

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**LPA No. 144 of 2012 a/w**  
**connected matters**  
**Reserved on: 20.11.2023.**  
**Pronounced on:30.11.2023.**

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**1. LPA No. 144/2012**

HP Housing and Urban Dev. Authority .....Appellant.  
Versus

Sushil Kumar Gupta and another .....Respondents.

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**2. LPA No. 145/2012**

HP Housing and Urban Dev. authority .....Appellant.  
Versus

Ajay Chauhan and another .....Respondents.

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**3. LPA No. 146/2012**

HP Housing and Urban Dev. Authority .....Appellant.  
Versus

Partap Chand Sharma and another .....Respondents.

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**4. LPA No. 147/2012**

HP Housing and Urban Dev. Authority .....Appellant.  
Versus

Prem Lata Sharma and another .....Respondents.

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**5. LPA No. 148/2012**

HP Housing and Urban Dev. Authority .....Appellant.  
Versus

Tarvinder Kaur Negi and another .....Respondents.

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**6. LPA No. 149/2012**

HP Housing and Urban Dev. Authority .....Appellant.  
Versus

Narinder Kumar Sood and another .....Respondents.

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**7. LPA No. 150/2012**

HP Housing and Urban Dev. Authority .....Appellant.  
Versus

Dr.J.K. Sharma and another .....Respondents.

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**8. LPA No. 151/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Gopal Krishan Goel and another

.....Respondents.

**9. LPA No. 152/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Dr. Kuldeep Maria and others

.....Respondents.

**10. LPA No. 153/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Ashok Kumar Mahajan and another

.....Respondents.

**11. LPA No. 154/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Dr. Slilpi Sood and another

.....Respondents.

**12. LPA No. 155/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Bhupender Pal Gupta and another

.....Respondents.

**13. LPA No. 156/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

M.L Gupta and another

.....Respondents.

**14. LPA No. 157/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Anil Gupta and another

.....Respondents.

**15. LPA No. 158/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Sarwan Singh and another

.....Respondents.

**16. LPA No. 159/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Manjuna and another

.....Respondents.

**17. LPA No. 160/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Arvind Kumar Sood and another

.....Respondents.

**18. LPA No. 161/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Mangal Sain and another

.....Respondents.

**19. LPA No. 162/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Hira Mani Sharma and another

.....Respondents.

**20. LPA No. 163/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Surjit Kaur and another

.....Respondents.

**21. LPA No. 164/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Tarsem Lal and another

.....Respondents.

**22. LPA No. 165/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

R.K. Khanna and another

.....Respondents.

**23. LPA No. 166/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Satish Kumar Sharma and another

.....Respondents.

**24. LPA No. 167/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Ashok Chauhan and another

.....Respondents.

**25. LPA No. 168/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Dr. Gian Chauhan and another

.....Respondents.

**26. LPA No. 169/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Ravi Kant Dogra and another

.....Respondents.

**27. LPA No. 170/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

R.S. Kochhar and another

.....Respondents.

**28. LPA No. 171/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Meena Sood and another

.....Respondents.

**29. LPA No. 172/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Dr. Randhir Chauhan and another

.....Respondents.

**30. LPA No. 173/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

V.K. Vashisht and another

.....Respondents.

**31. LPA No. 174/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Anita Vaidya and another

.....Respondents.

**32. LPA No. 175/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

O.P. Bhatta and another

.....Respondents.

**33 LPA No. 176/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Lakh Pal Singh Dhaulta and another

.....Respondents.

**34. LPA No. 177/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Harish Chandra Joshi and others

.....Respondents.

**35. LPA No. 178/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Suneel Kumar Angra and another

.....Respondents.

**36. LPA No. 179/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Ashwani Kumar Arora and another

.....Respondents.

**37. LPA No. 180/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Brahm Dutt Kashyap and another

.....Respondents.

**38. LPA No. 181/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Arun Kumar Katara and another

.....Respondents.

**39. LPA No. 182/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Kamaljit Singh Jaswal and another

.....Respondents.

**40. LPA No. 211/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Kameshwar Kant Gupta and another

.....Respondents.

**41. LPA No. 212/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Dr. Ajay Sood and and another

.....Respondents.

**42. LPA No. 213/2012**

HP Housing and Urban Dev. Authority	.....Appellant.
Versus	
Surinder Chauhan and another	.....Respondents.

