



Housing Schemes, Price fixation of houses and other related issues: A Study

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ABSTRACT

Housing schemes in India by Development Authorities have played a major role in strategising and executing a planned and organized growth in India. This paper discusses the various Special housing scheme launched by State through its instrumentality like 'Housing Boards', the issues relating to allotment, price fixation and other connected matters often arise, quite frequently resulting in litigation. Courts are called upon to decide these issues in accordance with rules and procedures formulated by the appropriate State Governments or the Boards authorised to frame rules.

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Introduction

1. In various housing scheme launched by State through its instrumentality like 'Housing Boards', the issues relating to allotment, price fixation and other connected matters often arise, quite frequently resulting in litigation. Courts are called upon to decide these issues in accordance with rules and procedures formulated by the appropriate State Governments or the Boards¹ authorised to frame rules. The recent instance of such a case is M.P.Griha Nirman Mandal Adhiniyam established under M.P. Griha Nirman Mandal Adhiniyam Act, 1972.² The Board floated the "Housing Scheme" for allotment of (36) residential houses for the employees of the State Government and of public sector undertakings. The scheme was named as "Riviera Towne" in Bhopal. An advertisement was published in newspaper by the Board specifying the terms and conditions for allotment to the applicants. The Board fixed an 'enhanced' estimated cost, after the tentative cost and revised calculations and price determined, which was informed to the allottees to give their consent or dissent within (15) days from the date of issuance of the said communication. In the case of allottees failing to do so, they will not be allotted and amount already paid will be refunded to them with interest as per provisions of the Act. The enhanced rate was more than 30% of the original price. Apart from this, notified the price of the land for registration and the stamp duty in contravention of the law laid down by the courts. All then issues were the subject-matter of litigation in courts on various grounds.³

2. In Delhi Development Authority's case,⁴ the Supreme Court held as follows:-

i) The allottee was bound to make the deposit at the enhanced rate as per the demand raised by DDA, if he wanted to secure the flat;

ii) That the allottee gets an indefeasible right to allotment only on the date of communication of allotment and not on the date of draw of lots. Date of draw of lots is only a process to identify or select the persons for allotment and not the allotment itself;

iii) When the cost was enhanced prior to allotment letter, demand of the enhanced rate was justified.

3. The advertisement issued by the 'Board' clearly stated that the cost of the house shown in the said advertisement are totally provisional and the final fixation of the price will be done after the completion of the scheme. In view of this, the allottees will have to pay the difference between the tentative cost and the final sale price of the land which is based on the fixation of the final cost of the land within the stipulated time⁵. The sale price fixed and intimated to the allottees, in accordance with the provisions of the Act 1972 and the clause of the advertisement is binding on the allottees.⁶

4. The Supreme Court pointed out 'that no provision of law is brought to the notice of the court that mere draw of lots vests an indefeasible right in the allottee for allotment at the price obtaining on the date of draw of lots. The procedure which provides that in the event of allottee not willing to take or accept the allotment at that rate, he may decline the allotment and such a procedural norm is not unfair.

5. In Tamil Nadu Housing Board case, the Supreme Court stated thus:-

¹ Boards such as A.P.Housing Board in Andhra Pradesh and M.P. Griha Nirman Mandal Adhiniyam in Madhya Pradesh.

² M.P.Griha Nirman Mandal Adhiniyam is referred to as "Board", and M.P. Griha Nirman Mandal Adhiniyam, 1972 is referred to as "Act 1972" throughout this study.

³ M.P. Housing & Infra-Structure Development Board Vs. B.S.S. Parihar AIR 2015 SC P.3436.

⁴ AIR 1995 SC P.1.

⁵ See Note 3 Para 21.

