

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P. Nos. 26157 & 26158 of 2015

&

M.P. Nos. 1 of 2015 (2 Nos.)

K. Kaliyappan

..Petitioner in W.P.No.  
26157 of 2015

V. Seshagiri

..Petitioner in W.P. No.  
26158 of 2015

Vs.

1. State of Tamil Nadu,  
rep. by its  
Secretary to Government,  
Housing Unit and Urban  
Development Department,  
Fort St. George,  
Chennai - 600 009.

2. The Chairman and Managing  
Director,  
Tamil Nadu Housing Board,  
No.493, Anna Salai,  
Nandanam,  
Chennai - 600 035.

..Respondents 1 & 2 in  
both the writ petitions

3. The Executive Engineer and  
Administrative Officer,  
Vellore Housing Board, Unit I,  
Tamil Nadu Housing Board,  
Sathuvacheri,  
Vellore - 632 009.

..3<sup>rd</sup> respondent in W.P.  
No. 26157 of 2015

3. Manager,  
Sales and Service,  
Vellore Housing Unit,  
Phase -1, T.N.H.B.,  
Sathuvacheri,  
Vellore - 632 009.

..3<sup>rd</sup> respondent in W.P.  
No. 26158 of 2015

Prayer: Petitions under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the entire records connected with the letter in Lr.Nos. A.6/9208/90 dated 30.05.2014 and A.12/10524/91 dated .10.2012 respectively passed by the respective 3<sup>rd</sup> respondent, quash the same and consequently direct the respondents to issue fresh demand notice excluding the interest and other cost, except the enhanced compensation fixed for the erst while land owners from whom the land was acquired by the respondents within a time frame that may be fixed by this Court.

For Petitioners            ::    Mr.M.Premkumar  
For Respondents        ::    Mr.V.Anandhamoorthy

O R D E R

When the writ petitions are taken up for hearing, the counsel on either side submitted that the issue involved in the writ petitions is no longer res integra as it is covered by the order passed in W.P. No. 28290 of 2015 dated 21.09.2015.

2. In both the writ petitions, the respective petitioners are challenging the demand made by the respective 3<sup>rd</sup> respondent. The very same issue was considered by this Court in W.P. No. 28290 of 2015 and the said writ petition was disposed of by order dated 21.09.2015, the relevant portion of which reads as hereunder:

"4. Admittedly, the proceedings are pending before the Sub Court for fixing the claim for enhanced compensation by the land owners. Considering the very same issue, this Court, by an order dated 26.03.2014 passed in W.P. Nos. 13509 to 13514 of 2011, after taking note of the judgment of the Hon'ble Apex Court in T.N. Housing Board V. Service Society, (2011) 11 SCC 13, has held as follows:

"21. The Tamil Nadu Housing Board appears to have calculated the balance amount payable by the petitioners taking into account the Government Order in G.O.Ms. 215 Housing and Urban Development Department dated 28 September, 2012. Though a reference was made to the difference in land cost, there was no indication about the enhancement made by the Reference Court with modification if any, made by the Appellate Court, interest paid to the land owners and other relevant details so as to enable the allottees, to have an idea with regard to each of the components. In case the reference proceedings are pending under

Section 18 of the Land Acquisition Act, either before the Reference Court or Appellate Court, calculation must be made by taking into account the maximum amount claimed by the landowners. The allottees would be benefitted in case the land cost along with statutory interest is deposited early, as otherwise, they are liable for interest after the conclusion of Section 18 proceedings.

22. The Tamil Nadu Housing Board is permitted to collect the differential cost and statutory interest in accordance with the judgment in Service Society.

23. In the result, the impugned notices are all set aside. The concerned division is directed to prepare a statement of cost indicating the development cost and land cost and statutory interest in the light of the judgment in Service Society. The notice calling upon the allottees to pay the balance amount must accompany a copy of the statement of cost. In case, petitioners have made payments pursuant to the impugned notice, such payments shall be given due credit. The petitioners should be given reasonable time to pay the balance amount after service of notice.

24. The writ petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed."

5. Thus the ratio laid down in aforesaid decision would govern this case also. Admittedly, in the case on hand, the basis for arriving at the costs have not been arrayed as per the guidelines given by the Hon'ble Court. However, the specific case of the petitioner is that the said cost is liable to be paid only after conclusion of the proceedings before the Sub Court, qua to pay the 'just compensation' that is likely to be arrived at. In other words, the learned counsel for the petitioner submitted that the petitioner would pay the requisite difference in payment with reference to the compensation to be fixed by the Sub Court on a reference made.

