

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.03.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.285 of 2018
and C.M.P.No.2138 of 2018

1.The Managing Director
Tamil Nadu Housing Board
No.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.

... Appellants/Respondents 1 & 2

Vs.

R.Seetha

... Respondent /Petitioner

Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 22.08.2017 made in W.P.No.22446 of 2009 on the file of this Court.

WP.22446 of 2009: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 Respondent vide Board's resolution No.615 dated 23/05/2007 in Memo No. Allot 3.3/34308/04 and quash the portion , where in 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 no.HR/11/46666/2004 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 access amount collected from the petitioner with interest.

(Prayer amended as per order dated 24/03/2011 in MP.No. 1 of 2011 in WP.No. 22446/2009)

For Appellants : Mr.V.Anandhamurthy
For Respondent : Mr.R.Ganesh Kumar

J U D G M E N T
[Judgment of the Court was delivered by
K.K.SASIDHARAN, J.]

The appellants allotted a Housing plot to the respondent and thereafter, determined the cost, pursuant to the order dated 09 October, 2006 in W.P.No.37156 of 2006. Since the decision taken by the appellants to add 25% of the amount as standard premium was pending with the Government, the fixation of final cost was delayed. In view of the order passed by the High Court directing the appellants to fix the cost and execute the sale deed in the name of the respondent, the Board added 25% premium as final cost and arrived at the cost payable by the respondent notwithstanding the pendency of the matter with the Court. The respondent paid the final cost and thereafter, the sale deed was executed.

2. Subsequently, the Government passed orders taking into account the recommendation made by the Tamil Nadu Housing Board to add standard premium of 25% to the upset price. The Government directed the Board to continue the earlier practice of calculating the upset price without charging standard premium at the rate suggested by the Housing Board. The respondent thereafter, submitted a representation for refund of the amount collected in excess by the Housing Board. The representation was rejected. The said order was put in issue before the writ court.

3. The learned single Judge arrived at a finding against the Board and a Mandamus was issued to the appellants to refund 25% of the premium amount collected from the respondent. The learned single Judge, in paragraph 17 of the order observed that in case the amount is not refunded within the time prescribed, action should be taken against the Officers who are responsible for such state of affairs and necessary entry should be made in their service record. Feeling aggrieved, the appellants have come up with this intra court appeal.

4. We have heard the learned counsel for the appellants. We have also heard the learned counsel for the respondent.

5. The respondent submitted application for allotment of a Housing plot under the Government quota. The Tamil Nadu Housing Board issued a provisional order of allotment on 05 July 2004. Since follow up action was not taken to fix the final cost and to execute the sale deed, the respondent filed a writ petition in W.P.No.37237 of 2006. The writ petition was disposed of by

order dated 09 October 2006. The learned single Judge directed the appellants to fix the cost and deliver the plot within a period of four weeks.

6. The order passed by the learned single Judge dated 09 October 2006 in W.P.No.37237 of 2006 was placed before the Tamil Nadu Housing Board for fixation of cost. The Board was of the view that it would not be possible to fix the final cost on account of the pendency of the matter with the Government. The Board earlier recommended to the Government that 25% of the total price should be added to the upset price treating it as standard premium. Since the issue was pending before the Government, the Tamil Nadu Housing Board kept the matter pending, including the case of the respondent without fixing the final cost.

7. Since the High Court issued a Mandamus, the Board was constrained to fix the final cost by including the standard premium of 25%. The respondent paid the said amount, as otherwise the allotment order would be cancelled by the Tamil Nadu Housing Board. The proposal given by the Tamil Nadu Housing Board to add 25% by way of standard premium was considered by the Government and an order was issued in G.O.Ms.No.33, Housing and Urban Development Department, dated 08 February, 2008 to the effect that the Housing Board is not entitled to add standard premium of 25% on the upset price. It was only thereafter, the respondent took up the matter with the Tamil Nadu Housing Board.

8. The order fixing the final cost clearly contain an indication that the matter is pending with the Government. The Board in its deliberations recorded that on account of the pendency of the matter with the Government, it would not be possible to add 25% of the standard premium and fix the cost. However, in order to comply with the order passed by the High Court in W.P.No.37156 of 2006, the Board calculated the amount payable by the respondent by including the standard premium of 25%. Therefore, it is clear that pending approval by the Government only, 25% was added by the Tamil Nadu Housing Board to the final cost payable by the respondent. It is a matter of record that the Government subsequently passed an order not to collect the standard premium of 25%. The benefit of the said order should be given to the respondent also, inasmuch as the amount was collected from her only during the pendency of the matter with the Government. The learned Single Judge was therefore, justified in directing the appellants to refund the excess amount to the respondent.

