BAREILLY DEVELOPMENT AUTHORITY & ANR.

v.

AJAI PAL SINGH & ORS.

FEBRUARY 17, 1989

[G.L. OZA AND S. RATNAVEL PANDIAN, JJ.]

U.P. Urban (Planning and Development) Act, 1973: S.4—Bareilly Development Authority—Construction of dwelling units—Whether entitled to revise cost of houses/flats and rate of monthly instalments—Applicants whether entitled to assail the action of the Authority in writ petition.

Constitution of India, 1950: Articles 12, 14, 32 & 226—Bareilly Development Authority—Whether other authority for purpose of Article 12—Construction of flats and dwelling units—Cost of flats/rate of instalment revised on allotment—Whether amenable to writ jurisdiction.

The appellant-Authority offered to register names of intending applications desirous of purchasing LIG, MIG, HIG and EWS type houses/flats. The 'General Information Table' given in the brochure indicated the type of houses, corresponding income groups, cost, initial payment to be made, rate of interest and approximate monthly instalments. Note (1) under the said table stated that the cost shown therein was only estimated cost and it would increase or decrease according to the rise or fall in the price at the time of completion of the houses, while Note (2) stated that the date given therein could be amended as felt necessary. By clauses 12 and 13 contained in the brochure the Authority reserved its discretion to change, alter or modify any of the terms and/or conditions of the allotment as and when necessary.

All the respondents registered their names for allotment of the flats in accordance with the terms and conditions in the brochure and made the initial deposit. Subsequently, they received notices from the Authority intimating the revised cost of houses and the amount of monthly instalment rates which were almost double of those initially stated in the 'General Information Table'. The respondents were further informed that those who intend to buy houses on the revised price/instalments must send their written acceptance by the date specified other-wise their claims would not be included in the lots to be drawn. Except a few, all other respondents gave their unequivocal and unconditional written consent. Hence their names were included in the

A draws and on becoming lucky in the draw, they were allotted their respective houses.

At this stage, all the respondents approached the High Court under Article 226 of the Constitution challenging the revised terms and conditions on the ground that the appellants were estopped from changing the conditions subject to which the respondents had applied for registration and deposited the initial payment, that the enhancement of cost of the house amounting to almost double of the estimated cost as shown in the brochure and the increase of the monthly instalments were much beyond their means and that this arbitrary and unilateral stand of the appellants was to the prejudice of the respondents. These petitions were resisted by the appellants by contending that the respondents were estopped from challenging the varied terms and conditions of the allotment after having consented.

The High Court found the action of the Authority in fixing the revised cost and instalments arbitrary and unreasonable and directed the appellant-Authority to re-determine the cost of the flats and instalments payable by them after hearing the parties.

In these appeals by special leave it was contended for the appellant-Authority that the income of the applicants was relevant only to determine the category of the scheme in which they had to be included for eligibility to get a house under the scheme but not for enhancement of the cost of the house and monthly instalments, that it had fixed the cost of the houses and the rate of instalments after taking into consideration the escalation in the price of building material, labour charges, cost of transport and allied valuable factors which all enter into the price fixation, that in price fixation the executive has a wide discretion and it is only answerable provided there is any statutory control over its policy of price fixation, and that after the parties had entered into the field of ordinary contract, as in the instant case, the relations were no longer covered by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties *inter se*

Allowing the appeals,

HELD: 1. Where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as

to compel the authorities to remedy a breach of contract pure and simple. [755C] A

Radhakrishna Agarwal & Ors. v. *State of Bihar & Ors.*, [1977] 3 SCR 249; *Premji Bhai Parmar & Ors. etc.* v. *Delhi Development Authority & Ors.* [1980] 2 SCR 704 and *D.F.O.* v. *Biswanath Tea Company Ltd.*, [1981] 3 SCR 662 referred to. B

The respondents in the instant case had voluntarily registered themselves as applicants only after fully understanding the terms and conditions of the brochure, inclusive of cls. 12 and 13 and Notes 1 and 2 of the General Information Table under which the Authority had reserved its right to change the terms and conditions as and when felt necessary evidently depending upon the escalation of the prices. The Authority did not compel anyone of the applicants to purchase the flat at the rates subsequently fixed by it and pay the increased monthly instalments. On the contrary the option was left over only to the allottees. All the same, the respondents gave their written consent unconditionally accepting the changed and varied terms and conditions. [753H; 754A-C] C D

