



Rev. Apl. Nos.86/2023, etc. Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.08.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

REV. APPLN. NOS. 86 TO 96 & 117 TO 132 OF 2023

IN

W.P.NOS.28118, 28119, 28120 & 28121 OF 2017

**W.P. NOS. 26893, 26923, 26927, 26926, 26929, 26910, 26916, 26898,
26920, 27116, 27120, 27122, 27125, 27123, 27108, 27112, 27111, 27114,
27115, 26930, 26921, 26933 & 26935 OF 2019**

AND

**W.M.P. NOS.30206, 30207, 30208, 30209, 30210, 30211,
30212 & 30213 OF 2017**

**W.M.P. NOS. 26288, 26303, 26306, 26304, 26307, 26293, 26295, 26299,
26291, 26301, 26488, 26490, 26494, 26501, 26498, 26481, 26483, 26482,
26485, 26487, 26308, 26302, 26310 & 26311 OF 2019**

**W.M.P. NOS. 22572 TO 22575, 22575 TO 22578, 22582, 22583, 22584 TO
22587, 22590 TO 22593, 22598, 22599, 22603 TO 22606, 22608 TO 22615**

Rev. Appln. No.117 of 2023

A. Navinna
117/2023

.. Petitioner in RA

- Vs -

1. The Secretary to Government (Housing)
Government of Puducherry
Secretariat, Beach Road
Puducherry 605 001.

2. The Secretary (PHB)



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Puducherry Housing Board
Anna Nagar, Puducherry 605 005.

3. The Chairman
Puducherry Housing Board
Anna Nagar, Puducherry 605 005.

.. Respondents in all RAs

Review Application No.117 of 2023 filed under Order XLVJ and Rule 1 of the Code of Civil Procedure praying this Court to review and set aside the common order passed by this Hon'ble Court in W.P. No.26923/2019 dated 25.04.2023.

For Petitioners : Mr. V.P.Sengottuvel, SC, for
Ms. Akshayaa Benjamin

For Respondents : Mr. A.Tamilvanan, AGP (P) for R-1
Mr. T.P.Manoharan, SC, Assisted by
Mr. T.M.Naveen, for RR-2 & 3

COMMON ORDER

The present petitions have been filed praying this Court to review and set aside the common order dated 25.04.2023 in W.P. No.28118 of 2017, etc., Batch.

2. This Court, vide its order dated 25.04.2023, recording the stand taken by the learned counsel on either side, had passed the following order :-



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“7. The learned Senior Counsel appearing for the petitioners further submitted that in order to give quietus to the issue, now the petitioners are inclined to pay the differential amount of Rs.14,85,611/-, as demanded by the respondents, along with 6% interest from 24.07.2017 to till date, however, this Court may permit the petitioners to pay the same by way of six equal installments. He further prayed that this Court may issue direction to the respondents to execute sale deed in favour of the petitioners on completion of the said payment

8. The respective learned Senior Counsel as well as the learned Additional Government Pleader appearing for the respondents raise no serious objection.

9. Since the petitioners themselves have come forward to pay the differential amount, as demanded by the respondents this Court, without expressing any opinion on the merits of the case, permits the petitioners to pay the differential amount of Rs.14,85,611/- along with 6% interest from 24.07.2017 to till date, by way of six equal installments and the same shall be paid on or before 5th of every succeeding English Calendar Month, commencing from May, 2023.

10. The respondents are directed to calculate the amount of Rs.14,85,611/- along with 6% interest from 24.07.2017 to till date (25.04.2023) and intimate the same to the petitioners so as to enable them to pay the same by way of six equal installments. After payment of the aforesaid amount by the



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petitioners in six equal installments, the respondents shall execute sale deed in favour of the petitioners, within a period of two weeks from the date of payment of the final installment.

11. The writ petitions are disposed of with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.”

3. The present review petitions are premised on the position that the review petitioners, who were the writ petitioners, had not consented for paying the amount of R.s14,85,611/- along with 6% interest from 24.07.2017 and, in fact, without their consent, the counsel appearing for the petitioners had instructed the learned senior counsel, whereupon, the learned senior counsel had made the said submission and, therefore, necessarily, the review petitions ought to be allowed.

4. However, when this Court pointed out that while such a stand can be accepted if the petitioners are ready and willing to argue on the merits of the writ petitions, learned senior counsel appearing for the review petitioners fairly submitted that the he would place the submissions on the merits of the issue.



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5. In such view of the matter, accepting the submission that the earlier order was passed by this Court, upon the submissions of either side, when the petitioners have not consented to the payment of the aforesaid amount, this Court, in the interest of justice is inclined to allow the review petitions and restore the writ petitions back to file and is inclined to hear the writ petitions itself on merits.

