

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2015

Coram:

The Honourable MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.25643 , 27086 to 27100,
27468, 28561 to 28571,
28758, 28795, 28796,
29109, 29793, 32070
to 32074 of 2014
and connected MPs

- 1 R.VIGNESH PETITIONER in WP No.25643 of 2014
S/O.R.RAJAGOPAL
- 1 A.PORKODI PETITIONER in WP No.27086 of 2014
W/O.A.T.ANBARASAN
- 1 B.RAJENDRAN PETITIONER in WP No.27087 of 2014
S/O.N.BALAMANICKAM
- 1 VASSANTHY PETITIONER in WP No.27088 of 2014
W/O.MOUNISSAMY
- 1 K.S.SAMBANDAN PETITIONER in WP No.27089 of 2014
S/O.K.P.SHANMUGAM
- 1 DR.V.SOUGOUMARANE PETITIONER in WP No.27090 of 2014
S/O.V.VASSODEVAN
- 1 DR.S.ALAGARASU PETITIONER in WP No.27091 of 2014
S/O.S.SUBRAMANIAN
- 1 C.NIRMALA PETITIONER in WP No.27092 of 2014
D/O.CHANEMOUGASSOUNDARAM
- 1 T.RAVICHANDRAN PETITIONER in WP No.27093 of 2014
S/O.T.THIRUGNANAM
- 1 R.NAMBIAR PETITIONER in WP No.27094 of 2014
S/O.RAMIAH THEVAR
- 1 DR.A.ARULVISAGAN PETITIONER in WP No.27095 of 2014
S/O.ADISESHAN
- 1 S.SIVANANDAM PETITIONER in WP No.27096 of 2014
S/O.A.SUBBIAH
- 1 S.ANANDARAJA PETITIONER in WP No.27097 of 2014
S/O.S.SUBRAMANIAN