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**43. LPA No. 214/2012**

HP Housing and Urban Dev. Authority	.....Appellant.
Versus	
Reeta Chauhan and another	.....Respondents.

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**44. LPA No. 215/2012**

HP Housing and Urban Dev. Authority	.....Appellant.
Versus	
O.P. Aggarwal and another	.....Respondents.

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**45. LPA No. 216/2012**

HP Housing and Urban Dev. Authority	.....Appellant.
Versus	
Vikas Bhushan Lalit and another	.....Respondents.

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**46. LPA No. 214/2012**

HP Housing and Urban Dev. Authority	.....Appellant.
Versus	
Manohar Lal Bhagra and another	.....Respondents.

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**47. LPA No. 218/2012**

HP Housing and Urban Dev. Authority	.....Appellant.
Versus	
Bidi Chand Pardesi and another	.....Respondents.

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**48. LPA No. 219/2012**

HP Housing and Urban Dev. Authority	.....Appellant.
Versus	
N.K. Kashyap and another	.....Respondents.

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**49. LPA No. 220/2012**

HP Housing and Urban Dev. Authority	.....Appellant.
Versus	
Naresh Kumar Kashyap and another	.....Respondents.

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**50. LPA No. 221/2012**

HP Housing and Urban Dev. Authority	.....Appellant.
Versus	
Arun Kumar Pandey and another	.....Respondents.

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**51. LPA No. 222/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Kamlender Kanga and another

.....Respondents.

**52. LPA No. 223/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Neera Walia and another

.....Respondents.

**53. LPA No. 581/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Krishan Pal Thakur and another

.....Respondents.

**54. LPA No. 582/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Ashok Dwivedi and another

.....Respondents.

**55. LPA No. 583/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

O.P. Sood and another

.....Respondents.

**56. LPA No. 584/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Sudhir Chander Sharma and another

.....Respondents.

**57. LPA No. 586/2012**

HP Housing and Urban Dev. Authority

.....Appellant.

Versus

Shashi Chauhan and another

.....Respondents.

**58. CWP No. 3272/2012**

Er. M.S. Chauhan

.....Appellant.

Versus

HP Housing and Urban Dev. Authority &amp; ors.

.....Respondents.

**59. CWP No. 3273/2012**

Jawahar Kaul

.....Appellant.

Versus

HP Housing and Urban Dev. Authority  
& another.

.....Respondents.

**60. CWP No. 3274/2012**

Vandana Thakur

.....Appellant.

Versus

HP Housing and Urban Dev. Authority &  
another.

.....Respondents.

**61. CWP No. 853/2010**

Ashwani Kumar Arora

.....Appellant.

Versus

HP Housing and Urban Dev. Authority &  
ors.

.....Respondents.

**62. CWP No. 1475/2010**

Prem Lata Sharma

.....Appellant.

Versus

HP Housing and Urban Dev. Authority &amp; ors.

.....Respondents.

**63. CWP No. 2986/2012**

Dr. Ranja Rao

.....Appellant.

Versus

HP Housing and Urban Dev. Authority &amp; ors.

.....Respondents.

*Coram:***The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.****The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.***Whether approved for reporting?*

For the petitioner(s)/

Appellant(s):

Mr. Bhupender Gupta & Mr. Neeraj Gupta, Sr. Advocates  
with Ms. Rinki Kashmiri, Advocate, Mr. Vinay Kuthiala,  
Sr. Advocate, with Ms. Vandana Kuthiala, Advocate, Mr.  
S.C. Sharma, Sr. Advocate with Mr. Arvind Negi,  
Advocate, Mr. Dinesh Thakur and Mr. Amit Singh



Chandel, Advocates, for the respective appellant(s)/petitioner(s) in the respective petitions and LPAs.

For the respondents: Mr. Anup Rattan, Advocate General with Mr. Pranay Pratap Singh, Additional Advocate Generals; Mr. Arsh Rattan & Mr. Sidharth Jalta, Deputy Advocate Generals, for the respondent(s)/State in the respective LPAs/ CWP's.

Mr. Vinay Kuthiala, Sr. Advocate with Ms. Vandana Kuthiala and Mr. Diwan Singh Negi, Advocates, Mr. Neel Kamal Sood, Sr. Advocate with Mr. Vasu Sood, Advocate and Mr. Dinesh Thakur, Advocate, for the respective private respondents, in the respective petitions and LPAs.

