A TAMIL NADU HOUSING BOARD & ORS.

v.

SEA SHORE APARTMENTS OWNERS WELFARE ASSOCIATION

(C.A. Nos. 7907-7913 of 2003)

B JANUARY 9, 2008

(C.K. THAKKER AND P. SATHASIVAM, JJ.)

Consumer Protection Act, 1986; Ss.2 (1)(0) and 12:

C *Services – Housing construction – Construction of flats by Housing Board on land acquisitioned by State Government – Agreement of sale-purchase of flats entered into between respondent-allottees and Housing Board – Ultimate cost of flats subject to amount of compensation to be rewarded for* D *the land acquisitioned – Issuance of allotment letters demanding certain additional amount – Challenged by allottees by filing Complaints – State Consumer Commission observed that raising of demand of additional amount by the Board improper and illegal – Affirmed by National Commission* E *holding that demand of additional amount made on non-existing grounds – On appeal, Held: Flats in question developed on land acquired by State Government – Compensation as awarded to land owners enhanced in a reference proceedings – Enhanced compensation affirmed* F *by Supreme Court – In terms of agreement, allottee-purchasers agreed to pay the final price of flats as would be fixed by the Board – Thus, the Board did not act unfairly/ unreasonably – However, the averments made by the allottees in the counter affidavit filed in Supreme Court were* G *unnecessary – All the complaints remitted to State Commission to decide issues/disputes in accordance with law – Contract – Consent.*

Consumer Protection Act – State Undertakings/ Instrumentalities – Exclusion of service offered by them from

H

application of the Act – Attempt for – Held: Must be discouraged as it would be against the spirit of the Act, a benevolent legislation. A

Consumer Redressal Commission – Disputes relating to deficiency in service – Consumer Disputes Redressal Commission – Jurisdiction of – Held: The Commission has jurisdiction to decide disputes relating to deficiency in service as services in terms of s.2(1)(o) of the Act includes housing construction as well. B

Words and Phrases: C

'Services' – Meaning of in the context of S.2(1)(o) of the Consumer Protection Act.

State of Tamil Nadu acquired a vast peace of land and transferred it to appellant No.1, Tamil Nadu Housing Board, for execution of the south Madras Neighbourhood Development Scheme. The Board proposed to construct different types of flats under its High Income Group Scheme. In order to assess demand from public, it issued an advertisement inviting applications for registration under the Scheme. The Board conducted draw for allotment of flats on October 15,1993 and issued provisional allotment letters giving tentative cost to successful applicants. Allotment letters indicating the final cost of the flats were issued by the Board in the year 1994. Later, an agreement was entered into between the Board and the allottees that ultimate cost of the flat was subject to the outcome in the land acquisition proceedings and possession of flats was given to all the allottees. Thereafter the allottees were asked to pay additional amount, to which they objected by filing representations to the Board. The Board, however, did not give any response. Even subsequent representations were not responded by the Board. Aggrieved, the allottees filed complaints before the State Consumer Commission under Section 12 of the Consumer Protection Act, 1986 D E F G H

A for direction to the Board to return the additional amount so demanded and paid by the members with interest thereon; that the Board to collect the instalments in 15 years as per the order of allotment issued earlier; and to pay compensation of rupees one lakh for the loss B sustained and mental agony suffered by its members. The State Commission allowed all the complaints quashing the demand made by the Board. Appeals filed by the Board against the order of the State Commissions were dismissed by the National Commission. Hence the C present appeals filed by the Board.

Appellant-Board contended that the Commissions were clearly in error in invoking the provisions of the Consumer Protection Act and in observing that there was 'deficiency in service'; that dispute in the instant case D related to fixation and determination of price of flats. Such dispute cannot be resolved in terms of provisions under the Act, and therefore, the Consumer Commission has no power/authority/jurisdiction to inquire into, deal with and decide such questions. Even otherwise, only civil court E can enter into disputed questions of fact on the basis of evidence adduced by the parties; that from the facts it was clearly established that in the year 1991, the Board formulated a scheme and tentative price of the flat was fixed. In view of overwhelming response, the scheme was F changed from seven types to fifteen types flats. Increase in plinth area was made, in ground area as also payment of excess compensation to land owners. All the applicants whose names had been registered in 1991 were informed about the revised price, the period within which the G amount was to be paid and the reasons for fixation of higher price; that at the time of registration, it was clearly indicted that for those who opted to make payment in instalments, the period of repayment was 13 years. However, when applications for allotment were called for, the period was indicated as 15 years, and it was accepted H

by the allottees; and in connection thereto agreements were signed by the allottees giving necessary undertakings. It was thereafter not open to the allottees to challenge fixation of price of flats by the Board. They were estopped from doing so under the doctrine of promissory estoppel; and that when complaints were filed before the State Forum, a counter-affidavit was filed on behalf of the Board wherein it was asserted that there were reasons for increase of price.

