TAMIL NADU HOUSING BOARD A

v.

THE SERVICE SOCIETY & ANR.

(Civil Appeal Nos. 2320 of 2011)

MARCH 04, 2011 B

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Housing – LIG housing scheme – Acquisition of land by State Government – Formulation of Scheme by Housing Board for development of the land and construction of houses C *and flats – Allotment of houses in the year 1976 – Fixation of tentative allotment price made up of cost of plot, cost of development and cost of house – Execution of lease-cum-sale agreement between the Board and the allottees – Clause of the agreement contemplating the final price to be* D *fixed within three years from the date of allotment – However, final price determined by the Housing Board in the year 1988 - Final cost increased considerably on account of enhancement of compensation to land owners – Issuance of demand letter to allottees to pay difference in cost by the* E *specified date, failing which interest @ 14%/13% p.a. would be charged – Challenge to, by the Society-allottees of the LIG houses – Dismissed by the State Government – Writ petition - Single Judge of the High Court quashed the demand of Board towards price increase – On writ appeal, Division Bench* F *directed the allottee to pay additional sum towards increased cost of the plot and the specified amount towards the interest with further interest @ 9% p.a. – Cross appeals – Held: Letter of allotment and lease-cum-sale agreement enabled the Housing Board to determine the final price taking into account* G *the final cost of acquisition, cost of development and amenities and cost of the building – The price indicated at the time of allotment was purely tentative – No term or provision in the contract to the effect that if the Board did not determine the final price within three years from the date of*

 H

A *allotment, it would lose the right to determine the final price thereafter or that the tentative price would become the final price – Thus, the Board not barred from fixing the final price on the expiry of three years from the date of allotment – Compensation in regard to the land was pending as also* B *development work could not be completed on account of encroachment of the acquired land – Therefore, while fixing the final price in the year 1988, alongwith land cost component out of the tentative price, the cost of development or cost of construction could be increased – It cannot be said that the* C *Board failed to justify the increase demanded by it – Demand for increase in price on account of final cost made by the Board upheld – Interest payable on the increase should be only 9% p.a., as directed by the High Court.*

Preeta Singh v Haryana Urban Development Authority D **1996 (8) SCC 756 – referred to.**

Case Law Reference:

1996 (8) SCC 756	**Referred to.**	**Para 21**

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2320 of 2011.

From the Judgment & Order dated 7.8.2007 of the High Court of Judicature at Madras in W.A. No. 1566 of 1999.

F WITH

C.A. No. 2321 of 2011.

Mohan Parasaran, ASG, T. Harish Kumar, V. Vasudevan, G V.Balachandran for the Appellant

V. Balachandran, R. Nedumaran, S. Thananjayan for the Respondents.

The Order of the Court was delivered by

H

ORDER

R. V. RAVEENDRAN J.

1. Leave granted.

2. The first respondent ('Society' for short) requested the state government (second respondent) to provide a Low Income Group housing scheme for the benefit of its members who were the employees of Tamil Nadu Electricity Board. The state government directed the Tamil Nadu Housing Board, the appellant herein ('The Board' for short) to execute the said scheme. To meet the requirements of the employees of the Electricity Board as also the staff of the appellant, the state government acquired an extent of 8.38 acres of land in Singanur Village, Coimbatore. The Board formulated a scheme for development of the said land and construction of 145 LIG Houses and 120 LIG flats therein. In pursuance of it, in the year 1976, the Board allotted to several members of the society, LIG Houses, each house comprising a plot measuring about 40' x 26' (1040 sq.ft.) and a proposed construction measuring 316 sq.ft. Though the standard measurement of the proposed plots was 1040 sq.ft, the actual extents of some of the plots were different, that is 1000 sq.ft, 1021 sq.ft, 1150 sq.ft, 1235 sq.ft etc. For convenience we will refer to the facts relating to the allottee of LIG House No.49 which comprised a plot measuring 1000 sq.ft. and a house measuring 316 sq.ft.

3. The tentative allotment price was fixed by the Board as Rs.18,000/- (made up of cost of plot, cost of development and cost of house) and each allottee was required to make an initial deposit of Rs.3000/- and pay the balance in agreed monthly instalments. The Board also entered into a lease-cum-sale agreement in November 1977 with the allottee containing the terms and conditions of lease and the option for sale. Clause 17 of the said agreement providing for sale of the LIG House to the allottee is extracted below:

A "The lessor agrees to sell the property more particularly described in the schedule hereunder to the lessee for such price as the Administrative Officer of the lessor may at any time in his sole discretion fix and at which time the Administrative Officer of the lessor is entitled to consider
B details regarding development charges, cost of amenities, cost of buildings etc., and whether the price of the land acquired under the Land Acquisition Act together with suitable modifications thereto by the local laws become final by a conclusive adjudication thereon by the concerned
C tribunals and courts. The final decision of the Administrative Officer of the lessor are to be the final price of the property as determined under these presents is conclusive and binding on the lessee and the lessee agrees to purchase the property from the lessor as the said price on the terms
D and conditions hereinafter mentioned.

