



W.P.No.27538 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.07.2023

Pronounced on : 28.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.27538 of 2022

M/s.Anandham Flat Owners Association
Represented by its President S.Seran
Ground Floor, No.96 West Street
Inner Circular Road
Kilpauk Garden Colony
Kilpauk, Chennai - 600 010.

... Petitioner

Vs.

1.The Principal Secretary
Housing and Urban Development
Fort St.George
Chennai - 600 009.

2.The Managing Director
Tamil Nadu Housing Board
9th Floor, CMDA Building
Koyambedu, Chennai.

3.The Executive Engineer
TNHB, Anna Nagar Division
Chennai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus calling for the records relating to the third respondent vide Letter No.ANA.3/3733-A/2019 dated 07.06.2022 and to quash the same and consequently direct the second and third respondents to execute the sale deed in favour of members of the petitioner's association.

[Prayer amended vide order dated 24.02.2023 made in WMP.No.3458/2023 in W.P.No.27538/2022]

For Petitioner : Mr.S.Vijayakumar, Senior Counsel
Assisted by J.Melwin Jabaz
Mr.A.V.Balasamy

For Respondents : Mr.A.Anandan
Government Advocate for R1
Mr.D.Veerasekaran
Standing Counsel for R2 & R3

ORDER

The petitioner is an Association whose members opted to purchase 62 flats in a self-financing house scheme floated by the second respondent individually. As per the scheme, the entire cost of the flats has to be paid, and an agreement too has been entered into by the second respondent with each of the members of the petitioner's Association.



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2. The agreement *inter alia* provided that the flats would be delivered to the purchasers thereof only upon they paying the entire sale consideration. In the context of the present case, Clause-22(a) is relevant which reads as below :

"22(a). The purchaser of the flat shall make his/her own arrangement to park their vehicles (i.e.,) to park the cars either in the stilt area and to park the two wheelers in the space around the blocks of flat."

3. The schedule provides sale of undivided share in the entire plot to each of the purchasers of the apartment. It is in this setting, the third respondent had come out with a notice dated 07.06.2022, wherein it demanded the cost of the parking area and the stilt area. According to the petitioner, this is illegal on two scores:

- (a) that there is no specific term in the agreement; and
- (b) that the members of the petitioner's Association having paid for the cost of the undivided share in the plot, are required to pay twice over for the same extent.

4. The second respondent has filed its counter and it is contended that:

- (a) A scheme for construction of HIG Flats (Stilt + 6 Floors) in Kilpauk



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Garden Colony, Chennai was framed in the year 2019 by the respondent-Board for the benefit of General Public. The scheme was provided with 70 covered car parking slots and 50 open car parking slots. In other words, each flat was provided with one covered car parking and one open car parking. The planning permission of the scheme was accorded by Chennai Metropolitan Development Authority in PP.No.11969, dated 03.06.2019. The scheme was registered with RERA vide reference No.MS:TN/29/Building/0173/2019.

(b) An advertisement was issued in "Daily Thanthi" dated 01.12.2019 by the third respondent calling applications from the General Public for allotment of the flats, wherein the selling price of the flat was quoted as Rs.10,400/- per sq.ft. The price is exclusive of car parking slot. The sale of application was from 04.12.2019 to 03.01.2020. In the lot conducted on 26.02.2020, initially 15 flats were allotted. Subsequently, all the flats were sold through drawal of lot and on first come first serve basis.

(c) The agreement for sale of flat was executed in July 2020 and possession handed over to all the allottees in September 2021. As



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per the norms of the Respondent-Board, petitioners have to pay for the entire cost of the flat for execution of sale deed including the cost of the car parking.

- (d) While so, a letter dated 20.07.2021 was sent to all the members of the association by the respondent-Board intimating the lot for the allotment of car parking slots on 30.07.2021. The duly constituted Allotment Committee in the lot conducted on 30.07.2021, allotted all the 120 car parking slots to the allottees.
- (e) After conducting the lot on 30.07.2021, a letter was sent to all the allottees of the flats on 04.05.2022 by the third respondent by intimating the cost of open car parking at Rs.1,00,000/- and covered car parking at Rs.1,50,000/- in pursuance of the minutes of the Pricing Committee Meeting held on 12.02.2020. The respondent-Board has followed the due procedure and the norms hitherto followed in having allotted the car parking slots and demanding the cost for the car parking slots from the allottees.
- (f) In the advertisement issued by the respondent-Board the selling price of Rs.10,400/- quoted by the third respondent is exclusive of charges for the car parking slots. The Pricing Committee in its



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meeting held on 12.02.2020 approved the selling price and charges for the open and covered car parking slots.

- (g) The advertisement was released only for the flats and not for the car parking slots. The allottees should pay the cost of the car parking separately for executing sale deed. 9 allottees had already paid the cost of the car parking slots and executed the sale deed.
- (h) To sum up, the respondent-Board is a statutory board, established under an Act of State Legislature viz., Tamil Nadu Housing Board Act, 1961, was formed for the purpose of providing housing stocks for the benefit of general public at large belonging to various social strata. The schemes are implemented in the land acquired / alienated for the purpose. Respondent-Board is functioning in a very transparent manner in fixing the price for its plots, flats and houses. In the advertisement issued, the selling price of the flat of Rs.10,400/- per sq.ft., quoted by the respondent-Board is exclusive of car parking slots. The allottees of the scheme are bound to pay the cost of the car parking slots allotted to them for execution of sale deed. If the cost of the car parking is not collected from the allottees, the respondent-Board will face dire financial loss and is



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likely to set a bad precedent and will have a rippled effect which will affect the future projects of the Board.