Allowing the appeals, the Court

HELD: 1.1 From the record, it is clear that in 1982, a huge land was acquired by the State under the Land Acquisition Act for public purpose, for the purpose of development of area by executing a Scheme known as South Madras Neighbourhood Scheme. Amount of compensation was paid to the land-owners as per the award but it was enhanced in a reference proceedings. The Board came up to this Court, but the enhanced compensation was confirmed. It is also clear from the Scheme initially prepared, which was subsequently finalized, there was difference in plinth area as also ground area. So far as price is concerned, in 1991, when the names of applicants were registered, it was clarified that the price indicated was 'tentative price' and it was subject to 'final price' being fixed by the Board. When the scheme was altered from seven types to fifteen types flats, then also it was stated that the amount shown was merely "tentative selling price". The intending purchasers, therefore, were aware of the fact that the final price was to be fixed by the Board. In fact an agreement to that effect was executed by all prospective allottees wherein they agreed that they would pay the amount which would be finally fixed by the Board. (Para –11) [382-G; 383-A, B, C, D]

1.2 In terms of clause 18 of the agreement entered into between the parties and signed by all the allottees, it

A is expressly agreed between both the parties that after the finalization of the total cost of construction of flat and the value of the land in accordance with the award of compensation declared by the Tribunals and Courts the Purchaser shall pay to the Vendor on demand before the B registration of the Sale Deed the difference between the amount already paid by the purchaser and the price amount finally fixed by the Chairman, the Vendor. In the circumstances, it cannot be said that the allottees were not aware of the above condition and they were C compelled to make payment and thus were treated unfairly or unreasonably by the Board. (Paras – 12 & 13) [383-D, E, F, G]

2.1 The observations made by this Court in the decided case of Lucknow Development Authority vs. M.K. D Gupta* make it clear that when private undertakings are taken over by the State or its Instrumentalities, any attempt to exclude the services offered by such statutory bodies to the common-man from the application of the Consumer Protection Act must be discouraged. It would be against E the spirit behind the benevolent legislation. At the same time, however, it cannot be overlooked that 'price fixation' depends on several factors. Normally, therefore, it would not be appropriate to enter into adequacy of price. (Para – 20) [387-C, D, E]

F **Lucknow Development Authority vs. M.K. Gupta,* **(1994) 1 SCC 243;** *Premji Bhai Parmar & Ors. vs. Delhi Development Authority & Anr.,* **(1980) 2 SCC 129;** *Bareilly Development Authority vs. Ajai Pal Singh,* **(1989) 2 SCC 116;** *R.D. Shetty vs. International Airports* G *Authority,* **(1979) 3 SCC 489 and** *Chief Administrator, PUDA vs. Shabnam Virk,* **(2006) 4 SCC 74 – relied on.**

2.2 The State Commission as well as National Commission ought to have considered all the aspects. Even if they were of the view that after the amendment of H the Consumer Protection Act in 1993 and in the light of

inclusion of 'housing construction' within the meaning of 'service' in clause (o) of Section 2(1), the Commission had jurisdiction to deal with and decide disputes relating to deficiency in service under the Act which included the issues raised, it was obligatory on them to consider whether the controversy raised in the proceedings with regard to fixation of price would be justiciable on the facts and in the circumstances of the case, particularly in the light of the contentions raised by the Board that there was increase in plinth area, ground area and payment of enhanced compensation to land owners. They were also required to consider that the Board does not have land of its own and the land was acquired under the Land Acquisition Act by paying compensation as determined in accordance with the provisions of that law. (Para – 27) [392-A, B, C, D]

2.3 The Commissions also could not ignore the fact that when the advertisement was issued for the purpose of registration of intending purchasers of flats, they were clearly intimated that the price shown was merely a 'tentative price'. Again, when the scheme was altered the intending purchasers were informed that the price was tentative and they would have to pay price finally determined by the Board. They consented and entered into an agreement by giving an undertaking that they would pay the price determined by the Board. (Para – 27) [392-D, E]

2.4 It was open to the allottees not to pay the additional amount demanded by the Board and not to take possession. By agreeing to pay the amount and by paying such amount and taking possession, now they want to go behind the concluded contract between the parties. All these questions were required to be gone into by the State Commission as also by the National Commission. The orders passed by both the Fora are, therefore, liable to be set aside. All the complaints are remitted to the State

A **Commission to decide them in accordance with law after hearing the parties. Since the original complaints were filed in 1995, the State Commission will give priority to the cases and decide them as expeditiously as possible. (Paras – 27 & 30) [392-G; 393-A; 394-A, B]**