The respondents after accepting the conditions imposed by the Authority had thus entered into the realm of a concluded contract pure and simple with the Authority and hence they could only claim the right conferred upon them by the said contract and were bound by the terms of the contract unless some statute stepped in and conferred some special statutory obligations on the part of the Authority in the contractual field. The contract between the respondents and the Authority did not contain any statutory terms and/or conditions. [754C-E] E

Even conceding that the Authority had the trappings of a State or would be comprehended in 'other authority' for the purpose of Article 12 of the Constitution, while determining price of the houses flats constructed by it and the rate of monthly insalments to be paid, the 'authority' or its agent after intering into the field of ordinary contract had acted purely in its executive capacity. Thereafter the relations were no longer governed by the Constitutional provisions but by the legally valid contract which determined the rights and obligations of the parties *inter-se*. In this sphere, they could only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the Authority in the said contractual field. [754G-H; 755A-B] F G

A *of India & Ors.*, **AIR 1979 S.C. 1628.**

The High Court while exercising its jurisdiction under Article 226 of the Constitution had, therefore, gone wrong in its finding that there was arbitrariness and unreasonableness on the part of the appellants in increasing the cost of the houses/flats and the rate of
B **monthly instalments, and giving directions in the writ petitions as prayed for.** [755D-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2809-2812A of 1986.

From the Judgment and Order dated 6.2.1986 of the Allahabad
C High Court in Civil Misc. W.P. Nos. 2274, 2983, 3860, 4558 and 3202 of 1984.

Rajinder Sachher and Bharat Sanghal for the Appellants.

D Harbans Lal, Dr. Meera Agarwal, R.C. Misra and Arun Madan for the Respondents.

The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J. These five appeals by Special
E Leave under Article 136 of the Constitution of India are preferred against the Judgment and Order dated 6.2.86 passed by the Allahabad High Court in Civil Misc. Writ Petition No. 2274/84 connected with Civil Misc. Writ Petition Nos. 2983/84, 3860/84, 4558/84 & 3202/84 directing the respondents (appellants herein) to re-determine the cost of the appellants' (respondents herein) flats and instalments payable
F by them after hearing their grievances.

Since identical contentions are urged in all the appeals, we are rendering a common judgment.

As it is said that Civil Appeal No. 2809/86 arising out of Civil
G Misc. Writ Petition No. 2274/84 is more comprehensive and the facts alleged therein may be taken as representative in character, the facts relating to this appeal are briefly stated.

The Bareilly Development Authority (hereinafter referred as 'BDA'), the first appellant was constituted under Section 4 of the U.P.
H Urban Planning and Development Act, 1973 by the State Government

for the purposes of development in the District of Bareilly. With a view to easing the acute housing problem in the said District, the BDA has undertaken construction of dwelling units for people belonging to different income groups styled as 'Lower Income Group', 'Middle Income Group', 'High Income Group' and the 'Economically Weaker Sections' (hereinafter referred as LIG, MIG, HIG and EWS respectively). The BDA issued an advertisement offering to register names of intending applicants desirous of purchasing dwelling houses/flats in any one of the different income groups intended to be constructed by the BDA. In this appeal i.e. Civil Appeal No. 2809/86, the respondents 1 to 17 and 20 got themselves registered for allotment of flats in MIG scheme and respondents 18 and 19 in HIG scheme with the BDA in accordance with the terms and conditions contained in the brochure issued by the Authority. The following table of the brochure shows the necessary details inclusive of the estimated cost for the different types of flats under various categories:

Type of House	Range of Income	Cost	Initial payment	Interest	Approx monthly instalment
MIG	Rs.1000 to Rs.1500 p.m.	Rs.64,000	Rs.5000	12%	Rs.551 p.m. for 15 yrs.
HIG	Rs.1500 and above p.m.	Rs.1,15,000	Rs.7000	12%	Rs.1440 p.m. for 10 yrs.
LIG	Rs.351 to Rs.1000 p.m.	Rs.35,000	Rs.2000	11%	Rs.345 p.m. for 15 yrs.
EWS	Rs.350 p.m.	Rs.11,000	Rs.100	7%	Rs.89 p.m. for 20 yrs.

The note under the 'General Information Table' given in the said brochure states that the cost shown therein is only estimated cost and it would increase or decrease according to the rise or fall in the price at the time of completion of the houses/flats.