5. The learned counsel appearing for the petitioner has placed reliance on the ratio of the Hon'ble Supreme Court in ***Nahalchand Laloochand Pvt. Ltd., Vs Panchali Co-operative Housing Society Ltd.***, [(2010) 9 SCC 536]; and the decision of the Division Bench of this Court in ***P.Sivanesan & Others Vs Tamil Nadu Housing Board & Others*** [(2014) 1 CTC 710 : (2014) 2 Mad LJ 695] and ***Abbotsbury Owners' Association Vs The Member Secretary, Chennai Metropolitan Development Authority*** [2023 (2) CTC 218 : 2023(1) MLJ 757], and argued that the stilt cannot be separately sold and is part of the amenities.

6. This Court carefully weighed the rival submissions. The point in issue is whether the TNHB can separately charge for the stilt area and the parking area? Here there is no case for the TNHB that stilt area and the parking area are not included when the sale of undivided share in the site is sold. Indeed, if these are excluded, there cannot exist any land over which undivided shares can be created. Secondly, the agreement in question nowhere provides that



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stilt area has to be separately paid for. Indeed Clause 22 specifically provides, “*the purchaser of the flat shall make his/her own arrangement to park their vehicles, i.e, to park the cars either in the stilt area and to park the two wheelers in the space around the blocks of flat.*” No where is there an indication that the stilt area and the parking area has to be separately paid for.

7. In ***Nahalchand Laloochand Pvt. Ltd., Vs Panchali Co-operative Housing Society Ltd.***, [(2010) 9 SCC 536] the Hon'ble Supreme Court has held that parking facility is an amenity to the flat owners. In ***Sivanesan & Others Vs TNHB and another***, a Division Bench of this Court was confronted with the question whether the TNHB can allot garage area to third parties. The Division Bench held that it cannot be as parking area is an amenity and relied on Rule 6(3) of the Tamil Nadu Apartment Ownership Act, 1994 as per which the common areas and facilities and the limited common areas and facilities shall remain undivided. This Order of the Division Bench was challenged by the TNHB in, ***Tamil Nadu Housing Board, Rep by its Chairman Vs P.Sivanesan & Ors*** [Order dated 05.11.2019 in Special Leave No.17612/2014 : MANU/SCOR/42933/2019], and the Hon'ble Supreme



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Court has confirmed the order of the Division Bench of this Court.

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8. Viewed in this backdrop, this Court has little to doubt that the impugned notice demanding payment for parking slot is bad in law and has no legal sanction. To sum up the reasons, (a) first, there is no specific agreement to support it; (b) the price paid for the undivided share necessarily includes stilt area and the parking area between the blocks, since without these area, there cannot exist some other area for sale of undivided share in the land. The stilt area is integral and forms part of the total area which is divided and sold as undivided shares; (c) that demand further payment for the same area which is covered within the price for the purchase of undivided share is impermissible and would amount to fraud on the allottees; (d) that the stilt area cannot be converted for any other purpose as it is part of the amenity necessary for the apartment owners; and the agreement has without any reservation has informed vide the standard form of contract that the allottees might have to park their vehicle in the stilt area and in the inter space between the blocks.

9. The TNHB apparently became overambitious and appear to outreach the agreements they enter into. To reiterate to charge for the stilt area separately



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as a parking area would mean that the allottees are required to pay twice over for the same area for which they had paid the price for purchasing the undivided share in the land. Plainly unconscionable to let the TNHB do this.

10. In conclusion, this Court allows the petition and the impugned proceedings of the third respondent dated 07.06.2022 is hereby quashed. No costs.

28.07.2023

Asr/ds



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To:
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- 1.The Principal Secretary
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N.SESHASAYEE.J.,

ds

Pre-delivery order in
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WEB COPY **N.SESHASAYEE, J.,**

This matter is listed today under the caption 'for being mentioned' at the instance of the learned counsel for the petitioner.

2.The petitioner has approached this Court with a prayer for Certiorarified Mandamus and in the prayer column of the order of this Court dated 28.07.2023, only the Certiorari part of the prayer is covered and not the Mandamus part.

3.Heard, the learned counsel for the respondents.

4.Paragraph no.10 of the order of this Court 28.07.2023 will now read as below;

“In conclusion, this Court allows the petition and the respondents 2 and 3 are now directed to execute a sale deed to each of the allottee's, provided they have paid all the installment dues other than any claim made towards parking charges Vide Letter No.ANA.3/3733-A/2019 dated 07.06.2022, within a period of eight (8) weeks from the date of receipt of a



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copy of this order..

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5.The Registry is now required to carry out necessary corrections to the order of this Court dated 28.07.2023 and issue a fresh order copy to the petitioner.

20.09.2023

Tsg



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N.SESHASAYEE, J.,

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20.09.2023