B **3. While supporting the orders passed by the State Consumer Commission and the National Consumer Commission, the allottees have made certain averments in the counter-affidavit filed in this Court. These averments made against the officials of the Housing Board were** C **unnecessary. (Para – 28) [393-B, C]**

4. It is clarified that no opinion has been expressed one way or the other on the controversy raised by the parties. All the observations made by this Court are limited D **for the purpose of holding that the State Commission as also National Commission ought to have dealt with and decided the contentions raised by the Housing Board. Therefore, as and when the complaints will be placed for hearing before the Commissions, they will be decided strictly on their own merits without being inhibited by** E **those observations. (Para – 31) [394-B, C, D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7907-7913 of 2001.

From the final Judgment and Order dated 25.2.2002 of F the National Consumer Disputes Redressal Commission, New Delhi in F.A. Nos. 500 to 506 of 1995.

V. Krishnamurthy, H. Harish Kumar, Dr. R. Prakash and P.N. Ramalingam for the Appellants.

G M.N. Rao, K.K. Mani, C.K.R. Linin Shekar and Mayur R. Shah for the Respondent.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. The present appeals are filed H against an order passed by the State Consumer Disputes

Redressal Commission, Madras ('State Commission' for short) on July 24, 1995 in Original Petition Nos. 143-149 of 1995 and confirmed by the National Consumer Disputes Redressal Commission, New Delhi ('National Commission' for short) on February 25, 2002 in First Appeal Nos. 500-506 of 1995. A

2. Shortly stated the facts are that the Tamil Nadu Housing Board (hereinafter referred to as 'the Board') was constituted under the Tamil Nadu Housing Board Act, 1961 (Act 17 of 1961). The primary object of creation of the Housing Board was to acquire land in the neighbourhood areas of developed cities at a reasonable price and to construct tenements, houses and flats thereon for providing residential accommodation to needy people of different income groups and categories. In the year 1982, vast piece of land admeasuring about 28 acres of Thiruvamiyer, Chennai was acquired by the State of Tamil Nadu under the Land Acquisition Act, 1894 for a public purpose, *viz.* for the development of the area known as South Madras Neighbourhood Scheme. On February 27, 1991 the Board approved a proposal to construct seven different types of flats. It proposed to construct 102 flats under its High Income Group Scheme ('HIG Scheme' for short). In order to assess demand from public, an advertisement was issued by the Board on March 21, 1991 inviting applications for registration under the title "Avail a chance of owning your own flat" in Thiruvanmiyur Extension, Madras. Seven types of flats were mentioned in the said advertisement along with plinth area, tentative price, initial deposit, monthly instalment, repayment period, amount of deposit for registration, etc. It was stated that pursuant to the said advertisement applications were made by interested persons. There was overwhelming demand and several persons applied. The record reflects that finally instead of seven types of flats, fifteen types of flats were constructed under HIG Scheme. The Board issued letters on August 13, 1993 to the applicants asking them whether they were willing to purchase flats. Necessary details of the type, design, plinth area, tentative selling price and other particulars were supplied. Draw was conducted on B C D E F G H

A October 15, 1993 and provisional allotment letters were issued on October 19, 1993. Tentative cost was specified in the letter which was to be paid within a period of 21 days. Final allotment order was made on August 9, 1994 wherein final cost of the flat was mentioned. An agreement was entered into between the B Housing Board and allottees on August 22, 1994. In the said agreement, it was mentioned that it was agreed between the parties that the ultimate cost of the total construction of the flat was subject to the outcome in the award of compensation in land acquisition proceedings pending adjudication and the final C amount will be fixed on that basis which will be paid by the members. Thereafter possession of flats was given to all allottees. The members were then asked to pay additional amount. The respondent-Sea Shore Apartments Owners Welfare Association ['Association' for short] felt that the demand D made and amount recovered by the Housing Board was neither legal nor proper. It could not have demanded more amount. The amount which was fixed earlier was already paid and the members of the Association were not treated fairly. It, therefore, made representation on December 26, 1994 against the additional amount. In the said representation, the Association E asked the Board to give reasons for enhancement of price of flats as also for reduction of period of payment of instalments from 15 years to 13 years. The Board, however, did not reply to the said letter. Even subsequent letter was not responded. Seven complaints were, therefore, filed by the allottees before the State F Commission on May 26, 1995 under Section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act'). Prayers were made in the complaints to direct the Board and its officers to return the escalation amount paid by the members of the Association with interest thereon; to restrain G the Board and its officers from insisting on payment of excess amount as demanded; to direct the Board to collect the instalments in 15 years as per the order of allotment issued earlier; to pay compensation of rupees one lakh for the loss sustained and mental agony suffered by the members of the H Association and to pay costs of the complaints. It was also stated

that the complainants had claimed relief for those members also whose names had been given in the Annexure to the complaints. A

