Before : A. L. Bahri, J.

BALDEV SINGH AND OTHERS,—*Petitioners.*

versus

CHANDIGARH HOUSING BOARD, CHANDIGARH,—*Respondent.*

Civil Writ Petition No. 4482 *of* 1987.

30th August, 1989.

Constitution of India, 1950—*Art.* 226—*Allotment of houses—Tentative price stated at the time of allotment—Enhancement of such price—Enhancement challenged as being arbitrary—Power of writ—Court to go into said enhancement—HUDCO guidelines providing for minimum rate of profit—Charging profit at higher rate—No decision of Board to do so—Higher rate of profit not permissible.*

Held, that in an appropriate case, the question if raised has to be decided as to whether the enhanced price was fixed arbitrarily or in violation of the relevant scheme. Merely because the allottees were forced to accept allotment of houses at a subsequent stage after entering into agreements with the Board, *per se* is no ground not to go into the question of arbitrary fixation of price of the houses.

(Para 7)

Held, that the HUDCO guidelines provide minimum profit at the rate of 5 per cent on the cost of construction of the flats. Neither any instructions or guidelines nor any order of any authority has been produced to show that for different categories of flats, different rate of profit was to be charged. It could not be left to the whim of the officers of the Board to charge different rates of profit from different allottees of different categories of flats. In case the Board was to charge higher rate of profit, it was necessary to pass appropriate order in this respect firstly to lay down the rate of profit to be charged (more than the minimum prescribed) from a particular date (ordinarily to be prospective) and further for such a variation in the rate of profit to be charged in respect of any particular category of flat, to give reasons for the same. Since no such decision of the Board or the Government authority in this respect has been produced, only the profit at the minimum rate as prescribed in the guidelines is held to be permissible which could be charged by the Board from the allottees.

(Para 14)

Civil Writ Petition under Articles 226 *of the Constitution of India praying that this Hon'ble Court may be pleased to :—*

(*a*) *call for the record of the case from the respondent Board and after perusal of the same ;*

(b) *issue an appropriate writ, order or direction quashing Annexure P/1 and also directing the respondent to refix the price of LIG (Upper) which is now being mentioned as M.I.G. (Duplex) at the original price which was offered and accepted by the petitioners and not to charge the arbitrarily increased price from the petitioners ;*

(c) *dispense with the requirement of rule 20(2) of the Writ Rules ;*

(d) *award the costs of the writ petition in favour of the petitioners ;*

(e) *issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*

It is, further, respectfully prayed that during the pendency of writ petition, the recovery of any further amount from the petitioners may please be stayed.

Ashwani Kumar Chopra, Advocate, *for the Petitioners.*

Anand Swaroop, Sr. Advocate, with Vanit Malik, Advocate, *for the Respondent.*

JUDGMENT

A. L. Bahri, J.

(1) There are thirteen writ petitions which are being disposed of by this judgment. Six writ petitions (Nos. 4482/1986, 7564/1987, 7113/1988, 7128/1987, 6154/1988 and 8601/1988) relate to allotment of flats in a draw held on November 27, 1983. Three writ petitions (Nos. 5082, 7183 and 10072 of 1988) relate to allotment of flats in a draw held on November 28, 1987. Two writ petitions (Nos. 6657 and 7889 of 1988) relate to allotment of flats in a draw held in May, 1988. The remaining two writ petitions (Nos. 3707 and 3708 of 1987) relate to construction of flats under self-financing scheme. In all the writ petitions, referred to above, the dispute is regarding fixation of price of the flats as determined by the Chandigarh Housing Board (hereinafter called 'the Board'). The claim of the petitioners is that at to be constructed by the Board, though tentative price was mentioned, however, at the time of completion of the flats, the same were allotted to the petitioners

at a very exhorbitant price which was arbitrarily fixed. Similar is the claim of the petitioners who were allotted flats under the self-financing scheme.

