

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.09.2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No. 4273 of 2007
and M.P.No.1 of 2007

Tamil Nadu Housing Board House Owners Association,
Regn. No.62 of 1989,
Virupatchipuram,
Vennampatty Road,
Dharmapuri - 636 705
Rep. by its Treasurer D.G.Balaram. ...Petitioner

vs.

1. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
2. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Hosur Housing Unit,
Hosur - 635 109.
3. The Financial Advisor,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in No.C4/16924/2004 dated 22.09.2004 on the file of the 3rd respondent quash the same and direct the respondents to refix the final cost of the houses of Virupakshipuram Neighbourhood Scheme, Dharmapuri based upon the details and guidelines furnished in the representation or the petitioner dated 04.12. 2006 and 09.12.2006.

For Petitioner : Mr.V. Elangovan

For Respondents: Mr.R.Bharathkumar

ORDER

(Order of the Court was made by Mr.V.BHARATHIDASAN, J.)

Writ petition has been filed challenging the order passed by the 3rd respondent (Housing Board) fixing the final cost for the plot allotted to the petitioner.

2. Learned counsel appearing for petitioner and respondents submitted that the issue in this writ petition now covered by the order of this Court in W.P.No.18545 of 2013 dated 11.02.2015, and similar order can be passed in this writ petition also.

3. The operative portion of the order dated 11.02.2015 in W.P.No.18545 of 2013 is extracted hereunder:

"5. After hearing the learned counsel for the parties and perusing the materials, it is seen that the issue involved in these writ petitions are squarely covered by the decision of the Honourable Supreme Court in the case of Tamilnadu Housing Board vs. Services Society, (2011) 11 SCC 13.

6. Learned counsel appearing for the respondent Board, on instructions submitted that the issue is squarely covered by the said decision. In fact, this Court has followed the said decision in W.P.No.13509 to 13514 of 2011 and also take note of another decision in the case of K.Usharani Vs. State of Tamilnadu, represented by its Secretary to Government, Housing Unit and Urban Development Department and others in W.P.No. 13243 of 2013 etc. batch dated 8.1.2014 and set aside the demand and allowed the writ petition giving certain directions.

7. The order passed by this Court in W.P.No.13509 to 13514 of 2011 dated 26.3.2014 reads as follows:

'2. It is submitted by the learned counsel on either side that the issue involved in these writ petitions is squarely covered by the decision of this Court in the case of K.Usharani Vs. State of Tamil Nadu, rep. by its Secretary to Government,

Housing Unit & Urban Development Dept. and others rendered in W.P.No.13243 of 2013 etc. batch dated 08.01.2014.

3. In the said batch of cases, an identical issue arose, though the prayer sought for in those batch of writ petitions were slightly different. The petitioners therein sought for a direction to issue sale deed by collecting only the enhanced compensation fixed by the Hon'ble Apex Court paid to the original land owners. It appears that this issue has arisen throughout the State of Tamil Nadu. This Court, after considering the contentions raised on both sides, following the decision of the Hon'ble Supreme Court in the case of T.N. Housing Board Vs. 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 notice, such payments shall be 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."

In the light of the above order, these writ petitions can also be disposed of on the same lines.'

4. Accordingly, the impugned notices are set aside, the 2nd respondent is directed to prepare a statement of cost indicating the development cost and land cost statutory interest in the light of the decision of the Hon'ble Supreme Court in the case of service Society(supra). The notice calling upon the petitioners to pay the balance amount must accompany a copy of the statement of cost and in case the petitioners have made payments pursuant to the impugned notices, such payments shall be given due credit and the petitioners shall be given reasonable time to pay the balance amount after

service of notice."

8. Following the above order, these writ petitions are allowed and the impugned notices are quashed. The respondents 2 and 3 are directed to prepare a statement of cost indicating the development cost and land cost and statutory interest in the light of the decision of the Hon'ble Supreme Court in the case of Service Society (supra). The notice calling upon the petitioners to pay the balance amount must accompany a copy of the statement of costs and in case, the petitioners have made payments pursuant to the impugned notices, such payments shall be given due credit and the petitioners shall be given reasonable time to pay the balance amount after service of notice.

9. With the above directions, the writ petitions are allowed. No costs. Connected Miscellaneous Petitions, if any, are closed."

4. In the light of the above order, the impugned order dated 22.09.2004 passed by the 3rd respondent is set aside and the writ petition is allowed in terms of the order in W.P.No.18545 of 2013 dated 11.02.2015. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

2. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Hosur Housing Unit,
Hosur - 635 109.

3. The Financial Advisor,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

+1cc to Mr.R.Bharathkumar , Advocate SR.No. 78307

+1cc to Mr.S.Doraisamy, Advocate SR.No. 77598

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and M.P.No.1 of 2007

A.SK(09/10/2019)