3. A reply was filed by the Board controverting averments made and allegations levelled in the complaints. It was stated that under the Demand Assessment Scheme, the price mentioned in the advertisement was only 'tentative'. Originally, the proposal was for construction of seven types of flats but because of great demand, it was finalized into fifteen types of flats. It was also stated that the construction cost was increased because of increase in ground area, plinth area and also because of payment of excess compensation to the land owners whose lands had been acquired for the purpose of construction of flats. It was contended that if the allottees were really aggrieved over the increase in cost, they could have well surrendered the flats. But they did not do so. They accepted the increase in price and took over possession of property. It was also contended that the Consumer Forum had no jurisdiction to deal with and decide the matters relating to fixation of price of flats and on that ground also, the complaints were not maintainable. It was submitted that the demand of price could not be said to be illegal, fanciful or otherwise unreasonable and the complaints were liable to be dismissed. B C D E

4. The State Commission considered the rival contentions of the parties and held that there had been 'deficiency in service' on the part of Board inasmuch as there was illegal demand by the Board of additional amount which was neither legal nor proper. The Commission observed that when the possession was sought to be given to the allottees, they had no option, but to take possession of the flats and that is how possession was taken over by the members and the said circumstance could not go against them. According to the State Commission, the complaint of the complainant-Association that escalation was unjust, unwarranted and illegal was well founded and ought to be upheld. According to the State Commission, "three-fold defence' put forward by the Board had no basis whatsoever. In the opinion of the State Commission, the defences as to (i) F G H

A increase in the plinth area, (ii) increase in the area of land, and (iii) payment of excess amount of compensation to the land owners were vague and no particulars were furnished. No details were supplied as to excess payment of compensation. It was also not clear whether the entire excess amount of compensation B paid to the land owners was in respect of land on which flats were constructed by the Board and allotted to the members of the Association. It was not open to the Board, commented the State Commission, to demand from members of the Association, the entire amount which it had paid to the land C owners towards enhanced compensation. The State Commission also held that the Board had no right to reduce the period of recovery of amount by instalments from 15 years to 13 years and the said action was illegal. Accordingly, all the complaints were allowed and the demand made by the Board D was quashed and set aside. Refund of amount was also ordered.

5. Being aggrieved by the order passed by the State Commission, the Board approached the National Commission. The National Commission by a short order dated February 25, 2002 dismissed all the appeals observing *inter alia* that the E State Commission recorded that "not a scrap of paper has been filed by the opposite party to show that there was any land acquisition proceedings before any court in respect of the lands in question". According to the National Commission, the action of the Board in increasing price was on non existing grounds F and hence the demand was not legal. The appeals were accordingly dismissed.

6. The Board has challenged these decisions by filing present appeals. On November 25, 2002, notice was issued. On September 15, 2003, leave was granted after hearing the G parties. Operation of the impugned order was also stayed subject to the appellants depositing the disputed amount in the Court within a period of four weeks from the date of the order. The Registry was directed to invest the said amount. The matters were thereafter ordered to be posted for hearing. That is how H the matters are before us.

7. We have heard the learned counsel for the parties. A

8. The learned counsel for the Board strenuously urged that the Commissions were clearly in error in invoking the provisions of the Act and in observing that there was 'deficiency in service'. According to the learned counsel, dispute in the instant case related to fixation and determination of price of B flats. Such dispute cannot be resolved under the Act. Consumer Commission has no power, authority or jurisdiction to inquire into, deal with and decide such questions. Even otherwise, in view of allegations and counter-allegations and assertions and retractions, only civil court can enter into disputed questions of C fact on the basis of evidence adduced by the parties and Commissions exercising summary power were in error in encroaching the jurisdiction of civil court which could not have been done.

D

9. It was also submitted that from the facts it was clearly established that in 1991 what was done by the Board was to formulate a scheme and tentative price was fixed. In view of overwhelmed response, the scheme was changed from seven types to fifteen types flats. There was increase in plinth area, in ground area as also payment of excess compensation to land E owners. It was, therefore, clearly stated in 1993 to all the applicants whose names had been registered in 1991 about the revised price, the period within which the amount was to be paid and the reasons for fixation of higher price. It was also stated that at the time of registration in 1991, it was clearly F indicted that for those who opted to make payment in instalments, the period of repayment was 13 years. In 1993, however, when applications for allotment were called for, the period was indicated as 15 years. The said mistake was rectified at the time of final allotment. With an open eye, it was G accepted by the allottees and agreements were signed by them giving undertakings. It was thereafter not open to the allottees to challenge fixation of price of flats by the Board. They were estopped from doing so under the doctrine of promissory estoppel. It was also submitted that when complaints were filed H