(2) With respect to houses constructed by the Board, the petitioners earlier moved this Court in C.W.P. No. 2412 of 1982 (*Baldev Singh* v. *Chandigarh Housing Board*) alleging therein that though flats were constructed in 1982, the petitioners were not allotted the same. It was during the pendency of the writ petition that the Board allotted the flats to them. The writ petition was disposed of by giving directions to the Board to re-fix the value of the flats constructed taking into consideration the rule of law as laid down by Madhya Pradesh High Court in *Smt. Sadana Agrawal and others* v. *Indore Development Authority, Indore and another*, (1). The Board looked into the matter and came to the conclusion that no relief could be granted to the petitioners in the matter of fixation of price of the flats constructed by the Board. The same was fixed in accordance with the guidelines given in the judgment of the Madhya Pradesh High Court as well as guidelines issued by Housing and Urban Development Corporation (HUDCO). Since the petitioners were not satisfied with the reply given by the Board, they challenged the same in the aforesaid writ petitions which are for disposal. As already noticed above, similar challenge was made with respect to the fixation of price of the flats constructed under the self-financing scheme.

(3) The stand of the respondent-Board is to the effect that the price of the flats constructed by the Board as fixed at the time of allotment was tentative which was revised and finalised at the time of completion of the construction of the flats. The petitioners, while entering into agreements with the Board, had accepted the revised sale price and they could not re-agitate the same in these petitions. Further, it is alleged that the price was fixed in accordance with guidelines issued by the HUDCO which had provided finances for the construction of such flats from time to time. At this stage, it may be noticed that full details of the amount spent in the construction of the flats were not given. At the time of arguments, some material was produced on behalf of the Board regarding the manner of fixing the price of the flats which will be considered.

(1) A.I.R. 1986 Madhya Pradesh 88.

(4) There are several judicial pronouncements on the subject of fixing price of such like flats. It would be useful to notice the same before adverting to the facts of the case in hand. *Premji Bhai Parmar and others* v. *Delhi Development Authority and others,* (2) was a case relating to houses constructed by Delhi Development Authority for Middle Income Groups (M.I.G.) Category. In the petition filed before the Supreme Court under Article 32 of the Constitution, a prayer was made for getting back part of the purchase price which was alleged to have been excessively charged from them. It was observed as under :—

> "A petition to the Supreme Court under Article 32 is not a proper remedy nor is the Court a proper forum for reopening the concluded contracts with a view to getting back a part of the purchase price paid and the benefit taken. The DDA is covered by Article 12 and while determining the price of flats constructed by it, it acts purely in its executive capacity. But after the State or its agents have entered into the field of ordinary contract, no question arises of violation of Article 14 or of any other constitutional provision. In absence of any special statutory power or obligation on the State in the contractual field apart from the contract, the petitioners are bound by the terms and conditions of the contract. The camouflage of Article 14 cannot conceal the real purpose motivating the petitions, namely, to get back a part of the purchase price of flats paid by the petitioners with wide open eyes after flats have been securely obtained. Those who contract with open eyes must accept the burdens of the contract along with its benefits. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. The jurisdiction under Article 32 is not intended to facilitate avoidance of obligations voluntarily incurred."

It was further held as under :—

> "Pricing policy is an executive policy. The executive has a wide discretion in this regard and is only answerable

(2) (1980)2 S.C. Cases 129.

provided there is any statutory control over its policy of price fixation. The experts alone can work out the mechanics of price determination; Court can certainly not be expected to decide without the assistance of the experts. Therefore, ordinarily it is not the function of the Court to sit in judgment over such matters of economic policy unless it is patent that there is hostile discrimination against a class."

In this case, surcharge to the extent of ten per cent recovered was maintained. The Delhi High Court in *Mangat Ram* v. *Delhi Development Authority and another* (3), with respect to the scope of Article 226 on such matters held as under:—

"Although the lease of land was executed by the President of India under the Government Grants Act, 1895, its cancellation for breach of the term of the lease deed would purely be a contractual action and not a statutory one and hence it would not be open to the lessee to challenge the cancellation or in other words to enforce the contractual rights by a writ petition."

