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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM

THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.S.A.NOS.81 TO 83 OF 2021
AND
C.M.P.NOS.20293, 20304 AND 20312 OF 2021

Col.C.M.Unnithan	... Appellant/Respondent in C.M.S.A.No.81 of 2021
Commander N Koteeswar	... Appellant/Respondent in C.M.S.A.No.82 of 2021
Capt. Nagarajan Vasudeva Rao	... Appellant/Respondent in C.M.S.A.No.83 of 2021

.Vs.

1. Army Welfare Housing Organisation (AWHO), Rep. By its Managing Director, South Hutments, Kashmir House, Rajaji Marg, New Delhi - 110 011.	
2. The Project Director, Army Welfare Organisation (AWHO), No.31, Thazhambur Village, Survey No.172/1 & 173, Thazhambur Link Road, Chennai - 600 130.	... Respondents/Appellants in all C.M.S.A's

PRAYER:-

Appeals filed under Section 58 of the Real Estate (Regulation & Development) Act, 2016 r/w Section 100 CPC against the order dated 06.10.2021 in Appeal Nos.67 to 69 of 2021 on the file of Tamil Nadu Real Estate Appellate Tribunal (TNREAT) setting aside the order dated 25.03.2021 in C.Nos.291, 292 and 294 of 2019 on the file of the Tamil Nadu Real Estate Regulatory Authority (TNRERA).



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For Appellant : Mr.Ramasubramaniam Raja
In all the Appeals

COMMON JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in these appeals is made to the common order dated 06 October 2021 passed by the Tamil Nadu Real Estate Appellate Tribunal in Appeal Nos.67, 68 and 69 of 2021.

2. By the impugned order, the Tribunal has, while allowing the appeals filed by the present respondents, remanded the matter back to the Regulatory Authority for fresh disposal and to comply with the direction given by this Court in C.M.S.A. Nos.12 to 14 of 2020 vide order dated 21.01.2021.

3. Learned advocate for the appellants has submitted that the impugned order passed by the Tribunal dated 06.10.2021 remanding the matter back to the Tamil Nadu Real Estate Regulatory Authority (TNRERA), in the facts of the case, was not required since the finding of the Tribunal that, the order of this Court dated 21.01.2021 was not properly appreciated by the first authority was inconsistent with the record and therefore the impugned order may be interfered with. During the course of submissions, learned advocate for the appellants has also addressed the Court on the merits of the matter to some extent, including by taking support of the decision of the Supreme Court of India in the case of Newtech Promoters and Developers Pvt. Ltd., Vs. State of U.P. and Others (2021 SCC Online SC 1044). It is submitted that these appeals be entertained.

4. Having heard learned advocate for the appellants and having considered the material on record, this Court finds as under:

4.1 The operative part of the impugned order dated 06.10.2021 reads as under:

"15. In the result, by allowing these appeals the order of the Regulatory Authority in C.Nos.291, 293 and 294 of 2019 dated 25.03.2021 is set aside and the matter is remanded back to the Regulatory Authority for fresh disposal to comply with the direction given by the Hon'ble Madras High Court in CMSA Nos.12 to 14 of 2020 dated 21.01.2021 in Para No.24 in the letter and spirit. No costs. Connected Miscellaneous Applications are closed."



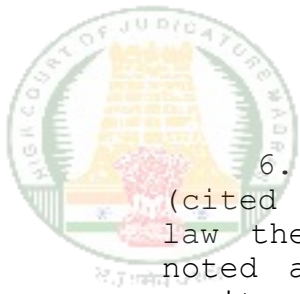
4.2. The matter is thus remanded to the authority by the Appellate Tribunal. The ground mentioned in the impugned order is that, though this was the second round of litigation, in the view of the Appellate Tribunal, the Authority had not properly considered the order of this Court dated 21.01.2021 in C.M.S.A.Nos.12 to 14 of 2020.

4.3 This Court has considered the finding of the Tribunal, keeping in view the observations of this Court in the order dated 21.01.2021. This Court has, while recording the order dated 21.01.2021, inter alia kept in view the status of the contesting parties being from Armed Forces. Though different law may not be applicable looking at the status or background of the parties, certain observations are made and the authority below was expected to consider and decide the matter on that line. The first Authority had passed the order, after remand on 25.03.2021. That was challenged by the promoters before the Appellate Tribunal and the Tribunal, on conjoint consideration of the order passed by this Court as referred above and the order passed by the first Authority, came to the conclusion that the impugned order before it i.e., the order dated 25.03.2021 did not meet with the requirement envisaged by the order of this Court dated 21.01.2021 in C.M.S.A. Nos.12 to 14 of 2020.

4.4 With the above finding when the matter is remanded back to the first Authority, the Tribunal has not gone into other aspects, which is also one of the grievances voiced before us. We find that, since the Tribunal was of the view that the matter needs to be considered afresh by the first Authority, the Tribunal has rightly not recorded finding on the other issues, otherwise it would have prejudiced the right of either of the parties. This argument/grievance therefore needs to be rejected.

4.5 So far the argument that the grievance against the finding of the Tribunal, that the order of the High Court was not properly considered by the first Authority also does not require further examination, for the reason that, when the Tribunal has, on the basis of the material before it recorded its satisfaction to the effect that the order of this Court was not kept in view in letter so also in spirit, interference by this Court would not be justified. This would also lead to a situation where, though the Appellate Tribunal has not recorded any finding on merits, that aspect will have to be gone into by this Court in these appeals. This may also prejudice either of the parties qua their right of appeal.

5. In totality we find that, no interference is required in the impugned order.



6. So far reliance on the decision of the Supreme Court (cited supra) is concerned, if it lays down any proposition of law the same has to be taken into consideration, however as noted above, neither this Court at this stage is going into merits of the matter nor the Tribunal has gone into it and therefore the first Authority is the best authority, where this grievance should be voiced by the present appellants.

7. With the above observations, these appeals are dismissed. No costs. C.M.Ps would not survive.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
Army Welfare Housing Organisation (AWHO),
South Hutments, Kashmir House,
Rajaji Marg,
New Delhi - 110 011.
2. The Project Director,
Army Welfare Organisation (AWHO),
No.31, Thazhambur Village,
Survey No.172/1 & 173,
Thazhambur Link Road,
Chennai - 600 130.

C.M.S.A.NOS.81 TO 83 OF 2021

NMI (CO)
PBS/19/01/2022