

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).No. 21990 of 2008 (P)

PETITIONER(S):

**C.P.DAMODARAN PILLAI, CHELACKAL,
KUNNAMTHANNAM, PALAKKATHAKIDI P.O,
THIRUVALLA 689 581.**

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENT(S):

- * 1. STATE OF KERALA, REP. BY SECRETARY,
DEPARTMENT OF HOUSING BOARD
THIRUVANANTHAPURAM. (R1 IS DELETED AS PER ORDER
DATED 12/02/2013 IN IA 2106/2013).**
- 2. KERALA STATE HOUSING BOARD,
REPRESENTED BY THE ADMINISTRATIVE OFFICER, 3RD FLOOR
HSHB OFFICE COMPLEX, PANAMPILLY NAGAR, KOCHI.**
- 3. THE EXECUTIVE ENGINEER,
KERALA STATE HOUSING BOARD, KOTTAYAM DIVISION,
KANJIKUZH, KOTTAYAM.**

R2, R 3 BY ADV. SRI. GEORGE BOBAN, SC, K.S.H.B.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/9/2015,
THE COURT ON 07-10-2015 DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE DETAILS OF THE ACQUISITION PROCEEDINGS INITIATED BY THE R2**
- P2: COPY OF THE DETAILS OF THE LAND ACQUISITION APPEALS**
- P3: COPY OF THE LETTER ISSUED BY THE PETITIONER DATED 14/9/98**
- P4: COPY OF THE REPLY LETTER DATED 5/10/98**
- P5: COPY OF THE LETTER ISSUED BY THE PETITIONER DATED 29/10/98 ALONG WITH POSTAL ACKNOWLEDGEMENT**
- P6: COPY OF THE LETTER DATED 25/2/99**
- P7: COPY OF THE AGREEMENT FOR SALE DATED 31/3/99**
- P8: COPY OF THE ORDER DATED 0/4/99**
- P9: COPY OF THE HIRE PURCHASE REGISTER MAINTAINED BY THE R2 AS REGARDS THE PETITIONER**
- P10: COPY OF THE NOTICE DATED 31/3/2005**
- P11: COPY OF THE NOTICE DATED 27/6/05 ISSUED BY THE R2**
- P12: COPY OF THE REPRESENTATION DATED 9/8/07 SUBMITTED TO THE R1.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J

WPC No.21990 of 2008

Dated this the 7th day of September, 2015

JUDGMENT

Under challenge in this writ petition is Ext.P11 which is a demand notice issued by the third respondent Housing Board demanding an amount of ₹3,78,711/- alleging to be the amount due from the petitioner towards finalisation of the scheme amount for purchase of the land and building.

2. According to the petitioner, in 1987, the second respondent had promoted the Changanacherry Housing Accommodation Scheme for which 11.93 acres of land and its possession was handed over. Statutory proceedings for compensation was preferred by the landlords before the Sub Court, Kottayam which were decreed in 1998. According to the petitioner, appeals were preferred by the State as well as two claimants, however, this Court dismissed all the appeals. In 1998, the price of the land got

finalised as regards the land acquisition proceedings. On an application by the petitioner, he was allotted a plot with building under the scheme. However, later, due to financial constraints, the petitioner requested the 2nd respondent to cancel the allotment. However, the second respondent expressed their willingness to reduce the price of plot to affordable limits. By that time, the land price got finalised and they were in a position to reduce the price further. Accordingly, the second respondent reduced the price of the plot and thereafter the petitioner started paying the instalments promptly. According to the petitioner, by letter dated 25.2.1999 produced as Ext.P6, it was informed that the Board had reduced the value of land and house to ₹10,80,049/-.

3. According to the petitioner, he had paid all the amounts due under the agreement by 10.9.2000. However, even after completing the payments, the Board did not issue the sale deeds to the petitioner and also to other residents for which the residents

association issued a notice for which there was no response and surprisingly on 27.6.2005, the petitioner was served with a notice directing him to pay an additional amount of ₹3,78,711/-. Impugned by the above, the petitioner has filed this writ petition.