It was further held as under:—

"It cannot be said that there are no circumstances at all in which a contract entered into on behalf of the Government would be amenable to interference under Article 226 of the Constitution. This branch of law is still in a process of evolution. The proliferation of statutory authorities and public corporations has brought into existence a huge contractual field in which the terms and conditions of the contract are practically dictated by the monopolistic limbs of State or other public authority and the other party to the contract has very little say in regard to the terms and conditions to which he is supposed to have agreed. In this state of things situations are likely to arise which may justify interference under Article 226 even in such cases. There are two situations where such interference can be made.

(3) AIR 1984 Delhi 246.

> The first covers cases where, after entering into a contract, the Government purports to exercise certain rights under the contract but, in reality, the Government is exercising its executive power in an arbitrary and unreasonable manner, so as to violate the common law. In such cases, though the Government is ostensibly acting under the terms of a contract it can be said, in reality, to be an exercise of the executive power of the State that is being challenged. The second situation involves an extension of the above principle. This is of cases where a term of a contract "imposed" by the State or authority on the citizen is contrary to law and, thus, *non est.* An action of the State, insisting on the observance of such a term of the contract would, in substance, be an act in the exercise of its executive or statutory power rather than as a contracting party simpliciter."

A Division Bench of Delhi High Court in *P. N. Verma and others* v. *Union of India and others*, (4) observed in respect of fixing price of such flats by the D.D.A. as under:—

> "The Delhi Development Authority, the DDA, is as free in fixing the price of flats as any private contractor will be, except only for the limitations of fair play and the need to avoid arbitrariness and discrimination that fetter the hands of a public authority which is amenable to Article 226. So long as it conforms to these regulations, its actions cannot be challenged. But once some regulation is infringed or any arbitrariness or invidious discrimination creeps in, its action is liable to challenge under Article 226.

It was further held as under:—

> "So where the DDA revises the earlier policy of price fixation and substitutes a new one, it is truly interfering with a step in the statutory stage amenable to writ jurisdiction and a writ petition cannot be dismissed as not maintainable merely on the ground that the result of the action also results in a breach of the original contract for which remedy is available in the ordinary Civil Courts."

(4) AIR 1985 Delhi 417.

It was further held as under with respect to the principle to be followed in the matter of fixation of price of such flats and if it is not followed, same would be arbitrary and liable to be quashed:—

> "But where the disposal cost is fixed on a basis totally different from that announced earlier or where the components taken into account cannot be described by any stretch of imagination as cost factors or where a component of the cost is shown to have been fixed arbitrarily and without any basis whatsoever, the Court has no option but to quash the determination of the disposal cost as fixed and direct the DDA to undertake afresh a proper determination thereof in accordance with the terms of the original contract or after excluding the items unwarrantedly included therein or after redetermining the value of any component on a proper and reasoned basis."

Such a matter was also under consideration of the Allahabad High Court in *Ajai Pal Singh and others* v. *Bareilly Development Authority, Bareilly and another* One of the conditions of allotment was that the Authority could revise the price It was held that the Authority could not be estopped from varying terms of allotment. In that case, originally cost of the flat was fixed at Rs. 64,000. However, when the possession was delivered, a sum of Rs. 1,27,000 was being claimed by the Authority. It was held that the burden was on the Authority to establish that the enhancement was not arbitrary. The case was remitted back to the Authority to redetermine the cost of the flats, as the original cost fixed was held to be arbitrary. In *Smt. Nirmala Dixit* v. *State of U.P. and others,* (6) the matter was again for consideration as to rise of the cost of the house (M.I.G.) from Rs. 18,000 to Rs. 27,000 Rs. 32,000 and likewise increase in the payment of instalments was arbitrary or not. The case of Ajai Pal Singh (supra) was relied upon. A direction was given to the Authority to frame a reasonable scheme in regard to payment of instalments. It was held that the instalment of Rs. 1,358.25 p. per month by a person belong to M.I.G. was arbitrarily determined.