A before the State Forum, a counter-affidavit was filed on behalf of the Board wherein it was asserted that there were three-fold reasons for increase of price; *viz.*, (i) increase in plinth area, (ii) increase in ground area, and (iii) payment of enhanced compensation to land owners. In view of the above pleas and B defences, the State Commission ought to have dismissed the complaints. The State Commission, however, failed to do so. But even otherwise, the State Commission did not consider all the defences in their proper perspective and held that the Board was not entitled to claim additional amount and issued certain C directions including refund of amount with interest. Obviously, the Board was aggrieved and it approached the National Commission. But the National Commission also, without considering the points raised by the Board confirmed the order passed by the State Commission and dismissed the appeals. D Both the orders, therefore, are not in consonance with law and are liable to be set aside.

10. The learned counsel for the complainants supported the order passed by the State Commission and confirmed by the National Commission. He submitted that the State E Commission has considered all the contentions raised by the Board and after perusing the materials placed before it, recorded a finding that none of the three defences raised by the Board was well-founded and hence could not be upheld. It was a pure finding of fact based on evidence. The National F Commission affirmed the order passed by the State Commission observing that the findings recorded by the State Commission were findings of fact and they did not call for interference. Such order cannot be said to be illegal or otherwise unreasonable which can be interfered with in exercise of G discretionary jurisdiction of this Court under Article 136 of the Constitution and the appeals may be dismissed.

11. Having heard the learned counsel for the parties, in our opinion, all the appeals should be allowed. From the record, it is clear that in 1982, a huge land admeasuring about 28 acres H at Thiruvanmiyur Extension, Chennai was acquired by the State

under the Land Acquisition Act for public purpose, namely, for the purpose of development of area known as South Madras Neighbourhood Scheme. Amount of compensation was paid to the land-owners as per the award but it was enhanced in reference proceedings. The Board came up to this Court, but the enhanced compensation was confirmed. It is also clear from the Scheme initially prepared, i.e. seven types scheme and fifteen types scheme which was subsequently finalized, there was difference in plinth area as also ground area. So far as price is concerned, in 1991, when the names of applicants were registered, it was clarified that the price indicated was 'tentative price' and it was subject to 'final price' being fixed by the Board. In any case when the scheme was altered from seven types to fifteen types flats, it was stated that the amount shown was merely "tentative selling price". The intending purchasers, therefore, were aware of the fact that the final price was to be fixed by the Board. In fact an agreement to that effect was executed by all prospective allottees wherein they agreed that they would pay the amount which would be finally fixed by the Board.

12. Clause 18 of the agreement entered into between the parties and signed by all allottees is extremely important and reads thus;

> "It is expressly agreed between both the parties that after the finalizatin of the total cost of construction of flat and the value of the land in accordance with the award of compensation declared by the Tribunals and Courts the Purchaser shall pay to the Vendor on demand before the registration of the Sale Deed the difference between the amount already paid by the purchaser as per clause 2 above and the price amount finally fixed by the Chairman the Vendor".

13. In the circumstances, it cannot be said that the allottees were not aware of the above condition and they were compelled to make payment and thus were treated unfairly or unreasonably by the Board.

A 14. The State Commission in the impugned order observed that it was the case of the Board that excess amount of compensation was awarded to the land owners. It proceeded to state that the excess compensation had been awarded in respect of lands covered by other schemes in the neighbourhood B and the Board attempted to shift the burden of the excess amount on the allottees of Thiruvanmiyur Extension Scheme. It also stated that no evidence was produced by the Board to show that there was any land acquisition proceeding before any court in respect of land covered by HIG Scheme No. 102 (though C Clause 18 of the agreement extracted hereinabove expressly refers to such proceedings). It also observed that an affidavit was filed by the Secretary of the Complainant-Association that HIG Scheme No. 102 was not involved in any land acquisition proceedings before any court and the said averment has not D been rebutted by the Board. (It may, however, be stated that in the reply filed by the Board before the State Commission, it was asserted that one of the reasons for increase in cost was due to excess amount of compensation allowed to the land-owners). The State Commission observed that all the three defences raised by the Board were 'delectably vague', without E any particulars as to how much escalation was due to plinth area, how much was due to increase in the land area and how much was due to payment of enhanced compensation to land owners. It went on to state that the cost of enhanced compensation and increased area "must also have been taken F into consideration in fixing the tentative selling price". The action of the Board, in the opinion of the State Commission was, therefore, unjust and arbitrary.

