

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th MARCH, 2023

IN THE MATTER OF:

+ **W.P.(C) 9550/2019**

COURT ON ITS OWN MOTION Petitioner

Through:

versus

GOVT OF NCT OF DELHI AND ORS..... Respondents

Through: Mr. Gautam Narayan, ASC for Respondent No.1/ GNCTD.

Mr. Ramesh Babu, Ms. Manisha Singh & Ms. Jagriti Bharti, Advocates for Respondent No.2/ RBI.

Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Madhav Bajaj, Ms. Kunjala Bhardwaj, Ms. Shreya V. Mehra & Mr. Yash Upadhyay, Advocates for Respondent No.3/ UOI.

Mr. Siddharth Panda, Advocate for Respondent/ L&B Deptt, GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. This Hon'ble Court was pleased to convert a letter of one Sh. Vinod Kumar Naugain into the present writ petition, in the nature of a Public Interest Litigation. Through the letter, the Complainant before this Court seeks the issuance of directions to the Central Government to draft and

implement a comprehensive scheme to address the grievances of home buyers availing home loans, including those buyers who haven't been given possession of their flats by their builders and are still paying monthly instalments towards EMI payment, and are thus unable to claim tax benefits on the payment of such monthly interest amounts. The Complainant prays for the formulation and implementation of a scheme that conclusively addresses the grievances of other home buyers who may not have the capacity to approach courts/forums to seek redressal against builders. The prayers, as sought for, are as follows:

“1. Grant full tax benefit 'from the date of payment of first instalment of EMI to the Bank' to all those home buyers who have taken home loan from the banks but possession of their dream home is delayed due to the fault of the builder; or

2. Even if the project is not delayed, grant tax benefit 'from the date of payment of first instalment of EMI to the Bank' to all those home buyers who have taken loan from the banks;

3. Grant free legal aid to the home buyers who are fighting against the mighty builders and trying to save their hard earned money;

4. Frame a law where interests of the buyers are fully protected and errant builders are punished; and

5. Banks do not own responsibility though they sanction the projects. Frame a law and make banks accountable and when insolvency proceedings are initiated against any builder, buyers should get their share first out of the sale proceeds of the builders properties e a law and make banks accountable and when insolvency proceedings are initiated against any builder, buyers should get their share first out of the

sale proceeds of the builders properties and not the banks as the banks should also bear such loss as they are solely responsible for financing the projects of the builders.”

2. The Complainant alleges that the banks, government and builders operate as part of a nexus and operating against public interest, sans any accountability to the public for their hard-earned money. It is the Complainant’s grievance that banks should be held responsible for the inordinate delay in real estate projects, inasmuch as banks only sanction loans for projects that are verified as genuine, after proper scrutiny.

3. The Complainant seeks to draw the attention of this Court to the plight of homebuyers insofar as there is often delay in construction and delivery of possession of flats and states his main concern for filing the present petition before this court is for issuance of directions to the government to formulate a comprehensive scheme for extending tax benefit vis-à-vis the payment of interest and principal amount of EMI as extends to those home buyers that have already gained possession of their dwelling units/homes. The Complainant has also alleged that the builders misuse the provisions of Insolvency and Bankruptcy Code, 2016, by resorting to declaration of insolvency in order to escape payment of dues to their creditors, who include home buyers and to this extent.

4. In compliance with an order of this Court in this petition dated the answering Respondent, Reserve Bank of India (hereinafter “RBI”) filed Counter Affidavit in categorically responding to the grievances raised by the Complainant. The Counter Affidavit on record has also annexed master circulars issued by the RBI dated 01.07.2015, titled as “Master Circular –

Loans and Advances – Statutory and Other Restrictions”, and “Master Circular – Housing Finance”, respectively.

5. The stance of the Respondent RBI in the counter affidavit is that borrowers including the likes of home buyers facing financial constraints may approach their lending banks with requests for restructuring of their loans, which is as per extant norms in the master circulars. The sanctioning of credit through loans and their subsequent recovery are de-regulated activities as per RBI directions, meaning thereby that the Board of Directors of every bank may discharge these functions at their own discretion. It is thus the prerogative of each commercial bank’s board of directors to frame their own guidelines for loan policies and ensure its implementation, on the basis of principles of commercial prudence and operating within the framework of the RBI’s directions contained in the circulars. The master circular on housing finance extends this liberty to every scheduled commercial bank other than regional rural banks, for activities pertaining to, or incidental to, sanction and recovery of loans in the realm of housing finance as well. This is so that the housing sector receives more credit, and such that more direct financing options are made available to the larger body public.

