

(2007) 08 MAD CK 0163
In the Madras High Court
Case No : W.A. No. 3020 of 2004

Tamil Nadu Housing Board

APPELLANT

Vs

Avadi Thaniraivu Veetumanai Thittamani Othukeeduthararkal
Nalavazhu Sangam and Avadi Tamil Nadu Veetu Vasathi Varia
Odukkeeduthararkal Matrum Kudiyiruppor Nalavazhu Sangam

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Citation : (2007) 5 CTC 439 : (2007) 6 MLJ 1224 : (2007) WritLR 883

Hon'ble Judges : S.J. Mukhopadhaya, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : S. Kasikumar, for K. Chelladurai, for the Appellant; Balan Haridoss, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—This writ appeal is directed against the order passed by the learned single Judge in W.P. No. 22878 of 2002

dated 27.6.2002, allowing the writ petition filed by the respondents herein.

2. The respondents herein filed the writ petition stating that they are registered Societies under the Societies Registration Act and in the first

respondent Society about 497 members and in the second respondent Society 400 members were allotted house plots by appellants/the Housing

Board under the Avadi Scheme in the year 1993. The concerned members have also constructed houses in the plots allotted to them and they are

residing therein. The Housing Board passed resolution No. 45/2000, pursuant to which the second appellant herein by letter dated 30.7.2001

directed the subordinate officials to execute and present the sale deeds for registration and conveying the plots to the members of the respondent

Societies after collecting the capitalised value of the plots with interest. At the time of allotment, the appellants herein fixed tentative price for each category of the lands allotted to the members. The members of the respondents Societies have also paid part of the tentative price fixed and agreed to pay the balance in monthly installments ranging from 10 to 15 years and the monthly installments are also being paid regularly. Some of the members of the respondents Societies paid the entire outstanding amounts and the appellants/Housing Board issued no due certificate to such of those members and executed the sale deeds in favour of the members, who have paid the entire tentative cost fixed by the Housing Board at the time of allotment. According to the respondents Societies, about 50% of the members have been issued with sale deeds in their favour.

3. On 22.9.2000, the appellants stopped execution of sale deeds even to the members who have paid the entire dues and on enquiry, the members of the respondent Societies were informed that the Housing Board enhanced the price of the plots and only after paying the enhanced price, the sale deeds will be executed. The action of the Board in demanding difference in cost with interest through demand made on 30.7.2001 was challenged in the writ petition by contending that the price, even though fixed in February, 1992, was tentative, the allotments were made in January 1993 and therefore the demand of cost at the rate fixed in January, 1993, is unsustainable and the demand of interest for the said amount is also not valid.

4. The learned single Judge allowed the writ petition on the ground that sale deeds were executed to several persons on the basis of the tentative cost and demanding higher cost with interest to some of the members of the respondent Societies is discriminatory. The learned single Judge also gave further direction to the appellants to execute the sale deeds conveying the plots allotted to the members of the respondent Societies without demanding any additional costs, in excess of the costs that were stipulated at the time of allotment to each members.

5. Aggrieved by the said order, appellants have filed the above writ appeal contending that as per Clause (14) of the allotment order, the price fixed was only tentative and not final and the same was also accepted by the members of the respondent Societies at the time of allotment without

any demur and the same is stated in the affidavit filed in support of the writ petition and therefore there is no controversy with regard to fixing of cost as tentative.

6. The learned Counsel for the appellants also filed an additional counter affidavit in the writ appeal by stating that the Avadi Scheme was

implemented with the financial assistance of the World Bank; the pricing was approved by the project management group in February, 1992;

applications for allotment were made to the public during June and July, 1992; and lots were conducted in January, 1993. It is further stated

therein that at the time of allotment, the price should have been capitalised at 12% interest from February, 1992 to March, 1993 and with the

revised price the allotments should have been made, but however, allotments were made at the price fixed in February, 1992, and sale deeds to

898 plots upto the year 2000 were executed at that cost without capitalisation. During audit, the said omission came to the light and consequently

resolution No. 45/2000 was passed by Sight and Service Committee to collect capitalisation amount and execute sale deeds only after collecting

the capitalisation amount with interest. It is further stated that the non-collection of the difference amount with interest insofar as the above 898

plots at the time of execution of the sale deeds was only due to bona fide mistake and the said allottees are also liable to pay the same and

necessary disciplinary actions are contemplated against the staff and officers, who have failed to intimate the capitalisation price to the allottees and

collect the same.

