HIGH COURT OF MADHYA PRADESH : JABALPUR

WRIT PETITION No.4193/2009

Smt. Geeta Sharma, through LRS :
B.L. Sharma & others

Vs.

State of Madhya Pradesh & others

&

WRIT PETITION No.4353/2011

Bharat Dubey & others

Vs.

State of Madhya Pradesh & others

Shri R.N. Singh, learned senior Counsel assisted by Shri Arpan J. Pawar and Shri H.K. Upadhyay, learned Counsel for the petitioner.

Shri Vaibhav Tiwari, learned Panel Lawyer for the respondent-State.

Shri Prasant Singh, learned Counsel for respondent No.2.

(**In W.P. No.4193/2009**)

Shri R.N. Singh, learned senior Counsel assisted by Shri Arpan J. Pawar and Shri H.K. Upadhyay, learned Counsel for the petitioner.

Shri Vaibhav Tiwari, learned Panel Lawyer for the respondent-State.

Shri Vivek Agrawal, learned Counsel for respondent No.2.

(**In W.P. No.4353/2011**)

Present : Hon'ble Shri Justice K.K. Trivedi

O R D E R

(_____/04/2015)

1. Since the issues involved in both the writ petitions are similar, the relief claimed are identical, both the writ petitions are heard together. However, the facts are taken from W.P. No.4193/2009.

2. The original petitioner has approached this Court by way of filing this writ petition under Article 226 of the Constitution of India taking exception to the alleged arbitrary and malafide action of the respondents in the matter of conferral of the rights over the plot in dispute said to be allotted to the petitioner by respondent No.3, in terms of the agreement between the respondents No.2 and 3 and has also called in question the actions of the respondents in demanding the price of the said plot at the prevalent rate. It is contended that in fact the original petitioner was member of the respondent No.3, a Cooperative Housing Society and by virtue of that membership, a plot was allotted to the petitioner. The land obtained by the respondent No.3 was in fact acquired by the respondent-State for the purposes of making it available to the respondent No.2, Jabalpur Development Authority (herein after referred to as 'JDA') for the purposes of implementing its scheme, under the provisions of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (herein after referred to as 'Act'). However, the agreement in between the respondents No.2 and 3 was executed on 7th December, 1983 to the effect that on development of the land by the Society, certain plots would be made available to the Society for the purposes of allotment of the same to the members. Pursuance to the said agreement, the allotment was made by the Society

during the subsistence of the agreement, which was ultimately revoked by the JDA on 21.10.1993 alleging that the term of development within the period of two years from the date of agreement was not fulfilled by the Society and the possession of the land was demanded. However, there were certain more disputes between the members of the Society and Society itself. There were differences between the Society and JDA, which resulted in filing of litigation before this Court in which the petitioner was not impleaded as a party. The Division Bench of this Court had passed certain orders in the said cases. Pursuance to the said order, actions were taken by the respondents and to settle the land in dispute in favour of the petitioner, demand was made for payment of the development cost at particular rate fixed, which the petitioner though was not liable to pay, agreed to pay. Despite this, the land was not settled in favour of the petitioner and now by the impugned demand, development charge is being claimed at exorbitant rate, therefore, this writ petition is required to be filed seeking protection of property rights of the petitioner. The petitioner has claimed the following reliefs in the writ petition :

> “7.1. To hold that the action of the respondent no.2 is not calling the petitioner and other promoter members of the respondent no.3 society who have deposited the then value of the plot allotted to them and allotment deeds were executed in their favour in the year 1990, is illegal and to quash the notices issued to respondent no.5 to 7 and others.
>
> 7.2. To direct the respondent no.2 to call the promoter members of the respondent no.3 society including the petitioner and execute lease deed/title deed in their favour on the price prevalent in the respective year of taking membership, by depositing minimum required amount against the respective plots, as desired

> by this Hon'ble Court deciding W.P. No.868/1994.
>
> 7.3. To grant any other relief which this Hon'ble Court may deem fit.
>
> 7.4. That this Hon'ble Court may pleased to be hold that the order/resolution of the respondent board order no.2178 dated 15.06.2012 annexure P-37 is bad in law and further be pleased to quash the same in the interest of justice."