6. Accordingly, the review petitions are allowed and the writ petitions are restored back to file and are taken up for hearing.

7. While reiterating the submissions advanced at the time of earlier hearing, learned Senior Counsel appearing for the petitioners submitted that the Puducherry Housing Board, through the Government, acquired lands to an extent of 1.36.00 hectares and 0.32.00 hectares under the Land Acquisition Act, 1894 and funds for the said acquisition was raised by availing loan from Housing and Urban Development Corporation Limited.



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8. It is the further submission of the learned senior counsel that out of the total extent of lands, an extent of 3324 sq.mtrs., of lands in R.S.No.300/2 alone were utilized for the purpose of constructing 40 HIG Flats at Sudhanthira Ponvizha Nagar, Rainbow Nagar, Puducherry for which applications was called for from the public for allotment of the same through drawal of lots. The price fixed being on the higher side and the construction of flats also not being satisfactory level and without any basic modern amenities and facilities, there were no takers and, therefore, the price was reduced to Rs.34,57,500/- for which paper publication was issued calling for applications for allotment of the flats through drawal of lots.

9. It is the further submission of the learned senior counsel that thereafter, allotment order was issued and the allottees were put into possession of their respective HIG Flats, but till date sale deeds have not been executed. It is the further submission of the learned senior counsel that though the allotment order provided for an increase in the final price by not more than 5%, however, demand notice was issued out of the blue informing the allottees that final cost of the flats is fixed as Rs.47,68,085/= and



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consequently, the allottees/petitioners were directed to pay a sum of Rs.13,10,585/- being the difference between the tentative cost and final cost, which is beyond the 5% threshold fixed in the allotment order.

10. Learned senior counsel further submitted that against the said notice, the petitioners filed W.P.Nos.25643 of 2014 etc., batch which petitions were dismissed vide order dated 13.02.2015 against which the petitioners preferred W.A.Nos.1132 of 2015 etc., batch. The Hon'ble Division Bench of this Court, vide its order dated 21.12.2015 in the said writ appeals directed the Housing Board to revise the cost within a period of 12 months from the date of occupation/handing over of possession, subject to 5% increase. However, without following the aforesaid direction, the present impugned orders have come to be passed, which is assailed in the present batch of petitions.

11. It is the further submission of the learned senior counsel that the flats were sold to the petitioners as early as in the year 2010 and 2013 at which time the tentative cost of the flat was fixed. However, even in the year



2019 there were some flats, which were yet to be sold one of which was sold for a sum of Rs.50,05,000/-, which clearly shows that the escalation amount while arriving at the final cost fixed by the Housing Board is wholly arbitrary, perverse, irrational and unsustainable and, therefore, the same requires interference.

12. Per contra, learned standing counsel appearing for the respondents submits that the Division Bench, in the writ appeals in the earlier round of litigation had clearly held that it is open to the Housing Board to re-determine the final cost even after completion of 12 months, after affording hearing to all the parties. That being the case, the amount has been redetermined inclusive of interest payable and impugned notice has been issued calling upon the petitioners to pay the same. Therefore, the petitioners are bound by the orders passed by the Division Bench and the petitioners are estopped from reagitating the same issue once over, which has already reached finality in the earlier round of litigation. Therefore, the present impugned notices, which are the off-shoot of the orders passed by the Division Bench cannot be said to be erroneous or illegal, nor it is perverse as opportunity of hearing



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was granted before fixing finalising the final cost and, therefore, no interference is warranted with the said notice.

13. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

14. The petitioners had purchased the flat by paying a sum of Rs.34,57,500/- as tentative cost and final cost was to be determined, which will not increase by more than 5% of the tentative cost. The above determination of the cost to be made within 12 months from the date of occupation/handing over, which would be evident from the order passed by the Division Bench and for better appreciation, the relevant portion of the said order is quoted hereunder :-

"39. No doubt, sale deeds have not been executed and the process of re-determination was undertaken by the respondent-Housing Board, after 5 2007 (5) CTC 439 6 (2008) 2 SCC 750 23 handing over possession and occupation of the flats. However, Clause 10 of the Conditions regarding sale price of a flat puts a cap on re-calculation beyond 12 months from the date of occupation.



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The time schedule of 12 months is not to be reckoned from the execution of sale deed or till the sale deed is executed.