Excepting the fixation of price with reference to the claim of compensation adjudicated or awarded by courts finally and conclusively with regard to the lands acquired under the scheme, the lessor shall fix the price of the property
E after taking into consideration the development charges, cost of amenities and buildings etc. within a period of three years from the date of allotment and which price is subject only to a revision on account of excess compensation if any awarded by the courts for the lands as aforesaid."

F Clause 24 of the agreement required the allottee-cum-lessee to pay interest on the amounts outstanding, at the rate of 9% per annum. The Board did not disclose to the allottees, the break-up of the tentative cost, as to how much for the land, and
G how much for the development cost and construction.

4. Though clause 17 contemplated the final price being fixed within three years from the date of allotment, the Board did not fix the final price within that period. The Board determined the final price only in the year 1988, nearly 12 years
H after the allotment and sent a demand letter dated 21.5.1988

informing the allottee that the final cost of the LIG House No.49 was Rs.34,770/- as against the tentative price of Rs.18,000/- and called upon the allottee to remit the difference in cost of Rs.16,770/- (plus Rs.351 payable to the municipal corporation) on or before 30.06.1988. The allottee was required to pay the said amounts on or before 30.06.1988, failing which the amount due would carry interest at 14%/13% per annum from 1.7.1988. The Board also clarified that the increase in the cost was mainly on account of payment of increased compensation for the acquisition of land.

5. Feeling aggrieved, the society, acting on behalf of its members who were the allottees of the LIG houses, filed an appeal before the state government challenging the said demand. The appeal was dismissed by order dated 31.10.1991. The society thereafter filed WP No.15635 of 1991 for quashing the appellate order dated 31.10.1991 of the state government and sought a direction to the Board not to demand from its members, any increase in price as demanded in May 1988. The society contended that having regard to clause 17 of the lease-cum-sale agreement, the final cost had to be determined within three years from the date of allotment; that such a determination not having been done, the tentative price of Rs.18,000/- should be deemed to be the final price; and that the Board could not make a demand for increase in price, after expiry of 12 years. Alternatively, it was submitted that in the event of the court holding that the Board could demand the increase in cost, that should be only in respect of the land cost component and not with reference to the components relating to cost of development and cost of construction. It was lastly contended that the amount determined and demanded by the Board as the final cost was excessive and the Board had failed to justify the final cost demanded by giving any break up or particulars of the claim.

6. The Board resisted the petition contending that the final price was determined with reference to the cost of the

A acquisition of the land and the cost of development and cost of construction. It stated that the delay in finalizing the final cost was on account of the pendency of dispute raised by the land owners in regard to increase in compensation for the acquired land and on account of encroachments over part of the acquired
B land. It contended that the final cost was based on actuals and it was not excessive. It was submitted that only a few of the LIG Houses and flats were allotted to the members of the society and the remaining houses were allotted to its own employees and to members of public; and that except 55
C allottees, all others had remitted the amount demanded.

7. A learned single judge of the High Court by order dated 29.4.1999 allowed the writ petition and quashed the appellate order dated 31.10.1991 of the state government and the demand by the Board for increase in price. The Board filed a
D writ appeal challenging the order of the learned Single Judge.

8. During hearing before the division bench, both sides filed calculation sheets showing the cost of acquisition and the consequential increase in the cost of the LIG house. As per
E the calculation sheet filed by the society, the balance payable by each allottee towards increase in land cost was Rs.8634/- per plot of 1040 sq.ft. (after adjusting Rs.3000/- paid as initial payment and Rs.500/- paid as EMD) and the interest payable thereon from 17.4.1985 to 6.11.1991 was Rs.5148/- in all
F Rs.13,782/- towards increase in land cost and interest as on 30.11.1991. The society alleged that the Board had indicated at the time of allotment, that the tentative price of Rs.18000 was made up of Rs.3000/- towards land cost and the balance towards development cost and construction; and that as no
G increase in regard to development cost/construction was notified to the allottees, within three years of allotment, the price component towards development/construction (which according to the society was Rs.15,000/- out of a total price of Rs.18,000/-) attained finality under clause 17 of the agreement. It was submitted that the amount payable by an
H

allottee to the Board on account of the increase in cost of land was Rs.13,782/- plus interest at 9% per annum on Rs.8,634/- from 1.12.1991 to date of payment.

