

Upendra Choudhury Vs. Bulandshahar Development Authority & Ors.

Writ Petition (Civil) No. 150 of 2021

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Full judgment text

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Dr. Dhananjaya Y. Chandrachud, J

1. These proceedings have been initiated under Article 32 of the Constitution by a purchaser, seeking directions in respect of a real estate project called "Sushant Megapolis", which is being developed by the fifth, sixth and seventh respondents. The reliefs which have been sought, while invoking the jurisdiction of this Court under Article 32, as noted above, are in the following terms:

- i. a writ in the nature of Mandamus directing the Respondent No. 1 & 2 to cancel all the agreements with respondent no.5,6 & 7 and to ensure that all the projects in which money has been taken from the buyers their money is refunded or the same is constructed and handed over in a reasonable period of time;
- ii. a writ in the nature of Mandamus appointing a court receiver or form a committee headed by a retired judge of this Hon'ble Court along with other suitable persons from different fields to monitor / handle the projects of Respondent 6 & 7 in which money has been taken from the buyers;
- iii. a writ of mandamus, or order or direction to conduct a detailed forensic audit for all the projects launched by respondent no. 5,6 & 7 in its project under the Flagship of "SUSHANT MEGAPOLIS";
- iv. a writ in the nature of mandamus or order or direction to conduct investigation by the CBI-Central Bureau of Investigation of the large scale fraud and cheating done by the officers of respondent no. 1 together with officers and directors of respondent no. 5,6 & 7 as the state agency has completely failed in its duty to investigate the matter;
- v. writ order or direction to direct all investigation agencies such as Serious Fraud Investigation Office, Enforcement Directorate and others to investigate the money siphoned off by the respondent no. 5, 6 & 7.
- vi. any other writ, order or direction in favour of the Petitioner and such similarly placed persons, as this Hon'ble court may deem fit and proper in the circumstances of the case."

2 The above extract would indicate that the primary relief which has been sought is (i) cancellation of all the agreements; (ii) refund of moneys to purchasers; and in the alternative (iii) ensuring that the construction is carried out and that the premises are handed over within a reasonable period of time. Incidental to the above reliefs, the petitioner seeks the constitution of a Committee headed by a former Judge of this Court together with other persons to monitor and handle the projects of the developer in the present case. The petitioner also seeks a forensic audit, an investigation by CBI and by other authorities such as the Serious Fraud Investigation Office and Enforcement Directorate.

3. Mr. Manoj V George, learned counsel appearing on behalf of the petitioner, submits that, in another project of the developer which is being implemented at Lucknow, notice was issued on a petition under Article 32 of the Constitution (Pawan Kumar Kushwaha and Ors. v Lucknow Development Authority and Ors.1) on 20 November 2020 by a two-Judge Bench of this Court of which one of us was a member. On the above grounds, it has been submitted that it would be appropriate for this Court to issue notice and tag the writ petition under Article 32 with the earlier proceedings.

4. On 7 January 2021, a three-Judge Bench of this Court [of which one of us was a member] has dealt with the maintainability of a petition under Article 32 in similar circumstances. In Shelly Lal v Union of India 2, this Court declined to entertain the petition. The order of the Court is extracted below:

1. A proposed construction project at NOIDA which did not take off from the drawing board has given rise to proceedings under Article 32 of the Constitution by twenty five purchasers of commercial premises.

2. Invoking the jurisdiction under Article 32, the petitioners have sought, inter alia, the following directions:

- (i) A writ, order or direction to the respondents to protect the interests and investments of customers/buyers in the larger public interest;
- (ii) A writ, order or direction for the revival of the project failing which the amounts invested by the petitioners be returned with interest at the rate of 18% per annum; and
- (iii) A court-monitored probe.

3. Having considered the cause which has been espoused by the petitioners through their counsel, Mr Shikhil Suri, we are of the view that the exercise of the jurisdiction under Article 32 of the Constitution would not be warranted in the facts of the present case.

4. Essentially, the writ petition requires the Court to step into the construction project and to ensure that it is duly completed. This would be beyond the remit and competence of the Court under Article 32. Managing a construction project is not within the jurisdiction of the court.

5. Several provisions of law confer statutory rights on purchasers of real estate and invest them with remedies enforceable at law. These include the Consumer Protection Act 1986, the Real Estate (Regulation and Development) Act 2016 and the Insolvency and Bankruptcy Code 2016. Parliament has enacted a statutory regime to protect the rights of purchasers of real estate and created fora which are entrusted with decision making authority.

6. A decision of a public authority which is entrusted with a public duty is amenable to judicial review. But it is quite another hypothesis to postulate that the decision making authority should be taken over by the court. The latter is impermissible. It would be inappropriate for this Court to assume the jurisdiction to supervise the due completion of a construction project especially in facts such as those presented in the present case.

This will inevitably draw the court into the day to day supervision of the project, including financing, permissions and execution - something which lies beyond the ken of judicial review and the competence of the court. The court must confine itself to its core competencies which consist in the adjudication of disputes amenable to the application of legal standards. We, consequently, leave it open to the petitioners to pursue the remedies available in law.

5 [sic 7] The writ petition is disposed of, subject to the aforesaid liberty.

6 [sic 8] Pending application, if any, stands disposed of."

