IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

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THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.24538 of 2010
and MP.No.1 of 2010

M.N.Ramu ...Petitioner

Vs.

The Commissioner,
Arakkonam Municipality,
Vellore District. ...Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the respondent to execute the sale deed in respect of the order of I.D.S.M.T. allotment of plot No.33, in Kavanur Housing Scheme at Arakkonam in favour of the petitioner without demanding any further amount in respect of the allotment made in Rc.No.8172/88F1, dt.19.03.2001.

For Petitioner : Mr.V.Manohar

For Respondent : Mr.N.Inbanathan, AGP

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and perused the materials available on record.

2. This writ petition has been filed for issuing direction to the respondent to execute sale deed in respect of the order of I.D.S.M.T. allotment of plot No.33, in Kavanur Housing Scheme at Arakkonam in favour of the petitioner without demanding any further amount.

3. The case of the petitioner is that in the year 1995, the respondent formed house sites under Kavanur Housing Development Scheme and in the lot conducted on 26.07.1995, the petitioner was allotted plot No.33. The further case of the petitioner is that he has been directed to pay the cost of the plot of Rs.19,200/- in eight installments. The petitioner paid the

entire cost on 28.01.1999. Thereafter, the petitioner approached the respondent periodically to get the sale deed in his favour. However, in the year 2007, the respondent demanded additional amount of Rs.6,480/- to execute the sale deed, which was also paid with protest, but the sale deed was not executed. Hence, he sent a representation dated 01.07.2010. Since no action was taken, the present writ petition.

4. The respondent has filed a detailed counter affidavit stating that the petitioner was the allottee of the house site bearing Plot No.33 on 26.07.1995 measuring an extent of 2400 sq.ft. The respondent fixed the cost approximately at the rate at Rs.8/- per sq.ft. and it was enhanced to Rs.10.70/- per sq.ft based on the audit objection, which was also approved by the Municipal Council, in the resolution No.2952, dated 26.05.2006. So the cost of the plot was enhanced from Rs.19,200/- to Rs.25,680/-

5. It is further stated that when the respondent-Municipality took steps to execute the sale deed in favour of the allottes of the house sits, they came to know that no guideline was fixed for registration of documents and the guideline in the Survey Number was shown as zero. The respondent by a letter dated 18.10.2007 and followed by a reminder dated 16.04.2008, requested the authority to fix the value enabling the Municipality to execute the sale deed in favour of the allottees. Thereafter, the Joint Sub-Registrar No.2, Arakkonam vide his letter dated 08.05.2008, sought further clarifications and in the year 2009, fixed the guideline at Rs.46/- per sq.ft. Accordingly, notice was sent to the petitioner dated 10.05.2010 to pay the difference amount of Rs.84,720/-, but the petitioner failed to pay the amount. The present guideline is Rs.100/- per sq.ft. and if the petitioner pays the additional difference amount of Rs.1,29,456/-, along with interest, the respondent is ready to execute the sale deed.

6. In the case on hand, it is not in dispute that on 26.07.1995, the petitioner was allotted the plot No.33 and the cost was fixed at Rs.19,200/-. Subsequently, due to audit objection, cost of the plot was enhanced to Rs.25,680/-. In the counter affidavit, the respondent has admitted the fact that the petitioner had already paid the cost fixed by the respondent. According to the respondent, the sale deeds for the allottees could not be executed for the reason that no guideline was fixed for the land in question. After addressing to the registering authority, the guideline value was fixed in the year 2008.

7. The learned counsel for the petitioner relying upon the decision of the Supreme Court in the case of Karnataka Industrial Areas Development Board vs. M/s.Prakash Dal Mills,

reported in 2011 STPL (Web) 352 SC, submitted that the respondent-Municipality has to act in a fair and reasonable manner and when they did not incur any additional cost, no additional land cost can be demanded from the petitioner. The relevant portion of the said judgment reads as follows:

