
(2014) 01 MAD CK 0226
In the Madras High Court
Case No : W.P. Nos. 13243 of 2013 and others

K. Usharani

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2014) 3 MLJ 57

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.K. Sasidharan, J.—The petitioners are all allottees of either housing plots or flats constructed by the Tamil Nadu Housing Board. The petitioners are primarily aggrieved by the fixation of final cost after considerable period and demand for payment of interest and penal interest on differential cost. There are five batch of cases relating to Coimbatore, Erode, Vellore Tiruvannamalai and Salem Districts.

2. Since the principal issue raised herein is covered by the judgment of the Supreme Court in Tamil Nadu Housing Board Vs. The Service Society and Another, , I am not dealing with the individual facts of each of the writ petitions, except to narrate the facts of one lead case from each District to give an indication of the grievance made by the allottees.

Coimbatore District

W.P. No. 225 of 2013:

3. The petitioner made an application for allotment of a housing plot formed by the Tamil Nadu Housing Board at Uppilipalayam, Coimbatore. The allotment of a plot having an area of 1071 sq. ft. was made on 24 March 1992. The Tamil Nadu Housing Board (hereinafter referred to as Housing Board), fixed the tentative

cost of Plot at Rs. 4,19,462/-. The final cost was not fixed on account of the land acquisition proceedings initiated by the landowners u/s 18 of the Land Acquisition Act. The petitioner paid the entire cost. Since final cost was not determined, sale deed was not executed. Finally, the petitioner received the impugned demand notice directing payment of differential land cost and interest.

Tiruvannamalai District

W.P. No. 1432/2013

4. The petitioner was given allotment of a housing plot having an area of 1227 sq. ft. at Thamarai Nagar, Tiruvannamalai, by the Housing Board as per order dated 24 January 1996. The tentative cost was fixed at Rs. 2,41,925/-. The petitioner paid the entire tentative cost in installments with interest. The final cost was not fixed on account of the pending land acquisition proceedings. While so, the Housing Board, issued the impugned notice demanding differential land cost, with exorbitant interest calculated from the date of original allotment.

Vellore District

W.P. No. 21765 of 2013

5. The petitioner was given allotment of a residential house by the Housing Board at Thirupattur. The petitioner paid the tentative cost fixed by the Housing Board, while making the allotment on 7 November 1991.

While so, the Housing Board issued the impugned notice directing the petitioner to pay the differential cost along with interest calculated on the purchase cost.

Erode District

W.P. No. 13243/2013

6. The petitioner was allotted a plot having an area of 1453 sq. ft. developed by the Housing Board at Muthampalayam Housing Unit, Erode. The petitioner paid the entire tentative cost of Rs. 73,900/- along with interest.

While so, the Housing Board issued a demand notice calling upon the petitioner to pay a sum of Rs. 3,54,481/- which includes differential land cost and exorbitant interest.

According to the petitioner, the Board is entitled to collect only the enhanced compensation payable to the land owners. Since amount under various heads were shown, the petitioner seeks a writ of mandamus directing the Housing Board to issue sale deed by collecting only the enhanced compensation fixed by the Reference Court.

Salem District:

W.P. No. 7637 of 2013:

7. The petitioner was given allotment of a housing plot at Annadhanapatti, by the

Tamil Nadu Housing Board. The allotment was made in the year 1996. Since the land value was not determined, only tentative cost was fixed by the Housing Board. Thereafter, land value was fixed by the Reference Court and finally by the High Court. The High Court determined the land value at Rs. 5.50 per sq. ft. as against Rs. 16 per sq. ft. fixed by the Reference Court.

While so, the Housing Board issued the impugned notice dated 26 October 2012, directing payment of a sum of Rs. 4,79,545/-. According to the petitioner, the impugned notice does not contain any indication as to how the amount was calculated by the Housing Board. The petitioner is therefore before this Court.

Defence:

8. The Tamil Nadu Housing Board in its counter affidavit, contended that the impugned notices contain only the revised land cost with interest, and it was fixed in the light of the award passed by the Reference Court and upheld by the Appellate Court. The petitioners are therefore liable to pay the differential land cost with proportionate interest.

Summary of submissions:

9. The learned counsel for the petitioners contended that the Housing Board wanted to collect the development charges from the petitioners besides exorbitant interest on revised land cost. According to the learned counsel, the petitioners have all paid the pre-determined amount within the stipulated period and as such, it is not be open to the Housing Board to collect exorbitant cost and interest. The learned counsels therefore wanted the Housing Board to refix the land cost by deleting the enhanced cost and interest. 11. The learned Additional

Advocate General contended that the Housing Board was compelled to pay the revised land cost. The Housing Board paid statutory interest in accordance with the award passed by the Reference Court. The petitioners are therefore bound to pay the revised land cost along with the statutory interest. The Housing Board having paid the enhanced land cost along with statutory interest was fully justified in directing the petitioners to bear the proportionate cost with interest.