(5) As already noticed above, in the previous writ petition filed by the petitioners, reliance was placed on a decision of Madhya

(5) AIR 1986, Allahabad 362.
(6) AIR 1988, Allahabad 4.

Pradesh High Court in *Smt. Sadhana Agrawal and others* v. *Indore Development Authority, Indore and another*, (7). It was held that where the Development Authority subsequently increased the estimated cost of the houses allotted arbitrarily and unilaterally, such fixation of cost was amenable to interference in the writ jurisdiction under Article 226 of the Constitution.

It was further held as under:—

> "A public authority like the Indore Development Authority has to act in a reasonable and open manner in its dealings with the citizens who come forward in response to its invitation of applications for allotment of flats. The prospective purchasers from the Development Authority are entitled to seek satisfaction on the score of escalation of cost whenever announced by the Development Authority. Also the Development Authority has to show awareness of the binding effect of its announcement of estimates and it is not open to the Development Authority as public authority to act unilaterally without taking into confidence the citizens with whom it is dealing and for whom it constructs".

Such a matter was also under consideration of this Court in *Charanjit Bajaj and others* v. *The State of Haryana and others*, (8). While referring to the agreement between the parties. It was held that the petitioners were legally bound to pay the enhanced amount of additional price demanded from them and HUDA had absolute right to revise the price of the plot on the basis of enhancement of compensation. It was further held as under on the question of payment of interest:—

> "The interest is being charged for the period intervening between deposit of compensation and the issue of notices to the allottees. Mr. Rajinder Singh, learned counsel, could not convince us as to on what basis interest was being charged from the plot-holders. The recovery of the enhanced price on the basis of payment of enhanced compensation has to be made by HUDA. If the Authority does not take prompt action in making recovery or in

(7) AIR 1986, Madhya Pradesh 88.

(8) 1986 P.L.J. 601.

depositing the enhanced amount of compensation, then the plot-holders cannot be made to suffer for that lapse. Further, there does not seem to be any basis for charging interest on the amount deposited for paying compensation."

It was held that the Development Authority was not entitled to charge any interest for the period intervening between deposit of compensation and the issue of notices.

(6) Learned counsel for the Housing Board has referred to certain decisions of this Court made at the preliminary stage while dismissing the writ petitions *in limine* and has argued that the present writ petition be dismissed follwing those judgments. C.W.P. No. 2168 of 1981 (*B. S. Uppal* v. *Punjab Housing Development Board*), was dismissed on August 19, 1981 by B. S. Dhillon and J. M. Tandon, JJ. observing as under :—

"In view of the averments made in the return that the petitioners accepted the offer and agreed in writing to payment of price which is now sought to be challenged in this writ petition, there is no merit in the writ petition which is dismissed."

C.W.P. No. 3036 of 1981 (*Des Raj etc.* v. *Housing Board, Haryana*) was dismissed by S. C. Mittal and I. S. Tiwana, JJ. on August 14, 1981 with the following observations:—

"Thereafter, the offers were made to the petitioners in terms of Annexure R. 1, which were accepted by the petitioners for instance Annexure R. 2. It is nobody's case now that the conditions of allotment of houses laid down in Annexure R. 1 have in any way been violated. That being so, this writ petition fails and the same is hereby dismissed."

C.W.P. No. 3200 of 1987 (*Smt. Tej Kaur Pannu* v. *U.T. Administration, Chandigarh and others*) was dismissed on November 19, 1987 by S. P. Goyal and I. S. Tiwana, JJ. observing as under:—

"The petitioner was offered a dwelling unit in dispute on 23rd July, 1984 at a price of Rs. 34,600, which she accepted and

started paying instalments. The parties are governed by the terms of the agreement. Dismissed".