3. The respondents have contested the claim of the petitioner on various grounds. The respondent No.2 has initially taken an objection with respect to the maintainability of the present writ petition by filing a short reply stating that the issues raised in the present writ petition are already answered by the Division Bench of this Court in its decision dated 08.05.2006 in W.P. No.868/1991, (Bramhapuri Sahkari Grih Nirman Samiti Maryadit vs. Jabalpur Development Authority and others) and other analogous writ petitions and in view of the said decision, all the claims raised in the present writ petition stood already decided. This decision has been affirmed by the Apex Court by dismissing the Special Leave Petition without any reservations and as such issues cannot be re-raised before this Court in the present writ petition. It is further contended that in a writ petition filed by one R.P. Dubey, being W.P. No.2731/2007, again these issues were raised, which have been answered on 26.08.2009 and holding that in view of the law already settled by the Division Bench of this Court, no relief whatsoever can be granted, the said writ petition has been dismissed. The action is required to be taken in terms of the decision of Division Bench in para 15 of the judgment and that being so, if the notices have been issued to the petitioner by the JDA, no wrong is committed. The original petitioner herself has accepted

that since house is constructed by her on the land so obtained by her on allotment from the Housing Society, she is willing to deposit the amount for the purpose of getting the land settled in her favour. Pursuance to this, if the demand in terms of the regulations is made, it cannot be said to be bad in law. It is, thus, contended that the entire claim is misconceived and the writ petition is liable to be dismissed.

4. This petition though was filed in the year 2009 but was not formally admitted. Interim protection was granted to the petitioner. During the pendency of the writ petition, the original petitioner has died and her legal representatives have been brought on record. In terms of the various orders passed by this Court, the matter is heard finally.

5. The questions which are to be answered are : (i) whether issues raised in the present writ petition are covered by the decision of this Court in the case of Bramhapuri Sahkari Grih Nirman Samiti Maryadit (supra) and if not, to what extent the petitioner would be entitled to the relief in the present case; and (ii) whether the respondent No.2 was bound by the agreement till its cancellation or revocation and in view of that if any plot was allotted to the original petitioner in terms of the said agreement by the Housing Society, would she be entitled to claim settlement of the said plot in her favour on the terms as were prevalent on the date of allotment.

6. To answer the first question, it is necessary to see what was the stand taken in the writ petition filed by the Bramhapuri Housing Society and what was the ratio of law laid-down by the Division Bench of this Court and whether in view of the fact that original petitioner was not a party to

the said proceedings, the decision in such case would be binding on her or not. To analyze the claim made in the said writ petition, it has to be seen what was claimed in the said writ petition.

7. The Housing Society has approached the Court in fact calling in question the order by which the agreement in between the said society and the JDA was revoked by the JDA. The said part of the nature of the claim is indicated in paragraph 2 of the order passed by the Division Bench of this Court. Virtually the action of recalling or cancelling or rescinding of agreement by JDA was subject matter before the Division Bench. However, it appears that in between the period when the agreement was not cancelled, the Housing Society itself has executed certain sale-deeds in favour of some of the persons, who were said to be the members of the said Housing Society. The other writ petitions were filed seeking direction that the Housing Society was not the owner of the land. The said land was declared as surplus under the Urban Land Ceiling and Regulation Act and was vested in the State Government. The same was acquired for the purposes of making of a housing scheme by the JDA and, therefore, there was no authority available in even JDA to enter into any agreement with a housing society for development of the said land and in lieu of that, to make available any number of plots of the said land to the Housing Society for allotment of the same to the members of the Society. The sale-deeds so executed by the Housing Society were, thus, bad in law and were liable to be set aside. There was yet another writ petition filed in public interest for the purposes of seeking a direction against the Municipal Corporation, Jabalpur, relating to sanction of layout plan of construction and relief was claimed to quash the same. Though the sale-deeds

executed by the Housing Society were called in question but any allotment made by the Society in favour of the member was not the subject matter of the said litigation before the Division Bench of this Court.