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**M.S. Ramachandra Rao, Chief Justice**

In this batch of cases, the issue which arises for consideration is:

*“whether the H.P. Housing and Urban Development Authority (in short “the Authority”) is entitled to claim from the respondents in LPAs / Writ Petitioners in respect of plots/houses which were allotted to them in 1989 under the 5<sup>th</sup> Partially Self Financing Scheme and 6<sup>th</sup> Self financing Scheme certain additional amounts towards notional interest which it would have earned had it invested the payments received from such allottees in FDRs earning interest /opportunity cost or not?”.*

**Background facts**

- 2) The said Authority is a statutory Authority created under the Himachal Pradesh Housing & Urban Development Authority Act, 2004, and its predecessors, were the Himachal Pradesh Housing Board, constituted under the H.P. Housing Board Act, 1972, constituted on 09.11.2000, and prior thereto, the Himachal Pradesh Nagar Vikas

Pradhikaran, and before it, the Shimla Development Authority, constituted by the State of Himachal Pradesh under Section 42-A of the H.P. Town & Country Planning Act, 1977. In 1989, the Shimla Development Authority announced the 5<sup>th</sup> Partially Self Financing Scheme and 6<sup>th</sup> Self Finance Scheme for construction and offer for allotment flats, residential houses and developed plots of different sizes/types on 99 years lease hold basis with renewal after 33 years in Shimla and issued a Brochure Annexure P-1.

- 3) Applications were invited from General Public, which were to be submitted on or before 30<sup>th</sup> November, 1989.
- 4) The respondents in the LPAs/petitioners in the CWPs are either original allottees or transferees therefrom submitted applications and flats/houses/plots were allotted to them in 1990. For convenience, these persons would be referred to as “*allottees*”.
- 5) The brochure provided that 20% of the earnest money was to be paid before draw of plots, 50% before issuance of letter of possession, and 100% of earnest money after issuance of letter for taking over possession.

- 6) It is not in dispute that Foot Note No.2 of the Annexure attached at the end of the Brochure issued by the Shimla development Authority contained the following condition:

*“Shimla Development Authority reserves the right to change the cost depending upon actual cost of construction, escalation in cost of land or material and labour etc.”*

- 7) Under the terms of the brochure as well as the allotment letter, the price of the land was fixed at Rs.800/- per sq.m which was to be paid in accordance with the schedule given by the Shimla Development Authority which was subsequently revised from time to time. Some of the allottees were also permitted to transfer the plots to others.

**CWP no.3206 of 2011**

- 8) For the purpose of consideration, we shall refer to the facts in CWP no.3206 of 2011, out of which, LPA no.144 of 2012 arises.
- 9) In that Writ petition, the petitioner is a transferee from an original allottee of a plot for which the permission was accorded on 28.01.1991 by Shimla Development Authority.
- 10) Later, vide a letter dt. 10.01.1994, the allottee was informed that due to increase in cost of land, there would be increase in cost of the plot of

not less than 70% and thus, revised tentative cost of the plot would be almost doubled. He was further informed that the plot was likely to be completed by the end of 1995 and the increase in price would be recovered in 30 installments of Rs.2,430/- per month.

- 11) The allottee made payments in accordance with the terms of the Brochure/ Scheme and as per the schedule fixed from time to time by the predecessor of the Authority.
- 12) Through another letter dt. 29.12.1993, the allottees of the plots under the 6<sup>th</sup> Self Financial Scheme, were also reminded of Foot Note No.2 of the Annexure attached to the brochure that the Shimla Development Authority reserves the right to change the cost depending upon actual cost of construction, escalation in cost of land or material and labour etc. The allottees were also informed in this letter that the scheme could only be completed after the participants discharge their contractual obligations by making payment of full cost of their Units, since the said Authority works on "*no profit no loss basis*" and does not have funds of its own.
- 13) After the allottee made payment of the balance amount as demanded, a lease-deed was executed on 11.04.1996 in favour of the allottee by the

H.P. Nagar Vikas Pradhikaran, the successor of the Shimla Development Authority and the predecessor of the Himachal Urban Development Authority.