6. It is stated that no specific averment has been set out against the Reserve Bank of India. The Reserve Bank of India in the capacity of a regulator and supervisor of the financial system of the country discharges, inter-alia, the role of prescribing parameters within which banks are to operate in tandem with the larger financial system. Amongst performing its multifaceted role as a regulator, the RBI is also tasked with ensuring that commercial banks facilitate circulation of credit in the housing sector, and

ultimately in the economy. In line with these objectives, the RBI has already issued the master circulars annexed in the Counter Affidavit, under powers of Section 35-A of the Banking Regulation Act, 1949. The section reads as under:

“[35A. Power of the Reserve Bank to give directions

(1) Where the Reserve Bank is satisfied that-

(a) in the 2[public interest]; or

3[(aa) in the interest of banking policy; or]

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.”

7. The master circulars issued by the RBI, which is filed as Annexure P-2 in the Petition, lay down a set of guidelines or framework for scheduled commercial banks to follow and implement. Banks are directed through the master circulars, to ensure that activities such as lending of loans or

advances are done in line with principles of economic prudence and profitability. The Apex Court in Peerless General Finance and Investment Co. Ltd. v. RBI, (1992) 2 SCC 343 while discussing the role of RBI in the regulation of the country's economy has observed as under:

“30. Before examining the scope and effect of the impugned paragraphs (6) and (12) of the directions of 1987, it is also important to note that Reserve Bank of India which is bankers' bank is a creature of statute. It has large contingent of expert advice relating to matters affecting the economy of the entire country and nobody can doubt the bona fides of the Reserve Bank in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. It is the duty of the Reserve Bank to safeguard the economy and financial stability of the country. While examining the power conferred by Section 58-A of the Companies Act, 1956 on the Central Government to prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by non-banking companies, this Court in Delhi Cloth and General Mills v. Union of India [(1983) 4 SCC 166 : (1983) 3 SCR 438 : (1983) 54 Comp Cas 674] observed as under: (SCC pp. 188-89, para 28)

“Mischief was known and the regulatory measure was introduced to remedy the mischief. The conditions which can be prescribed to effectuate this purpose must a fortiori, to be valid, fairly and reasonably, relate to checkmate the abuse of juggling with the depositors/investors' hard earned money by the corporate sector and to confer upon them a measure of protection namely availability of liquid assets to meet the obligation of repayment of deposit which is implicit in

acceptance of deposit. Can it be said that the conditions prescribed by the Deposit Rules are so irrelevant or have no reasonable nexus to the objects sought to be achieved as to be arbitrary? The answer is emphatically in the negative. Even at the cost of repetition, it can be stated with confidence that the rules which prescribed conditions subject to which deposits can be invited and accepted do operate to extend a measure of protection against the notorious abuses of economic power by the corporate sector, to the detriment of depositors/investors, a segment of the society which can be appropriately described as weaker in relation to the mighty corporation. One need not go so far with Ralph Nadar in America Incorporated to establish that political institutions may fail to arrest or control this ever-widening power of corporations. And can one wish away the degree of sickness in private sector companies? To the extent companies develop sickness, in direct proportion the controllers of such companies become healthy. In a welfare State, it is the constitutional obligation of the State to protect socially and economically weaker segments of the society against the exploitation by corporations. We therefore, see no merit in the submission that the conditions prescribed bear no relevance to the object or the purpose for which the power was conferred under Section 58-A on the Central Government.”

31. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably.

Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.”

8. In Small Scale Industrial Manufacturers Association (Registered) v. Union of India, (2021) 8 SCC 511, the Apex Court while placing reference to the observation made in paragraph 30 and 31 of Peerless General Finance & Investment Co. Ltd. (supra), proceeded to hold that the courts ought not to supplant themselves for government expert authorities fully competent in the domain of economic and fiscal policy, which in this instance is the RBI.

“65. In Peerless General Finance & Investment Co. Ltd. [Peerless General Finance & Investment Co. Ltd. v. RBI, (1992) 2 SCC 343] , it is observed and held by this Court that the function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is further observed that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts. It is further observed that it is not the function of the court to amend and lay down some other directions. The function of the court is not to advise in matters relating to financial and economic policies for which bodies like RBI are fully competent. The court

can only strike down some or entire directions issued by RBI in case the court is satisfied that the directions were wholly unreasonable or violative of any provisions of the Constitution or any statute. It would be hazardous and risky for the courts to tread an unknown path and should leave such task to the expert bodies. This Court has repeatedly said that matters of economic policy ought to be left to the Government.