(7) The contention of learned counsel for the respondent-Board cannot be accepted. The decisions relied on are based on facts of those cases. The question as to whether the enhanced price of the flats/houses was arbitrarily fixed or not was not there. Probably, it was assumed that the enhanced price was fixed in accordance with the scheme or the rules formulated by the Board or the HUDCO. In view of ratio of the decisions of the Supreme Court, as referred to above, in an appropriate case, the question if raised has to be decided as to whether the enhanced price was fixed arbitrarily or in violation of the relevant scheme. Merely because the allottees were forced to accept allotment of houses at a subsequent stage after entering into agreements with the Board, *per se* is no ground not to go into the question of arbitrary fixation of price of the houses. Such a question was gone into in C.W.P. No. 381 of 1981 (*Ravinder Kastogi and others* v. *The Housing Board, Haryana*) decided by G. C. Mittal J. on January 15, 1982, holding that the increase on the basis of land acquisition award or arbitration proceedings would be permissible. In that case, eleven items of increase in the fixation of higher price of houses were mentioned and only two items related to enhancement on account of acquisition award and interest payable thereon relating to the land. With respect to other items, it was held that they neither form part of the agreement nor were covered by "other conditions of letter of allotment". With respect to determining price of the land, it was noticed that earlier it was fixed at the rate of Rs. 61 per square metre but was enhanced to Rs. 91 per square metre. This increase of 50 per cent was not due to the increased compensation awarded by the Courts or the interest payable on the enhanced compensation. A direction was given to the Board that the calculation be made in the manner suggested and information of the proposed enhancement of the price be given to each one of the allottees (petitioners in that case) and price payable by them should be increased accordingly. With respect to fixation of instalments for payment of the price of houses allotted, it was stated that the parties will be bound by the agreement.

(8) A booklet issued by HUDCO in October, 1982 known as "Financial Appraisal" provides as to how the price of the land and the houses to be constructed under these schemes financed by HUDCO

are to be determined. At page 8, item (e) "Elements of costs" provides the following factors to be taken into consideration:—

(9) While determining the cost of the land, price or compensation paid for acquiring the land, cost of special establishment maintained for the purpose, legal charges, interest on land cost from the date of acquisition to the date of commencement of the project and rate of interest to be added on the land cost already paid for is the average rate of interest of the Agency's borrowings. the interest on the land cost during construction is calculated for the full period of the project and in case of land cost to be financed out of loan from HUDCO, the interest paid should not be more than the lending rate. To the cost of development of the land, 10 per cent of the cost could be added for supervision charges. The construction cost is to be supported by detailed estimates. To the construction cost, supervision charges and addition of 10 per cent limit is also provided. Further interest on construction cost is also permissible at the appropriate rate of interest. Item (viii)(a) provides as under fixing upper limit of different kinds of flats:—

> "(viii) *All inclusive* cost : before adding profit (a) The aggregate of all the costs mentioned in the preceding paragraphs would give the all inclusive cost per dwelling unit. It is ensured that this cost is within the ceiling cost of Rs. 12,000 (Rs. 8,000) for Category-A. Rs. 20,000 (Rs. 18,000) for Category B, Rs. 50,000 (Rs. 42,000) for the MIG and Rs. 1.25 lakhs (Rs. 1 lakh) for HIG as fixed by the Government. The figures in bracket indicate old ceiling costs i.e., the ceiling costs applicable upto 30th June, 1982."

(10) In the written statement, as already observed above, a general stand was taken by the Board that enhancement in the price of the flats allotted was on account of the increase in the price of the building material and in accordance with the scheme. This general statement being considered not sufficient at the time of arguments, two charts have been produced giving details as to how the price of constructed flats were finally fixed. Charts 'A' and 'B' give the details of the price of the flats. Chart 'A' refers to L.I.G. (Duplex) flats completed in the year 1984, item Nos. 1 to 8, and the other flats mentioned in item Nos. 9 and 10 were completed in March, 1988 and construction of two other flats mentioned at item

Nos. 12 and 13 was completed in 1986. These two flats were constructed under self-financing scheme. This chart also gives the further details of fixation of prices. Chart 'B' refers to the fixation of price of M.I.G. (Duplex) flat in Sector 40-B, Chandigarh. Along with these two charts, documents in support of fixation of price of these flats have also been produced.