- 14) After being handed-over possession, the allottee constructed his house on the plot.
- 15) According to the allottees, the successors of the Shimla Development Authority anticipated increase in cost of the land on account of enhancement of compensation payable for the acquired land since proceedings for enhancement of compensation were pending adjudication in the Courts under the provisions of the Land Acquisition Act, 1894.
- 16) It is not in dispute that the compensation amount was in fact enhanced by the Reference Court on 28.08.1995 and later by the High Court of Himachal Pradesh in 2007.
- 17) In addition to the proportionate increase in the enhanced compensation, what is called 'notional interest'/opportunity cost was demanded by the Himachal Urban Development Authority from the allottees on the pretext that the said Authority had invested the monies received from the allottees in the development/construction of the

scheme; and because it did not park the said money in interest bearing Fixed Deposit Receipts, such interest which it would have earned, had it parked the money in some interest bearing Fixed Deposit Receipts, it should be paid by the allottees.

- 18) We may point out at the outset that none of the allottees or the transferees from allottees have disputed their liability to pay to the Authority any amount due on account of enhancement of compensation either by the Reference Court or by the High Court.

**The First round of litigation between the parties i.e., CWP No.2177 of 2010 and batch dt.15.6.2010 and decision therein**

- 19) The allottees approached this Court by filing CWP No.2177 of 2010 and batch with regard to fixation of land value in respect of the land acquired for the Schemes and given to them.
- 20) A Division Bench of this Court followed passed orders on 15.6.010 and disposed them off following it's previous order dt.19.5.2010 in a similar case wherein it had held that the Authority did not have any commercial motive in the transaction; what is the total cost of land involved in the acquisition, development and transfer, was a simple question of calculation; all administrative expenses in the process will have to be included under the head '*cost of land*'; that the Authority is

seeking to recover from the allottees only the portion of land value as enhanced by the superior Courts; and the land value is to be fixed in respect of the entire area acquired for the purpose of transfer adding the development charges, the charges borne by the Authority for the amenities, administrative expenses etc.

It directed the Authority to make a proper fixation of actual land value, making it clear that its objective was to function on '*no profit no loss basis*' and in case in the process any of the allottees are to bear any more liability, the same can be recovered from them.

It further held that being a matter of computation, since neither the allottees nor the Authority were possessed with the wherewithal in the process, it would be open to the allottees to nominate two Chartered Accountants for the purpose of such computation, and those Chartered Accountants would sit with the Accountants nominated by the Authority or the Chief Executive Officers and make an endeavour to settle the accounts.

It also clarified that while fixing the land value in terms of the judgment, the amounts already paid would have to be duly adjusted.

- 21) After the said order was passed in CWP No.2177 of 2010 and batch on 15.6.2010, a meeting took place between the team of Chartered Accountants of the allottees and those appointed by the Authority.
- 22) On 14.09.2010, the Authority supplied copy of the final costing of Sectors 3 & 4 of New Shimla to the Chartered Accountants of allottees, who responded to the same by filing objections dt. 17.09.2010, but in terms of a letter dt. 15.01.2011, the objections were rejected.
- 23) The allottees were required to deposit the entire amount as demanded by the Authority in terms of letter dt. 10.06.2008 at Rs.613/- per sq.m extra.
- The judgment dt.09.01.2012 of the learned Single Judge in CWP No.3206 of 2011 and batch**
- 24) This prompted the allottees to approach this Court by filing CWP no.3206 of 2011 and the batch out of which, these LPAs also arise.
- 25) The learned Single Judge adverted to Note-2 in the Brochure, which stated that the Shimla Development Authority reserves the right to change cost depending upon actual cost of construction, escalation in cost of land, material, labour or for any other unforeseen reasons, and concluded that the allottees by contractual obligation, would have to clear the dues before the due dates, and if not, pay interest @ 18% per annum.



He also noted that only after full recovery of cost of the property, including interest, would possession be handed over under the lease-deed executed in favour of the allottees.

The learned Single Judge then went on to hold that it is not the case of the Authority that any one of the conditions, stipulated in the brochure, was breached by the allottees, and that if any such dues are there, it would be open to the Authority to take appropriate action in that regard.

The learned Single Judge also recorded that the allottees do not dispute that there was an overrun of the cost in the acquisition and development of land and they were ready and willing to pay the actual cost incurred by the Authority.

He also considered that the Authority, as against the initial cost of Rs.800/- per square meter, had already recovered Rs.1,415/- per sq.m as price of land, and is demanding a further amount of Rs.613/- per sq.m as per the calculation furnished by the Authority in para 39 of his judgment.

