



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.A(MD) Nos. 644 to 647 of 2016

and

C.M.P(MD) Nos. 4255 to 4258 of 2016

1. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 009.
2. The Executive Engineer and
Administrative Officer,
Madurai Housing Unit,
Tamil Nadu Housing Board,
Ellis Nagar, Madurai District. : Appellants/Respondents 2 & 3
in all Writ Appeals

Vs.

- | | |
|-------------------|--|
| 1. M.Regina Beevi | : 1 st Respondent in W.A.(MD) No.644/16 |
| M.Kumaravel | : 1 st Respondent in W.A.(MD) No.645/16 |
| P.Dharmaraj | : 1 st Respondent in W.A.(MD) No.646/16 |
| M.Pandian | : 1 st Respondent in W.A.(MD) No.647/16 |
-
- | | |
|---|--|
| 2. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing Unit and Urban Development Department,
Fort St. George,
Chennai - 600 009. | : 2 nd Respondent/1 st Respondent
in all Writ Appeals |
|---|--|

COMMON PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent, praying to set aside the common order dated 28.09.2011 in W.P(MD).No.9963 to 9966 of 2011.

Prayer in WP(MD). 9963/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned demand notice issued by the 3rd respondent in his proceedings Lr.No.MH dated 18.02.2011 in respect of LIG 105 and quash the same as illegal and consequentially to direct the 3rd respondent to calculate the interest on difference in land cost between the original tentative land cost and the final land cost from the date of finalization of land cost i.e., 18.02.2011.



Prayer in WP(MD). 9964/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned demand notice issued by the 3rd respondent in his proceedings Lr.No.MH dated 18.02.2011 in respect of LIG 24 and quash the same as illegal and consequentially to direct the 3rd respondent to calculate the interest on difference in land cost between the original tentative land cost and the final land cost from the date of finalization of land cost i.e., 18.02.2011.

Prayer in WP(MD). 9965/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned demand notice issued by the 3rd respondent in his proceedings Lr.No.MH dated 18.02.2011 in respect of MIG 25 and quash the same as illegal and consequentially to direct the 3rd respondent to calculate the interest on difference in land cost between the original tentative land cost and the final land cost from the date of finalization of land cost i.e., 18.02.2011.

Prayer in WP(MD). 9966/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned demand notice issued by the 3rd respondent in his proceedings Lr.No.MH dated 18.02.2011 in respect of LIG 96 and quash the same as illegal and consequentially to direct the 3rd respondent to calculate the interest on difference in land cost between the original tentative land cost and the final land cost from the date of finalization of land cost i.e., 18.02.2011.

For Appellants : Mr.S.Nagarajan
For Respondent No.1 : Mr.C.Venkateshkumar
for M/s.Ajmal Associates
For Respondent No.2 : Mr.M.Murugan
Government Advocate
[In all Writ Appeals]

COMMON JUDGMENT

[Common Judgment of the Court was delivered
by **M. SATHYANARAYANAN, J.**]

<https://hcservices.ecourts.gov.in/hcservices/>
The official respondents in W.P.(MD) Nos.9963 to 9966 of 2011, are the appellants and the first respondent / writ



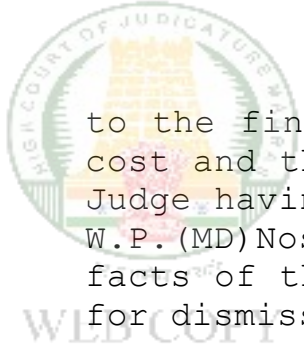
petitioners made a challenge to the impugned demand as to the determination of final land cost and demand of interest on the additional cost from the date of original allotment. The writ petitions, after contest came to be allowed partly, by directing the appellants / the Tamil Nadu Housing Board, to rework the interest as per the agreement on and from the Board's resolution dated 03.02.2011, in and by which the final land cost was determined till the date of payment. The official respondents in the said writ petitions, challenging the legality of the said common order came forward to file these writ appeals.

2.It is not in dispute that each of the writ petitioners were allotted with flats under Lower Income Group Scheme, known as "Virudhunagar SMT Scheme" and as per the impugned notices dated 18.02.2011, the final cost was determined and interest was also demanded from the date of the original allotment.

3.The learned Judge has placed reliance upon the common order dated **16.10.2006**, made in **W.P. (MD) Nos. 6036 of 2002 batch etc.**, in **V.Muralidharan Vs. State of Tamil Nadu**, in which it has been held that the Tamil Nadu Housing Board, in its resolution dated 03.02.2011 has determined the final cost, as on 30.06.1994 as against the tentative cost of Rs.41,800/- per ground and the said position cannot be revisited and however, the demand of interest on the final cost, is payable only from the date of the resolution ie., on 03.02.2011 and not from the date of the original allotment.

