

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.22446 of 2009

R.Seetha

.. Petitioner

Vs.

1) The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai 600 035.

2) The Administrative Officer and
Executive Engineer,
Hosur Housing Unit,
Tamil Nadu Housing Board,
Bagalur Road, Hosur 635 109.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents vide Board's resolution No.615 dated 23.05.2007 in Memo No. (Allot.3.3/34808/04) and quash the portion, wherein the respondents have demanded 25% premium over the market value from the portion contrast to G.O.Ms.No.33 dated 08.02.2008, consequentially set aside the rejection order vide letter No.HR/11/4666/2004 dated 09.09.2009 and further direct the respondents to re-fix the cost of the commercial Plot No.13B at Phase- III Bagalur Road, N.H.Scheme, Hosur according to G.O.Ms.No.839 dated 06.10.1993 and G.O.Ms.No.33, dated 08.02.2008 and refund the excess amount collected from the petitioner with interest.

(Prayer amended as per order dated 24.03.2011 in M.P.No.1 of 2011 in W.P.No.22446 of 2009)

For Petitioner : Mr.R.Ganesh Kumar

For Respondents : Mr.D.Nandakumar

O R D E R

The petitioner has come up with the present Writ Petition challenging the Housing Board's Resolution No.615, dated 23.05.2007 in Memo No.(Allot.3.3/34808/04), wherein the respondents have demanded 25% premium over the market value from the portion, contrast to G.O.Ms.No.33 dated 08.02.2008, and consequentially set aside the rejection order vide letter No.HR/11/4666/2004, dated 09.09.2009 and further direct the respondents to re-fix the cost of the commercial Plot No.13B at Phase-III Bagalur Road, N.H.Scheme, Hosur as per G.O.Ms.No.839 dated 06.10.1993 and G.O.Ms.No.33, dated 08.02.2008 and refund the excess amount collected from her with interest.

2. The petitioner was allotted Plot No.13-B under the Government discretionary quota in Phase III of the Hosur Housing Scheme, which was formulated by the Tamil Nadu Housing Board. The petitioner had filed necessary documents along with the prescribed application together with the registration fee on 05.07.2004. Since there was delay in handing over the possession, the petitioner filed W.P.No.37156 of 2006 and this Court, by an order dated 09.10.2006 directed the 1st respondent herein to consider the petitioner's representation dated 21.06.2006.

3. According to the petitioner, by an order dated 15.06.2007, the cost of the Plot was fixed at Rs.849/- per sq. ft. and the total cost was Rs.1,10,19,000/-. A different plot in the same Phase III was allotted to another person viz. V.Srinivasan at Rs.432/- per sq. ft. on 18.08.2004. The petitioner submitted that after allotment of the above said Plot, she paid an initial amount fearing that, any delay in payment at that stage may cause cancellation of allotment. She further submitted that she made several representations to the respondents on 27.06.2007, 04.07.2007, 16.07.2007, 28.07.2007, 15.10.2007, 23.03.2009 and 14.07.2009 for reduction of cost. Since there was no response, the petitioner paid the entire amount as demanded by the Tamil Nadu Housing Board and obtained the Sale Deed on 31.01.2007 and took possession of Plot No.13-B.

4. Pursuant thereto, the 2nd respondent fixed the market price at Rs.675/- per sq. ft. for Plot No.13-B and recommended to fix the cost. Whereas, the 1st respondent herein enhanced the same by 25%, i.e. at the rate of Rs.849/- per sq. ft. and in case of Plot No. 33-D, the 2nd respondent recommended at Rs.510/- per sq. ft., but, the 1st respondent reduced the same at Rs.432/- per sq. ft. According to the petitioner, fixation of costs is 100% more than the prevailing market price and in comparison to the similar Plot No.33-D, fixation of costs for 13-B is highly arbitrary.

5. It is further stated by the petitioner that the entire cost of the Plot under protest has been paid and she is continuously pursuing with the respondents regarding re-fixation of the cost of the Plot and refund of the excess cost collected from the petitioner by the respondents. In this regard, the petitioner gave a representation dated 23.03.2009 to the respondents, but, the same has been rejected by the respondents vide Letter No.H.R.11/4666/2004 dated 09.09.2009, without considering the merits of the case. Aggrieved by the same, the petitioner is before this Court.

6. Respondents have filed a detailed counter affidavit stating that the petitioner was allotted Government discretionary quota as per G.O.(2D) No.66 dated 03.03.2004 and regular Allotment Order was issued on 15.06.2007. The rate fixed by the respondents was paid by the petitioner and taking note of handing over of the possession on 22.06.2007, the Sale Deed was issued on 31.07.2007 after collecting the full cost. Respondents/Housing Board admitted that the petitioner and four others have requested refund of excess amount together with interest at 16% in terms of G.O.Ms.No.33, dated 08.02.2008 and that the Board has not approved the request with regard to refund of amount.

7. It is further stated by the respondents in the counter affidavit that a sum of Rs.1 Crore was paid by the petitioner herein and she has also obtained the Sale Deed. According to the respondents/Housing Board, the cost of the Plot is fixed by the Board's Committee and when Plot No.33-D was allotted to one Srinivasan on 22.01.2004 and Plot No.13-B of the petitioner was allotted on 15.07.2007, comparison of costs with that of other Plots by the petitioner cannot be accepted due to price escalation. The respondents/Housing Board contended that when the petitioner has taken over possession of the Plot and registered the Sale Deed and as the Board has not approved the reduction of costs, the question of refund of excess amount after the issuance of Sale Deed does not arise. Hence, according to the respondents, the Writ Petition has got to be dismissed.

