

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WA.No. 1071 of 2007 (C)

AGAINST THE JUDGMENT IN WP(C) 28371/2005 DATED 14-08-2006

APPELLANT/IST RESPONDENT IN THE WRIT PETITION :

**KERALA STATE HOUSING BOARD
REPRESENTED BY SECRETARY, K.S.E.B. COMPLEX,
PANAMPILLY NAGAR, KOCHI 16.**

BY ADV. SRI.GEORGE BOBAN, SC

RESPONDENTS/PETITIONERS AND RESPONDENTS 3, 4 & 5 IN THE WRIT PETITION :

- 1. GEORGE MARTIN
AF2-16, VASANTHA NAGAR
PALARIVATTOM, KOCHI 25.**
- 2. MARYKUTTY K.M.,
AF2-16, VASANTH NAGAR,
PALARIVATTOM, KOCHI 25.**
- 3. ADMINISTRATIVE OFFICER,
KERALA STATE HOUSING BOARD,
KOCHI HOUSING UNIT, KOCHI 16.**
- 4. THE REGIONAL ENGINEER,
STATE HOUSING BOARD, KOCHI HOUSING UNIT
KOCHI 16.**
- 5. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
THIRUVANANTHAPURAM.**

**R1 & R2 BY ADVS. SRI.P.K.JOSE
SMT.TESSY JOSE
SRI.K.R.DEEPA
R5 BY SR. GOVT. PLEADER SRI. P.I DAVIS**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-06-2015, ALONG
WITH WA NO. 1072/2007 & WA NO. 1208/2007, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

W.A.Nos.1071, 1072 & 1208 of 2007

Dated this the 29th day of June 2015

J U D G M E N T

Shaffique, J

These appeals are filed against the common judgment dated 14/08/2006 in W.P.C.Nos.28371/2005, 30276/2005 and 24538/2005 respectively. The respondent, Kerala State Housing Board is the appellant in all these cases. The writ petitions were filed by the private respondents herein, who are hereinafter referred to as 'the petitioners', challenging the demand for additional amount to be paid towards differential cost for acquisition of land and the manner in which the computation had been made.

2. The facts involved in the writ petitions would disclose that the Kerala State Housing Board (hereinafter referred to as 'the Board') has allotted certain extent of land along with an apartment in favour of the petitioners on a scheme by which an initial tentative amount has been fixed as consideration. An initial lumpsum payment had to be made by the allottees and thereafter

the balance amount had to be paid in 96 instalments. Since the land was acquired by the Board and the land acquisition proceedings had to be finalised, appropriate provision has been made in the agreement of allotment to recover such additional cost. The allotments were made somewhere in 1992 and the petitioners were put in possession of the respective apartments. The Board made a demand for additional amounts in terms of the final price which was challenged by the petitioners inter alia contending that the fixation of the amounts were totally arbitrary and no materials were produced regarding the manner in which computation had been made. Further it was contended that the Board is not entitled to recover interest on the balance amount due as final cost. Hence direction was issued to incorporate the interest payable on the final cost till 28/12/1996.

3. The learned Single Judge, after considering the matter elaborately, observed that the entire land acquisition proceedings were completed and last payments were made by the Board on 28/12/1995. Once the land acquisition cost has been paid, there is no reason for delaying the demand made to the allottees. The demand being made only in the year 2004, there is laches on the

part of the Board and therefore the petitioners will not become liable to pay any interest on the amount demanded after 28/12/1995. Their obligation will only be to pay the actual differential amount of the cost as on 28/12/1995. The Board was directed to refund the excess payment made by the petitioners by way of interest. As far as the first petitioner in W.P.C.No.24538/2005 was concerned, it was observed that the calculation of interest from 10/04/1989 is bad in law and therefore, interest on the additional amount realizable from the 1st petitioner in W.P.C.No.24538/2005 shall only be from 23/03/1992 as in the case of the 2nd petitioner in the said case.

4. It is, impugning the above common judgment that the appeals have been filed. One such appeal W.A.No.1068/2007 was dismissed as withdrawn as per the judgment dated 06/04/2010 as the appellant had settled the matter with the Board.

5. In respect of remaining three appeals, learned counsel for the appellant, after referring to the terms of the agreement between the parties, argued that the demand for the final amount can be made only after the period prescribed for payment of instalments. In that view of the matter, when the last payment

was to be made only by the year 2000, the demand made in the year 2004 is not at all a delayed demand. Further, the petitioners' right to get the sale deed executed arise only after the year 2000 when the instalments in terms of the tentative value is paid by them and only thereafter the question of payment of the balance amount arises. In so far as the final amount has been worked out after the acquisition proceedings, the obligation of the petitioners to pay the amount arises from the date on which the Board effects the payment and thereafter since the amount is available with the petitioners, their obligation to pay interest continues. The liability had been fixed on the petitioners based on the contract between the parties which should not have been read down by the learned Single Judge. For that reason itself, the learned Single Judge was not justified in denying the interest to Board.