1 M.MURUGAN ... PETITIONER in WP No.27098 of 2014
S/O.K.S.MANICKAVASAGAM

1 G.HEMALATHA ... PETITIONER in WP No.27099 of 2014
W/O.M.ANAND

1 A.SITTANANDAM ... PETITIONER in WP No.27100 of 2014
S/O.N.APPAR

1 N.SIVAKUMAR ... PETITIONER in WP No.27468 of 2014
S/O.P.NAGAMUTHU

1 GEORGE FERNANDEZ ... PETITIONER in WP No.28561 of 2014
S/O.VINCENT PETER

1 C.KUMARI ... PETITIONER in WP No.28562 of 2014
W/O.CHANDRAKUMAR

1 K.SUDHAKAR ... PETITIONER in WP No.28563 of 2014
S/O.KALYANASUNDARAM

1 D.DHANASEGARAN ... PETITIONER in WP No.28564 of 2014
S/O.DHANDAPANI

1 K.VIJAYALAKSHMI ... PETITIONER in WP No.28565 of 2014
W/O.K.KALIYAPERUMAL

1 V.SELVAMURUGAN ... PETITIONER in WP No.28566 of 2014
S/O.R.VENKATESAN

1 D.GIRIJA ... PETITIONER in WP No.28567 of 2014
W/O.M.DHANDAPANI

1 B.HEMA KUMAR ... PETITIONER in WP No.28568 of 2014
S/O.G.BALACHANDRAN

1 M.PALANIVELU ... PETITIONER in WP No.28569 of 2014
S/O.MANICKASAMY

1 SUBBULAKSHMI SUNDARAM ... PETITIONER in WP No.28570 of 2014
W/O.G.ASHOK SWAMINATHAN

1 S.MAHESH ... PETITIONER in WP No.28571 of 2014
S/O.K.SARANGAPANI

1 N.RAJASEKHAR ... PETITIONER in WP No.28758 of 2014
S/O.M.K.NATARAJAN

- 1 L.GANESH KUMAR ... PETITIONER in WP No.28795 of 2014
S/O.LAKSHMANAN
- 1 D.SATHIYANARAYANAN ... PETITIONER in WP No.28796 of 2014
S/O.R.DHANDAPANI
- 1 R.MUTHUKUMARASSAMY ... PETITIONER in WP No.29109 of 2014
S/O.RAJAKANNU REP. BY POWER AGENT R.
VISALAKSHY D/O. T.RAJAKANNU
- 1 K.NIRANJAN ... PETITIONER in WP No.29793 of 2014
S/O.B.KALAIMARAN
- 1 A.NAVINNA ... PETITIONER in WP No.32070 of 2014
D/O.N.R.ANBZHAGAN
- 1 P.MAHENDIRAN ... PETITIONER in WP No.32071 of 2014
S/O.A.PALANISAMY
- 1 THULASI RAMASWAMY ... PETITIONER in WP No.32072 of 2014
W/O.N.RAMASAMY
- 1 V.MOHANDASS ... PETITIONER in WP No.32073 of 2014
S/O.K.VARADAPPAN
- 1 VALLABADASSEE ... PETITIONER in WP No.32074 of 2014

-Vs-

- 1 PUDUCHERRY HOUSING BOARD ... RESPONDENT in WP No.25643, 27086, 27087,
REP. BY ITS CHAIRMAN 27088, 27089, 27090, 27091, 27092, 27093,
ANNA NAGAR PUDUCHERRY. 27094, 27095, 27096, 27097, 27098, 27099,
27100, 27468, 28561, 28562, 28563, 28564,
2 THE SECRETARY 28565, 28566, 28567, 28568, 28569, 28570,
PUDUCHERRY HOUSING BOARD 28571, 28758, 28795, 28796, 29109, 29793,
ANNA NAGAR PUDUCHERRY. 32070, 32071, 32072, 32073, 32074 of 2014

WP.No.25643 / 14:

Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/ HIG/ S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the Sale Deed in respect of the Flat No.D-29 Second Floor Sudhanthira Ponvizha Nagar Puducherry allotted to the petitioner within the time stipulated

WP No.27086 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.E-37 Second Floor Sudhanthira

Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27087 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.B-14 Second Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27088 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.B-10 Ground Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27089 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.B-9 Ground Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27090 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.A-4 First Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27091 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.A-1 Ground Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27092 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.E-34 Ground Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27093 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379

dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.A-5 Second Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27094 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.A-7 Third Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27095 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.C-17 Ground Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27096 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.D-31 Third Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27097 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.D-28 First Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27098 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.C-18 Ground Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27099 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.C-19 First Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27100 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/ HIG/ S.P.Nagar/ D.R./2014/ 379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.D-27 First Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.27468 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in No.3/PHB/EW-7 /HIG/S.P. Nagar/D.R/2014/379 dated 18.08.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.E-39 Third Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

WP No.28561 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.A-3 First Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.28562 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.E-35 First Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.28563 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.C-20 First Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.28564 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.C-21 Second Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.28565 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.D-30 Second Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time

stipulated

WP No.28566 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.C-23 Third Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.28567 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.B-13, Second Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

WP No.28568 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.A-8, Third Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

WP No.28569 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.D-32, Third Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

WP No.28570 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.C-22 Second Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

WP No.28571 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/EW-7/HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.B-11, First Floor Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

WP No.28758 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in No. 3/PHB/EW-7/ HIG/S.P.Nagar/ D.R/2014/379 dated 18.8.2014, quash the same and direct the respondents to execute the sale deed in respect of the Flat No.B-11, First Floor, Sudhanthira Ponvizha Nagar, Puducherry, allotted to the petitioners within the time stipulated

WP No.28795 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/PHB/EW-7/HIG /S.P.Nagar/D.R./2014/379 dated 18.08.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.A-2, ground floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.28796 of 2014

calling for the records relating to the proceedings of the 2nd respondent made in No.3/PHB/EW-7/HIG /S.P.Nagar/D.R./2014/379 dated 18.08.2014 quash the same and direct the respondents to execute the sale deed in respect of the flat No.E-38, Second floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.29109 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in No. 3/PHB/EW-7/HIG/S.P.Nagar /D.R/2014/379 dated 18.8.2014, quash the same and direct the respondents to execute the sale deed in respect of the Flat No.D-25, Ground Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.29793 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in No.3/ PHB/ EW-7/HIG/ S.P.Nagar/D.R/ 2014/379 dated 18.8.2014 quash the same and direct the respondents to execute the Sale Deed in respect of the Flat No.A-6, Second Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner within the time stipulated

WP No.32070 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in 3/PHB/EW-7/ HIG/S.P.Nagar /D.R/2014/379 dated 18.08.2014 quash the same and direct the respondent to execute the sale deed in respect of the Flat No. E-33, Ground Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

