

(1998) 02 MAD CK 0040
In the Madras High Court

V.S. Arunachalam

APPELLANT

Vs

The Managing Director, Tamil Nadu Housing Board

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 MLJ 616

Hon'ble Judges : Y. Venkatachalam, J

Bench : Division Bench

Judgement

Y. Venkatachalam, J.—This writ petition has been filed by the writ petitioner invoking Article 226 of the Constitution of India, seeking for a

writ of mandamus directing the respondent to issue sale deed to the petitioner in respect of M.I.G. Plot No. 150 with building allotted to him

M.K.B. Nagar, Vyasarpadi, Madras-39 by letter No.40574 H (I)/73, dated 27.7.1974 without demanding any amount in excess of Rs. 57,400

demanded from him on 12.12.1977 and to refund the excess amount collected with interest at 18% p.a. from the date the excess amount is with

the Board.

2. In support of the writ petition, the writ petitioner has filed an affidavit wherein he has narrated all the facts and circumstances that forced him to

file the present writ petition. The respondent did not file any counter.

3. Heard the arguments of the learned Counsel appearing for the petitioner and also that of the learned Counsel for the respondent/Board.

4. I have also gone through the contents of the affidavit together with all the relevant material documents available on record in the form of typed

set of papers.

5. The point that arises for consideration in this writ petition is, as to whether there is any valid ground to allow this writ petition or not?

6. It is the case of the writ petitioner herein that the M.I.G. Plot No. 150 with building which is the subject matter of the writ petition was allotted

to him on 26.4.1974 and at that time it's tentative cost was given as Rs. 41,600 according to the petitioner the said plot with building was handed

over to him on 28.3.1978 and the price of the same as on 19.3.1978 was given as Rs. 57,432 and the Board worked out the monthly installment at

the rate of Rs. 271 p.m., for a period of 15 years. After paying the monthly installment up to February, 1983, the petitioner enquired the amount

payable by him in case he had to pay the balance in one lump sum. The Board informed him that the amount payable by him as on 28.2.1983 as

Rs. 21,643 According to the petitioner, he paid the entire amount in one lump sum on 25.2.1993 though this is Rs. 1,034 in excess of the amount

actually due and payable to the Board. In 1985 the Board informed the petitioner that the final cost of the building and land allotted to him worked

out at Rs. 76,460. On 19.12.1985, he requested the Board to furnish him the break-up figures of the final cost, but he did not receive any reply.

The petitioner's case is that he is entitled for the issue of sale deed to him as he has paid more than the tentative cost and the cost intimated on

12.12.1977. Whereas the respondent has fixed the final cost at Rs. 76,460 and has demanded the difference in final cost of Rs. 19,028 with

interest and penal interest since 1986 to be paid forthwith by his letter dated 25.1.1995 to avoid implementation of penal clauses of L.C.S.

Agreement. In this regard the petitioner wrote a letter dated 8.2.1995 requesting the respondent to withdraw the excess amount claimed and he

has not received any reply for the said letter. Hence this writ petition.

7. The prayer asked for in this writ petition by the writ petitioner is to direct the respondent to issue sale deed to the petitioner in respect of M.I.G.

Plot No. 150 with building allotted to him in M.K.B. Nagar, Vyasarpadi, Madras by letter dated 27.7.1974 without demanding any amount in

excess of Rs. 57,400 demanded from him on 12.12.1977 and refund the excess amount collected with interest at 18% p.a. from the date the

excess amount is with the Board.

8. It is an admitted fact in this case that the transaction between the parties

herein is governed only by the agreement entered into between them in this regard which has been titled as Lease-cum-sale Agreement. The contention of the petitioner herein is that the respondent cannot finalise the cost of the property after a lapse of more than 11 years after the allotment of the plot to him, that according to Clause 15 of the agreement to Board shall fix the price of the property after taking into consideration the development charges, cost of amenities, cost of buildings etc., within a period of 3 years from the date of allotment and that according to Clause 27 of the said agreement, the Board shall sell and convey the property by a registered deed of sale after the expiry of 5 years from the date of handing over possession of the property and accordingly as possession was handed over on 28.3.1978, the respondent should have sold the property on or before 28.3.1983. It is also contended by the petitioner that the Board cannot differentiate between allottees in the same area and collect different rates of land cost and also that the Board having given a certificate that the petitioner has paid the full cost of the plot and building on 1.7.1983, cannot revise the cost after the period of 3 years from the date of allotment i.e., 27.7.1974.