8. However, it further appears that validity of the agreement executed in between the JDA and the Housing Society was closely scrutinized by the Division Bench. The discussion was made in that respect in paragraph 12 and 13 of the judgment and the effect of non-fulfillment of any of the conditions was also taken note of. The Division Bench has categorically held that the Housing Society was not competent to sell the plot even to its members but the proposal for allotment of land or plot to its member by the Housing Society was never taken into consideration. The sale-deeds were said to be void ab initio but for allotment of plot, not a single word was said in the entire judgment.

9. In light of this, the effect of the agreement and execution of the allotment in favour of the original petitioner has to be examined. The agreement is not in dispute, which has been placed on record as Annexure P-2. The objects of the agreement are very important and, therefore, the same are reproduced for ready reference :

> “WHEREAS the Development Authority having considered the request of the Housing Society agree to their carrying out the development in the sale on terms hereinafter set out.
>
> WHEREAS the Society also requests for allotment of the plots out of the above land to its members in leasehold rights in consideration of the development to be carried out in the aforesaid area.
>
> WHEREAS the Development Authority having considered the request of the Society

> for allotment of plots vis-a-vis the development to be done in the said area, agrees to allot plots to the said Society, in leasehold rights."

In consideration of the above three conditions, the parties to the agreement agreed that the Society shall carry out the development in the area as per lay-out approved by the Town and Country Planning Department and the Town and Country Development Authority. The development authority was required to give the specification of the development work to the Society. The Society was required to deposit 10% of the estimated cost of the internal development with the development authority as security. The development authority was required to give the estimate of the development cost to the society and society was required to deposit 10% of the same as receipt of demand notice from the development authority within one month of the receipt of such demand notice, which amount was refundable on satisfactory completion of the development work by the Society. The Society was required to deposit 2% of the estimated development cost for internal development with the development authority, which was subject to the final accounting and a refund, if permissible, and so on so forth. The agreed term S.No.11 was more important, which contemplates action to be taken in the event of the society failing to carry out the development work. Condition S.No.13 specifically prescribes that in lieu of the cash price of the land, the development authority shall demise lease of the plot area equally to 20% of the land to the land-owner or his nominee.

10. In terms of this agreement on which date the estimated cost was informed to the Society and on which date Society was called upon to deposit the said amount with the development authority is not pleaded. It is also not

made clear on what date the specifications of the development were delivered to the Housing Society. However, the respondent JDA has relied only on order dated 21.10.1993 saying that since the development work has not been completed from the date of agreement, i.e. with effect from 07.12.1983, within a period of two years and since the power of attorney executed in favour of the Society was also cancelled on 16.03.1990, the agreement executed in between the Society and JDA stand cancelled. The justification of this order is not required to be taken note of because it is already held by the Division Bench that such an order was just and proper and agreement with the Society was rightly cancelled. However, what would be the effect on the letter of proposal for allotment of land to the members issued by the Society during subsistence of the agreement between the Society and JDA, in terms of Condition S.No.13 is yet to be decided.

11. True it is that certain persons were made members of the Housing Society. True it is that amount for development indicated was collected by the Society. True it is that information was given with respect to the allotment of the plot to the members. On the date when the letter of allotment was issued in favour of the original petitioner by the Society, the agreement was in existence. In terms of whatever conditions applicable, the original petitioner was informed that she was required to deposit the development charge assessed at Rs.13/- per square feet. Since the original petitioner was allotted a corner plot, she was directed to deposit 10% additional charge, total amounting to Rs.26,000/-. The facts that certain allotments were made, were brought to the notice of the JDA with a request to settle the plot in their favour. At the time when the order of cancellation of agreement was issued, no step was taken

by the JDA for settlement of the plot in favour of the original petitioner or even cancellation of allotment of plot to her by the Housing Society. The litigation was not in respect of the allotment of the plot, rather the same was in respect of the sale-deeds so executed. Certain allottees were informed to make deposit of the development cost at the rate of Rs.280/- per square feed so that lease-deed may be executed in their favour by the JDA under the orders of the Chief Executive Officer, JDA, by the Land Acquisition Officer, JDA. In what circumstances said action was not taken, has not been explained. Therefore, since the agreement in between the Society and the JDA was not cancelled on the date of allotment was made by the Housing Society in favour of the petitioner, in terms of the conditions of agreement, JDA was required to take into consideration all those facts and to settle the claim of the petitioner. Non-settlement of such claim of the petitioner for a long time was in fact a folly on the part of the respondent JDA for which the original petitioner was not to be held responsible.