6. On the other hand, learned counsel appearing for the petitioners in W.P.C.No.24538/2005 submits that there is no justification on the part of the Board in not finalising the final price within a reasonable time. Even according to the Board, the land acquisition cost had been arrived at as early as on 28/12/1995.

Under such circumstances, the demand made after nine years has resulted in substantial loss to the petitioners as they are now called upon to pay a huge rate of interest as per the terms of the agreement, which according to the learned counsel, was arbitrary and unfair and therefore the learned Single Judge was justified in directing that no interest shall be payable after 28/12/1995.

7. In respect of the contention urged by the 1st petitioner in W.P.C.No.24538/2005 is concerned, it is clear from the materials placed on record that there has been some mistake in computing interest from the year 1989 and therefore we are of the view that the learned Single Judge was justified in directing that the liability of the 1st petitioner to pay interest shall be considered only from the date on which 2nd petitioner was called upon to pay interest. We do not want to interfere with the said finding of fact in this appeal.

8. As far as the liability to pay interest is concerned, it is clear from the averments made in the writ petition as well as the counter affidavit and the findings of the learned Single Judge that the final payment for the land acquisition has been made by the Board on 28/12/1995. The final land acquisition cost being

arrived at by the Board during the relevant time, the Board could have finalised the final price within a reasonable time. The learned Single Judge found that the delay in fixing the final price in 2004 was unreasonable. We do not think it necessary to interfere with the said finding also.

9. Now the only question is whether the petitioners are liable to pay interest on the amount demanded by the Board. The argument of the Board is that only after the entire 96 instalments were made that the amount could be demanded in terms of Clause 10. This argument, according to us, is without any basis. Clause 10 is an independent provision which is related to clause 9 which reads as under:

“10. It is expressly agreed between the parties hereto that after the finalisation of the price of the land/apartment and service charges the Board of the party of the second part shall pay to the Board together with interest at 18% per annum, the difference between the tentative price fixed therefore and the price finally fixed for both the land and service charges by the Board, within thirty days or the date of registered notice demanding the payment thereof or in such instalments such rate of interest to be determined by the Board.”

10. In terms of Clause 9, it is agreed between the parties that the Board is entitled to refix the final price taking into account the enhanced compensation awarded by Courts and as per actual cost of construction. It was further indicated that the decision of the Board in fixing the revised price of the land shall be conclusive and final. By Clause 10 the parties agreed that after the finalisation of the price of the land/apartment and service charges, the allottee shall pay to the Board together with interest at 18% per annum, the difference between the tentative price fixed and the price finally fixed for both the land and service charges by the Board within 30 days from the date of service of a registered notice demanding the payment or in such instalments with such rate of interest, to be determined by the Board. Clause 10 apparently is an independent provision by which Board is entitled to make a demand for the difference between tentative price and final price with 18% interest and on such demand being made, allottee is liable to pay such amount within 30 days thereafter and on such instalments as may be determined by the Board. In so far as the demand has been made only after a lapse of nine years which we have already held as gross delay on the

part of Board, it is not open for the appellant to contend that demand can be made only after payment of 96 instalments.

11. Learned counsel for the Board has placed reliance on the judgment of the Supreme Court in **Kerala State Housing Board and Others v. Kerala State Housing Board, Nellikode Housing Colony Allottees Assn. And Others** [2011 KHC 4850]. That was a case in which there was a delay of more than 1½ years in making the payment. In that case, the Supreme Court, having considered the fact that Board will have to repay the cost of acquisition, directed payment of the balance amount after fixation of the final price with interest @ 8% per annum. But the delay in the present case is about 9 years and in the case before the Supreme court, the delay was only 1½ years. There cannot be any doubt regarding the proposition as laid down by the Supreme Court in the said case, but the entitlement of the Board to demand interest has been lost on account of the long delay in making the demand. Under such circumstances, we are of the view that until the demand has been made, the learned Single Judge was justified in directing that interest is not payable. But the allottees would definitely become liable to pay the

amount worked out at least from the date of demand, which cannot be disputed. Hence, we make it clear that the petitioners will be liable to pay interest @ 8% per annum from the date when the demand was made on the principal amount payable with interest till 28/12/1996. All other directions of the learned Single Judge are upheld.

With the above modification, these appeals are disposed of.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