5. A definitive view on whether it would be appropriate for the Court to entertain a petition under Article 32 seeking prayers similar to those sought in the instant case has been taken in the above terms. The above reasons would ex facie apply to the facts of the present case. The reliefs which have been extracted earlier would involve the Court in an adjudicative process in determining whether (i) all the agreements should be cancelled; (ii) whether money which is paid by the home buyers should be refunded; or in the alternative (iii) whether judicial directions are necessary to ensure that the project is constructed and the premises are handed over within a reasonable time.

The writ petition under Article 32 has been filed by a singular home buyer without seeking to represent the entire class of home buyers. The petition proceeds on the implicit assumption that the interest of all the buyers are identical. There is no basis to make such an assumption. All buyers may not seek a cancellation and refund of consideration. Apart from this aspect, the petitioner seeks other reliefs in aid of the primary relief, including the constitution of a Committee presided over by a former Judge of this Court for the purpose of handling the projects of the developer where moneys have been taken from home buyers.

6. Following the earlier view which has been taken on 7 January 2021, we are of the considered opinion that it would be inappropriate to entertain a petition under Article 32 for more than one reason. There are specific statutory provisions holding the field, including among them:

- (i) The Consumer Protection Act 1986 and its successor legislation;
- (ii) The Real Estate (Regulation and Development) Act 2016; and
- (iii) The Insolvency and Bankruptcy Code 2016.

7. Each of these statutory enactments has been made by Parliament with a specific purpose in view. The 1986 Act as well as the subsequent legislation contain provisions for representative consumer complaints. One or more home buyers can consequently seek relief to represent a common grievance for a whole class of purchasers of real estate. The RERA similarly contains specific provisions and remedies for dealing with the grievance of purchasers of real estate. The provisions of the IBC have specifically taken note of the difficulties which are faced by home buyers by providing for remedies within the fold of the statute.

8. Entertaining a petition of this nature will involve the Court in virtually carrying out a day to day supervision of a building project. Appointing a Committee presided over by a former Judge of this Court would not resolve the problem because the Court will have nonetheless to supervise the Committee for the reliefs sought in the petition under Article 32.

Insofar as the remedies of a criminal investigation are concerned, there is reason for this Court not to entertain a petition directly under Article 32 in the present set of facts. Adequate remedies are available in terms of the Code of Criminal Procedure 1973. The statutory procedures which are enunciated have to be invoked. Adequate provisions have been made in the statute to deal with the filing of a complaint and for investigation in accordance with law.

Judicial intervention is provided at appropriate stages by competent courts in that regard. In *Devendra Dwivedi v. Union of India and Ors.*⁶, a three-Judge Bench of this Court [of which one of us was a member] held that, determining "whether recourse to the jurisdiction under Article 32 be entertained in a particular case is a matter for the calibrated exercise of judicial discretion."

It was further held that this remedy cannot be used as a ruse to flood this Court with petitions that must be filed before the competent authorities set up pursuant to the appropriate statutory framework. In view of the statutory framework, both in terms of civil and criminal law and procedure, we are of the view that entertaining a petition under Article 32 would be inappropriate. The Court has no reason to doubt the genuineness of the grievance which has been espoused by the petitioner.

However, the issue is whether his recourse to Article 32 is the correct remedy when alternative modalities are available and particularly since the engagement of the Court in a petition of this nature would involve a supervision which does not lie within the province of judicial review. Real estate projects across the country may be facing difficulties. The intervention of the Court cannot be confined to one or a few selected projects. Judicial time is a precious resource which needs to be zealously guarded.

We have to always be mindful of the opportunity cost involved in exercising our discretion to admit a petition and to intervene, in terms of diversion of time and resources away from other matters where our intervention would be more apposite and necessary. In certain cases in the past, this court has intervened on behalf of home buyers. These include: (i) Projects of Amrapali Group (*Bikram Chatterji v Union of India*⁷); and (ii) Unitech matter (*Bhupinder Singh v Unitech Ltd*⁸). Nothing contained in the present judgment will affect those proceedings or similar cases which have been monitored.

In the present case, there is no reason to assume that the petitioner represents a class, apart from the other reasons set out earlier for declining intervention. Hence, on a considered view and for the reasons we have indicated above, we decline to entertain the petition under Article 32. However, in terms of the order dated 7 January 2021, we clarify that this will not come in the way of the petitioner espousing the remedies which are available to him under the relevant statutory provisions.

9. Subject to the aforesaid clarification, the petition shall stand disposed of.

1 Writ Petition (Civil) No 1001 of 2020

2 Writ Petition (Civil) No 1390 of 2020

3 "1986 Act"

4 "RERA"

5 "IBC"

6 Writ Petition (Criminal) 272 of 2020

7 Writ Petition (C) No 940 of 2017

8 Civil Appeal No 10856 of 2016

Item No. 6

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[Writ Petition(s)(Civil) No(s). 150/2021]

This petition was called on for hearing today.

CORAM:

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s)

Mr. Manoj V George, Adv. Ms. Shilpa Liza George, AOR Ms. Akriti Jai, Adv. Mr. Panmei, Adv. Ms. Manju E. George, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

The petition is disposed of in terms of the signed reportable judgment.

Pending application, if any, stands disposed of.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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