Analysis:

10. The petitioners were all given allotment of either residential plots or flats by the Housing Board. While making allotments, land value was not crystallized on account of the pending reference u/s 18 of the Land Acquisition Act. The petitioners were aware of this factual position. It was not possible for the Housing Board to wait till the disposal of the statutory proceedings u/s 18 of the Act for making allotment. The Housing Board has taken loan from HUDCO and they need to pay interest. This compelling necessity made the Housing Board to fix the tentative cost. The allottees were directed to pay the tentative cost at the first instance and to pay the final cost later, after the culmination of Section 18 proceedings. 13. The petitioners accepted the proposal made by the Housing Board to allot plots of flats/flats on payment of tentative cost, with obligation to

pay final cost later. The lease cum sale agreement executed by the petitioners with the Housing Board contain an undertaking regarding payment of final cost after the culmination of land acquisition proceedings. The petitioners have executed the agreement and took possession of the plots/flats. They are bound by the undertaking to pay the final cost. There is no question of avoiding payment of cost, consequent to the re-determination of land cost by the Reference Court.

11. The Housing Board is entitled to collect the enhanced land cost from the allottees of a particular project. The Housing Board is liable to pay statutory interest on the enhanced amount in accordance with the provisions of Land Acquisition Act. Since the Board is functioning with the principle "no profit - no loss", necessarily, the burden of payment of land cost and statutory interest should be borne proportionately by all the allottees. There is no escape from such payment.

12. The judgment of the Supreme Court in *T.N. Housing Board v. Service Society* (supra), is an answer to all the issues raised in these writ petitions.

13. In *Service Society*, the following three questions were raised:

(i) Whether the Board is barred from fixing the final price on the expiry of three years from the date of allotment, resulting in the tentative price becoming the final price?

(ii) Even if the Board could fix the final price beyond three years, whether only the land cost component could be increased out of the tentative price and not the cost of development or cost of construction?

(iii) Whether the Board failed to justify the increase demanded by it?

14. The Supreme Court answered all these issues with cogent reasons.

(a) First issue - Finding

There is no compulsion to fix the development cost within 3 years in all cases.

(b) Second issue - Finding

(i) The Housing Board is entitled to revise not only the land cost but also the other components like development and cost of building;

(ii) Even the development cost could be revised after three years like land cost.

(c) Third issue

With regard to the third issue, the Supreme Court held as follows:

27. When a large undeveloped tract is acquired by a development authority or a board, considerable amounts will have to be spent for developing it, to make it suitable for residential use. This will include the cost of levelling the land, forming plots, laying roads and drains, drawing electrical lines, laying water and

sewerage pipes, providing electricity and water, etc. This cost also will have to be proportionately borne by the allottee as development cost. Some authorities even load the cost with reference to its overheads, that is, a proportionate cost, depending upon the norms, rules and regulations.

30. Whenever allotments are made even before the completion of the development of land and construction, necessarily the cost that is shown by the authority or the Board will be tentative. In regard to the land cost, there may be claims for enhancement of compensation before the Reference Court with appeals to the High Court and this Court. Sometimes the entire process may take 10 to 15 years and till that process is concluded the final cost of the land cannot be determined. An allottee cannot therefore say that the authority cannot increase the cost after 12 years.

31. Similarly the cost of developing of land into residential area requires coordination with different contractors engaged for laying roads, laying drains, developing parks and playgrounds, drawing electricity lines, water lines, sewerage lines, etc. Many times, disputes with the contractors lead to delays and litigation. Sometimes though the work may be completed within three years, the settlement of bills and ascertainment of cost may take several years. There may also be encroachments, which will have to be removed which apart from being time consuming and involving litigation, delay the development and finalisation of cost of development. As a consequence, the development cost may also shoot up beyond the estimate on account of delays, additional claims of contractors, litigations and other factors. The same applies to the cost of construction of the houses also.

32. Therefore, an allottee cannot contend that the increase, if any, should be determined within three years and if the increase is not so determined, the tentative cost would itself become the final cost. Such an interpretation of Clause 17 would be illogical and unreasonable. If the Board is able to show that there was sufficient cause for the delay in deciding the final price and that it was beyond its control to determine the final cost earlier (or within three years) it will be entitled to final cost even if the claim is delayed by a few years. The allottee cannot refuse to pay it merely on the ground of delay.

15. The Supreme Court with a view to guard the interest of Housing Board and allottees, suggested preparation of a chart wing the break up of cost. The relevant graph reads thus:

34. In view of the complex nature of acquisition, development, construction and allotment, it is necessary to safeguard the interests of the allottees and at the same time ensure that there is no loss to the public exchequer or the authority by making it to bear any part of the cost of development or cost of the plot or cost of construction. Normally a claim by the authority or the Board for increase should be accepted if the authority or Board certifies that what is claimed is the actual final cost, and supports it by a certificate from an independent chartered

accountant or its own accounts department showing the break-up of the cost.

35. A standard certificate should furnish the following:

- (a) break-up of the tentative allotment price in regard to the plot, development and construction;
- (b) break-up of the final cost in regard to the plot, development and construction;
- (c) a table showing total area, area used for plots, area used for common/service areas like roads, drains, parks and open spaces;
- (d) a table showing the acquisition cost; and
- (e) a table showing the construction cost.

16. The law is therefore clear that the Housing Board is entitled to collect the land value paid or payable to the landowners along with statutory interest.

17. The impugned notices do not contain the break up of cost as indicated in Service Society.

18. 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 u/s 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.

19. The Tamil Nadu Housing Board is permitted to collect the differential cost and statutory interest in accordance with the judgment in Service Society.

20. 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 notices, such payments shall be given due credit. The petitioners should be given reasonable time to pay the balance amount after service of notice. The writ petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.