9. On the other hand, the calculation sheet filed by the Board showed the total acquisition cost of the land (8 acres 38 cents) including interest upto 31.3.1987 was Rs.35,02,727.24. The Board contended that on that basis, the cost of land and development per ground (an area of 2400 sq.ft) was Rs.40,400/- and each allottee should pay the proportionate cost based on the actual sital area of the LIG House allotted to him and interest in addition.

10. The division bench its judgment dated 7.8.2007, held after referring to the two calculation sheets, that the interests of justice would be met if each allottee is directed to pay an additional sum of Rs.13,780/- towards the increased cost of the plot and Rs.5,148/- towards interest in all Rs.18,928/- as on 30.11.1991 with further interest at 9% per annum. The High Court assumed that all plots measured 1040 sq.ft. It did not indicate any reasons for arriving at the said amount nor did it record any finding as to the correctness of the calculations by the society and the Board.

11. Feeling aggrieved, the Board and the society have filed these two appeals. On the contentions urged, the following questions arise for our consideration :

(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?

Re. question (i)

12. The letter of allotment and the lease-cum-sale agreement enable the Board to take note of the cost of land, cost of development and amenities, and cost of the building to determine the final price. It is not in dispute that when the allotment was made in the year 1976, the layout was yet to be developed, the construction had not yet begun and the compensation for the acquired land was yet to be determined by the Land Acquisition Collector. The price indicated at the time of allotment was therefore purely tentative. The Board did not undertake the scheme as a commercial venture but on 'no loss-no profit basis', with a loan from HUDCO. Therefore obviously it has to pass on the liability for the entire cost to the allottee who opted to buy the LIG house under the scheme. The allotment was on lease-cum-sale basis and until the LIG House was conveyed in favour of the allottee, he continued as a lessee of the Board and does not acquire any ownership rights.

13. The reference to the period of three years in clause 17 was not intended to be prohibition upon fixation of final price thereafter. The work of development of an acquired land into a residential layout and construction of houses therein were expected to be completed within three years, but final determination of the claims for increase in compensation for acquired land was expected to take much longer. Clause 17 therefore provided that the final price will be decided within three years, subject however to further revision with reference to the land cost. If the Board completed the development of the layout and construction of houses within three years and if there are no pending claims, it is bound to fix the final price of the LIG house within three years from the date of allotment (even if the land acquisition cost had not been finalized) and if necessary, revise the final cost subsequently, after determination of land acquisition cost.

14. But where the development of the layout and construction of houses were not completed within three years from the date of allotment, the Board obviously could not determine the final cost within three years as neither of the three components (cost of land, cost of development and cost of construction) would be known to the Board. There is no term or provision in the contract that if the Board does not determine the final price within three years from the date of allotment, the Board would lose the right to determine the final price thereafter or that the tentative price would become the final price. If on account of delay in determination of compensation for land acquisition or delay on the part of the contractors in completing the development works or construction, or if there are any encroachments or if there are pending claims of contractors regarding development or construction, the Board would not be able to determine the final cost within three years. But that did not mean that the tentative cost would become the final cost in the absence of such a provision in the letter of allotment or lease-cum-sale agreement.

Re :question No.(ii)

15. The alternative submission of the society is that even if the price could be increased after three years, having regard to clause 17 of the lease-cum-agreement, what could be increased after three years is only the land cost component and not the cost of the development or building. Clause 17 states that except the fixation of price with reference to the compensation finally awarded by the courts, the board should fix the price of the LIG house after taking into consideration the development charges, cost of amenities and cost of buildings within three years from the date of allotment. If the final price is so fixed, thereafter what could be increased is only the land cost component on account of any increase in compensation that may be awarded by the courts. If the board had earlier fixed the final price, the society's contention might have merited acceptance as the component of price with reference to cost

A of development and amenities and cost of building would have attained finality on account of such final determination and only the increase on account of award of compensation for land could be demanded after such determination of final price. But where the final price has not been determined at all, for B whatsoever reason, and the final cost was being determined for the first time, the allottee cannot contend that only the increase on account of the land, and not the increase on account of development cost and construction cost, could be demanded. Where the final price has not been fixed, the Board C could, after ascertainment of various costs, determine the final price even after three years, and the finality in regard to cost of development and amenities and the cost of construction, referred under clause 17, would not apply.