WP No.32071 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in 3/PHB/EW-7/ HIG/S.P.Nagar /D.R/2014/379 dated 18.08.2014 quash the same and direct the respondent to execute the sale deed in respect of the Flat No.C-24, Third Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

WP No.32072 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in 3/PHB/EW-7/ HIG/S.P.Nagar /D.R/2014/379 dated 18.08.2014 quash the same and direct the respondent to execute the sale deed in respect of the Flat No. B-16, Third Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

WP No.32073 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in 2nd respondent made in 3/PHB/EW-7/ HIG/S.P.Nagar / D.R/2014/379 dated 18.08.2014 quash the same and direct the respondent to execute the sale deed in respect of the Flat No.D-26, Ground Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

WP No.32074 of 2014

Calling for the records relating to the proceedings of the 2nd respondent made in 2nd respondent made in 3/PHB/EW-7/ HIG/S.P.Nagar / D.R/2014/379 dated 18.08.2014 quash the same and direct the respondent to execute the sale deed in respect of the Flat No. B-15, Third Floor, Sudhanthira Ponvizha Nagar, Puducherry allotted to the petitioner.

For Petitioners : Mr.M.Devaraj

For Respondents : Mr.T.P.Manoharan

C O M M O N O R D E R

Heard Mr.M.Devaraj, learned counsel for the petitioners and Mr.T.P.Manoharan, learned Standing Counsel for the respondent Housing Board and perused the materials placed on record.

2. Since in all these writ petitions, the prayer sought for is identical and the challenge is the proceedings issued by the 2nd respondent Puducherry Housing Board, by which the 2nd respondent had demanded revised final cost and directed the petitioners to pay the difference between the revised final cost and the tentative cost fixed by the Board at the time of allotment.

3.1 The respondent Board acquired the lands in R.S.No.300/2 & 301/5 situated at Rainbow Nagar, now Sudanthira Ponvizha Nagar, Puducherry Town, measuring an extent of 1.36.00 Hectares and 0.32.00 hectares respectively through the Government under the Land Acquisition Act, 1894. An award was passed on 19.02.1998 and the Board has borrowed from the Housing and Urban Development Corporation Limited (HUDCO) and paid compensation of Rs.1,37,26,731/- to the land owner which is a temple. It is stated that the respondent Board has been paying interest on the said loan obtained from HUDCO.

3.2 Out of the total extent, the land in R.S.No.300/2, measuring 850 sq.m. was handed over to the Puducherry Slum Clearance Board for construction of flats for economically weaker sections and the remaining extent of 12,750 sq.m. was given to the respondent Board.

3.3 The respondent Board has developed the lands and constructed (i) 40 HIG Flats, (ii) 77 MIG Flats and (iii) 64 LIG Flats and said to have provided all the amenities, including compound wall, inner roads, parking areas, parks, water pumping station with over head tanks, electricity transformer installations, electricity connection,

drinking water connection, drainage connection etc.

3.4 It is further stated that the Board is in a severe financial constraint and unable to pay salaries to its employees. It is submitted that due to the financial problems faced by the Board, the Board was unable to sell the flats at concessional rates under the Hire Purchase Lease Scheme. Therefore, a decision was taken to sell the flats on Out-Right sale basis at the market value to the persons possessing financial capacity and willingness to purchase the flats. It is stated that the construction of flats was commenced on 04.08.2008 and the construction is yet to be fully completed.

4. The issue involved in these writ petitions is with regard to payment of revised final cost. All the petitioners who are purchasers of the flats on Out-Right basis have challenged the impugned proceedings by contending that the respondent Board are bound by the terms and conditions and in terms of sub-clause (o) of Clause (d) of the General Conditions of Allotment, the final cost of the flat shall not exceed the tentative cost by more than 5%, however, the impugned demand is more than 20.78% and the same is without jurisdiction.

5. It is submitted by the petitioners that 40 flats have been constructed and the initial tentative cost fixed did not fetch any offer and therefore there was a scale down of the price in 2010. Based on the advertisement, only a slender response was received and therefore, it was once again advertised for the same flats in November 2011 for the third time and the petitioners have participated in the same and allotments were made in July 2013. Therefore, it is stated that it is absolutely arbitrary and unreasonable to revise the cost of the flats at this juncture. Further it is stated that the respondents had already worked out the cost of the flat and fixed the profit margin at 3% and now the respondent had fixed the margin of the profit at 10%, which is arbitrary.