7. On the basis of the said counter affidavit the learned Counsel appearing for the appellants/Housing Board argued that the said bona fide mistake

committed by some of the officers of the appellants cannot be taken advantage of by the members of the respondent Societies and the learned

single Judge was not right in allowing the writ petition filed by the respondents herein.

8. The learned Counsel for the respondents on the other hand submitted that the appellants having not collected the difference in price and interest

from 898 allottees, they are not justified in demanding the same from the remaining allottees/members of the respondent Societies and their denial to

execute the sale deeds is arbitrary.

9. We have considered the rival submissions made by the learned Counsel for the appellants as well as respondents.

10. The point in issue is whether the appellants are justified in demanding capitalisation amount and interest from February, 1992, to March, 1993,

and whether the members of the respondent Societies can be compelled to pay interest from April, 1993, till July, 2001, and whether the members

of the respondent societies are bound to pay interest from August, 2001, till the date of payment.

11. The facts in this case are not in dispute. For perusal of this Court, the learned Counsel appearing for the appellants produced the allotment

order of one D.Rajendran, 10 Hanuman Tharayan Koil Street, Otteri, Madras. Clause (14) of the allotment order clearly states that the amount

fixed is only tentative. The translated version of Clause (14) of the allotment order reads thus:

(14) The final cost of the plot cannot be determined now. The price fixed by the CMDA after allotment alone will be the final cost of the plot. After

such notification, the difference in cost should be paid with interest by the allottees.

In paragraph 4 of the affidavit filed by the respondents/petitioners in the writ petition, the above position is admitted by stating as follows:

...The members of the petitioner Sangams were allotted plot under E.W.S. A section, E.W.S., B Section, L.I.G.I, L.I.G.II, MIG and HIG. At the

time of allotment, the respondent board fixed tentative price for each category of land allotted to the members. Towards cost of the plot allotted,

the members of the petitioner Sangams have deposited a part of the tentative price fixed and the balance to be paid in monthly instalments ranging

from 10 to 15 years.

Thus, it is clear that the amount fixed at the time of allotment was only tentative, fixed in February, 1992, and the actual allotment orders are made

only in March, 1993. Therefore, the appellants are entitled to fix the market rate as on the date of allotment of plots i.e., in March, 1993, and for

the difference of cost from February, 1992 to March, 1993, the allottees are liable to pay interest at 12% per annum. The conditional allotment

orders are also accepted by the members of the respondent Societies as such they are estopped from challenging the said demand of final costs with

interest.

12. It is also the admitted case that no demand for the said amount was made by the appellants till July, 2001. The said demand having not been

made till such time, the appellants are not entitled to claim interest from March, 1993 to July, 2001. In the affidavit filed in support of the stay

petition in W.A.M.P. No. 5600 of 2004, though it is stated that the allottees were asked to pay the difference amount, the date of demand is not

mentioned. The demand in writing was made only on 30.7.2001. The mistake committed by the officials of the appellants department in not

demanding the amount till the end of July, 2001, cannot be put against the allottees and therefore the appellants are not justified in claiming interest

from March, 1993 to July, 2001. The demand was made on 30.7.2001 and the respondents challenged the same before this Court by filing writ

petition. The said writ petition was allowed by the learned single Judge on the premise that several persons were given sale deeds by the appellants

without collection of capitalisation fee and interest. The same was explained by the appellants by filing additional counter affidavit in this writ

appeal, wherein it is clarified that the registration of the sale deeds to certain persons are by bona fide mistake and the said mistake was found

during audit and the persons, who are responsible for the said mistake are being proceeded departmentally and that the persons, who were given

sale deeds are also directed to pay difference amount with interest. Hence the allegation of discrimination is found against the respondents.

13. In the light of the above statement contained in the additional counter affidavit, we are of the view that the reasonings given by the learned

single Judge are unsustainable and the members of the respondent societies are bound to pay the said capitalisation amount with 12% interest per

annum from February, 1992, to March, 1993, and also from August, 2001, till the date of actual payment.

14. The writ appeal is allowed permitting the appellants to recover the capitalisation amount with 12% interest from February, 1992 till March,

1993, with 12% interest per annum and also interest from August, 2001, till the date of payment. There will be no order as to costs.