

SHIMLA DEVELOPMENT AUTHORITY

v.

ASHA RANI

FEBRUARY 26, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Housing—Allotment of flat under Shimla Development Authority Self Financing Scheme—Escalation charges demanded on account of enhanced compensation payable for the lands acquired construction of flats—High Court directing not to recover the escalation charges—On appeal held, allottee not only to bear burden of escalation in construction costs but also of the land when the Court enhanced compensation under the provisions of Land Acquisition Act.*

*D.D.A. v. Pushpendra Kr. Jain, JT (1994) 6 SC 292, held inapplicable.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4388 of 1996 Etc.

From the Judgment and Order dated 6.6.95 of the Himachal Pradesh High Court in R.P. No. 88 of 1995.

H.K. Puri, Rajesh Srivastava, Ujjwal Banerjee and S.P. Lanka for the Appellants.

S.K. Bagga Seeraj Bagga, Ms. S. Bagga and Ms. Monika Bhanot, for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard the counsel on both sides.

These appeals by special leave arise from the order of the High Court of Himachal Pradesh at Shimla made on June 6, 1995 in W.P. No. 88/95. The admitted facts are that the respondent had applied under Self-Finance Scheme in 1986 for allotment of the flats. The respondent had deposited a sum of Rs. 13,800 for 'A' type house. On November 13, 1986, the respondent was informed that she had to pay a tentative cost of Rs. 1,44,000 which

included earnest money of Rs. 13,800 already deposited. In other words, she was required to deposit Rs. 1,30,200 in installments stated in the letter. There after, she was informed by letter dated November 1991 that cost of construction had been increased, on account of the hike in prices of the material, to Rs. 2,73,332 as against Rs. 1,44,000; and she was directed to pay the balance amount in the manner indicated in the letter. On reference under Section 18 of the Land Acquisition Act, the District Judge by his award and decree dated April 30, 1993 enhanced the compensation payable to the land acquired for the construction of flats under the Self Finance Scheme. Consequently, by the letter dated April 12, 1993 respondent was called upon to pay the escalated charges. Respondent, as stated earlier, approached the High Court challenging the demand. The High Court allowed the writ petition and directed the appellant-Authority not to recover the amount from the respondent. In view of the letter written by the appellant on two occasions earlier, the only question is : whether the High Court is right in its direction not to recover the amount from the respondent? The admitted position, as stated earlier, is that the land of a private owner was acquired under the Land Acquisition Act for the Self Finance Scheme. As a matter of fact, when scheme is for construction and allotment of the houses to the allottees is initiated, allottee is bound to bear the cost of the value determined by the civil Court under Section 26 of the Land Acquisition Act by award and decree or thereafter if an appeal is filed and further increase is made under Section 54 of the Act. In this case, admittedly, on reference under Section 18, the Court had determined the compensation by award and decree made under Section 26 on April 30, 1993. Therefore, the earlier demand was required to be modified, consistent with the escalation in the cost of the value of the land as a result of determination of the compensation by the civil Court.

Shri Bagga, learned counsel for the respondent placed reliance on the judgment of this Court in *D.D.A. v. Pushpendra Kr. Jain*, JT (1994) 6 SC 292. Therein the cost of the value was increased by the DDA between the date of the draw by the DDA and the date of communication to the respondent and the respondent was called upon to pay the difference of the amount. In that case, the draw was made on October 12, 1990 and the intimation of the successful draw in favour of the respondent and allotment was given on January 13, 1991. In the meanwhile, land price was unilaterally increased by D.D.A. Under those circumstances, this Court had held that unless otherwise provided in the scheme, the allottee is liable to make

payment of the price as on the date of the communication of the letter of allotment. The ratio therein is inapplicable to the facts in this case. As held earlier, the allottee is to bear the burden of not only the escalation in construction costs but also of the escalation of the value of the land when the Court enhanced the compensation under provisions of the Land Acquisition Act at various stage. Otherwise, who would pay the escalation cost value of the land etc. The appellant is not a private builder for profit.

The appeals are accordingly allowed. The order of the High Court is set aside. The writ petition stands dismissed. No. costs.

Appeals allowed.