6. Thus, the crux of the argument of the learned counsel for the petitioners is that in terms of sub-clause (o) of Clause (d) of the general conditions of allotment, there is no justification for the respondents to demand final cost of the flats more than 5% of the tentative cost.

7. Detailed counter affidavits have been filed in W.P.Nos.28561 to 28571, 28758, 28795 and 28796 of 2014 and the learned counsel for the respondent Board submitted that the same shall be treated as counter in rest of the cases also.

8.1 The learned counsel appearing for the respondents by relying upon the counter affidavits, submitted that the flats are situated in a posh area in the heart of the Puducherry Town. The market value of the lands is very high in the year 2010. The market value was more than Rs.1,800/- per sq.ft., whereas the actual value fixed by the Government was Rs.800/- per sq.ft. It is submitted that each HIG flat is measuring 1692 sq.ft. with land and undivided share in the

lands and earthquake resistance capacity and it is having all amenities for the safe and comfortable living. It is submitted that the private builders have charged at the rate of Rs.3,200/- per sq.ft. during the relevant time i.e, 2010.

8.2 Further, justifying the demand of revised final cost, it is submitted by the learned counsel for the respondents that earlier, there was a political Chairman headed the Board and he with the assistance of a Chartered Accountant, without looking into the supporting details fixed the tentative sale price at Rs.3,45,750/- and the same is invalid and the said tentative sale price was only an approximate price and therefore, the Board took a conscious decision in exercise of their power under Clause 14 and have now revised the final price and they have issued the demand.

8.3 It is further submitted by the learned counsel for the respondents that the purchasers are bound by the declaration given by them at the time of allotment where they have stated that they have understood the terms and conditions of allotment and they are solemnly agree to abide by them.

8.4 Further, by referring to clause 10(i) of the terms and conditions for allotment, it is submitted by the learned counsel for the respondents that till the final cost is fixed and sale deeds are executed, the allottees continue to remain as tenants of the Board. Further, it is submitted that the Board is bound by the methods and procedures which are prescribed in the terms and conditions for allotment on Out-Right basis.

8.5 In paragraph No.17 of the counter affidavits, a calculation has been given, calculating the land value at the market rate of Rs.1,800/- per. sq.ft. and the comparative statement has also been given calculating at the rate of Rs.800 per sq.ft. The calculation reads as follows:-

"(1) If the value of the land is calculated at the Market Value of Rs.1,800/- per st.ft., along with the development cost, construction cost, administrative charges & miscellaneous expenses incurred by the Board till 23.11.2013, the Sale price of each HIG Flat is as follows:-

(i) The value of the undivided share in the land	: Rs.24,40,231/-
(ii) Development cost	: Rs. 1,94,824/-
(iii) Construction Cost	: Rs.32,82,635/-
(iv) Administrative Charges	: Rs. 4,62,608/-
(v) Miscellaneous Expenses	: Rs. 64,078/-

Cost of each Flat as on 23.11.2013	: Rs.59,82,768/-

(vi) As it is an outright sale,
as per the Principal
Accountant General's Audit
Report, the Board is bound to
charge profit at 10% on
Rs.59,81,768/- : Rs. 5,98,177/-

Total cost of each flat
as on 23.11.2013 : Rs.65,79,945/-

(2) If the value of the land is calculated at the Govt. Guideline Value of Rs.800/- per sq.ft. along with the development cost, construction cost, administrative charges & miscellaneous expenses incurred by the Board till 23.11.2013, the Sale price of each HIG Flat is as follows:-

(i) The value of the undivided share in the land : Rs.10,84,547/-
(ii) Development cost : Rs. 1,94,824/-
(iii) Construction Cost : Rs.32,82,635/-
(iv) Administrative Charges : Rs. 4,62,608/-
(v) Miscellaneous Expenses : Rs. 64,078/-

Cost of each Flat
as on 23.11.2013 : Rs.46,26,084/-

(vi) As it is an outright sale,
as per the Principal
Accountant General's Audit
Report, the Board is bound to
charge profit at 10% on
Rs.59,81,768/- : Rs. 54,62,084/-

Total cost of each flat
as on 23.11.2013 : Rs.50,88,692/-

8.6 It is further submitted that the respondent Board is proceeding with the remaining construction works and it is entitled to rectify the mistakes in fixation and demand of sale price made by it in July/August 2014 under Clause 14 and 15 of the conditions regarding sale price. Therefore, it is stated that even the revised sale price demanded in the impugned notices are liable for further revision in the sale price of the Board.