40. For the reasons mentioned hereinabove and also regard being had to the terms and conditions of allotment, we are of the considered opinion that the tentative cost is revisable within a period of 12 months from the date of occupation/handing over of possession, subject to 5% increase only. The respondent-Housing Board is not competent to enhance price of the flat unilaterally, arbitrarily. However, in the cases on hand, it appears to have been discovered that the tentative cost was fixed deliberately on the lower side, ignoring the actual cost of land and also, construction cost and development charges and as such, the respondent-Housing Board is entitled to re-determine the final cost even after completion of 12 months, after affording hearing to all the parties. As a sequitur, it is open to the respondent Board to initiate fresh proceedings, if so advised.”

15. On a careful perusal of the above order, it is evident that the Division Bench held that the Housing Board was entitled to re-determine the final cost even after completion of 12 months. The only cap that had been laid on the Housing Board related to the hearing of the parties before fixing the final cost of the flat. The above finding was rendered by the Division Bench as it was observed that the tentative cost was fixed deliberately on the lower side, ignoring the actual cost of the land and also the construction cost



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and development charges. When on the said premise, the respondent-Housing Board was permitted to redetermine the final cost even after completion of 12 months, it does not lie in the mouth of the petitioners to once approach this Court and contend that the impugned notice is bad, when the notice itself was on the basis of the order passed by the Division Bench. Further, it is to be pointed out that the order of the Division Bench had attained finality and the same was never questioned before the higher judicial forum.

16. Be that as it may. A perusal of the affidavit filed by the petitioners reveals that initially a show cause notice was issued fixing Rs.67,44,376/- as the proposed cost of the flat personal hearing was fixed on 9.6.2016 and in the personal hearing, the allottees, including the petitioners were heard and, thereafter, vide order dated 24.7.2017, the final cost was arrived at Rs.49,43,111/- on the basis of the report of the Fact Finding Committee dated 30.05.2017. The petitioners claim that the said Fact Finding Committee was constituted without any representation from the petitioners/allottees, however, it is to be pointed out that it is very well within the realm of the



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respondent/Housing Board to constitute a Fact Finding Committee to arrive at the final cost of the flat, as the Division Bench, in its order dated 21.12.2015 in W.A. No.1332/2015, etc., had permitted the Housing Board to redetermine the cost of the flat. Such being the case, the stand of the petitioners that the Fact Finding Committee was constituted without representation from the petitioners is wholly misconceived.

17. The Division Bench having allowed the respondent-Housing Board to redetermine the final cost after hearing the petitioners, if the respondent-Housing Board had resorted to setting up a Fact Finding Committee and based on its report and also the representation of the petitioners and other allottees, had arrived at the amount to be paid towards the final cost and had issued the impugned notices calling upon the petitioners and the other allottees to pay the said amount, the said exercise cannot be said to be erroneous or bad and it is well within the power of the respondent Housing Board to resort to such a procedure.



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18. Insofar as the stand of the petitioners that the final cost arrived at by the respondent/Housing Board in the year 2017 is exorbitant as even in the year 2019, a flat was sold for Rs.50,05,000/- and, therefore, it is not as per the terms of the allotment, the said contention cannot be the basis for this Court to hold that the final cost fixed is not as per the allotment order. It is to be pointed out that no material whatsoever has been placed before this Court to show that a flat was sold in the year 2019 for Rs.50,05,000/-. Even otherwise, insofar as the other tenements, including the flat, which is alleged to have been sold in the year 2019 is concerned, it is for the respondent/Housing Board to fix the cost of the tenement and it is not open to the petitioners to question the cost at which the flat is sold for the reason that the petitioners have been in occupation of the flats on being allotted from the year 2010. The petitioners were enjoying the flat since its completion in the year 2010, but the flat, though at first hand basis is alleged to have been sold by the respondent/Housing Board in the year 2019, yet it is to be pointed out that the flat is old by ten years from the date of its initial construction and in the abovesaid backdrop, it is within the authority of the respondent Housing Board to fix the cost of the flat and the petitioners



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cannot claim the basis of the above price to be given to them as well as it is not as per their order of allotment.

19. The impugned notice calling upon the petitioners to pay the final cost as determined, being in terms with the order of the Division Bench in W.A. No.1332/2015, etc., to which the petitioners were also a party, the principles of *res judicata* squarely operates against the petitioners and the petitioners are estopped from canvassing the same grievance once over. Therefore, there are no merits in the writ petitions and, accordingly, the same deserves to be dismissed.

20. In the result,

- i) *The review applications are allowed and the writ petitions are restored back to file;*
- ii) *For the reasons aforesaid, all the writ petitions fail and the same are dismissed.*
- iii) *Consequently, connected miscellaneous petitions in the writ petitions and the review applications are closed. In the circumstances of the case, there shall be no order as to costs.*



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M.DHANDAPANI, J.

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