(11) Fixation of price of flats, either constructed under the general schemes by the Housing Board or under the self-financing scheme, is for the experts of the Board to determine as it requires making different calculations i.e., rate of the price of the plot, area of the plot, rate of construction, area of constructed portion, departmental charges, interest rate on the amount financed by the HUDCO and profit. It is not considered proper to go into these minor details. Still, there are certain matters which require consideration in these cases.

(12) The first point for consideration, is as to whether the Board could charge interest in respect of flats which were earlier constructed and there was delay in allotting the same to the petitioners. According to the petitioners, the Board is not entitled to charge interest for the period there was delay in allotment of the flats to the petitioners which was of about two years. The second question debated is that interest could be charged only on the cost of land and the building constructed thereon and not on other items such as development charges, interest paid to HUDCO and on profit as determined by the Board. The third question raised by the claimants is with respect to the rate of profit claimed by the Board. According to the contention, charging of profit in respect of flats constructed by the Board has to be uniform, otherwise, it would amount to discrimination as well as arbitrariness which cannot be sustained.

(13) Chart 'A' produced by the Board gives the fixation of price of L.I.G. (Duplex) flats. In 1977, the tentative cost of the flat was fixed at Rs. 18,000 taking into consideration the cost of the land at Rs. 38.50 per square yard as was promised to be given to the Board by the Chandigarh Administration. The covered area was 446 square feet. The land was allotted to the Board on December 24, 1981 and ultimately the Chandigarh Administration charged price of the land at the rate of Rs. 80 per square yard. The construction of these flats was completed in 1984. At that time i.e., in August, 1984, the final price fixed was Rs. 73,300 for the flat on the ground floor and

Rs. 70,900 for the flat on the first floor. This included departmental charges 10 per cent, interest 12.6 per cent, profit 10 per cent and the covered area was increased to 656 square feet. This price has been fixed for the flats which are in dispute in Civil Writ Petitions Nos. 4482/1986, 7564/1987, 7113/1988 and 7128/1987. Some of the flats were completed in June, 1984 and their price was fixed as under :—

(i) For the ground floor flat—Rs. 76,300.

(ii) For the first floor flat—Rs. 73,300.

Other details are the same. These flats are in dispute in Civil Writ Petitions Nos. 6154 and 8501 of 1988. For the flat which is in dispute in C.W.P. No. 7183 of 1988, the price has been fixed for the ground floor flat at Rs. 1,11,800 and for the first floor flat at Rs. 1,07,500. In C.W.P. No. 5082 of 1988, for the type of flat, price was fixed at Rs. 1,06,600 on the ground floor and at Rs. 1,02,500 on the first floor. These flats were constructed in 1984 but allotted in December, 1987. It is sought to be explained in this chart that these flats were earlier allotted to others but were resumed and re-allotted to the present petitioners. The increase is on account of adding interest at the rate of 12.5 per cent per annum on the original price and expenditure met on account of keeping watch and ward at the rate of Rs. 50 per mensem. With respect to the flats in dispute in C.W.P. Nos. 6657 and 7889 of 1988, the tentative price initially fixed was Rs. 18,000 as the Chandigarh Administration was to charge for the land given at Rs. 38.50 per square yard. The covered area of the flat was to be 446 square feet. The land was allotted to the Board on August 10, 1983 and the price of the land was being charged at Rs. 95 per square yard. The flats were constructed in March, 1988. The final price fixed was Rs. 98,200 for the ground floor and Rs. 92,700 for the first floor-departmental charges 10 percent, interest 12.5 per cent, profit 8 per cent. The covered area was 749 square feet. The houses were completed in March, 1988 and allotted in May, 1988. In respect of flats which are in dispute in C.W.P. No. 10072 of 1988, the position is the same as above. With respect to the flats constructed under the self-financing scheme which are in dispute in C.W.P. Nos. 3707 and 3708 of 1987, the tentative cost was Rs. 70,000 departmental charges 10 per cent, interest 12.5 per cent, and profit 10 per cent. Rate of land was Rs. 175 per square yard. The Chandigarh Administration allotted the land in

June, 1985 and the flats were constructed in November, 1986 and allotted in May, 1987 on the price as under :—

(i) on the ground floor ... Rs. 97,900.