9. In support of the above contention, the learned counsel for the respondents placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of Tamil Nadu Housing Board vs. Avadi Thaniraivu Veetumanai Thittamani Othukeeduthararkal Nalavazhu Sangam reported in 2007 (5) CTC 439 to support the contention that if there is any bonafide mistake found by the audit and certain persons were responsible for the mistake, they can be departmentally proceeded with and the interest of the Board will not be affected on that ground.

10. The short question that falls for consideration is that whether the respondent Board was justified in revising the final price at this stage?

11. The petitioners would contend that in terms of sub clause (o) of clause (d) of the General Conditions of allotment, the respondent Board cannot fix the final cost more than 5% of the tentative cost. It is seen that all the allottees have been granted the allotment on Out-Right basis and it cannot be disputed that the allottees are bound by all the terms and conditions of the allotment as contained in the General Conditions of allotment as well as in the terms and conditions for allotment. Therefore, the petitioners/allottees cannot raise any contention contrary to the terms and conditions of the allotment.

12. It is true that as per the general conditions sub clause "o" of Clause (d) of the General Conditions of allotment, the final cost of the flat shall not exceed the tentative cost by more than 5%. In normal circumstances, the Board would be entitled to and bound by the said condition. But a perusal of the counter affidavits filed by the Board, it is seen that the cost of the flat initially fixed was during the tenure of a politically appointed Chairman of the Board. It is the definite case of the respondent Board that the tentative sale price of the flat was not properly fixed considering all the parameters and it was based on a Chartered Accountant opinion without any supporting details. When that being the case, it has to be seen as to whether the respondent Board can rectify and revise the cost, which according to them is incorrect and on account of a mistake committed without supporting details.

13. There is no dispute with regard to the fact that the terms and conditions of allotment also form part of the general conditions, which specifies about the allotment and sale of lands constructed by the respondent Board. Clause 10 of the terms and conditions prescribes the procedure to be followed after the allotment is made. In terms of sub clause (v) of clause 10, an allottee shall continue as a tenant of the Board till such time the flat is conveyed to him or her through a registered sale deed. Admittedly all the petitioners are yet to receive the sale deed and therefore they are deemed to continue as tenants of the Board till the time the sale deeds are executed in regard to clause 10(v).

14. The Board now seeks to draw power from clause 14 of the terms and conditions of allotment which reads as follows:-

"14. The Board is competent to revise the cost of the flat at any time for any reason which discloses that the price fixed tentatively is less than what it should be. The decision of the Board in this behalf is final".

In terms of the above condition, the Board is competent to revise the cost of the flats at any time for any reason which discloses that the price fixed tentatively is less than what it should be and the decision of the Board is final.

15. As noticed above, in the counter affidavits filed by the respondents, the reasons have been set out elaborately as to how the earlier fixation of the tentative price was done during the period

when the Board was under the control of a political Chairmann. The Board at that time did not have a technical team to fix the tentative sale price, but, it appears it finalised the price on the basis of an opinion of a Chartered Accountant. There is no supporting materials or reasons for such fixation. In the counter affidavits the respondent Board has set out the reasons for revision and the reasoning given for revision is based on the scientific calculation based on market value of the property. Therefore, it cannot be stated that Board cannot revise the tentative price. It is to be noted that the revision of tentative price is in exercise of the powers conferred under the general conditions of allotment, but, as per the terms and conditions of allotment, more particularly clause 14. Therefore, the contention raised by the petitioner that there cannot be fixation of final price over and above the 5% of the tentative price is incorrect, since, in the facts and circumstances of the case, the power has been exercised by the Board in accordance with clause 14 of the terms and conditions for allotment. The petitioners who are all allottees having accepted the terms and conditions are bound by them. Therefore, the contention raised by the petitioners that revision of tentative price is without jurisdiction is a contention to be rejected. Accordingly, the revision of cost by the respondent Board in exercise of the power under clause 14 of the terms and conditions for allotment is upheld.

