

U.P. AVAS EVAM VIKAS PARISHAD AND ANR.

v.

RAVI KUMAR ANAND AND ORS.

MAY 2, 1995

[R.M. SAHAI AND SUJATA V. MANOHAR, JJ.]

*Housing :*

*Housing Board—Allotment of Houses—Price escalation—Writ Challenging—High Court upholding escalation but directing Board to grant relaxation in respect of interest and penalty—Special Leave Petition by allottees—Dismissal—Review Petitions—Writ by some allottees claiming benefit granted by High Court earlier—Board's resolution to grant concession to those allottees who would withdraw their cases—Issue of notices to defaulter allottees—Letter containing Board's decision not communicated to each allottee—Direction by High Court to extend concessional benefit not only to defaulters but to all the petitioners—Held justified—But High Court's direction regarding 50% concession in respect of profit and overhead charges held not justified as it was settled in earlier petitions.*

The respondents, who were allotted and given delayed delivery of flats under a Self Financing Scheme by the appellant- board, filed writ petitions in the High Court challenging the escalated price demanded by the appellant. The High Court upheld the escalation but held that the demand of 18% interest from the allottees was excessive and directed the Board's Commissioner to grant relaxation to allottees in interest and penalty. The respondents filed a Special Leave Petition which was dismissed. Therefore, they file review petition before the High Court for clarification of the impugned judgment. In the meantime, some of the allottees filed writ petitions claiming the same benefits which were given by the High Court in its earlier order. During the pendency of these petitions the Board resolved to grant certain concessions with regard to interest and maintenance charges to those allottees who would withdraw their cases from the Court and accordingly directed its authorities to issue notices for recovery of money from those allottees who had committed default in making the payments. However, the Board's decision was not communicated to each individual allottee in writing. On the basis of the

letter dated 20/21 July, 1990 containing the Board's resolution the High Court directed that the benefits should be extended to every petitioner. The High Court also directed that the demand of administrative and profit charges should be reduced by 50% Against the decision of the High Court Housing Board preferred appeals to this Court.

Allowing the appeals in part, this Court

**HELD : 1.** The effect of the resolution passed by the Board and its implementation was to grant concession to those allottees who had committed default that was not fair. If the Board's Commissioner relaxed the conditions in pursuance of the judgment of the High Court then the benefit of it could not be denied to those who were more law abiding and deposited the entire amount demanded by the Board. They could not be made worse than those who were defaulters. Consequently, all those allottees who had filed the review petitions or writ petitions and to whom no intimation was sent shall also be extended the same concession. The High Court's order in respect of extension of concession to all the allottees is upheld. [1116-D-E]

**2.** The High Court was not justified in granting the concession of 50% in respect of profit and over-head charges as these aspects had been finally decided and settled in the earlier writ petitions, Special Leave Petitions against which had been dismissed by this Court. The High Court could not have reopened the matter by way of a review petition when it was not permitted by this Court and effect of which, if permitted, would be to disturb the finality of the earlier decision. The said order of the High Court is liable to be set aside. [1116-G-H, 1117-A-B]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 5713 of 1995 Etc.

From the Judgment and Order dated 5.11.1993 of the Allahabad High Court in Civil Misc. Writ Petition No. 1179 of 1987.

S.B. Sanyal and P.K. Jain for the Appellants.

Arun Jaitley, Ranjan Mukherjee, Rakesh persad and B.B. Saharya for the Respondents.

The following Order of the Court was delivered :

The short question that arises for consideration in these appeals filed by the statutory body constituted for constructing and providing houses is whether the High Court was justified, in peculiar facts and circumstances of these cases, to allow review applications and writ petitions filed by various allottees and direct the appellants to grant concession of 50% in profit and administrative charges due to delayed delivery of flats as the High Court in earlier writ petition had granted such benefit in respect of interest and penalty.

For proper appreciation of the controversy, few facts in brief are necessary to be mentioned. In a Scheme known as 'Self Financing Scheme, 1985' announced sometime in the month of October/November, 1984 the respondents were allotted flats in 1986 of different types in different income groups. But the possession could not be handed over as constructions were not complete. When possession was delivered the appellant demanded extra amount as the price had escalated in the mean time. It was challenged by the allottees as the amount demanded was arbitrary and the constructions too were incomplete. The writ petitions were decided in February, 1990. The escalation was upheld. But the demand of interest at 18% was held to be excessive. The High Court further observed that brochure issued by the appellant relating to the scheme empowered the Commissioner to grant relaxation from various conditions for valid reason or for the delay due to slackness of the official machinery. The High Court directed that since delay was caused as the appellant did not discharge initial responsibility, the Commissioner may consider granting relaxation in interest and penalty. The respondents were not satisfied. They approached this Court by way of Special Leave Petitions. The petitions were dismissed on 22nd March, 1990. The order reads as under:-

"The Special Leave Petitions are without merits and are dismissed. The fate of these SLPs will not, however, stand in the way of the petitioners moving the High Court for clarification of certain observations in the impugned judgment, which the petitioners contend are in their favour and in regard to which we express no view".