9. In deciding this matter, the L.C.S. agreement entered into between the parties alone has an important role. As could be seen from the said agreement, in Clause 8 and Clause 9 it has been very clearly set out that it is only the tentative estimated value of the property. So, it is not open to the petitioner herein to insist upon the respondent/Board to make a sale deed in his favour case he has already paid more than the tentative price.

In this regard the first part of Clause 15 of the agreement throws more light on this aspect which reads as follows:

The Board agrees to sell the property, more particularly described in the schedule hereunder, to the lessee/purchaser for such price as the chairman of the Board may at any time in his sole discretion fix, and at which time the Chairman is entitled to consider details regarding development charges, cost of amenities, cost of building etc., and whether the price of the land acquired under the central Act together with suitable modifications thereto by the local laws has become final by a conclusive adjudications thereon by the concerned Tribunals and courts. The final decision of the Chairman as to the price of the property as determined

herein is conclusive and binding on the lessee/purchaser and the

Lessee/ purchaser agrees to purchase, the property from the Board at the said price, on the terms and conditions herein after mentioned.

This position of law, i.e., the chairman is entitled to consider the details regarding development charges, cost of amenities cost of building etc.,

together with the price of the land acquired and fix the price and such price determined by the chairman is conclusive and binding on the lessee

purchaser is against the contention of the petitioner herein that the respondent should be directed to issue the sale deed to the petitioner in respect

of the property in question without demanding any amount in excess of Rs. 57,400 demanded from him on 12.12.1997 and to refund the excess

amount collected with interest and that therefore the said contention of the petitioner has no merits and the same is rejected. In this regard the

learned Counsel for the respondent relied on two decision as follows:

1. Raghunathan v. Tamil Nadu Housing Board 1997 W.L.R. 25 and 2. K. Natarajan v. Tamil Nadu Housing Board W.P. Nos. 19974 of 1992

etc., dated 10.11.1997.

Amount the two, the first one is by a Division Bench of this Court and the second one is by a learned single Judge of this Court following the

Division Bench decision. In the first case the Division Bench has held as follows:

The power to make a final determination as to cost of the plot has been retained and has been made one of the conditions of the order of allotment

and the lease cum agreement, which has been executed by the petitioners. The grounds on which the cost can be enhanced are also stated in the

order of allotment and so in the order of lease-cum-sale agreement. Therefore, the Housing Board has undoubted authority to enhance the cost of

the plot.

In such circumstances, the ratio laid down in the above mentioned two decisions squarely applies to the present case as regards the authority of the

Housing Board to enhance the cost.

10. Now, coming to the other main contention of the writ petitioner that as per Clause 27 of the agreement the Board shall sell and convey the

property by a registered deed of sale after the expiry of 5 years from the date of handing over possession of the property and that as the

possession of the property was handed over to him on 28.3.1978 the respondent should have sold the property on or before 28.3.1983 and the

failure to do as is violative of the agreement, it will be useful to extract Clause 27 of the agreement to decide this point, which reads thus:

On the lessee/purchaser paying the rents purchase price and all incidental charge to be incurred for any conveyance of the property and other

amounts payable by the lessee purchaser under this deed and on the lessee/purchaser duly performing the terms and conditions of this agreement

and on such payments and performance only, and after the expiry of five years from the date of handing over possession of the property, the

Board shall sell and convey the property be a registered deed of a conveyance to the lessee/purchaser.

As seen from the above Clause 27 it is very clear that the expiry of period of 5 years from the date of handing over possession itself is not the only

condition for execution of sale deed by the Board, besides that the petitioner should have paid all other charges and the price as fixed by the

Board. But, admittedly in this case, the price and the charges as fixed by the respondent has not at all been paid by the petitioner herein and he is

disputing the same. Under such circumstances, it is not open to the petitioner at this stage to raise such a contention that the respondent failed to

execute the sale deed on or before 28.3.1983. Therefore, this contention of the petitioner also is rejected.