He also noted that the allottees are only disputing the claim for component of interest towards cost of land amounting to Rs.2,26,34,054/- computed by the Authority @ 16.5% from April 1991 up to March 1996 for a period of nine years, and interest on the cost of development amounting to Rs.2,87,00,397/- @ 16.5% for a period of three years, amounting to total of Rs.5,13,34,451/-.

The learned Single Judge then held that development of common area, such as parks, roads and common amenities, such as sewerage, water & electricity by the Authority would be with respect to the entire area of the Project; enhanced compensation for the acquired land is not restricted to the plotted area and it is *qua* the entire acquired land, and so, there is no justification for recovering the enhanced cost only from the allottees of the plots.

He also noted that the Authority and its predecessor had sold the built up area by computing entire cost of land, including cost of amenities and escalations, and it was not their case that such enhanced compensation was not being recovered from such allottees.

He then considered the claim of the Authority for the amount of Rs.5,13,34,451/-, which it claimed to be opportunity cost, i.e. part of

direct cost and its plea that even in ‘no profit no loss’ Projects, it has to be included in the Project as per the accepted norms of costing.

He held that such a demand is totally illegal because it was not contemplated in the scheme/brochure/lease-deed nor there was any statutory obligation in this regard. He observed as under:-

*“44. Be that as it may be, according to HIMUDA Rs.5,13,34,451/- (Rs.2,26,34,054 plus 2,87,00397) is being recovered as an “opportunity cost” which is “part of direct cost and even in no profit no loss project it has to be included in the project as per the accepted norms of costing”. Now this is totally illegal. It is neither contemplated in the scheme/ brochure/ lease deed nor is there any statutory regulation in this regard. “Actual cost of construction, escalation in cost of land, material, labour or for any other unforeseen reasons” – “escalations” – “Contingencies stipulated under Regulation 26.5” do not envisage levy of such interest. Neither did HIMUDA inform the petitioners/allottees of the same nor did they accept such representations. There was neither any offer nor any acceptance. This unilateral imposition of interest is illegal, unconstitutional, unethical and unconscionable. What is the Authority contractual or statutory to impose such demand has not been disclosed. In fact it is also not in the spirit of the judgment passed by the Division Bench of this Court wherein it has been specifically directed that amounts to be calculated is on no profit no loss basis.*

*45. Most importantly books maintained by HIMUDA also do not reflect that a sum of Rs.5,13,34,451/- was actually paid by them as interest to third parties. Significantly interest paid by HIMUDA towards cost of*

the land and development has been specifically charged from the allottees about which there is no dispute. Consequently I find that HIMUDA has failed to explain as to how a sum of Rs.5,13,34,451/- can be recovered by them from any of the allottees, including the plot holders some of whom are before this Court as petitioners.

46. It is argued by Mr. Bhupinder Gupta, Senior Advocate, learned Counsel for HIMUDA that notional interest is to generate money for administrative charges for unforeseen circumstances. It is not an imaginary cost but incidental in nature. I am afraid contention merits rejection. Administrative charges to the extent of 10% already stand calculated about which there is no dispute. It is further argued that since such amounts had not crystallized and recovered from the allottees, they could not be reflected in the books of accounts. Submission is self defeating. It only shows that no money was actually paid or cost incurred by HIMUDA yet the same is now sought to be recovered. It would be worthwhile noticing that all payments stood paid by the allottees between the years 1989 and 1996-97 and as per Statement Annexure-PX, on amounts recovered by HIMUDA from the allottees, which were invested somewhere else, interest to the extent of 12.38 crores has accrued, which benefit has not been passed over to the allottees.”

*( emphasis supplied)*

- 26) Thus, the learned Single had categorically held that the claim of this amount towards alleged opportunity cost or notional interest, was a unilateral imposition on the allottees without having any basis in either contract or statute or in the scheme/brochure/lease-deed, and is illegal

for it to make such a demand while professing to be doing business on ‘*no profit no loss basis*’. More so, when its Books of Accounts do not reflect the sum and it was an expenditure not incurred by them as they did not pay any interest to any 3<sup>rd</sup> party; and the interest paid by it towards cost of land and development was specifically charged from the allottees for which there is no dispute.

27) The learned Single Judge specifically noted that all payments stood paid by the allottees between 1989 and 1996-97, and as per a statement Annexure-PX, on amounts recovered by the Authority from the allottees, which had been invested elsewhere, an interest of Rs.12.38 crores had accrued, which benefit had also not been passed on to the allottees.

