authority* v. *Grihsthapana Co-operative Group Housing Society Ltd.,* JT (1995) 2 SC 530. It is by referring to this decision that the High

Court, in the impugned judgment, has held that the appellant could have forfeited a sum of Rs. 5 Lacs only. The appellant's case is that the facts in *Grihsthapana's* case were different; and so, what was decided therein is not applicable. The respondent's stand on the other hand is that their cases are covered by the aforesaid decision.

4. Shri Jaitley, appearing for the appellant, has contended that the distinction lies in the fact that in *Grihsthapana's* case, the co-operative society had not made any deposit after 10.5.1993 which is the date on which this Court had disposed of the Special Leave Petitions filed by Green Valley Co-operative Group Housing Society making a grievance about escalation of the rate of premium. By that order this Court has only extended the time to pay instalments at the escalated rate upto 31 May, 1993 without interest, and thereafter with interest upto 31.7.1993. It is an admitted position that the respondents in the present appeals had paid further sum of money after the order of this Court dated 10.5.1993, which fact was missing in the earlier case.

5. Shri Bhattacharjee, appearing for the respondents in appeals arising out of SLP(C) Nos. 24713 & 24721 of 1995, has urged that the fact of deposit after 10.5.1993 can not make the ratio in *Grihsthapane's* case inapplicable. We are afraid, we cannot agree because the decision in that case was based on the fact that there was no acceptance of the offer given by the appellant on 3.11.1992 at the enhanced premium, whereas the deposits made in cases at hand after the order of 10.5.1993 clearly shows that the offer of 3.11.1992 was accepted. The submission on behalf of the respondent in appeal relatable to SLP(C) No. 415/96 that the membership of the co-operative society was reduced to 76, as against 135, and so, the deposit made subsequent to 10.5.1993 should not be taken to be a deposit on behalf of all the members, cannot be accepted to have made any difference because when the deposit was made on 31.5.1993 it was on behalf of 135 members.

6. Shri Bhattacharjee was at pains in submitting that though the facts of *Grihsthapana's* case were not on all fours with the cases at hand. Civil Appeal No. 930/95 relatable to Ahluwalia Co-operative Group Housing Society Limited, which was one of the appeals in the batch disposed of by the aforesaid judgment, was one in which some deposit had made after 10.5.1993; and so, what was decided in Ahluwalia's appeal would, in any

case, be applicable. As to this, Shri Jaitley has contended that when the earlier civil appeals were taken up in batch, the facts of Ahluwalia were not specifically brought to the notice of the Court; and it is because of this that benefit of what was decided in the facts of *Grihsthapana* was made available to Ahluwalia. As the decision in that case is based on the facts of *Grihsthapana's* case, we find no difficulty in stating that the benefit which had come to be made available to Ahluwalia was inadvertent and cannot be extended to the respondents herein.

7. The aforesaid shows that the ratio in *Grihsthapana* case cannot apply and it would have been permissible for the appellant to forfeit the entire earnest money due from the respondents in view of the law laid down in *Grihsthapana* case. If we were to allow the appellant to do so, we find that the amount becoming liable to be forfeited would be on very high side inasmuch as in the case of Shilpa Co-operative - respondent in appeal arising out of SLP(C) No. 24713/95 - this amount would be in a neighbourhood of Rs. 22 lacs, even if we were to reckon the amount of earnest money which had been *actually* deposited, and not what was required to be deposited. We would think that keeping in view the many rounds of litigation and the hardship which would be caused to the respondents, Justice demands that we may not burden the respondents with huge sums in this regard. Shri Jaitley has urged that the appellant is at no fault and indeed it has suffered because of lapse of the respondents, being required to pay interest on the amount taken on loan by it; and so, if we were to give some relief to the respondents, the hardship of the appellant may also be borne in mind.

8. Having considered the cases of both the sides and the facts and circumstances of the appeals at hand, we are of the view that 50 per cent of the amount which had otherwise become due to the appellant should be allowed to be forfeited. We make it clear that 50 per cent would be calculated, not on the total amount which these respondents were required to deposit pursuant to the allotment order of 3.11.1992, but on the component of the earnest money out of *actual* total deposit. The appellant would refund the remaining amount to the respondents within a period of six weeks from today, failing which the respondents would be entitled to interest @ 18% per annum from today till payment.

9. The appeals are allowed accordingly. No order as to costs.

Appeals allowed.