15. It was also held that reduction of period of payment of G balance amount from 15 years to 13 years by monthly instalments amounted to 'deficiency in service' and that part was, therefore, illegal. Accordingly, the following directions were issued by the State Commission;

"1. It is declared that the opposite parties are entitled to H claim from the members of the complainant

Association for the flats allotted to them under No.102 HIG Scheme at Thiruvanmiyur Extension only the selling price mentioned in Ex.A2(a) containing the particulars of this Scheme.

2. The opposite parties are directed to refund to the members of the complainant Association who have made full payment, the excess amount collected with interest thereon at 12% from the date of collection till payment.

3. In respect of the Members of the Complainant Association who have opted for payment in instalments, the opposite parties are directed to re-schedule the balance of payment as per Ex.A2 (a) in monthly instalments for 15 years instead of 13 years and adjust the excess payment made if any, towards future instalments.

4. The opposite parties are also directed to pay a consolidated sum of Rs.7,000/- as costs to the Complainant Association at the rate of Rs.1,000/- per complaint".

16. The National Commission, without discussing the evidence on record as also contentions raised by the Board, conclusions arrived at and reasons weighed with the State Commission, confirmed the findings by a brief order.

17. As observed earlier, it was contended by the Board before the State Commission and National Commission that fixation of price of flats cannot fall within the purview of the Commission. It is, no doubt, true that 'housing construction' had been included in the definition of 'service' in clause (o) of Section 2(1) of the Act by the Consumer Protection (Amendment) Act, 1993 [Act 50 of 1993]. But it was submitted that the 'fixation of price' cannot be made subject matter of dispute and Consumer Commission could not deal with the question as to adequacy of price. A specific contention was raised by the Board before the

A State Commission and National Commission, but it was decided against the Board though according to the Board, the point was covered by earlier decisions of the National Commission itself.

18. The learned counsel for the Board referred to a B decision of the National Commission in *Gujarat Housing Board v. Akhil Bhartiya Grahak Panchayat & Ors.*, (1996) 1 CPJ 103. Considering the provisions of the Act, the National Commission held that the Consumer Commission had no jurisdiction to go into the question of pricing of houses and plots, sold or allotted C on hire purchase system by the Development Authority or Housing Board. The Commission relied upon its earlier decision in *Gujarat Housing Board v. Datania Amritlal Fulchand & Ors.*, (1993) 3 CPJ 351.

D 19. True it is that in *Lucknow Development Authority v. M.K. Gupta,* (1994) 1 SCC 243, this Court stated;

"When private undertakings are taken over by the government or corporations are created to discharge what is otherwise State's function, one of the inherent objectives E of such social welfare measures is to provide better, efficient and the cheaper services to the people. Any attempt, therefore, to exclude services offered by statutory or official bodies to the common man would be against the provisions of the Act and spirit behind it. It is indeed F unfortunate that since enforcement of the Act there is a demand and even political pressure is built up to exclude one or the other class from operation of the Act. How ironical it is that official or semi-official bodies which insist on numerous benefits, which are otherwise available in G private sector, succeed in bargaining for it on threat of strike mainly because of larger income accruing due to rise in number of consumers and not due to better and efficient functioning claim exclusion when it comes to accountability from operation of the Act. The spirit of consumerism is so feeble and dormant that no association, H

public or private spirited, raises any finger on regular hike in prices not because it is necessary but either because it has not been done for sometime or because the operational cost has gone up irrespective of the efficiency without any regard to its impact on the common man. In our opinion, the entire argument found on being statutory does not appear to have any substance. A government or semi-government body or a local authority is as much amenable to the Act as any other private body rendering similar service. Truly speaking it would be a service to the society if such bodies instead of claiming exclusion subject themselves to the Act and let their acts and omissions scrutinized as public accountability is necessary for healthy growth of society".

20. The above observations make it clear that when private undertakings are taken over by the State or its Instrumentalities, any attempt to exclude the services offered by such statutory bodies to the common-man from the application of the Act must be discouraged. It would be against the spirit behind the benevolent legislation. At the same time, however, it cannot be overlooked that 'price fixation' depends on several factors. *Normally*, therefore, it would not be appropriate to enter into adequacy of price.

21. It may be profitable at this stage to refer to a decision of this Court in *Premji Bhai Parmar & Ors. v. Delhi Development Authority & Anr.*, (1980) 2 SCC 129. The petitioner in that case purchased a plot offered by the respondent-Authority and after payment of price took possession thereof. Subsequently, however, he filed a petition under Article 32 in this Court contending that the surcharge collected by the authority was illegal and violative of Article 14. Dismissing the petition, this Court held that the remedy sought by the petitioner to reopen the concluded contract with a view to getting back a part of the purchase price paid and benefit taken was not proper.