9. The learned single Judge directed the appellants to refund the amount within a period of 45 days with interest at 6% per annum from the date of filing the writ petition. The learned single Judge, in paragraph 17 of the order directed the Housing Board to take action against the Officers, in case the amount is not paid within the stipulated period. The learned Single Judge even directed the Housing Board to send the names of those Officials to the Registrar General of this Court and record the adverse entries in the service records of the concerned employees. There was no need for such a direction for the simple reason that there were no materials before the writ court to opine that the appellants would not make payment within the period of 45 days. The order passed by the learned single Judge is revisable by the Division Bench, in case a writ appeal is filed. We are, therefore of the view that the observation made in paragraph 17 of the order is unwarranted. We therefore, expunge paragraph 17 of the order passed by the learned single Judge.

10. The learned single Judge directed the appellants to refund the amount with interest at 6% per annum. We set aside the direction to pay the interest, subject to the condition that 25% of the premium shall be refunded to the respondent within a period of two weeks from the date of receipt of a copy of this judgment. In case the amount is not paid within a period of two weeks, the amount would carry interest at 12% calculated from the date on which the payment was made by the respondent.

The intra court appeal is allowed to the limited extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar

gms

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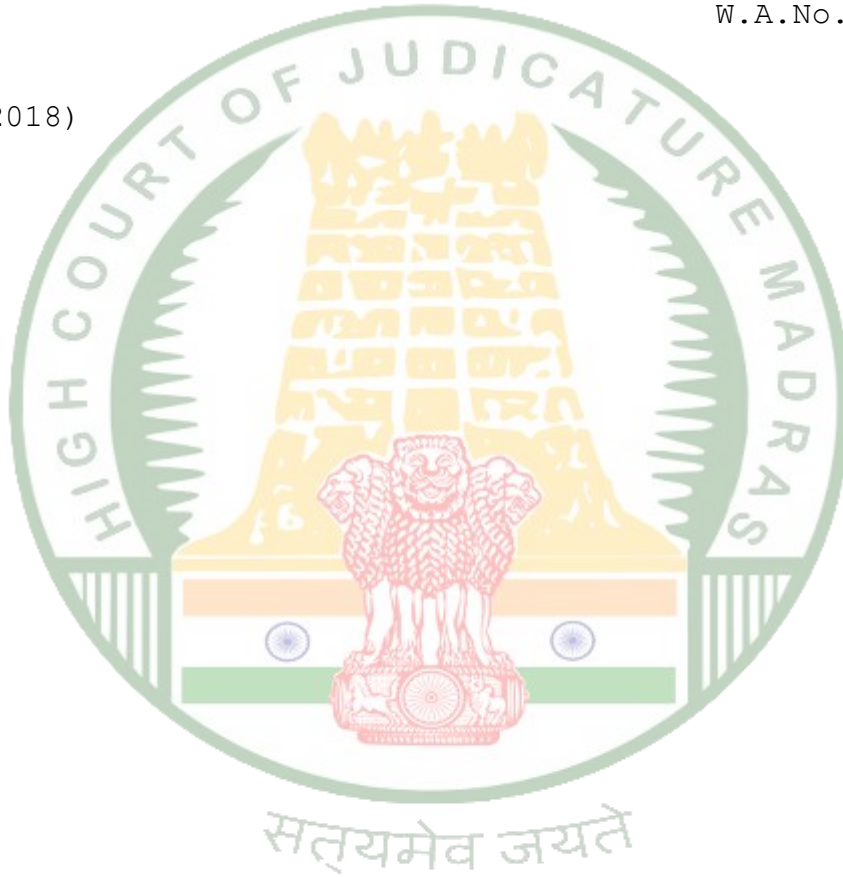
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+1cc to Mr.R.Ganesh Kumar, Advocate SR.No.18776
+1cc to Mr.V.Anandha Murthy, Senior Counsel for TNHB, SR.No.19057
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