⁶ See Note 1 Para 23

i) There is no terms or provision in the contract that if the Board does not determine the final price within 3 years from the date of allotment, the Board will lose the right to determine the final price thereafter or that the tentative price shall be the final price;

ii) If an account of delay in determination of compensation for land acquisition or delay on the part of contractors in completing the development works or construction, or if there are any encroachments, or if there are pending claims of contractors, the Board will not be able to determine the final cost within three years. However, such a contingency will not make tentative cost as 'final cost', if there is no provision in the letter of allotment or lease-cum-sale agreement to that effect. In other words, the Board could fix the final price even after three years after ascertaining various costs.

6. An allottee cannot claim that the increase in price should be determined, within three years and if it is not done the tentative price will be the final price. Such a claim would not only be illogical but also unreasonable. The Board can show that there was sufficient cause for the delay and it was beyond its control to determine. The allottee cannot refuse to pay merely on the grounds of delay.

The cost of land may increase substantially by reason of enhancement of compensation. Cost may also increase owing to services like providing for roads, parks and playgrounds etc. These costs also have to be included in the final fixation of the price. The decision rendered in *M.P.Housing Board Vs. Anil Kumar Khiwani*, wherein the Board's power to determine the final cost was denied on account of delay was treated as a precedent and erroneous in law and hence not binding. In the cast of *Municipal Corporation of Delhi*, the Supreme Court held that "precedents sub-silentio and without argument are of no moment" and the courts have to take recourse to relieve from injustice perpetrated by unjust precedents. Restraint in dissenting or over-ruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

7. The Supreme Court has laid down the following guidelines for the exercise of the power to determine the final fixation of price:-

- i) The cost of the land which was at the time of registration;
- ii) Actual developmental expenditure incurred on the plot since after the registration;
- iii) Total construction cost;
- iv) Supervision fees (at the rate prevalent at the time of registration);
- v) Penal interest against the remaining instalments as per the rules of the Board (at the rate prevalent from time to time);
- vi) Other charges as per the rules of the Board.

8. In *Coimbatore District Central Co-op. Bank*, the Supreme Court held that the retention of the power to fix final rates must pass through the test of proportionality.

The doctrine of proportionality is aimed at controlling the discretionary power of the administration. The principles of the doctrine rests on the following:-

i) If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, courts of law can interfere with such action;

ii) The principle is concerned with the process, method or manner in which the decision-maker has ordered his priorities. It steps in to focus true nature of exercise and the elaboration of a rule of permissible priorities;

iii) Proportionality involves "balancing test and 'necessity test'";

iv) Proportionality test involves that the legislative and administrative authorities, who have wide range of choices in the exercise of discretionary power, to determine whether "the choice made infringes the fundamental rights excessively or not".

9. In case of discriminatory actions of the Government, under Art 14 the two tests are applied namely

a) Primary review by applying the doctrine of proportionality and

b) Secondary review based on 'Wednesbury' principles of reasonableness.

Thus, the scope of review by courts of administrative actions is limited to the deficiency in decision-making process and not the decision.

10. In the case, the Supreme Court observed that the final fixation by the Board is arbitrary and laid down for re-fixation for the cost of developed plot at Rs.16500/- for the year 2009 adding 10% to the provisional cost every year to be payable by the allottees with interest at 9% P.A. being added from the date of demand till the date of payment.

11. In conclusion, the following points can be made for the just decision with regard to final fixation by the authorities for allotment made of developed plots:-

i) The proportionality test and the *Wednesbury's* test of reasonableness be applied to examine the validity of decision relating to an administrative action;

ii) The guidelines laid down by the Supreme Court be incorporated in the rules of authorities in the matter of allotment of developed lands;

iii) Construction work of the houses should be completed speedily to avoid unnecessary expenditure on account of time factor;

iv) Lands to be acquired should be done expeditiously and compensation issue be settled to avoid delay in the execution of work and allotment;

v) The power of the authorities should be exercised judiciously;

vi) In no case the allottee should be financially burdened excessively as it would be opposed to the doctrine of legitimate expectation when an initial payment increases beyond the capacity of the individual to pay.