16. It is not in dispute that the compensation in regard to D the land was pending in courts and was finally determined in or about 1985. It is also not in dispute that development work could not also be completed as a portion of the acquired land was under encroachment. Therefore it is not possible to say that when the final price was fixed in the year 1988, it could be E only with reference to increase on account of land and not with reference to increase in the development cost or construction cost. The demand letter dated 21.5.1988 of the Board clearly states that the increase in price demanded was mainly due to increase in compensation for the land paid by the Board and F only a small portion of the increase was under the other heads.

Re: question No.(iii)

17. The High Court, we find, has not appreciated the controversy in the correct perspective nor decided the matter G in issue. The finding of the learned single judge that the Board is not entitled to any increase is contrary to the terms of allotment. The letter of allotment and the lease-cum-sale agreement make it clear that the price mentioned in the letter of allotment was only tentative and final price was to be H determined taking into account, the final cost of acquisition,

cost of development and amenities, and cost of the building. The fact that, subsequent to the allotment of the LIG Houses and execution of lease-cum-sale agreements, the land acquisition cost increased substantially was not in dispute. Similarly, if there was any increase in the actual cost of development/construction the allottees had to bear it. The Board could not be made liable to bear the extra cost as it was operating on 'no-profit, no-loss basis' and had obtained a loan from HUDCO to execute the scheme. The division bench referred to the contentions of the parties and extracted the calculation sheets filed by both parties, but did not pronounce upon the correctness of the same. It neither accepted nor rejected the calculation sheets filed by the Board and the Society. The sum of Rs.13,780/- found by it to be increase in cost and Rs.5,148/- as interest, were apparently borrowed from the calculation sheet filed by the Society. But as per the calculation sheet of the society the increase in land cost (over and above the deposit of Rs.3500/-) was Rs.8,634/- and interest upto 30.11.1991 was Rs.5148/-, the total being Rs.13,782/-. The High Court however wrongly assumed that as per the calculation sheet of the Society, the increase in the cost of the plot itself was Rs.13,782/- (rounded of to Rs.13780/-) and the interest of Rs.5,148/- was in addition to Rs.13,782/- and direct such payment. This is without any acceptable basis.

18. The cost of a house constructed by a development authority or Housing Board has the following three components: (a) the cost of the plot; (b) the proportionate share in the cost of development and amenities (like water, electricity, sewage disposal etc.) and (c) cost of construction of the house. Where the construction is taken up in a developed layout, and not in an undeveloped land, item (b) will not be an independent component, but be a part of item (a).

19. If a development authority or board acquires a large tract of land and develops it for residential purposes and forms plots in a portion thereof for construction of houses, utilises

another portion for construction of multi-storeyed apartment buildings and uses the balance for development works like roads, drains, parks, open spaces apart from earmarking some areas for site office/electrical sub-station/police station, etc., then what is chargeable to the allottee of a plot or a house, is not only the cost of the plot area, but also the cost of the proportionate share in the common areas, used for development and amenities and the cost of the development.

20. We may illustrate. If 5 Hectares (50000 sq.m.) of land is acquired for formation of residential plots each measuring 250 sq.m., it is not possible for the authority to carve out 200 plots (each measuring 250 sq.m). This is because, not less than 25% to 30% of the total sital area will be used up for forming roads, footpaths and drains. Another 10% to 20% may be used for common facilities and amenities like park, playground, community hall etc. The common/service areas are not saleable and the board will have to recover the cost thereof by loading the proportionate cost thereof, on the cost of the residential plots. Therefore if 40% is the area used for roads, drains, parks, playgrounds etc., the saleable area or area that can be used for forming plots would be only 60% and the cost of the total land 50000 sq.m. will have to be recovered from the sale of the said 60% area (30,000 sq.m.) which can be carved into 120 plots of 250 sq.m. If the total value of 5 hectares is Rs.60 lakhs, the value of a plot of 250 sq.m. will not be Rs.30000/- (that is Rs.60 lakhs divided by 200) but Rs.50,000/-(that is Rs.60 lakhs divided by 120). An allottee of a plot measuring 250 sq.m. cannot therefore contend that he is liable to pay only the actual proportionate cost of 250 sq.m. of land out of 50000 sq.m. The proper method is to calculate the total common/ service area (used for roads, drains and common amenities) and include the proportionate cost thereof in the price of the plot.

21. 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. In *Preeta Singh* vs. *Haryana Urban Development Authority* – 1996 (8) SCC 756, this Court held :

> "It is to be remembered that the respondent HUDA is only a statutory body for catering to the housing requirement of the persons eligible to claim for allotment. They acquire the land, develop it and construct buildings and allot the buildings or the sites, as the case may be. Under these circumstances, the entire expenditure incurred in connection with the acquisition of the land and development thereon is required to be borne by the allottees when the sites or the buildings sold after the development are offered on the date of the sale in accordance with the regulations and also offered on the date of the sale in accordance with the regulations and also conditions of sale."