11. Now, coming to the other contention raised by the petitioner herein that as per Clause 15 of the L.C.S. Agreement between them Board shall

fix the price of the property after taking into consideration the development charges, cost of amenities, cost of buildings etc., within a period of

three years from the date of allotment, we have to peruse the concerned Clause 15 carefully. The second part of Clause 15 deals with this point

and reads as follows:

Excepting the fixation of price with reference to the claim or compensation adjudicated or awarded by tribunals and courts finally and conclusively

with regard to the lands acquired under the scheme, the Board shall fix the price of the property after taking into consideration the development

charges, cost of amenities, cost of building etc., within a period of three years from the date of allotment and such price is subject only to a revision

on account of excess compensation if any awarded by tribunals or courts for the lands as aforesaid.

From the above, it is crystal that an outer time limit of a period of three years from the date of allotment has been fixed for the Board to determine

the price of the Property after taking into consideration the development charges etc. However, as already observed by this Court in the previous

part of this order, the Board has every authority to enhance the cost of the property taking into consideration the development charges etc. But as

per the provision made in the above Clause 15 that has to be made within a period of three years from the date of allotment. In this case admittedly

the allotment has been made to the petitioner even on 26.4.1974 and the three years" period comes to an end on 25.4.1977. Whereas as could be

seen from the records, the final cost was arrived at Rs. 76,460 only on 10.12.1985. This is clearly violation of Clause 15 of the agreement, Further

the breakup figures regarding the final cost were provided to the petitioner herein only on 25.1.1995. But as per Clause 15, the final cost should

have been determined on or before 25.4.1977. Admittedly in this case that has not been done. Further as per Clause 15 the so called final cost is

subject only to a revision on account of excess compensation if any awarded by Tribunals or courts for the lands. But that is not the case of the

respondent herein. It is stated by the petitioner herein the affidavit that there is no case before any tribunal or court for the lands concerned herein

claiming higher compensation etc., That stand of the petitioner has also not been disputed by the respondent Board. That being so it is their duty to

determine the final cost of the property within a period of three years from the date of allotment of the property and admittedly that has not been

done in this case and that therefore, it is certainly violation of provisions of Clause 15 of the agreement.

12. In support of their above contention, the petitioner relied on the following decision rendered in W.P.Nos.7816 of 1987 and order dated

17.2.1980 by a learned single Judge of this Court. In the said order, the learned Judge while deciding similar point held that the respondents are

duty bound to finalise the cost of the land and the building including the value of the development charge etc., within a period of three years from

the date of allotment. In such circumstances, the said decision squarely applies to the facts of the present case and that therefore, the above

contention raised by the petitioner merits acceptance of this Court.

13. Therefore, for all the aforesaid reasons and in view of my above discussions with regard to the various aspects of this case, this Court is of the

firm view that the respondent/board has every power to enhance the cost taking into consideration the development charges etc., and fix the final

cost of the property. But at the same time for such a fixation the respondent cannot take its own time and that should be made within a period of

three years from the date of allotment as per Clause 15 of the agreement.

14. In the result, the writs petition is partly allowed and the respondent herein is given the following directions:

1. The respondent is directed to fix the final costs of the property in question by taking into consideration the development charges, cost of

amenities, cost of building etc., that are applicable and prevailed as on 25.4.1997 and communicate the same to the petitioner herein within 60

days from the date of receipt of copy of this order:

2. In case, if there is any amount still due from the petitioner herein, Two month's time is granted to him to pay the said amount.

3. On such payment made by the petitioner herein, the respondent is directed to execute the sale deed in favour of the petitioner within a period of

four weeks from the date of such payment;

4. In case if there is any excess amount already collected from the petitioner herein that the final cost fixed as directed by this Court, the same shall

be returned to the petitioner herein 30 days from the date of receipt of this order together with interest as 12% pa. from the date of collection till

the date of return of the said amount by the respondent.

5. In this circumstances of this case, there will be no order as to costs.