12. Even otherwise if the claim of the petitioner was also considered in terms of the orders passed by the Division Bench in the case of Brahmapuri Housing Society (supra) and if any negotiation was to be held for transfer of the land to the persons, who were in possession of the said land, in terms of Rule 5 of the Rules, which were in vogue at the relevant time, as also in terms of Section 58 of the Act, as was available on that day and the rules, which were in vogue at that time when the agreement had taken place, decisions were to be taken by the JDA. It was the claim of the respondents themselves that they were demanding Rs.280/- per square feet as development cost for the settlement of the land in favour of the petitioner or else they were required to intimate the petitioner that the

allotment made in her favour by the Society in terms of the agreement, stood cancelled which would have given a right to the petitioner to assail all those actions. However, the JDA did nothing for a long time and sat tied on the issue. It is not that the JDA was not aware that the house was constructed by the petitioner on the land so obtained by her from the Society. If it was unauthorized act of the Society of making the allotment to the petitioner, action was required to be taken at that stage and not otherwise. For all these lapses on the part of the JDA, they cannot be allowed to charge development charge at the exorbitant rate.

13. Having considered first issue in foregoing paras, now it has to be examined whether still the JDA is bound to comply with any such term of agreement or whether still petitioner would be entitled to the reliefs claimed. In fact all such transactions are the contractual matters, which are governed by the equitable laws. As has been described herein above, the petitioner was in bonafide believe that rightful allotment has been done to her by the Housing Society since she has deposited the amount with the Society and since there was an agreement in between the Society and JDA whereas the respondents, more particularly JDA, the real owner of the property, was required to initiate action against the petitioner in case the JDA was of the opinion that the allotment was not properly made in favour of the petitioner as Society was having no right to make such allotment or that no vested right was available to the Society on account of its lapses to allot the plot to the petitioner. The lapses are more on the part of respondent JDA and are not attributable to the petitioner. In such circumstances, adherence to such a rule, which would not be applicable in the case in hand in peculiar facts and circumstances, would not be justified. This has been held

by the Apex Court in the case of ***Delhi Development Authority vs. Pushpendra Kumar Jain, 1994 Supp (3) SCC 494*** and in the case of ***Delhi Development Authority vs. Kanwar Kumar Mehta and others, (1996) 11 SCC 196***, that the right of plot is applicable as is prevailing on the date of communication of the allotment letter. In the peculiar facts and circumstances where the allotment was on account of someone else and escalation of price has taken place, such fact was considered by the Apex Court and it was held that the right of interest would be applicable as on the date of original draw, that means the date of allotment.

14. In the case of ***Brij Mohan and others vs. Haryana Urban Development Authority and another***, ***(2011) 2 SCC 29***, again in the case of allotment of plot, the Apex Court has held in paragraphs 20, 21, 22 and 23, which read thus :

> "20. As noticed above, the scheme requires the allottees under the scheme for landlosers/oustees, to pay the normal allotment rates for the allotted plots. The question is what is the meaning of the term "normal allotment rate". No doubt, the term would ordinarily refer to the allotment rate prevailing at the time of allotment. If an acquisition is made in 1985 and the developed layout in the acquired lands is ready for allotment of plots in 1990, and allotments are made in the years 1990, 1991, 1992, 1993, 1994 and 1995 at annually increasing rates, a landloser who is allotted a plot in 1990 will naturally be charged a lesser price. But if his application is kept pending by the Development Authority for whatsoever reason and if the allotment is made in 1992, he may have to pay a higher price; and if the allotment is made in 1995 he may have to pay a much higher price.