All the respondents registered their names for MIG, HIG and

A EWS flats as the case may be and made the initial deposit. Thereafter, the respondents in MIG group received indentical notices dated 19/20.1.84 from the Secretary, Bareilly Development Authority (second appellant) intimating that the revised cost of houses/flats of MIG group as well as the amount of monthly instalment would be as
B follows:

1.	No. of houses available	77
2.	Cost of the house	Rs.1,27,000
3.	Down payment to be made/ paid on allotment	Rs.35,000
4.	No. of monthly instalment fixed for the payment of remaining amount	180
5.	Rate of yearly interest	13.5%
6.	Amount of monthly instalment with interest.	Rs.1,031.50

E By the said notice, the respondents in MIG group were informed that 40% of the houses/flats mentioned in the notice would be given to the allottees who would deposit the entire cost in one cash payment and that the other allottees who intend to buy houses/flats on the above revised price/instalments must send by 28.1.84 their written acceptance on the annexed proforma to the Registration Section of the
F office of the BDA otherwise their claims would not be included in the lots to be drawn on 31.1.1984. Except the respondents Nos. 13, 17, 18 and 20, all other respondents in reply to those notices gave their unequivocal and unconditional written consent. Hence their names were included in the draw and on becing lucky in the draw, the respondents barring the above 4 were allotted their respective houses. After allot-
G ment, they were asked to complete the other formalities and make down payments in accordance with the notice dated 19/20.1.1984, by a further notice dated 3.2.1984 (Annexure 'F'). Similar notices were issued to all the registered allottees for all types of houses and the respondents were also intimated that in case any of the registered persons does not want to purchase the house, his name would not be
H included in the draw but he would have his choice later on.

At this stage, all the respondents in these appeals approached the High Court under Article 226 of the Constitution of India challenging the revised terms and conditions of the BDA on the ground that the petitioners were estopped from changing the conditions subject to which the respondents-applicants had applied for registration and deposited the initial payment in the year 1980; that the enhancement of cost of the house/flat amounting almost double of the estimated cost as shown in the brochure while inviting the applications and the increase of the monthly instalments are much beyond the means of the respondents and that this arbitrary and unilateral stand of the petitioners is to the prejudice of the respondents. On the above contentions, the respondents prayed in their respective petitions for issue of writ of mandamus directing the petitioners to maintain the allotment of the flats in their favour on the original terms and conditions, to hand over the possession of the same and further to restrain the petitioners from cancelling the original allotment. The above plea was resisted by the petitioners strongly relying on certain conditions contained in the brochure especially of clauses 12 and 13 as per which the BDA has reserved its discretion to change, alter or modify any of the terms and/or conditions of the allotment given in the brochure; that its decision would be final with regard to any matter concerning the registration and allotment and that the BDA has right to relax any condition in its discretion. It has been further contended that respondents barring 13, 17, 18 and 20 have given their written acceptance to the changed conditions as mentioned in the notice dated 19/20.1.1984 and as such they are not entitled to the reliefs claimed in the writ petition. According to the petitioners the increase in the cost and the interest demanded from the respondents is neither arbitrary nor unreasonable and the High Court is not the proper forum for examining in detail the terms regarding payment of instalments in the circumstances of the present case, and if the respondents were not agreeable to the changed terms and conditions, they could as well resile from their consent. Finally, it was contended that the respondents are estopped from challenging the varied terms and conditions of the allotment after having consented.

The High Court though repelled the contention of the respondents (allottees) based on the principle of promissory estoppel, made the following observations with regard to the case of the respondents in the MIG category:

> "In the circumstances of the present case the fixation of monthly instalment to the tune of Rs.1031.50 from the

A petitioners of MIG group whose income is hardly Rs.1500 per month appears to us smacking of arbitrariness and unreasonableness on the part of the contesting opposite party (petitioners herein)";

B "In the circumstances of the present case, we are not satisfied that the contesting opposite party has succeeded in establishing its demand of double the estimated cost by facts and figures. The end of justice demands that the authority should refix the cost of the petitioner's flats after hearing their grievance."

C The High Court answered the objections taken by the petitioners herein that the respondents have consented for the changed terms and conditions observing, "We think that the consent obtained from the petitioners was also not reasonable act on the part of the contesting opposite parties (appellants herein)". Finally, the High Court adopting the above reasoning in respect of the cases of other respondents
D also falling under various categories directed the appellants herein in all the writ petitions "to re-determine the cost of the petitioners' (respondents herein) flats and instalments payable by them after hearing their grievances."

Being aggrieved by the impugned judgment the appellants have
E filed these appeals by special leave.

