

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.3946 of 2018

and

WMP.No.4839 of 2018

S.Rajalakshmi

Rep. by her Power Agent

R.Srinivasan

.. Petitioner

Vs.

1.The Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai-35.

2.The Assistant Revenue Officer
Tamil Nadu Housing Board
Thirumazhisai Satellite Town Division
#792, TKSPM Towers Trunk Road,
Poonamallee, Chennai-56.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order in Notice No.Thi.Thu.Ko.Na.Ko/oo thu/A12026/95 dated 03.01.2018 passed by the 2nd respondent and to quash the same and further direct the respondents to register the sale deed in favour of the petitioner as per the allotment order.

For Petitioner: Mr.S.Sivakumar

For Respondents: Mr.V.Anandamoorthy
standing counsel

O R D E R

Mr.V.Anandamoorthy, learned standing counsel takes notice for the respondents. By consent of the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the impugned demand notice calling upon the petitioner to pay the arrears of Rs.3,73,620/- towards the cost of the land allotted to the petitioner as early as in the year 1995.

3. Both sides fairly stated before this Court that the issue involved in this case is squarely covered by an order passed in WP.No.28290 of 2015 dated 21.09.2015, wherein this Court after setting aside the similar impugned order therein, issued further direction to the respondents to quantify the amount payable by the petitioner, by duly complying with the directions issued in the Judgment passed by the Hon'ble Apex Court in the Tamil Nadu Housing Board -vs- Service Society reported in [(2011) 11 SCC 13], by keeping in mind the compensation to be fixed by the jurisdictional Sub Court. Further direction was also issued therein that on such determination, the petitioner therein shall pay the same and thereafter, get the sale deed executed.

4. For better understanding, the said order is extracted hereunder:-

"3. The petitioner, who is an allottee, having paid the tentative cost, has come forward to file this writ petition challenging the order impugned by which he was directed to pay the differential cost which has been fixed by taking into consideration the highest claim made by the erstwhile land owners.

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 & 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".

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 the 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."

5. Since both sides agreed that the same order can be passed in this writ petition as well and in view of the fact that the impugned demand is similar to the one, which was put to challenge in the above writ petition, this writ petition is also disposed of, in terms of the above order passed by this Court in WP.No.28290 of 2015. Accordingly, this writ petition is allowed and the impugned order is set aside and consequently, the respondents are directed to quantify the amount payable by the petitioner, by duly complying with the directions issued by the Hon'ble Apex Court in the above said case, keeping in mind the compensation to be fixed by the jurisdictional Sub Court and on such determination by the respondents, the petitioner shall pay the same and get the sale deed executed thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mk

To

- 1.The Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai-35.
- 2.The Assistant Revenue Officer
Tamil Nadu Housing Board
Thirumazhisai Satellite Town Division
#792, TKSPM Towers Trunk Road,
Poonamallee, Chennai-56.

- + 1 cc to MR.V. Anandhamurthy, Advocate Sr.13648
+ 1 cc to Mr.S. Sivakumar, Advocate Sr.13404

W.P.No.3946 of 2018

(CS-VII)
EU(07/03/2018)