21. The question is whether any discrimination should be permitted depending upon the whims, fancies and delays on the part of the authority in making allotments. To take this case itself, the application for allotment was made in 1990. On 9.9.1991, HUDA advertised the residential plots in the sectors developed from the acquired lands for allotment, wherein the allotment rate was shown as Rs.1032 per square metre (Rs.863/- per square yard) for plots of 300 square metre. In the year 1993, the allotment price was increased to Rs.1342/- per square metre (Rs.1122/- per square yard) and the appellants are required to pay the 1993 price instead of paying the rate in vogue when the layout was ready for allotment. Should the landloser who promptly made the application in 1990 be made to suffer, because of the inaction on the part of HUDA in making the allotment? We get the answer in the HUDA scheme itself.

22. The policy clearly states that "claims of the oustees shall be invited before the sector is floated for sale". This is also reiterated in the subsequent scheme dated 19.3.1992 which provides that "claims of the oustees for allotment of plots under this policy shall be invited by the Estate Officer, HUDA concerned, before the sector is floated for sale". It is therefore evident that the landloser applicants for allotment should be given the option to buy first, before the applications for allotment are invited from the general public. This means that the prices to be charged will be the rate which is equal to the rate that is fixed when the sector was first floated for allotment. In this case, it is not in doubt that when the sector was floated for sale, the rate that was fixed in regard to plots of 300 square metre or less, was Rs.1032/- per square metre (Rs.863 per square yard.

23. The appellants had made the applications in 1990 and approached the High Court in 1992. There was even a direction by the High Court to consider their applications within a fixed time. The appellants should therefore be allotted plots under the scheme at the initial price at which the layouts/sector

> plots were first offered for sale after the acquisition. Merely because HUDA delayed the allotment in spite of the applications of the appellants and the order of the High Court, and made the allotments only after a contempt petition was filed, does not mean that the appellants become liable to pay the allotment price prevailing as on the date of allotment. Having regard to the terms of the scheme which clearly requires that the landlosers shall be invited to apply for allotment before the sector is floated for sale, it is clear that the initial price alone should be applied provided the landlosers had applied for allotment at that time. In this case such applications were in fact made by the appellants. We are therefore of the view that the respondents could charge for the allotted plots only the rate of Rs.1032/- per square metre (or Rs.863/- per square yard) and not the rate as revised in 1993, namely Rs.1122/- per square yard."

15. In view of the law laid-down by the Apex Court, certain documents, which have been placed on record, are required to be examined. Whether in terms of the allotment, original petitioner has fulfilled the conditions or not. The amount was deposited in terms of allotment as was proposed in the year 1986 by the petitioner on 14.02.1986 and 27.11.1986. The amount so calculated was in terms of the rate, which were prevalent at that time and in proof of the said fact the sale-deed of that year executed for the adjoining plots have been produced. In the year 1983 when the official action was taken, the rates of the land have been proved by placing on record again the sale-deed executed in that respect within the very same area. Nothing has been placed on record to indicate by the respondents that such assertions of fact by the petitioner was incorrect. Even otherwise, when a demand was made by the JDA, the petitioner, though under compulsion, has accepted to pay development charge of the plot at the rate of Rs.280/- per square feet. In view of this, there was no question of

making any further demand from the petitioner, specially when the petitioner was not responsible for any delay in settlement of the plot. The conduct of the respondents itself is enough to demonstrate that they cannot take shelter of Division Bench decision, which has not been rendered in respect of such claim of persons like petitioner, therefore, the respondents would be liable to be commanded to take steps for settlement of the plot in favour of the petitioner pursuance to their letter issued by them to the petitioner asking the petitioner to deposit Rs.280/- as development cost for such grant. This is further fortified that this was resolved by the JDA itself in its meeting dated 08.05.2006 which was pursuance to the order of Division Bench in case of Brahmapuri Sahkari Grih Nirman Samiti Maryadit (supra) and, therefore, it would be appropriate to direct the respondent JDA to implement its resolution dated 08.05.2006 and to settle land in favour of the petitioner.

16. In view of discussion made herein above, the writ petition is allowed. The respondent JDA is directed to implement its resolution dated 08.05.2006 and to settle the land in favour of the petitioner or legal representatives of the petitioner, within a period of two months from today, on payment of development charges as prescribed in the said resolution. However, looking to the peculiar facts and circumstances of this case, there shall be no order as to costs.

(**K.K. Trivedi**)
Judge

Skc