6. Considering the same, this Court is of the view that this is a fit case wherein the impugned

order will have to be set aside and the respondents can always ask the petitioner to pay the difference amount based upon the compensation to be fixed by the jurisdictional Sub Court. It is also not in dispute that the sale deed is yet to be executed and the petitioner's entitlement for the same would come only when the difference in payment is being paid by him.

7. Accordingly, the impugned order is set aside and consequently, a direction is hereby issued to the respondents to quantify the amount payable by the petitioner by duly complying with the directions issued in the judgment of the Hon'ble Apex Court, referred to supra, and keeping in mind the compensation to be fixed by the jurisdictional Sub Court. On such determination by the respondents, the petitioner shall pay the same and thereafter get the sale deed executed.

8. The writ petition stands disposed of accordingly. No costs. Consequently, the connected M.P. is closed."

Following the said order, the impugned orders are set aside and the writ petitions are disposed of on the same terms. No costs. Connected M.Ps are closed.

Sd/-  
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

nv  
To

1. Secretary to Government,  
Housing Unit and Urban  
Development Department,  
Fort St. George,  
Chennai - 600 009.
2. The Chairman and Managing  
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Tamil Nadu Housing Board,  
No.493, Anna Salai,  
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3. The Executive Engineer and  
Administrative Officer,  
Vellore Housing Board, Unit I,  
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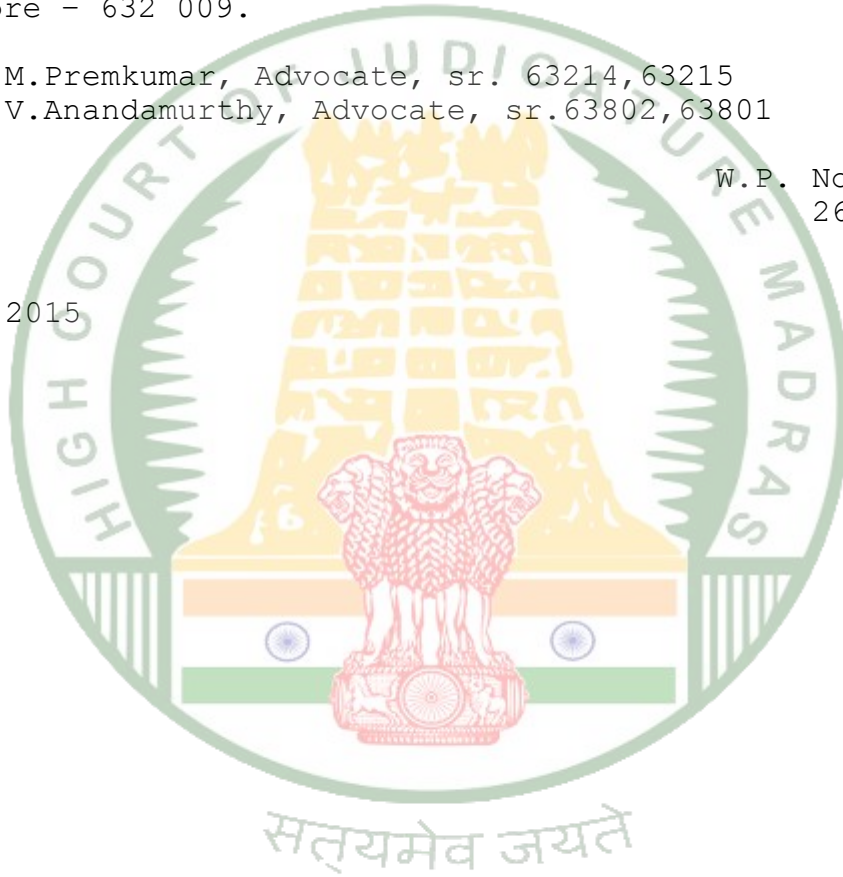
4. Manager,  
Sales and Service,  
Vellore Housing Unit,  
Phase -1, T.N.H.B.,  
Sathuvacheri,  
Vellore - 632 009.

+2 ccs to M.Premkumar, Advocate, sr. 63214, 63215

+2 ccs to V.Anandamurthy, Advocate, sr.63802, 63801

W.P. Nos. 26157 &  
26158 of 2015

vs co  
kra 15.12.2015



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