

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A Nos.40 to 42 of 2018 and
C.M.P.Nos.302 to 304 of 2018

- 1.Tamil Nadu Housing Board,
Rep. By its Chairman and Managing Director,
Anna Salai, Nandanam,
Chennai - 600 035.
- 2.The Executive Engineer cum Administrative Officer,
Salem Housing Unit (Allotments)
Tamil Nadu Housing Board,
Ayyanthirumaligai Road,
Salem -8.Appellants

Vs

P.Shanthi ...Respondent in WA No.40/2018
T.G.Baskar ...Respondent in WA No.41/2018
Viswanathan ...Respondent in WA No.42/2018

Prayer:- Writ Appeals filed under clause 15 of the Letter Patent to set aside the order dated 12.10.2015 made in W.P.No.19586, 19648 and 20387 of 2013 respectively.

Prayer in W.P.No.19586 of 2013:-

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of the Writ of Certiorari Mandamus, calling for the records of the 2nd respondent in his Lr. NO./Relief G.O.215/2012 dated Nil.10.2012 (signed on 26.10.2012) in so far the demand of Rs.4,85,249/- made under the column left out and Rs.2,23,212/- with interest of Rs.61,249/- mentioned under the column difference of Land Cost and quash the same as illegal and direct the 2nd respondent to release the sale deed in favour of the petitioner by fixing the difference of land cost on par with other allottees.

Prayer in W.P.No.19648 of 2013:-

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of the Writ of Certiorari Mandamus, Calling for the records of the 2nd respondent in his Letter No.R7/965/2002 dated 15.02.2012 and the Lr.No. R5/7137/2007 dated 20.05.2013 with regard to the column left out as Rs.2,14,323/- and Rs.1,52,949/- with interest mentioned under the column difference of land cost and quash the same as illegal and direct the 2nd respondent to release the sale deed in favour of the petitioner by fixing the difference of land cost on par with other allottees

Prayer in W.P.No.20387 of 2013:-

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of the Writ of Certiorari Mandamus, calling for the records of the 2nd respondent in his Lr.No./Relief GO 215/ 2012 dated 26.10.2012 in so far the demand of Rs.3,16,674/- made under the column Left out and Rs.1,52,644/- with interest of Rs.67,781/- mentioned under the column difference of land cost and his Lr.No./ Relief GO 115/ 2013 dated 5.7.2013 in so far the demand of Rs.4,97,158/- made under the column Left out and Rs.1,52,644/- with interest of Rs.74,013/- mentioned under the column difference of land cost and quash the same as illegal and direct the 2nd respondent to release the sale deed in favour of the petitioner by fixing the difference of land cost on par with other allottees

For Appellants : Mr.V.Anandhamurthy
Additional Government Pleader
in all the Appeals

C O M M O N J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The Tamil Nadu Housing Board allotted unsold flats to the respondents by fixing the cost. The cost was unilaterally revised later on the ground that they are liable to pay the original cost, which was agreed to be paid by the earlier allottees notwithstanding the fact that it was only after cancelling the earlier allotments, new allotments were made in favour of the subsequent allottees fixing the terms and conditions including the cost. The writ petitions filed by the respondents were allowed by the learned single Judge quashing the demand made by the Housing Board. The common order dated 12 October 2015 is under challenge at the instance of the Tamil Nadu Housing Board.

2. We have heard the learned Additional Government Pleader on behalf of the appellants.

3. The Tamil Nadu Housing Board constructed houses for the High Income Group (HIG) at Edapadi in the district of Salem. The houses were allotted to the applicants fixing the tentative cost. The Housing Board subsequently cancelled the allotments made in favour of some of the allottees. The Government of Tamil Nadu pursuant to the request made by the Housing Board permitted the Board to sell the unsold houses at the cost price by conducting a special sale camp.

4. The respondents in the respective appeals approached the Housing Board, Salem Housing Unit, for allotment of houses under the HIG Group. The terms and conditions of the order of allotment was complied with by the allottees. However, all of a sudden, the allottees were directed to pay additional amount on penal interest, interest on capitalisation and interest on difference in land cost. The demand was not in accordance with the order of allotment. Therefore, the respondents filed individual writ petitions. The learned single Judge having found merit in the claim made by the respondents allowed the writ petitions.

5. The appellants have come up with the appeals on the ground that capitalisation amount has not been included in the tentative cost of the houses allotted to the respondents. According to the Housing Board, it was only after cancelling the earlier allotments, new allotments were made in favour of the respondents. The respondents are therefore liable to pay the capitalisation amount, which was payable by the original owners. There is absolutely no merit in the contention taken by the Housing Board. The Housing Board after cancelling the allotment made in favour of the original allottees requested the Government to review the cost price of unsold houses. Thereafter, with the permission of the Government, the Housing Board revised the cost of the houses. The houses were allotted to the respondents fixing the cost. The Housing Board has no case that the respondents have not paid the cost as per the order of allotment. It was only after paying the cost as per the allotment order, the Housing Board has come with a new claim for payment of capitalisation amount. The capitalisation amount should be paid only by the original allottee. There is no question of directing the subsequent purchasers to pay the amount determined by using the capitalisation method. The liability of the subsequent allottees would only to pay the amount as determined originally and indicated in the order of

allotment. The learned single Judge was perfectly correct in allowing the writ petitions by quashing the unreasonable claim made by the Housing Board. We are therefore of the view that there is absolutely no merit in the appeals filed by the Housing Board.

6. In the up shot, we dismiss the intra court appeals. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

svki

To

- 1.The Chairman and Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.
- 2.The Executive Engineer cum Administrative Officer,
Salem Housing Unit (Allotments)
Tamil Nadu Housing Board,
Ayyanthirumaligai Road,
Salem -8.

+lcc to Ms.A.Arulmozhi, Advocate, S.R.No.1951
+lcc to Mr.V.Anandhamurthy, Advocate, S.R.No.2296
+lcc to Ms.M.Srividhya, Advocate, S.R.No.9547
+lcc to Ms.A.Arulmozhi, Advocate, S.R.No.1950
+lcc to Ms.A.Arulmozhi, Advocate, S.R.No.1949

(08/03/18)

W.A Nos.40 to 42 of 2018

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CS/06/03/18

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