> "15. We have considered the submissions made by the learned counsel. It is true that under Clause 7(b), the Board reserved to itself the right to fix the final price of the demised premises as soon as it may be convenient to it and communicate the same to the concerned lessee. Upon communication of the price, the lessee is required to pay the balance of the value of the site. Determination of the price by the Board is binding on the lessee. In our opinion, the aforesaid clause would not permit the Board to arbitrarily or irrationally fix the final price of the site without any rational basis. The power of price fixation under Clause 7 being statutory in nature would have to be exercised, in accordance with statutory provisions; it can not be permitted to be exercised arbitrarily. Undoubtedly, as observed by this Court in the case of Premji Bhai Parmar (supra), Courts would not reopen the concluded contracts. Ms. Suri had placed reliance on the observations made by this Court in Paragraph 10 of the judgment, which are as follows:- "Pricing policy is an executive policy. If the Authority was set up for making available dwelling units at reasonable price to persons belonging to different income groups it would not be precluded from devising its own price formula for different income groups. If in so doing it uniformly collects something more than cost price from those with cushion to benefit those who are less fortunate it cannot be accused of discrimination. In this country where weaker and poorer sections are unable to enjoy the basic necessities, namely, food, shelter and clothing, a body like the Authority undertaking a comprehensive policy of providing shelter to those who cannot afford to have the same in the competitive albeit harsh market of demand and supply nor can afford it on their own meagre emoluments or income, a little more from those who can afford for the benefit of those who need succour, can by no stretch of imagination attract Article 14. People in the MIG can be charged more than the actual cost price so as to give benefit to allottees of flats in LIG, Janata and CPS. And yet record shows that those better off got flats comparatively cheaper to such flats in open market. It is a well recognised policy underlying tax law that the State has a wide discretion in selecting the persons or objects it will

tax and that the statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection the law operates unequally, and this cannot be justified on the basis of a valid classification, that there would be a violation of Article 14 (see East India Tobacco Co. v. State of A.P.). Can it be said that classification income-wise- cum-scheme-wise is unreasonable? The answer is a firm no. Even the petitioners could not point out unequal treatment in same class. However, a feeble attempt was made to urge that allottees of flats in MIG scheme at Munirka which project came up at or about the same time were not subjected to surcharge. This will be presently examined but aside from that, contention is that why within a particular period, namely, November, 1976 to January, 1977 the policy of levying surcharge was resorted to and that in MIG schemes pertaining to period prior to November, 1976 and later April, 1977 no surcharge was levied. If a certain pricing policy was adopted for a certain period and was uniformly applied to projects coming up during that period, it cannot be the foundation for a submission why such policy was not adopted earlier or abandoned later."

16. In our opinion, these observations would not be applicable in the facts of this case. The appellants are required to fix the price within the stipulated parameters contained in the Statute and the Board Regulations. Ms. Suri has also relied on a judgment of this Court in the case of Indore Development Authority Vs. Sadhana Agarwal (Smt.) & Ors.4 in support of the submissions that since the allotment letters indicated only the tentative price, the respondents could not demand that they be allowed the sites at the original price. In that case, this Court observed as follows:-

> "Although this Court has from time to time, taking the special facts and circumstances of cases in question, has upheld the excess charged by the development authorities over the cost initially announced as estimated cost, but it should not be understood that this Court has held that such development authorities have absolute right to hike the cost of flats, initially announced as approximate or estimated cost for such flats. It is well known that persons belonging to middle and lower income groups, before registering themselves for such flats, have to take their financial capacity into

> consideration and in some cases it results in great hardship when the development authorities announce an estimated or approximate cost and deliver the same at twice or thrice of the said amount. The final cost should be proportionate to the approximate or estimated cost mentioned in the offers or agreements. With the high rate of inflation, escalation of the prices of construction materials and labour charges, if the scheme is not ready within the time-frame, then it is not possible to deliver the flats or houses in question at the cost so announced.
>
> It will be advisable that before offering the flats to the public such development authorities should fix the estimated cost of the flats taking into consideration the escalation of the cost during the period the scheme is to be completed. In the instant case the estimated cost for the LIG flat was given out at Rs 45,000. But by the impugned communication, the appellant informed the respondents that the actual cost of the flat shall be Rs 1,16,000 i.e. the escalation is more than 100%. The High Court was justified in saying that in such circumstances, the Authority owed a duty to explain and to satisfy the Court, the reasons for such high escalation. We may add that this does not mean that the High Court in such disputes, while exercising the writ jurisdiction, has to examine every detail of the construction with reference to the cost incurred. The High Court has to be satisfied on the materials on record that the Authority has not acted in an arbitrary or erratic manner."

17. These observations make it clear that the High Court has the jurisdiction to satisfy itself on the material on record that the authority has not acted in an arbitrary or erratic manner. In our opinion, the High Court, in the present case, has not acted beyond such jurisdiction. Ms. Suri then relied on the case of Kanpur Development Authority Vs. Sheela Devi (Smt.) & Ors.5 In the aforesaid case, this Court reiterated the jurisdiction of the High Court to satisfy itself, that there was material on the record to justify the escalation of cost of a house/flat. The Court can take notice as to whether the delay was caused by the allottee or the authority itself. In our opinion, the judgment of the High Court is within the parameters of the jurisdiction vested in it under Article 226 of the Constitution of India.