(ii) on the first floor ... Rs. 87,400.

departmental charges 10 per cent, interest 13.5 per cent and profit 8 per cent.

(14) From the perusal of details, as given above, it is apparent that profit at different rates has been charged by the Board from the allottees in respect of the same category of flats as well as for different category of flats. The HUDCO guidelines provide minimum profit at the rate of 5 per cent on the cost of construction of the flats. The contention of counsel for the Board is that since only minimum profit is mentioned in the guidlines, it was for the Board to determine the rate of profit to be charged in respect of different categories of flats. I am afraid this contention cannot be accepted as such. "Neither any instructions or guidelines nor any order of any authority has been produced to show that for different categories of flats, different rate of profit was to be charged. Mr. R. S. Mongia, Advocate, appearing on behalf of the Board, argued that for L.I.G. flats, 10 per cent interest was being charged and for H.I.G. flats, 8 per cent interest was being charged. However, he did not specify category of flats for which minimum prescribed rate of 5 per cent was being charged. It could not be left to the whim of the officers of the Board to charge different rates of profit from different allottees of different categories of flats. As noticed above, in the HUDCO guidlines, 5 per cent towards profit could be charged as minimum. In case the Board was to charge higher rate of profit, it was necessary to pass appropriate order in this respect firstly to lay down the rate of profit to be charged (more than the minimum prescribed) from a particular date (ordinarily to be prospective), and further for such a variation in the rate of profit to be charged in respect of any particular category of flat, to give reasons for the same. Oral contention raised at the time of arguments by the counsel for the Board that upto the extent of 10 per cent profit should be considered as reasonable as has been charged by the Board and if for certain reasons, for certain category of flats, it has been reduced to 8 per cent, no fault should be found therewith. I am afraid this contention cannot be accepted. Since no such decision of the Board or the Government authority in this respect has been produced, only

the profit at the minimum rate as prescribed in the guidlines is held to be permissible which could be charged by the Board from the allottees.

(15) Since the rate of interest was increased by the HUDCO to 13.5 per cent on the finances provided for construction of the flats, the Board could also charge the same interest at the time of fixing the price of the flats when completed although earlier only 12 per cent was being charged. No fault can be found in that in respect of flats in dispute in C.W.P. Nos. 3707 and 3708 of 1987. These flats were constructed under the self-financing scheme.

(16) With respect to the flats, construction of which was completed in 1984 but were allotted in 1987, there is a difference in the price of the flats, as is apparent from the Chart 'A', details of which have been given above. The contention of counsel for the Board is that these flats were earlier allotted to others and on cancellation of those allotments, these flats were allotted to the petitioners in C.W.P. Nos. 7183 and 5082 of 1988 in December, 1987. While revising the price, interest at the rate of 12.5 per cent on the original price and watch and ward charges at Rs. 50 per mensem. upto December 31, 1987 have been added. This process of re-fixing the value of the flats does not appear to be proper. When in June, 1984, price of ground floor flat was fixed at Rs. 76,300, it was raised to Rs. 1,11,800 in December, 1987. The price of Rs. 76,300, as already observed above, included departmental charges 10 per cent, interest 12.5 per cent and profit 8 per cent. The Board was not entitled to charge 12.5 per cent on departmental charges, interest as well as on profit. This amounts to charging double interest while giving rest which is not permitted either under the guidlines or under any law. On the price of the plot, the Board could charge 12.5 per cent interest from the date of allotment of the land to the Board till the date of allotment of the flat to the allottee. In between if the flat was allotted to somebody else and resumed thereafter, on the price of the flats as determined, including interest on the land and departmental charges and profit, again on re-allotment of flats, on these items, further interest could not be charged. Learned counsel for the Board has argued that when the flats were resumed from the previous allottee for non-payment of the price so determined, on that very price, the Board could claim interest also from the second allottee as the Board was deprived of the whole price, as determined at the time of allotment to the previous allottee. This contention cannot be accepted as it is admitted that when the previous

allotment was cancelled, the Board charged some percentage of the amount deposited by the previous allottee which is not being adjusted while fixing the price of the flat now being allotted to the petitioner(s).

