

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.02.2015

Coram :

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No. 18545 of 2013 & W.P.No.792 of 2015

Mr. K.P. Chandrasekaran (deceased)

1. Mrs.Kalarani

2. P.C.Nivedha

Pl and P2 are substituted as LRs of the deceased vide order dt. 11.02.2015 in 11.02.2015 in M.P.No.1 of 20145 ... Petitioners in W.P.18545/2013

3. Kalarani

4. P.C. Nivedha ...Petitioners in both W.P.NO.792/2015

vs.

1. The State of Tamilnadu, represented by its Secretary to Government, Housing & Urban Development Department, Fort St. George, Chennai 600 009.
2. The Chairman & Managing Director, Tamilnadu Housing Board, Nandanam, Chennai 600 035.
3. The Executive Engineer & Administrative Officer, Salem Housing Unit of TNHB, Ayyanthirumaaligai Road, Salem 636 008. .. Respondents in both W.Ps.

Prayer in W.P.No.18545 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the entire records relating to impugned order pursuant to the Lr.No.Nil dated 24.2.2011 and followed by Lr.No.Nil/Relief GO 215/2012 dated Nil. 10.2012 (signed on 17.12.2012) and Letter No.R3/4005/2007 dated 08.3.2013, on the file of the 3<sup>rd</sup> respondent and the consequential Letter No.03(1)/8667/13 dated 19.04.2013 on the file of the 2<sup>nd</sup> respondent, quash the same and direct the 3<sup>rd</sup> respondent to calculate the difference in the land cost on the basis of the tentative cost of the land namely Rs.2,62,100/- originally fixed in February 1995 and the capitalization of the land cost correctly done in 2007 itself.

Prayer in W.P.No.792 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the entire records relating to impugned order in Lr.No.R. /G.O.83/2014 dated 30.05.2014 on the file

of the 3<sup>rd</sup> respondent and quash the same and further direct the 3<sup>rd</sup> respondent to calculate the difference in the land cost on the basis of the tentative cost of the land namely Rs.2,62,100/- originally fixed in February 1995 and after taking into account the capitalization of the land cost correctly done in 2007 itself .

For Petitioners in both W.Ps.: Mr. D. Shivakumaran

For Respondents in all W.Ps. : Mr. Jayaprakash Narayanan  
Special Govt. Pleader for R1  
Mr. V.Ananthamurthy (R2 and R3)

### C O M M O N     O R D E R

Heard the learned counsel for the petitioners and the Special Government Pleader appearing for 1<sup>st</sup> respondent and the learned counsel appearing for respondents 2 and 3.

2. The petitioner in W.P.No.18545 of 2013 was Thiru.K.P.Chandrasekaran who is no more and he has been substituted by his wife Mrs.Kalarani and his daughter P.C.Nivedha who are his legal heirs .

3. The prayer sought for in this Writ Petition is to quash the demand issued by the respondent Housing Board dated 24.2.2011 followed by another demand which was dated October 2012 and consequential communication of the 3<sup>rd</sup> respondent dated 8.3.2013 and a letter dated 19.4.2013 and for a direction to the 3<sup>rd</sup> respondent to calculate the difference in the land cost on the basis of tentative cost of the land namely Rs.2,62,100/- originally fixed in February 1995 and the capitalization of the land cost correctly done in 2007.

4. During the pendency of these writ petitions, since the original writ petitioner/allottee Mr. K.P.Chandrasekaran passed away, the respondent Board issued an identical demand on the petitioners namely his spouse and his daughter dated 30.5.2014. Therefore, the petitioners namely the spouse and daughter of Mr.K.P.Chandrasekaran were constrained to approach this Court by filing W.P.No.792 of 2015 challenging the subsequent demand which was also identical to the demand which is subject matter of challenge in W.P.No.18545 of 2013.

5. After hearing the learned counsel for the parties and perusing the materials, it is seen that the issue involved in these writ petitions are squarely covered by the decision of the Honourable Supreme Court in the case of Tamilnadu Housing Board Vs. Service Society, (2011) 11 SCC 13.

6. Learned counsel appearing for the respondent Board, on instructions submitted that the issue is squarely covered by the said decision. In fact, this Court has followed the said decision in W.P.No.13509 to 13514 of 2011 and also take note of another decision

in the case of K. Usharani Vs. State of Tamilnadu, represented by its Secretary to Government, Housing Unit and Urban development Department and others in W.P.No.13243 of 2013 etc. batch dated 8.1.2014 and set aside the demand and allowed the writ petition giving certain directions.

7. The order passed by this Court in W.P.No.13509 to 13514 of 2011 dated 26.3.2014 reads as follows;

"2. It is submitted by the learned counsel on either side that the issue involved in these writ petitions is squarely covered by the decision of this Court in the case of K.Usharani vs. State of Tamil Nadu, rep. By its Secretary to Government, Housing Unit & Urban Development Dept. and others rendered in W.P.No.13243 of 2013 etc. batch dated 08.01.2014.

3. In the said batch of cases, an identical issue arose, though the prayer sought for in those batch of writ petitions were slightly different. The petitioners therein sought for a direction to issue sale deed by collecting only the enhanced compensation fixed by the Hon'ble Apex Court paid to the original land owners. It appears that this issue has arisen throughout the State of Tamil Nadu. This Court, after considering the contentions raised on both sides, following the decision of the Hon'ble Supreme Court in the case of 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 & 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 benefited 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 notices, 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". In the light of the above order, these writ petitions can also be disposed of on the same lines.

4. Accordingly, the impugned notices are set aside. The 2<sup>nd</sup> respondent is directed to prepare a statement of cost indicating the development cost and land cost and statutory interest in the light of the decision of the Hon'ble Supreme Court in the case of Service Society (supra). The notice calling upon the petitioners to pay the balance amount must accompany a copy of the statement of cost and in case the petitioners have made payments pursuant to the impugned notices, such payments shall be given due credit and the petitioners shall be given reasonable time to pay the balance amount after service of notice.

8. Following the above order, these Writ Petitions are allowed and the impugned notices are quashed. The respondents 2 and 3 are directed to prepare a statement of cost indicating the development cost and land cost and statutory interest in the light of the decision of the Honourable Supreme Court in the case of Service Society (supra). The notice calling upon the petitioners to pay the balance amount must accompany a copy of the statement of costs and in case, the petitioners have made payments pursuant to the impugned notices, such payments shall be given due credit and the petitioners shall be given reasonable time to pay the balance amount after service of notice.

9. With the above directions, the writ petitions are allowed.  
No costs. Connected Miscellaneous Petitions, if any, are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To

1. The Secretary to Government,  
Housing & Urban Development Department,  
Fort St. George, Chennai 600 009.
2. The Chairman & Managing Director,  
Tamilnadu Housing Board,  
Nandanam, Chennai 600 035.
3. The Executive Engineer & Administrative  
Officer, Salem Housing Unit of TNHB,  
Ayyanthirumaaligai Road,  
Salem 636 008.

+ 1 cc to Mr.V. Anandha Murthy, Advocate SR.7622

KM(CO)  
Eu 16.03.15

W.P.No. 18545 of 2013  
& W.P.No.792 of 2015

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