The calculation sheet of the Society which works out the cost of land with reference to the actual size of the plot ignoring the proportionate share in the cost of the common/service areas (roads, drains, etc.) and the development cost, is therefore liable to be rejected.

22. 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 high court and this court. Sometimes the entire process may take 10 to 15 years and till that process is

A 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. Similarly cost of developing of land into residential area requires coordination with different contractors engaged for laying roads, laying drains, developing parks and B 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 C be encroachments, which will have to be removed which apart from being time consuming and involving litigation, delay the development and finalization of cost of development. As a consequence, the development cost may also shoot up beyond the estimate on account of delays, additional claims of D contractors, litigations and other factors. The same applies to the cost of construction of the houses also. 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 E 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 F ground of delay.

23. On the other hand the authority or Board should also be diligent. Allottees belonging to low income groups should not be made to suffer for the defaults or negligence on the part G of the staff of the authority. They should take prompt steps to settle claim regarding compensation. They should also be prompt in executing the development works and construct work. They should ensure that the cost is kept to the minimum. If any allottee approaches court and is able to demonstrate that the H development and construction work was completed within three

years, but the authority failed to fix a final cost, it may be possible to infer that there was no increase from the tentative cost and therefore the final cost was not fixed and therefore the tentative cost should be the final cost. Be that as it may.

24. 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. 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.

It is open to the allottee to apply for the particulars and have it verified independently, before rushing to court.

25. Let us now examine whether the amount claimed by the board in this case is excessive. As noticed above in regard to a plot measuring 1000 sq.ft. with a residential house measuring 361 ft. the board had indicated the tentative price

as 18000 in the year 1976. After the compensation for land was decided by courts and after carrying out the development work and construction, the board determined the final cost as Rs.34,770 in the year 1988 and demanded the difference of Rs.16,770/-. The question is whether this claim is excessive.

26. We find that the allottees/society do not dispute that the cost of the land increased considerably on account of enhancement of compensation. The board showed that the total cost of land inclusive of interest upto 31.3.1987 was Rs.35,02,727 for 8 acres and 16422 sq.ft. The said figure was broadly accepted by the society, in its calculation sheet. The society arrived at the cost of a plot measuring 1040 sq.ft. as 3500 (paid as deposits) plus Rs.8634/- which aggregates to Rs.12,134. But as noticed above, this is the proportionate cost worked out for 1040 sq.ft. out of the total cost of an extent of 33,64,902 sq.ft. (8 acres and 16422 sq.ft.). It is not possible for the allottee to contend that he will pay only the proportionate actual cost of his plot. If the cost of the plot has to be worked out, the cost relating to proportionate share in the common/ service areas (roads, parks, playgrounds etc.) should be added. That means at least addition of another 40% to the price worked out for the actual extent of the plot. With reference to the cost worked out by the society, if 40% is added, the increased cost of plot would be around Rs.16,987.60. According to the society the original tentative cost for the plot was Rs.3,000. Therefore the increase in cost would be around 14,000. What is demanded as additional amount is Rs.16,770. The difference is hardly 2770 which may be attributable to the increase in the cost of development/ construction. It cannot therefore be said that the amount claimed under the demand notice dated 21.5.1988 is excessive or unreasonable. Neither party has given the full data or facts or accounts. The allotment was made 35 years back. No purpose would be served by remitting the matter for re-examination. On the facts and circumstances, we are satisfied that the demand is not open to challenge.

27. The only aspect that required to be corrected is the rate of interest. The demand notice dated 21.5.1988 claims interest at the rate of 13% or 14% per annum on the outstanding with effect from 1.7.1988 which is contrary to the provisions of contract. The board will be entitled to only simple interest at 9% per annum. The Division Bench of the High Court has already held that the interest should be only at 9% per annum.

28. We accordingly allow the appeal filed by the Board in part and dismiss the appeal filed by the society. We uphold the demand for increase in price on account of final cost made by the board but confirm that the interest payable on the increase should be only 9% per annum as directed by the High Court. The Board will now calculate the amounts due accordingly and after giving credit to the amounts already paid, demand only the balance due. The respective allottees who are members of the society, shall be permitted to pay the same in six quarterly instalments. If there is any error in arithmetical calculations, it is open to the respective allottee to point out the same to the Board for its consideration.

N.J. Appeal allowed.