In consequence of the observations in the last part of the order of the respondents approached the High Court by way of review petitions. Some of the allottees filed writ petitions as well claiming same benefit as

was given by the High Court in its order dated 7th February, 1990. While these petitions were pending the appellant held a meeting to consider the implications of directions issued by the order. The Board resolved:-

"The proposal has been unanimously approved by the Parishad after discussion. It was further decided by Parishad that this benefit be given to the allottees who withdraw their case from the court".

The letter then gives out the concessions which the Board resolved to grant to allottees. It was as under:-

1. After the issuance of the allotment order no interest would be charged from the allottees within a period of three months as indicated in the order dated 22.4.88.
2. After the expiry of three months simple interest at the rate of 14.5% will be realised from allottees as indicated in the order dated 29th July, 1988. This period shall reckon from the expiry of three months, but after a lapse of an year 18% interest penal interest would be charged from such allottees.
3. The maintenance charges shall be reduced to the extent of 50%."

In the end it was added:-

"Under the above decision of Parishad the Estate management officer Indira Nagar/Vikas Nagar, Lucknow and Kanpur and Raibarielly be informed that the persons affected be assessed and requisition be sent with the notice enclosed. Please take quick action so that money may be recovered".

This letter was produced before the High Court. Even though the scope of the review petitions or the writ petitions was limited, the allottees attempted once again to raise the issue of escalation. It was rejected. But the High Court after perusing the letter observed that these benefits may be extended to every petitioner. It was further held that since there was no contractual liability about the administrative and profit charges which were sought to be recovered from petitioners the demand was liable to be reduced by 50%.

The question that arises for consideration is whether, the High Court was justified in extending the benefits of letter dated 20th/21st July to all those allottees who had approached the High Court since the Board extended it only to those who agreed to withdraw their petition. It is not necessary to decide this larger issue as the allottees could be precluded from claiming any benefit only if it could be established that the decision of the Board was brought to their notice by written intimation and yet they did not agree to avail of it. The decision of the Board was, it appears, not communicated to each individual allottee in writing. The argument of the learned counsel for the Board that when letter was produced before the High Court it should be held to be intimation to the allottees does not impress. The Scheme was a self-financing scheme. The last part of the letter indicates that some allottees had not made the payment. Therefore, the authorities were directed to issue letters after calculating the amount. The decision was not communicated, therefore, it cannot be argued that those who did avail of it were not entitled to the concession. The effect of the resolution and its implementation was to grant concession to these allottees who had committed default. That was not fair. If the Commissioner relaxed the condition in pursuance of the judgment of the High Court then the benefit of it could not be denied to those who were more law abiding and deposited the entire amount demanded by the Board. They could not be made worse than those who were defaulters. Consequently, all those allottees who had filed the review petitions or writ petitions and to whom no intimation was sent shall also be extended the same concession.

The High Court has further held that on the same parity of reasoning as of maintenance, the allottees should be granted concession of 50 percent in respect of profit and overhead charges. Whether in a 'Self Financing Scheme' the Parishad was entitled to charge profit and overhead charges from those persons who had deposited the entire amount but were not handed over possession and the delay was on part of the Parishad is a debatable issue on which it is not necessary to express any opinion in this case as it was not open to allottees to raise it and the High Court was not justified in granting the concession as these aspects had been finally decided and settled in the earlier writ petitions, SLPs against which had been dismissed by this Court. The High Court could not have reopened the matter by way of a review petition when it was not permitted by this Court and effect of which, if permitted, would be to disturb the finality of

the earlier decision.

In the result, the appeals are allowed in part, the order of the High Court allowing the review petition and directing the Parishad to grant 50% concession on the administrative charges as well as the profit sought to be realised is liable to be set aside. The order in respect of interest and the extension of concession as mentioned in the letter dated 20/21st July, 1990 to all the allottees subject to observation made earlier is upheld. The parties shall bear their own costs.

Appeals allowed.