28) He also observed that the allottees had never been informed that the component of notional interest would be charged from them either at the time of allotment or at the time of execution of the lease/handing over of possession.

29) The learned Single Judge further held that the Himachal Urban Development Authority is a ‘State’ and not a private developer, and having made a promise to allot land on ‘*no profit no loss basis*’ under

the Self Financing Scheme, it cannot be permitted to act as an unscrupulous Real Estate Developer and cheat people by raising illegal demands in a clandestine manner.

30) He also held that it cannot be permitted to modify the scheme midway and increase the total saleable area, though it did and this altered the character of the scheme and commercially benefited it; he ruled that “*entire administrative expenses*” would not take in its sweep component of “*notional interest*”, since the Authority had separately calculated interest payable towards the cost of land and development and also charged administrative charges to the extent of 10% on the entire cost of acquisition of land and development thereof.

31) The learned Single, therefore, quashed the additional demands made by the Authority towards the claim of notional interest and granted relief to the allottees.

32) Assailing the same, these Letters Patent Appeals are filed.

### **Consideration by the Court**

33) Standing Counsel for the Authority contended that the common order passed by the learned Single Judge is erroneous and that the Authority is entitled to the opportunity cost.

- 34) While computing the cost of the land, the Authority has included an amount of Rs.2,26,34,054/- on account of notional interest @ 16.5% from April 1991 to March 1996; and further the notional interest of Rs.2,87,00,397/- @ 16.5% for 3 years on account of notional interest.
- 35) Thus, a total amount of Rs.5,13,36,451/- has been included in the cost of the land on account of notional interest.
- 36) Counsel for the allottees contended that the allottees had never agreed to this claim anywhere; that it is the admitted case that no such interest on capital investment has ever been paid by the Authority to any third party, and on the contrary they have retained excess amount received from the petitioner in 1997 till 2007, in which year enhanced compensation was paid to the land owners whose lands had been acquired for the Scheme / project. They pointed out that it has not even been entered in its books of accounts.
- 37) We agree with the said contention of the counsel for the allottees.
- 38) None of the learned Counsel appearing for the Authority could support the said claim either on the basis of a contract to which the allottees or their transferees were parties, or on the basis of any statute, or any term of the brochure or lease-deed .

- 39) We are of the view that such a claim is being made unilaterally without any legal basis.
- 40) For an organization like the Authority which is a “State” within the meaning of Art.12 of the Constitution of India, and which claims to run business on a ‘*no profit no loss basis*’, to contend that it is entitled to such a claim which has no legal basis, is impermissible in law.
- 41) While its demand from the allottees amounts towards the cost incurred on account of enhancement of compensation under the Land Acquisition Act, is perfectly justifiable, the Authority cannot be permitted to unjustly enrich itself by making claims which do not have any legal basis.
- 42) As held by the Supreme Court in ***Delhi Development Authority & Another vs. Joint Action Committee & Others<sup>1</sup>***, a person would be bound by the terms of the contract subject of course to its validity; a contract in certain situations may also be avoided; with a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout.

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<sup>1</sup> (2008) 2 SCC 672



The Supreme Court declared that a party to the contract cannot, at a later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and which were based upon unilateral issuance of office orders, but not communicated to the other party to the contract.

It also held that terms and conditions of a contract, though capable of alteration or modification, such alteration or modification cannot be done unilaterally, unless there exists any provision either in contract itself or in law; and new terms of contract cannot be thrust upon the other party to the contract unilaterally.

- 43) This judgment has been rightly followed by the learned Single Judge in the impugned judgment while granting relief to the allottees/transferees from them.
- 44) The reasoning of the learned Single Judge is unexceptionable and we completely endorse it.
- 45) None of the counsel for the Authority were able to point out any flaw in the same.
- 46) For all these reasons, these Letters Patent Appeals filed by the Authority, are dismissed and the Writ petitions filed by the

allottees/transferees from them, are allowed; and the Authority is held disintitled to claim any notional interest/opportunity cost from them.

No costs.

47) Pending miscellaneous application(s), if any, shall also stand disposed of.

**(M.S. Ramachandra Rao)**  
**Chief Justice**

**(Jyotsna Rewal Dua)**  
**Judge**

**November 30, 2023**  
*(Yashwant)*