(17) As already noticed above, during pendency of the previous writ petition, flats were allotted to some of the petitioners and there was delay. The contention of counsel for the petitioners is that there was no fault of the petitioners in causing this delay and the Board should not be allowed to charge interest for this period. There is force in this contention. Once the flats are constructed and their sale price is fixed, all the eligible allottees after taking a draw, as is the practice, were to be delivered possession of the flats on the said price. Such petitioners were arbitrarily, denied the possession of the flats for some time for which they were not to be blamed. There is no reason for the Board to charge interest on the sale price so fixed at the rate of 12.5 per cent per annum to be charged from such of the allottees for the delay, if any. It has been argued on behalf of the petitioners that the period of instalments has been reduced to ten years arbitrarily with the result there is increase in the instalment price. This contention cannot be accepted. The period of instalments has been fixed under the guidlines issued by the HUDCO. Since the number of instalments have been reduced by reducing the time, there has to be corresponding increase in the annual instalments. This contention is, therefore, repelled.

(18) Learned counsel for the Board argued that the petitioners having accepted the price fixed at the time of allotment of the flats cannot challenge the same in view of section 19-A of the Contract Act. This contention cannot be accepted. The Board is a State under Article 12 of the Constitution. The entire financial control of the Board is with the Government. The flats are constructed by the Board and allotted to different categories of persons and the Board was required to fix price of the flats in accordance with the guidelines given by the HUDCO, another Government Undertaking In this view of the matter, the contract which is sought to be put forth as defence by the Board as a shield under section 19-A of the Contract Act is not available. The arbitrariness in fixing the price, according to the judicial pronouncements, referred to above, can be looked into and only to that extent. Otherwise, as already noticed above, full details of the fixation of the price of the flats was not to be gone into.

(19) For the reasons recorded above, all the writ petitions are allowed with no order as to costs with the direction to the respondent Board to refix the price of the flats of the petitioners and the instalments under the guidelines issued by the HUDCO and the observations made above.

S.C.K.

Before : G. R. Majithia, J.

MANGAL DASS (DECEASED) THROUGH HIS LEGAL REPRESENTATIVES,—*Appellants.*

versus

S. S. SANDHU AND OTHERS,—*Respondents.*

First Appeal from Order No. 1011 *of* 1988.

31st August, 1989.

Motor Vehicles Act, 1939 (*Act IV of* 1939)—*S.* 110-*A*—*Application under—Death of injured claimant during the pendency of application—Legal heirs of the deceased—Right to be substituted.*

Held, that the maxim *actio personalis moritur cum persona* cannot be invoked, if the accident instead of resulting in an injury resulted in the death of a person. The legal representatives can claim compensation for loss to the estate of the deceased. If an action is initiated by an injured person for compensation in respect of items which involve loss to her property why should it not survive to the legal representatives when he dies during the pendency of an action. The applicants are allowed to be brought on record as legal representatives of the deceased claimant.

(Para 3 & 5)

First Appeal from the order of the court of Shri J. S. Sekhon, Motor Accident Claims Tribunal, Chandigarh dated 9th October, 1987 dismissing the application and original claim of Mangal Dass with no order as to costs.

CLAIM : Rs. 2,00,000 *was claimed.*

CLAIM IN APPEAL : For reversal of the order of the labour court.

Thakur Kartar Singh, Advocate, *for the Appellants.*

Mahraj Baksh Singh, Advocate, *for Respondent No.* 3.