22. The Court stated;

A "Conceding for this submission that the Authority has the trappings of a State or would be comprehended in 'other authority' for the purpose of Article 12, while determining price of flats constructed by it, it acts purely in its executive capacity and "is bound by the obligations which dealings B of the State with the individual citizens import into every transaction entered into the exercise of its constitutional powers. But after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the Constitutional provisions but by the legally C valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred D upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract".

23. The Court went on to state;

E "The principal contention canvassed on behalf of the petitioners is that the treatment meted to them by the Authority is discriminatory inasmuch as no surcharge was levied on flats in MIG scheme constructed and allotted prior to November 1976 and after January 1977. MIG flats F involved in these petitions were constructed and were available for allotment in November 1976 and the lots were drawn in January 1977. There is one more MIG scheme at Munirka where the allotment took place at or about the same time but in which case no surcharge was G levied. The contention is that once for the purpose of eligibility to acquire a flat, the criterion is grounded in income brackets, MIG, LIG, et et. those in the same income bracket form one class even for the purpose of determining disposal price of flat allotable to them irrespective of H situation, location or other relevant determinants which

enter into price calculation and therefore, in the same income group there cannot be differentiation by levying of surcharge in some cases and charging only the cost price in other cases and that the discrimination is thus writ large on the face of the record because by levying surcharge in case of petitioners they have been treated unequally and with an evil eye. It is difficult to appreciate how Article 14 can be attracted in the circumstances hereinabove mentioned. Cost price of a property offered for sale is determined according to the volition of the owner who has constructed the property unless it is shown that he is under any statutory obligation to determine cost price according to certain statutory formula. Except the submission that the Authority has a proclaimed policy of constructing and offering flats on 'no profit no loss' basis which according to Mr. Nariman has a statutory flavour in the regulations enacted under the Act, the Authority is under no statutory obligation about its pricing policy of the flats constructed by it. When the flats were offered to the petitioners the price in round figure in respect of each flat was mentioned and surcharge was not separately set out and this price has been accepted by the petitioners. The obligation that regulations are binding on the Authority and have provided for a statutory price fixation formula on 'no profit no loss' basis will be presently examined but save this the Authority is under no obligation to fix price of different flats in different schemes albeit in the same income group at the same level or by any particular statutory or binding formula. The Authority having the trappings of a State might be covered by the expression 'other authority' in Article 12 and would certainly be precluded from according discriminatory treatment to persons offering to purchase flats in the same scheme. Those who opt to take flats in a particular income-wise area-wise scheme in which all flats came up together as one project, may form a class and any discriminatory treatment in the same class may attract Article 14. But to say that throughout its course of existence the Authority

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A would be bound to offer flats income-group-wise according to the same price formula is to expect the Authority to ignore time, situation, location and other relevant factors which all enter the price structure. In price fixation executive has a wide discretion and is only answerable provided B there is any statutory control over its policy of price fixation and it is not the function of the Court to sit in judgment over such matters of economic policy as must be necessarily left to the Government of the day to decide. The experts alone can work out the mechanics of price determination; C Court can certainly not be expected to decide without; the assistance of the experts".

24. Again, in *Bareilly Development Authority v. Ajai Pal Singh,* (1989) 2 SCC 116, the Authority (BDA) constructed plots for persons belonging to different income grups. The terms and D conditions contained in the brochure empowered the BDA to revise the cost of price and to enhance the rate of flats. The petitioners got themselves registered for allotment of flats. Notices were issued by the BDA intimating the petitioners regarding the costs of flats and the rate of instalments. The said E action was challenged under Article 226 of the Constitution. The High Court of Allahabad, placing reliance on *R.D. Shetty v. International Airports Authority,* (1979) 3 SCC 489 held that the BDA acted arbitrarily and unreasonably in unilaterally enhancing the cost of flats and the rate of instalments and F directed the BDA to redetermine the issue. The BDA approached this Court.

25. Allowing the appeal, setting aside the judgment of the High Court and distinguishing *International Airports Authority,* this Court observed;

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"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 rate of monthly instalments to be paid, the

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'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. BDA in this case) in the said contractual field".

(emphasis supplied)

26. Recently, in *Chief Administrator, PUDA v. Shabnam Virk,* (2006) 4 SCC 74, the allottee had filed an affidavit clearly indicating that she would undertake to abide by all the terms and conditions of allotment letter and the amount indicated therein for allotment of a house. There was nothing to show that the increase was possible only when there was increase in the cost of construction. It was held by this Court that the allottee was liable to pay amount as stipulated in the allotment letter. It was observed;

"It is to be noted that the respondent herself had accepted in the undertaking that she accepted the allotment of the house and undertook to abide by all the terms and conditions of the allotment letter. It is not in dispute that in the allotment letter the figure as demanded has been reflected. That being so the respondent was liable to pay the amount as stipulated in the allotment letter.