4.The learned Counsel appearing for the respondents / Tamil Nadu Housing Board would submit that the common order dated 16.10.2006, made in W.P. (MD) Nos. 6036 of 2002 batch etc., cannot have any universal application for the reason that the said order came to be passed on the peculiar facts and circumstances of the said case and though, the said order was slightly modified by the Hon'ble Supreme Court in **Civil Appeal No.1805 of 2007 (Chairman & Managing Director, Tamil Nadu Housing Board and another Vs. S.Raghavan and others)**, cannot apply to the facts and circumstances of the case for the reason that even at the time of allotment, the writ petitioner's were put on notice that it is subject to rules and conditions prescribed in the application form, in prospectus and in the lease-cum-sale agreement and on account of interference to land acquisition proceedings and original petitions pertain to enhancement of compensation, the final cost was determined belatedly and it cannot be taken advantage by the writ petitioners and prays for interference.

5.Per contra, the learned counsel appearing for the respondents / writ petitioners in each of these writ appeals would contend that they are not questioning the determination of final cost. However, attempt is made to charge the interest with regard



to the final cost right from the date of fixation of the original cost and the said demand exceeds the original cost and the learned Judge having found that the common order dated 16.10.2006, made in W.P.(MD)Nos.6036 of 2002 batch etc., would have application on the facts of the case, has partly allowed the writ petitions and prays for dismissal of these writ appeals.

6.This Court has considered the rival submissions and perused the materials placed before it.

7.The Division Bench of this Court, in the above cited common order dated 16.10.2006, made in W.P.(MD)Nos.6036 of 2002 batch etc., has formulated the following question for determination:

"What is the period from which, interest is payable both in respect of final land cost and capitalisation charge?"

8.A Division Bench of this Court in paragraph No.23 of the said judgment has observed that the allottees and the respondents are bound by the terms and conditions of the contract and they cannot resile from the contract, and also placing reliance upon the decisions rendered by the Hon'ble Supreme Court, found that the department cannot charge interest from the date of allotment and that eventhough logically interest should be charged depending upon the date of service of notice, in order to avoid any unnecessary confusion and complications, thought fit to direct the Tamil Nadu Housing Board to charge interest from the date of the Board's resolution dated 21.05.2004 and also made it clear that the interest on the revised land cost as well as the capitalisation cost should be paid only from the date of the resolution on 21.05.2004.

9.In the case on hand, though it is vehemently contended by the learned Counsel appearing for the appellants that on account of the final determination of the compensation amount, there was some delay in determining the land cost, in the considered opinion of this Court, the said submission lacks merit for the reason that no material whatsoever have been placed before this Court as to the enhancement of the compensation amount pertaining to the land acquisition reference proceedings under Section 18 of Central Act 1 of 1894.

10.There are no materials placed before this Court, as to the reason for increase in land cost. Admittedly, vide proceedings of the Financial Advisor, TNHB, dated 18.02.2011, in proceedings No.C1/2243/10, it is stated that the Tamil Nadu Housing Board in its resolution No.6.04 dated 03.02.2011, has resolved to fix the final cost of Rs.1,33,000/- per ground as on 30.12.1992, in order to redress the long pending grievances of the allottees.



11. It is to be pointed out at this juncture that the tentative cost determined on 30.06.1994 got resolved and a final cost of Rs.1,33,000/- was fixed only on 03.02.2011, vide resolution of the Tamil Nadu Housing Board. As rightly pointed out by the learned counsel appearing for the respondents / writ petitioners, the interest determined from the date of original allotment exceeds even the original cost of the flat allotted by them. Therefore, the learned Judge has rightly taken note of the said aspect, and correctly applied the common order dated 16.10.2006 in W.P.(MD)Nos.6036 of 2002 batch etc., to the present case on hand. It is also to be remembered at this juncture that the scheme is meant for poor and downtrodden and also to lower income housing scheme and on that ground, this Court is of the considered view that the interest is payable only from the date of the resolution dated 03.02.2011.

12. This Court, on a thorough consideration and appreciation of the materials placed before it, is of the considered view that there are no infirmities or error apparent on the record of the reasons assigned by the learned Judge in partly allowing the writ petitions and finds no merit in these writ appeals.

13. In the result, the writ appeals are dismissed confirming the common order dated 28.09.2011, made in W.P(MD).No.9963 to 9966 of 2011. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Secretary to Government,
State of Tamil Nadu,
Housing Unit and Urban Development Department,
Fort St. George,
Chennai.

+4cc to Mr.S.Nagarajan, Advocate Sr.No.53387

+1cc to M/s.Ajmal Associates Sr.No.53507

+1cc to The Spl. Government Pleader Sr.No.53577

MR

VB/SKN/RSKS/AR1/05/04/2018/5P/8C