Shri Rajinder Sachher, Sr. Adv. after taking us through the relevant documents and the additional affidavit filed by the second respondent and the reply affidavit assailed the reasonings given by the High Court contending that the said Court has erroneously held that
F the BDA has failed to justify the demand of the enhancement in the cost of houses/flats as well as the increase of the monthly instalments in disproportionate to their income, because the income of the applicant was relevant only to determine the category of the scheme in which the applicant had to be included for eligibility to get a house/flat under the scheme but not for enhancement of the cost of the houses/
G flats and monthly instalments. According to him since the declared policy of the BDA being 'No Profit No Loss', it had fixed the cost of the houses/flats and the rate of instalments after taking into consideration of the escalation of the building material, labour charges, cost of transport and the allied valuable factors which all enter into the price fixation, and as such the High Court is not correct in going into the
H question of computation of cost of the construction of houses/flats and

the plea of clerical mistakes exercising its jurisdiction under Article 226 of the Constitution of India. He further submits that the High Court has gone wrong in importing the principle laid down in *Ramana Dayaram Shetty* v. *The International Airport Authority of India & Ors.*, AIR 1979 Supreme Court 1628 to the present facts and circumstances of the case in view of the fact that in price fixation the executive has a wide discretion and it is only answerable provided there is any statutory control over its policy of price fixation and it is not the function of the High Court to sit in judgment over such matters of economic policy. It has been vehemently urged that after the parties have entered into the field of ordinary contract, the relations are no longer covered by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties *inter-se*.

The fact that all respondents had applied for registration only on acceptance of terms and conditions contained in the brochure inclusive of Clauses 12 & 13 as well as the conditions mentioned in the Notes 1 and 2 of the 'General Information Table' of the said brochure, and further the respondents barring respondents Nos. 13, 17, 18 and 20 in MIG group gave their reply accepting the changed terms and conditions as per letter dated 19/20.1.1984 cannot be challenged in view of the unassailable documentary evidence namely Annexures 'A', 'D', 'E' and 'F'.

Now, we shall reproduce some of the relevant conditions of the brochure as well as the changed conditions contained in the letter dated 19/20.1.1984. Clauses 12 and 13 of the brochure issued by the BDA and the notes 1 and 2 of the General Information Table thereto read thus:

> *Clause 12*
> For allotment by lottery all the above-mentioned terms and rules given in the booklet would ordinarily be followed but the Development Authority will have the right to change, enhance or amend any of the terms and/or condition as and when it thinks necessary and at its discretion.
>
> *Clause 13*
> The decision of the Development Authority in regard to any matter in relation to the registration application will be final. It would have the right to relax any of the conditions at its discretion. The right to sell by auction the Middle

A Income Group and Higher Income Group plots/houses or any portion thereof, of the various schemes, will also vest in the Development Authority.

General Information Table

B * * *

Note: (1) The cost shown in the column 4 is only estimated cost. It will increase or decrease according to the rise or fall in the price at the time of completion of the property.

C

Note: (2) The data given in the above mentioned table can be amended as felt necessary.

The last paragraph of the letter dated 19/20.1.84 (Annexure 'D')
D reads thus:

"If you want to buy the house on the above price/instalment then you must send by 28.1.1984 your written acceptance on the annexed proforma to the Registration Section of this office."

E

It may be mentioned here that in this letter (Annexure 'D'), the BDA has informed the allottees of MIG about the enhancement of the cost of the houses/flats as well as the increase of the monthly instalment and the rate of yearly interest etc. and requested the allottees to give their written acceptance so that their names could be included in
F the list.

The respondents except the four above have sent their written acceptance to the letter (Annexure 'D'). For a better appreciation of the case of the appellants, we think that as an example the letter (Annexure 'E') of the first respondent in this case namely Shri Ajay
G Pal Singh may be reproduced:

"I, Ajay Pal Singh, S/o Shri Sujan Singh want to take a Middle Income Group house in the Housing Scheme No. 2 situated at Tibrinath of the Bareilly Development Authority on payment by instalment. I have seen the house and
H am satisfied. I accept the rules of the Bareilly Development Authority."

Only on the basis of the writtn acceptance, the name of the first respondent was included in the draw and he has successful in getting the allotment of House No. 37 in MIG type which fact if clearly borne out by the letter from the second respondent (Annexure 'F'). In this connection, it is worthwhile to note that the first respondent, Shri Ajay Pal Singh is the Principal of Shri Guru Govind Singh Inter College and his educational qualifications are M.A. (Econ. & Hist.), B.Sc., B.Ed., LL.B. From the above, it is clear that all the respondents who have sent their applications for registration with initial payment only after having fully understood the terms and conditions of the brochure inclusive of the Clauses 12 and 13 and Notes 1 and 2 of the General Information Table as per which the BDA has reserved its right to change, enhance or amend any of the terms and/or conditions as and when felt necessary, and also the right to relax any of the conditions at its discretion, and that the cost shown in the column 4 of the brochure was only estimated cost subject to increase or decrease according to the rise or fall in the price at the time of completion of the property. This is not only the case of the applicants of MIG scheme but also of the other applicants falling under the other categories i.e. HIG, LIG and EWS. So it cannot be said that there was a mis-statemennt or incorrect statement or an fraudulent concealment in the information supplied in the brochure published by the BDA on the strength of which all the applicants falling under the various categories applied and got their names registered. In such a circumstance the respondents cannot be heard to say that the BDA has arbitrarily and unreasonably changed the terms and conditions of the brochure to the prejudice of the respondents.