16. This lead us with the only issue as to whether the respondent Board are entitled to implement the impugned orders.

17. From para 17(D) of the counter affidavits it is evident clear that the Board has taken a stand that after completion of the remaining construction work, the Board will calculate the development cost, construction cost, administrative charges and miscellaneous expenses incurred by it from 24.11.2013 till the completion of the works and include the same and fix the correct tentative sale price under Clause 14, fix the final sale price as prescribed under sub clause (0) of clause (d) and intimate the final sale price to the allottees and collect the balance sale price from them as per clause 15 and only thereafter it will issue the final allotment order to the petitioners and execute the registered sale deeds in favour of them in terms of clause 11(ii) of the terms and conditions for allotment. Thus, it is seen that the impugned proceedings are not final orders and the Board has a proposal to further revise the price after construction is fully completed. In such circumstances, the respondent Board cannot give effect to the present impugned proceedings at this juncture.

18. Accordingly the writ petitions are disposed of by holding that the Board are entitled to revise the tentative cost and fix final cost under clause 14 of the terms and conditions for allotment. Since the Board proposes to make further revision of the tentative price and then fix the final price, till such time the impugned proceedings cannot be given effect to and shall be kept in abeyance.

It is made clear that question of demanding interest as made in the impugned orders does not arise. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rg

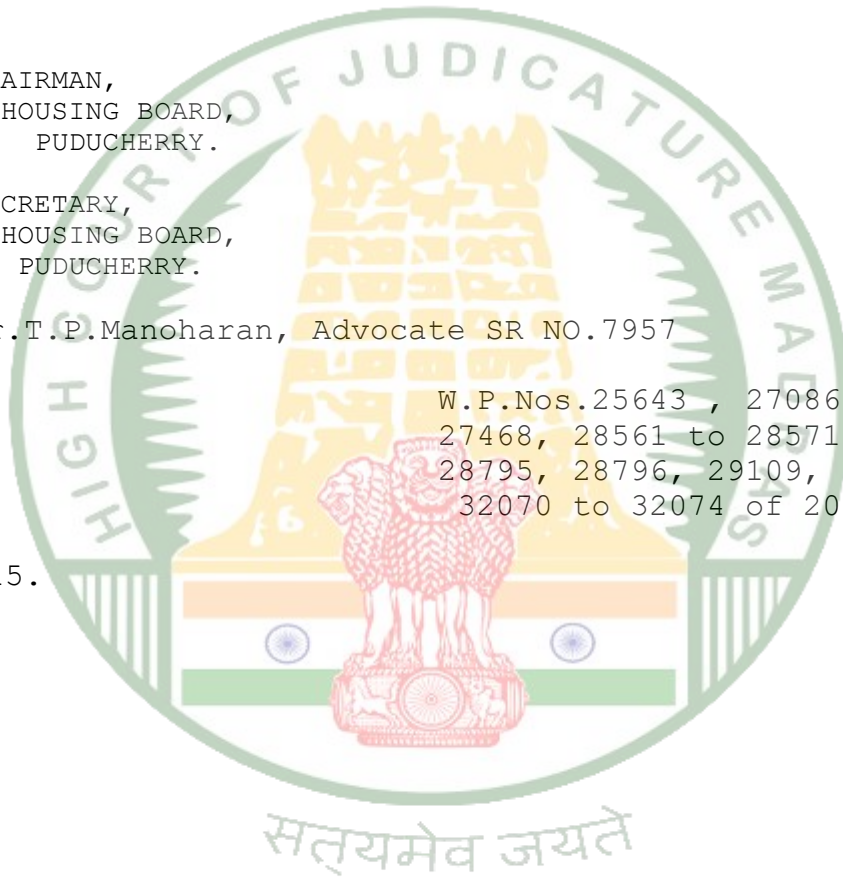
1 THE CHAIRMAN,
PUDUCHERRY HOUSING BOARD,
ANNA NAGAR PUDUCHERRY.

2 THE SECRETARY,
PUDUCHERRY HOUSING BOARD,
ANNA NAGAR PUDUCHERRY.

1 CC To Mr.T.P.Manoharan, Advocate SR NO.7957

W.P.Nos.25643 , 27086 to 27100,
27468, 28561 to 28571, 28758,
28795, 28796, 29109, 29793,
32070 to 32074 of 2014

ad[co]
gp/4.3.2015.



WEB COPY