18. The Board being a State within the meaning of Article 12 of the Constitution of India is required to act fairly, reasonably and not arbitrarily or whimsically. The guarantee of equality before law or equal protection of the law, under Article 14 embraces within its realm exercise of discretionary powers by the State. The High Court examined the entire issue on the touchstone of Article 14 of the Constitution of India. It has been observed that the fixation of price done by the Board has violated the Article 14 of the Constitution of India. It is correctly observed that though Clause 7(b) permits the Board to fix the final price of the demised premises, it cannot be said that where the Board arbitrarily or irrationally fixes the final price of the site without any basis, such fixation of the price could bind the lessee. In such circumstances, the Court will have the jurisdiction to annul the decision, upon declaring the same to be void and non-est. A bare perusal of Clause 7(b) would show that it does not lay down any fixed components of final price. Clause 7(b) also does not speak about the power of the Board to revise or alter the tentative price fixed at the time of allotment. The High Court has correctly observed that Clause 7(b) does not contain any guidelines which would ensure that the Board does not act arbitrarily in fixing the final price of demised premises. Since the validity of the aforesaid Clause was not challenged, the High Court has rightly refrained from expressing any opinion thereon.

19. Even though the Clause gives the Board an undefined power to fix the final price, it would have to be exercised in accordance with the principle of rationality and reasonableness. The Board can and is entitled to take into account the final cost of the demised premises in the event of it incurring extra expenditure after the allotment of the site. But in the garb of exercising the power to fix the final price, it can not be permitted to saddle the earlier allottees with the liability of sharing the burden of expenditure by the Board in developing some other sites subsequent to the allotment of the site to the respondents. The respondents have placed on record sufficient material to show that acquisition and development of land in the industrial area has been in phases. Some areas and segments are fully developed and others are in different stages of development. Sites and plots have been allotted at different times and locations. Thus, it cannot be said that all the allottees form one class.

Earlier allottees having sites in fully developed segments cannot be intermingled with the subsequent allottees in areas which may be wholly undeveloped. Such action is clearly violation of Article 14. We are also of the opinion that the Board can not be permitted to exercise its powers of fixing the final price under Clause 7(b) at any indefinite time in the future after the allotment is made. This would render the word "as soon as" in Clause 7(b) wholly redundant. As noticed earlier, in the present case, the Board has sought to fix the final price after a gap of 13 years. Such a course is not permissible in view of the expression "as soon as" contained in Clause 7(b)."

8. The learned Additional Government Pleader submitted that originally tentative cost was fixed and the petitioner has no right to challenge the final price fixed by the respondent and this Court dismissed the similar writ petition in W.P.No.23447 of 2012 filed by one of the allottee viz., T.Prakasam.

9. I am not able to agree with the submissions of the learned Additional Government Pleader for the reason that in the year 1999, the petitioner paid the tentative cost and the final cost was determined by the respondent in the year 2006. In the counter affidavit, the respondent has categorically stated that the entire cost was paid in the year 2006, but sale deeds could not be executed to the allottees for the reason that the guideline was not fixed. Fixing guideline is the duty of the officials in the Registration Department and admittedly the allottees have no role to play therein.

10. As stated in the counter affidavit, guideline came to be fixed only after a letter was addressed by the respondent, for which the allottees cannot be mulcted with additional liabilities. Hon'ble Supreme Court in the above cited decision has observed that the board is entitled to take into account the final cost in the event of its incurring extra expenses after allotment of sites.

11. Keeping in view the dictum laid down in the above decision and for the aforesaid reasons, I am of the opinion that the petitioner is entitled to succeed in the writ petition. Accordingly, the writ petition is allowed and the respondent is directed to execute the sale deed in respect of the plot No.33, in Kavanur Housing Scheme at Arakkonam in favour of the petitioner forth with. It is needless to mention that the petitioner shall pay the stamp duty and registration fee as per

the present guideline value. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy//

Sub Assistant Registrar

To

The Commissioner,
Arakkonam Municipality,
Vellore District

+1cc to Mr.V.MANOHAR, Advocate SR.No.48214
+1cc to Mr.N.INBANATHAN, Advocate SR.No.47831

WP.No.24538 of 2010

SMI/13.08.2018