As there is no dispute that the respondent had in fact filed an affidavit clearly indicating that she undertook to abide by all the terms and conditions of the allotment letter, the amount indicated in the allotment letter was the amount in respect of the allotment of the house. We find nothing in the quoted clause to show that the increase was possible only when there was an increase in the cost of construction. The clause quoted above does not reflect any such intention of the parties".

27. In our considered opinion, the State Commission as well as National Commission ought to have considered all these aspects. Even if they were of the view that after the amendment of the Act in 1993 and in the light of inclusion of 'housing construction' within the meaning of 'service' in clause (o) of Section 2(1), the Commission had jurisdiction to deal with and decide disputes relating to deficiency in service under the Act which included the issues raised, it was obligatory on them to consider whether the controversy raised in the proceedings with regard to fixation of price would be justiciable on the facts and in the circumstances of the case, particularly in the light of the contentions raised by the Board that there was increase in plinth area, ground area and payment of enhanced compensation to land owners. They were also required to consider that the Board does not have land of its own and the land was acquired under the Land Acquisition Act by paying compensation as determined in accordance with the provisions of that law. The Commissions also could not ignore the fact that when the advertisement was issued for the purpose of registration of intending purchasers of flats, they were clearly intimated that the price shown was merely a 'tentative price'. Again, when the scheme was altered the intending purchasers were informed that the price was tentative and they would have to pay price finally determined by the Board. They consented and entered into an agreement by giving an undertaking that they would pay the price determined by the Board. When the question of giving possession of flats came up, the Board informed them to pay the remaining amount so that possession could be delivered to them. They made such payment and obtained possession. It was, therefore, contended by the Board that the allottees were estopped from raising the contention that additional amount could not have been recovered from them. It was open to the allottees not to pay the additional amount demanded by the Board and not to take possession. By agreeing to pay the amount and by paying such amount and taking possession, now they want to go behind the concluded contract between the parties. In our considered opinion, all these questions were required to be gone into by the State

Commission as also by the National Commission. The orders passed by both the Fora are, therefore, liable to be set aside. A

28. Before we part with the matter, we may refer to one more aspect. After the Board approached this Court and notice was issued, the respondent-Association filed a counter-affidavit in this Court through Secretary of the Association. In the said affidavit, the orders passed by the State Commission and affirmed by the National Commission were sought to be supported. One may appreciate allottees taking such stand supporting the orders which were passed in their favour. But while doing so, certain averments and remarks have been made which were not necessary for determining the question. For instance in paragraph 12 of the affidavit-in-reply, it was stated; B C

> "A public undertaking like the Housing Board has not only to act fairly, but also openly it cannot suppress vital documents and play the game of hide and seek. We have given to ourselves a democratic Constitution. Accountability and transparency are the pillars of democracy. There must be sun shine in the corridors of power. It is lamentable that the bureaucrats of the Housing Board are still living in the atmosphere of British Raj and accountability and transparency are *anaethima* to them". D E

29. In paragraph 16 of the counter, similar allegations have been levelled. It was stated that an instrumentality of State is expected to conduct its affairs in transparent manner, but the Board failed to do so. At another place, it was said that service oriented body like the Housing Board cannot act like private bodies and take a 'Shylockean attitude'. In our opinion, all those observations could have been easily avoided. Since we are setting aside both the orders and remitting the cases to the State Commission for deciding afresh in accordance with law, it would not be appropriate to say anything more on this. Let the matter rest there. F G

30. For the foregoing reasons, all the appeals are allowed. The order passed by the State Commission and confirmed by H

A the National Commission is set aside. All the complaints are remitted to the State Commission to decide them in accordance with law after hearing the parties. On the facts and in the circumstances of the case, there shall be no order as to costs. Amount if any, deposited by the appellant-Board in this Court B may be refunded to the Board with accrued interest thereon. Since the original complaints were filed in 1995, the State Commission will give priority to the cases and decide them as expeditiously as possible preferably before June 30, 2008.

31. At this stage, we may clarify that we should not be C understood to have expressed any opinion one way or the other on the controversy raised by the parties. All the observations made by us hereinabove are limited for the purpose of holding that the State Commission as also National Commission ought to have dealt with and decided the contentions raised by the D Housing Board. Therefore, as and when the complaints will be placed for hearing before the Commissions, they will be decided strictly on their own merits without being inhibited by those observations.

32. Ordered accordingly.

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S.K.S. Appeals allowed.