
(2012) 02 SC CK 0048

In the Supreme Court Of India

Case No : C.A. No. 1481 of 2012 (Arising out of SLP (C) No. 6588 of 2009)

Allottee's Ser. Mangr. T. Nadu Hng. BD. and Others

APPELLANT

Vs

R. Chinnathambi

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Citation : (2012) 2 SCALE 627

Hon'ble Judges : K.S. Radhakrishnan, J;Deepak Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. Mr. Guru Krishna Kumar. Additional Advocate General for the State of Tamil Nadu with Mr. B. Balaji, appeared for Appellants and Mr. S. Nanda Kumar, Learned Counsel appeared for the Respondent.

3. Appellant Tamil Nadu Housing Board and others are before us, against the judgment and order passed by Division Bench of the High Court of Madras in Writ Appeal No. 684 of 2002, decided on 10.04.2008, preferred by Respondent herein.

4. Respondent, a Government employee, serving as a doctor in the Government General Hospital, was allotted a flat No. H.102/GI in 80 HIG 'C' type House, Valmiki Nagar, Thiruvannamiyur Extension, Chennai, by Appellant No. 1 vide communication dated 26.02.1998, under 'Hire Purchase System'. The said allotment was cancelled on 11.11.1998, as Respondent had failed to deposit 10% of the amount of total cost of the flat, worked out by Appellant No. 1 at Rs. 8,47,200/-. As per the conditions imposed by Appellants for allotment of the flat, he was supposed to have deposited 10% of the aforesaid amount within 21 days from the date of issuance of allotment letter to him. He failed to deposit the said amount. Thus, Appellants had cancelled the allotment to the Respondents on 11.11.1998.

5. On 05.5.1998, he made a prayer to the Appellants for changing the location of the flat to ground floor on account of personal difficulties. By 15.3.1998, the period of 21 days as granted to the Respondent for depositing the amount by the Appellants had already expired. Thereafter, Respondent deposited a sum of Rs. 15,200/- on 05.5.1998, further amount of Rs. 30,492 on 25.11.1998 and another sum of Rs. 27,017/- on 14.12.1998. The total of the aforesaid amount would not come to 10% of the amount required to be deposited by Respondent. But the aforesaid dates would reveal that subsequent two deposits were made by Respondent with the Appellants, after cancellation of the allotment on 11.11.1998. The Appellants had accepted the said amounts.

6. According to the Appellants, Respondent was a chronic defaulter and had not paid the amounts which were falling due but still approached the Court trying to take an advantage of various circulars issued by the State Government from time to time even though he was not entitled to get the benefits thereof.

7. It is not in dispute that Respondent had furnished all other details which were required to be furnished by him except that he committed defaults in payment of the initial amount and the installments falling due thereafter.

8. Respondent filed a Writ Petition before learned Single Judge for directing the Appellants to hand over the possession of the flat or return the amount paid with interest. The Appellants contested the Writ Petition before the learned Single Judge and submitted that the Government Orders of which the Respondent is trying to take advantage of, would not be applicable to him as his allotment was much prior in point of time. After considering the matter from all angles, learned Single Judge was of the opinion that no case for interference was made out, thus, he proceeded to dismiss the Respondent's Writ Petition.

9. Feeling aggrieved thereof, Respondent filed aforesaid Writ Appeal, before Division Bench of the High Court. The Division Bench with an intention to work out equities between the parties, granted relief to the Respondent and set aside the impugned order passed by learned Single Judge.

10. The operative part of the impugned order passed by Division Bench reads as under:

(i) The Respondents are directed to consider the case of the Appellant/Writ Petitioner as per G.O. Ms. No. 174, Housing and Urban Development Department dated 07.02.1991 and the Housing Board Memo in 1 -3/8028/91 dated 20.04.1992, and also as per G.O. Ms. No. 29 dated 22.01.2001 and fix the cost of the flat and the interest liable to be paid by him and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order.

(ii) The Respondents shall calculate the amount which is liable to be paid by the Appellant/writ Petitioner for Hire Purchase on the basis of the A & B Certificate issued by the Respondent dated 21.05.1998 for the eligibility to avail the House Building Advance which was already granted for out-right purchase of the flat.

The calculation shall be made in the presence of the Appellant/writ Petitioner, after an intimation to him;

(iii) After arriving at the calculations, the Appellant/writ Petitioner is granted a time of four weeks to make the payment and the Respondent Board shall execute the sale deed in his favour within four weeks thereafter.

11. Pursuant to the order passed by Division Bench of the High Court, the Appellants herein after calculating the amounts payable by Respondent issued a letter to him on 16.5.2008, asking him to pay the balance cost of Rs. 17,98,592/-, excluding the payments already made by him for the said flat. Admittedly, Respondent did not comply with the said direction.

12. The Appellants thereafter issued yet another letter to him on 22.8.2008, giving him one more opportunity to pay a total amount of Rs. 26,73,106/- by or before 31.8.2008, so as to enable him to get the Sale Deed executed in his favour. Respondent did not comply with this order also.

13. In the light of the aforesaid facts and features of the case, we have heard Learned Counsel for the parties at length and perused the record.

14. We are of the considered opinion that in the given facts and circumstances of the case and keeping in mind the fine gesture of the Appellants, where on account of pendency of the aforesaid matter, they have kept one flat vacant because of this litigation, and Respondent has since retired with effect from 31.1.2011, we deem it fit and proper that the Appellants may consider to allot the said flat to Respondent only. The question that arises for consideration is as to at what rate Respondent should be asked to pay interest to the Appellants.

15. We have been given to understand that in the letter dated 16.5.2008 issued to the Respondent after pronouncement of the impugned judgment by the Division Bench, the rate of interest was calculated only at 18% on the amounts due and payable by Respondent and it did not have an element of penal interest. But in the letter issued on 22.8.2008, when a sum of Rs. 26,73,106/- was demanded from the Respondent, it also had an element of penal interest in it. Thus, we see that within a short period of three months, there has been a steep increase in the amount required to be paid by Respondent on account of inclusion of penal interest in it.

16. As mentioned hereinabove, solely, with an intention to work out equities between the parties and not to put either of the parties to irreparable injury, loss or harm, in our considered opinion, interest at the rate of 12% per annum may be charged by the Appellants from the Respondent without penal interest. A fresh demand be made by the Appellants after re-calculation at the aforesaid rate of interest to the Respondent and he be called upon to make the payment of at least 10% of the total amount due, within a period of 15 days from the receipt of the said demand, the balance of the 90% of the amount due would be payable by him positively within a period of six months, from the date of the demand. No

further latitude can be shown to the Respondent. If he fails to make the payment either of the first installment or of the balance of the 90% of the original demand within a period of six months, as a necessary consequences whereof, the allotment of flat in favour of the Respondent would automatically stand cancelled.

17. Since more than ten years have passed ever since the flat was allotted to the Respondent, he is also called upon to satisfy the other norms which were fixed by the Appellants for the allotment of flats to the allottees.

18. Once the full amount has been deposited by the Respondent with the Appellants as a necessary consequence thereof, the Appellants would execute the sale deed of the said flat in favour of the Respondent within a period of 15 days thereafter.

19. Needless to say that possession of the said flat would be delivered to Respondent only after he has made full payment to the Appellants.

20. With the aforesaid directions, this Appeal stands allowed to the above extent, and the orders of the Division Bench and the learned Single Judge stand modified. Parties to bear their respective costs.