66. In *Narmada BachaoAndolan [Narmada BachaoAndolan v. Union of India, (2000) 10 SCC 664]* , in paras 229 and 233, it is observed and held as under : (SCC pp. 762-63)

“229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

233. At the same time, in exercise of its enormous power the Court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must,

therefore, act within their judicial permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law.”

67. *In Prag Ice & Oil Mills [Prag Ice & Oil Mills v. Union of India, (1978) 3 SCC 459 : AIR 1978 SC 1296] , this Court observed as under : (SCC p. 478, para 24)*

“24. ... We do not think that it is the function of this Court or of any court to sit in judgment over such matters of economic policy as must necessarily be left to the Government of the day to decide. Many of them, ... are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts.”

69. *What is best in the national economy and in what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government and RBI on the aid and advice of the experts. The same is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review. Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in exercise of the power of judicial review, do not ordinarily interfere with the*

policy decisions, unless such policy could be faulted on the ground of mala fides, arbitrariness, unfairness, etc.

70. There are matters regarding which the Judges and the lawyers of the courts can hardly be expected to have much knowledge by reasons of their training and expertise. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.”

9. In Internet & Mobile Assn. of India v. RBI, (2020) 10 SCC 274, the Apex Court held that directions issued by the RBI are supplemental to the statutory force of the RBI Act, 1934. It was observed as under:

“150. Law is well settled that when RBI exercises the powers conferred upon it, both to frame a policy and to issue directions for its enforcement, such directions become supplemental to the Act itself. In Peerless General Finance & Investment Co. Ltd. v. RBI [Peerless General Finance & Investment Co. Ltd. v. RBI, (1992) 2 SCC 343] , this Court followed the decisions in State of U.P. v. Babu Ram Upadhyaya [State of U.P. v. Babu Ram Upadhyaya, AIR 1961 SC 751 : (1961) 1 Cri LJ 773] and D.K.V. Prasada Rao v. State of A.P. [D.K.V. Prasada Rao v. State of A.P., 1983 SCC OnLine AP 61 : AIR 1984 AP 75] to hold that Rules made under a statute must be treated as if they were contained in the Act and that therefore they must be governed by the same principles as the statute itself. Useful reference can also be made in this regard to the following observations in ICICI Bank Ltd. v. Official Liquidator [ICICI Bank Ltd. v. Official Liquidator, (2010) 10 SCC 1 : (2010) 4 SCC (Civ) 1] : (SCC p. 25, para 40)

“40. When a delegate is empowered by Parliament to enact a policy and to issue directions which have a statutory force and when the delegatee (RBI) issues such guidelines (policy)

having statutory force, such guidelines have got to be read as supplement to the provisions of the BR Act, 1949. The “banking policy” is enunciated by RBI. Such policy cannot be said to be ultra vires the Act.”

10. Statutory directives issued by RBI are done in exercise of powers under Sections 21 and 35A of the Banking Regulation Act, 1949. The master circulars in the counter affidavit sets out extensive detailed norms for lending activities which would include housing loans, for banks to follow and implement. What emerges thus on a reading of the foregoing is that the RBI being a regulatory body is equipped with requisite expertise to advise on and to formulate economic policies, that have a binding effect on the banking system which is backed by statutory force. As pointed out earlier, it is well settled law that while considering matters pertaining to economic policy, courts ought to yield to the wisdom of policy makers who are fully equipped to decide on matters of policy in their domain, and therefore to refrain from exercising powers of judicial review. A perusal of the same shows that a well structured regimen has been created by the RBI which includes guidelines to the various banks on the issue of advancing loans to home buyers. A perusal of the said Master Circular shows that RBI has given advice to various banks as to which all projects should loans be advanced and the precautions which the banks have to take while extending loans. The Master Circular also advices that the quantum of loans which are to be granted by the banks for housing finance and also to maintain loan to value ratio in case of individual housing loans. The Reserve Bank of India can only guide the banks to frame their loan policies with the approval of their boards and advices that the policies must be within the