More so, the respondents barring respondent Nos. 13, 17, 18 and 20 after having given their written consent accepting the changed and varied terms and conditions as shown in the letter dated 19/20.1.84 are not justified in contending that the BDA has gone back on its original terms and conditions and has substituted new conditions to their detriment. It is quite un-understandable that the persons like the first respondent who is highly educated, occupying the post of the Principal of a College and who has accepted the changed terms and conditions by his letter is making these allegations against the BDA.

The respondents were under no obligation to seek allotment of houses/flats even after they had registered themselves. Notwithstanding, they voluntarily registered themselves as applicants, only after fully understanding the terms and conditions of the brochure inclusive of Clauses 12 and 13 and Notes 1 and 2 of the General Information

A Table which we have reproduced above, they are now trying to obtain the houses/flats at the price indicated in the brochure at the initial stage conveniently ignoring the other express conditions by and under which the BDA has reserved its right to change the terms and conditions as and when felt necessary, evidently depending upon the escalation of the prices. One should not loose sight of the fact that the BDA B did not compel anyone of the applicants to purchase the flat at the rates subsequently fixed by it and pay the increased monthly instalments. On the contrary, the option was left over only to the allottees. In fact, the respondents in Civil Appeal No. 2809 of 1986 except the four above mentioned have unconditionally accepted the changed terms and conditions.

C Thus the factual position in this case clearly and unambiguously reveals that the respondents after voluntarily accepting the conditions imposed by the BDA have entered into the realm of concluded contract pure and simple with the BDA and hence the respondents can only claim the right conferred upon them by the said contract and are D bound by the terms of the contract unless some statute steps in and confers some special statutory obligations on the part of the BDA in the contractual field. In the case before us, the contract between the respondents and the BDA does not contain any statutory terms and/or conditions. When the factual position is so, the High Court placing reliance on the decision in *Ramana Dayaram Shetty* case (AIR 1979 SC E 1628) has erroneously held:

> "It has not been disputed that the contesting opposite party is included within the term 'other authority' mentioned under Article 12 of the Constitution. Therefore, the contesting opposite parties cannot be permitted to act arbitra- F rily with the principle which meets the test of reason and relevance. Where an authority appears acting unreasonably this Court is not powerless and a writ of mandamus can be issued for performing its duty free from arbitrariness or unreasonableness."

G This finding, in our view, is not correct in the light of the facts and circumstances of this case because in *Ramana Dayaram Shetty* case there was no concluded contract as in this case. Even conceding that the BDA has the trappings of a State or would be comprehended in 'other authority' for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the H rate of monthly instalments to be paid, the 'authority' or its agent after

entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties *inter-se*. In this sphere, they can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority (i.e. B.D.A. in this case) in the said contractual field.

A

B

There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple *Radhakrishna Agarwal & Ors.* v. *State of Bihar & Ors.*, [1977] 3 SCR 249; *Premji Bhai Parmar & Ors. etc.* v. *Delhi Development Authority & Ors,* [1980] 2 SCR 704 and *D.F.O.* v. *Biswanath Tea Company Ltd.*, [1981] 3 SCR 662.

C

In view of the authoritative judicial pronouncements of this Court in the series of cases dealing with the scope of interference of a High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India in cases of non-statutory concluded contracts like the one in hand, we are constrained to hold that the High Court in the present case has gone wrong in its finding that there is arbitrariness and unreasonableness on the part of the appellants herein in increasing the cost of the houses/flats and the rate of monthly instalments and giving directions in the writ petitions as prayed for.

D

E

For the reasons hereinbefore stated, we set aside the judgment of the High Court and accordingly allow all the appeals. There will be no order as to costs.

F

Before parting with the judgment, we would like to observe that it is open to the respondents to approach the appellants for correction of any clerical mistakes in the calculation, if any and they are at liberty to move any proper authority for any remedy if they are otherwise legally entitled to.

G

P.S.S. Appeals allowed.