8. Learned counsel for the petitioner contended that the respondents cannot demand 25% more than the market value, which is said to have been fixed by them. It is his further contention that fixation of costs in the case of the petitioner's Plot is discriminatory, since, as per the recommendations of the 2nd respondent, cost of the petitioner's Plot was fixed at Rs.675/- per sq. ft., whereas, the 1st respondent fixed the same at Rs.849/- per sq. ft. and that in the case of one Srinivasan, who was allotted Plot No.33-D in the same Phase, the 2nd respondent recommended costs at Rs.510/- per sq. ft., but the 1st respondent reduced the same to Rs.432/- per

sq. ft. Thus, according to the learned counsel, the respondents have rejected the claim of the petitioner without any application of mind.

9. In reply, learned counsel appearing for the respondents/Housing Board submitted that Commercial Plot No.33-D1 was allotted on 22.11.2004, whereas, Plot No.13-B was allotted to the petitioner on 15.06.2007. He further submitted that the Housing Board's pricing Committee had examined various aspects such as Ruling rate, Guideline value, Market value and capitalized Auction rate and adopted uniform policy of Market value plus 25% premium as final cost of the Plot as Rs.1,10,19,000/-. It is his contention that the petitioner cannot compare the cost of the Plot allotted to him with that of other Plots, after registering the Sale Deed.

10. Heard the learned counsel on either side and perused the material documents available on record.

11. It is seen that the Government in G.O.Ms.No.839, Housing and Urban Development (HB-5(2)) Department, dated 06.10.1993, has categorically stated that enhancing the premium by 25% is not feasible. Further, the Government vide G.O.Ms.No.33, Housing and Urban Development (HB-5(1)) Department, dated 08.02.2008 has negated the recommendations of the Tamil Nadu Housing Board, as there is no yardstick for fixing the premium of 25% and has categorically stated that the Housing Board has to follow the existing procedure regarding fixation of costs for Commercial Plots.

12. While placing the said Government Order before the Board, the Board vide Res.No.9.03, dated 17.07.2008 has resolved to implement the existing rate with minor modifications, i.e. for arriving at the average cost of Board quota and further resolved that the amount fetched in the earlier auction upto the date of allotment of particular Government quota may be capitalized and the average cost may be arrived at and the same rate may be adopted for GDQ Commercial Plots, whenever it is allotted. The matter was placed before the Board through a communication which is impugned in this Writ Petition and request of the petitioner was rejected with an observation stating that, "BOARD RESOLVED TO REJECT THE REQUEST FOR REFUND OF ANY AMOUNT WHEREVER THE SALE DEEDS HAVE ALREADY BEEN ISSUED".

13. It is not in dispute that the petitioner was allotted Plot No.13-B and that by paying the entire amount of Rs.1,10,19,000/-, she got the Sale Deed registered on 31.07.2007. It is also not in dispute that the petitioner, on several occasions, had sent representations to the respondents requesting them to refund the excess amount of 25% upset price, which was demanded. Though, the contention of the petitioner

that different rates are fixed for different Plots, i.e. Plot Nos.13-B and 33-D, appears to be sound, there cannot be any comparison of Plot No.13-B with Plot No.33-D, as Plot No.33-D was purchased in 2004 and Plot No.13-B was purchased in 2007.

14. The contention of the respondents/Housing Board that the petitioner has paid the entire amount and she cannot seek refund of 25% of the amount cannot be accepted. Had the petitioner not paid the entire amount as demanded, the Plot would not have been allotted to her. That apart, there are several communications sent by the petitioner for refund of excess amount, which has not been admitted by the respondent/Housing Board. In G.O.Ms.No.33, the Government has categorically stated that there is no yardstick for fixing the premium of 25%. The petitioner also drew the attention of this Court to the decision rendered by this Court in W.P.No.2671 of 1999, dated 13.09.2002, whereby, it is held that the Board cannot take a technical stand to defeat the claim of refund.

15. This is not a case of approbation and reprobation. The petitioner is at the receiving end and she has to necessarily pay the amount demanded by the respondent/Housing Board and if there is any illegality, it is open to the petitioner to challenge the same in the manner known to law. That apart, as per G.O.Ms.No.33, when excess amount is fixed over and above the upset price, the demand made by the respondents/Housing Board is not correct.

16. In view of the above, the respondents are directed to refund the excess amount paid by the petitioner within a period of 45 days from the date of receipt of a copy of this order, together with interest at 6% per annum from the date of filing the Writ Petition till the actual date of payment.

17. This Court makes it clear that if the excess amount is not refunded within the time stipulated, interest payable by the respondent/Housing Board will have to be recovered from the personal Account of the officials, who are responsible for disbursing the amount and adverse entries should form part of their Service Record. It is further made clear that the Names and Designation of the Officials, who are responsible to comply with this order and the Names of the Officials, who are responsible to repay the amount shall be sent to the Registrar General of this Court within 15 days from the date of receipt of a copy of this order and a copy of this order shall be marked to such Officials by the respondents/Housing Board.

This Writ Petition is allowed to the extent indicated above.
No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sts/aeb

To:

- 1) The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai 600 035.
- 2) The Administrative Officer and
Executive Engineer,
Hosur Housing Unit,
Tamil Nadu Housing Board,
Bagalur Road, Hosur 635 109.
- 3) The Secretary to Government,
Housing & Urban Development Department,
Government of Tamil Nadu,
Secretariat,
Chennai 600 009.
4. The Registrar General
High Court Madras
- 5.The Section Officer
Accounts Section High Court Madras

+1 cc to M/s.S.Shernikraj Advocate sr 60271
+1 cc to M/s.D.Nandakumar Advocate sr 60730

W.P.No.22446 of 2009

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