framework/guidelines issued by the RBI. The banks are expected to conduct basic due diligence at the time of approval/sanction/disbursement/renewal of the loans. When the loans are sanctioned only on the basis of income of the borrower, the banks also conduct due diligence in respect of the property for which the loans are sanctioned. The banks as part of their business have to maintain a schedule for disbursal and recovery of loan and if a home buyer fails to repay the loan then the banks have to take steps to recover the loan, as it is public money, from the defaulting buyer. The schedule is decided mutually by the bank and the borrower. The guidelines specify that the housing loans sanctioned to individuals who invest in housing projects is linked to the stages of construction of housing projects. However, it cannot be said that it is the banks' responsibility to get the project completed and the bank cannot assume the role of the builder to complete the project. The Master Circular (Supra) advises banks to appoint auditors to check as to whether there is misutilization of loans. The banks can only give a red flag to the borrower for the misutilization and it is for the lenders to take appropriate legal action by approaching the civil forum to ensure that the project is completed within time. The Apex Court in Bikram Chatterji and Others vs. Union of India and Others, 2020 SCC OnLine SC 494 has also given directions to the Reserve Bank of India which reads as under:

“29. Learned Receiver submitted that the RBI may be directed to advise all banks and financial institutions such as insurance companies, and employers of the establishments which have sanctioned home loans to home buyers to disburse all balance loan amounts to the home buyers whose accounts are regular and they will abide by instructions issued by the Receiver in this regard. It is further pointed out that banks have certain reservations regarding the funding of NPA accounts.

In view of current social and economic conditions, the Court may direct the RBI to keep its circulars/guidelines relating to NPA in abeyance and permit all banking and financial institutions, etc. to disburse loans to home buyers notwithstanding the status of accounts as NPA. Banks and financial institutions be directed to work out a long-term restructuring of all home buyers' loans about Amrapali Projects as well as any charges on the Amrapali project held by banks and financial institutions.

30. On the previous date of hearing, i.e., 27.5.2020, we requested Mr. Vikramjit Banerjee, learned ASG to obtain instructions from the RBI concerning the release of loans by the banks and other financial institutions to the home buyers. It was clearly stated that RBI instructions do not come in the way of releasing home buyers' loans whose accounts are NPAs. It would be for the banks and other financial institutions to release the loan. In the facts and circumstances, appropriate directions can be issued by this Court, and the RBI guidelines would not come in the way in the facts of the case. Learned counsel appearing for the banks pointed out that they are ready to release the loan to the home buyers. However, it would be in a phased manner and as per the stage of construction, they would be releasing the loan to the particular home buyer.

31. Considering the aforesaid and in the facts and circumstances of the case, as projects have been stalled for the last several years, the home buyers have obtained loans but cannot enjoy the fruits of their investment. At the same time, if projects are not completed and home buyers are not sure of handing over of flats, it would be difficult for them to pay bank dues till eternity and it is in the interest of home buyers

as well as banks and financial institutions as they can recover money when projects are completed in an effective manner. We direct the banks and financial institutions to release loans to home buyers, whose loans have been sanctioned, notwithstanding the fact that their accounts are declared as NPAs. Let there be restructuring of the loan amount. It may be released under the current norms of the RBI for releasing loans and the rates fixed by the RBI therefor. The disbursement of further loans may be based on the present rate of interest fixed by the RBI; this we order in the peculiar facts of the case. It may be released stage-wise and long-term restructuring of the loans may be done so that construction is completed and buyers are able to repay the loan. Ordered accordingly.”

11. When the projects proponent defaults in completing a project, it is always open for the banks to approach the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for getting a Insolvency and Resolution Professional appointed and to take measures to ensure that project is revived and the project is completed because the banks are also anxious to recover their money. The entire problem that has been projected by the Complainant has to be looked into to safeguard the interests of the home buyers and also the banks who deal with public money, and the banks cannot be converted into developers and builders or an authority on whom the responsibility is loaded to ensure that the project is completed. Other than the remedies in Insolvency and Bankruptcy Code, 2016, it is always open for the home buyers to approach the Real Estate Regulatory Authority (RERA) to ensure that the project is completed.

12. In view of the fact that there is a proper regimen available to redress the grievances of a home buyer and also in view of the Master Circular

(Supra) issued by the Reserve Bank of India, no further Orders and directions are required to be passed in the instant petition.

13. With the abovementioned observations, the present petition stands dismissed, along with application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MARCH 13, 2023

S. Zakir/SS

भारतमेव जयते