4. In the counter affidavit filed by the respondents, they have contended as follows:

The demand raised in Ext.P11 is the proportionate share of the enhanced compensation in land acquisition cases up to 30.6.2005 and also the differential cost of building with interest as per the final cost approved by the Board on 18.3.2005. They would admit that the petitioner was an allottee of PWB No.F13-4 under the Changanacherry Housing Accommodation Scheme. According to the respondents, as per the terms of the agreement executed between the Board and the petitioner, the land value and the service charge fixed were purely tentative and were bound to be revised at a later

stage depending upon the compensation award to be paid by the Board in land acquisition cases fixed by the Courts and Tribunals in LAR cases pending and also the increased cost of development works and amenities undertaken with respect to the above scheme. According to the respondents, the petitioner had agreed to pay the revised rates fixed by the Board which is final and conclusive payment. They would contend that the final cost of the project was approved by the Board only on the meeting held on 18.3.2005 and thus, the differential cost and additional land value in respect of the plot allotted to the petitioner was revised as on 30.6.2005. It is contended that at the time of allotment, the petitioner had remitted the tentative value fixed for the plot and building in instalments. The land acquisition cases were pending against the Board. Therefore, the Board has fixed the final value and settlement of the acquired property to an anticipated amount of ₹35,00,000/-. This was done to avoid the

burdening of the allottees with future interest that may accrue due to the delay in the payment of the LAR compensation and also to hand over the sale deed at an earlier date. There were 15 LAR cases in connection with the project and the Board was making payment in the said land acquisition cases. Payments were made during 2012. Last payment was made on 16.7.2012. The tentative cost of plot with building was originally fixed as ₹12,52,406/- and subsequently the price was reduced by 15% and intimated as ₹10,89,049/-. The petitioner executed a sale agreement on 31.3.1999 agreeing to purchase the plot and the building at tentative cost. The case was purely tentative and provisional and the price fixed was subject to revision by the Board. Therefore, according to them, the demand made as per Ext.P11 is correct and the same was issued in accordance with the decision of the Board dated 30.6.2005. Therefore, they prayed for a dismissal of the writ petition.

5. Arguments have been heard.

6. The argument advanced by the learned counsel for the petitioner is that the petitioner had completed his part of the contractual obligation as early as on 10.9.2000 and thereafter the second respondent delayed the transfer of ownership solely because of their default and therefore, the petitioner cannot be burdened with any increase in the cost of land or interests subsequent to the year 10.9.2000. It was also argued that the additional land value would not be applicable in the case of the petitioner as on the year 1998, the land acquisition prices had become final and subsequently as per Ext.P8, the prices as regards the petitioner was revised after taking into consideration the real prices in the project.

7. According to the learned counsel for the petitioner, all related land acquisition references were decided prior to the date of agreement between the petitioner and the second respondent. Hence, the

cost of the land had been confirmed and the cost as per the agreement was the cost prevalent at that date.

8. The learned standing counsel for the respondent Board, per contra, would submit that the price fixed in the agreement was only tentative and subject to revision by the Board as several land acquisition cases were pending.

9. Referring to clause 10 of Ext.P7 which is the copy of the agreement, the learned standing counsel for the Board would submit that as the clause specifically stated that the land price was tentative and any increase demanded was payable and therefore, the demand under Ext.P7 is justifiable. It was pointed out that if the entire cost of the land including enhancement had already been taken into account while fixing the cost of the land mentioned in the agreement, it would not have stated that the land price was tentative and subject to increase in final settlement.

10. As directed by this Court, the learned standing counsel for the respondent Corporation filed a memo along with the account statement of the Changanassery Housing Scheme which gives the details regarding the land cost further paid.

11. I find considerable force in the contention of the respondent Board as the cost of the construction was shown as the final price and the cost of land and development was shown as tentative in Ext.P7 which is the copy of the agreement. Ext.P7 clearly demonstrates that the amount shown in the agreement towards land cost and service charges was not the final cost. Having taken possession of the land and building subject to the conditions made mention of in Ext.P7, the petitioner cannot now turn around and dispute the genuineness of the claim put forward by the respondent.

12. As the work statement now filed along with the memo clearly indicate that additional expenditure has been incurred by the respondent Board towards

cost of acquisition of the land, the petitioner cannot wash off his hands saying that there was a concluded contract and he is not liable to pay any more.

Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is not entitled to get the relief as prayed for. In the result, this writ petition fails and accordingly, dismissed.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/

true copy

P.S.TO JUDGE