

SUPREME COURT OF INDIA

Chairman & M.D., T. Nadu Housing Brd.

Vs.

S. Raghavan

C.A.No.1805 of 2007

(R.V.Raveendran and Dalveer Bhandari JJ.)

02.09.2008

ORDER

1. These appeals by the Tamil Nadu Housing Board ('Board' for short) by special leave are directed against the common order dated 16.10.2006 made by the Madras High Court, allowing in part the writ petitions filed by the respondents (allottees of flats/houses). The said writ petitions were filed challenging the determination of the final cost of the land, capitalization charges and interest in regard to Ellisnagar Housing Board Scheme and the consequential demands made by the appellant Board in the years 2001 and 2002. The said demands were based on the final land cost determined by the Board as Rs.6,32,630/- per ground as also the capitalization amount charged, as per GO (MS) No.63 dated 2.2.2001. The allottees had also sought a direction to the Board to execute deeds of conveyance in their favour, on receipt of the amounts legally due.

2. After a detailed consideration of the long-standing disputes between the Board and the allottees, in the light of calculations furnished by the Board, and decisions taken by the Board during the pendency of earlier legal proceedings on the suggestions of Lok Adalat, the High Court disposed of the writ petitions with following directions:

“(a) The allottees (petitioners in the writ petitions) will pay the final land cost at the rate of Rs.349100/- per ground with 5% nominal profit. The actual amount determined by the appellant in respect of each allottee shall be paid together with interest as per the rate set out in the agreement from 21.5.2004 till date of payment.

(b) The capitalization charges will be determined for the period from the date when flat or house was made ready for occupation till date of allotment for occupation and such amount will be indicated separately. The interest on such amount will be payable from 21.5.2004.

(c) If the Housing Board has not intimated the allottees about the capitalization charges so far, it is open to the Housing Board to specify the amount as stated in clause (b) and demand the same with interest from 21.5.2004.

On complying with the above directions and satisfying any other requirement as per law, the allottees who have prayed for execution of sale deeds in their favour are entitled to get the sale deeds executed.”

3. The Appellant Board had contended before the High Court that the interest on the difference in land cost should be from the date of allotment.

“On the other hand, the allottees had contended that liability to pay interest would arise only from 21.5.2004 when the final cost was determined. The High Court accepted the contention of the allottees and directed that interest should be claimed only from 21.5.2004 -- the date of determination of the final cost. The appellant is aggrieved by the restriction of liability of allottees in regard to interest from 21.5.2004 instead of the respective dates of allotment.”

4. The Board also stated that it had borrowed funds from financial institutions for construction; that in regard to the allotments made after the cut off date, (the date up to which interest is charged while fixing/approving the selling price under the scheme), the Board had capitalized the interest on the cost of construction only till the cut off date; and that the Board was therefore entitled to further capitalization amount from the cut off date to the date of allotment or 'ready for occupation date', whichever was later.

“But the High Court however directed that the capitalization amount should be charged only for the period from the date when the flat/house was made 'ready for occupation' till the 'date of allotment'. The Board contends that the capitalization amount claimed in accordance with its standard practice ought to have been accepted by the High Court.”

5. When the matter was heard for some time on 27.8.2008 and the issues were crystalised, both counsel took time to ascertain whether the long drawn multi-round litigations could be put an end by modifying the direction of the High Court in regard to interest on the difference in land cost, by altering the date of commencement of interest as 1.1.2001 instead of 21.5.2004, having regard to the fact that interest upto 31.12.2000 had been taken into account while calculating the land cost as on 31.12.2000 as Rs.349100/- per ground.

6. When the matter came up today, both counsel submitted that the parties were agreeable for modification of the date of commencement of interest as 1.1.2001 instead of 21.5.2004 with reference to the final land cost of Rs.349100/- (with 5% profit) per ground as on 31.12.2000.

7. In regard to capitalization, it was submitted on behalf of the Board that the standard procedure adopted for arriving at the price for all schemes of the Board, where the allotment was made after the cut off date was to add capitalization charges on the cost of construction (that is, approved selling price less land cost, profit and collection charge) from the 'cut off date' to date of allotment or ready for occupation date whichever was later. It was submitted that in Ellisnagar Scheme, all allotments were made after the cut off date, but the aforesaid procedure of adding capitalization charges was not followed in arriving at the selling price;

and that therefore, later on, based on the GO dated 2.2.2001, the capitalization amount and interest thereon from allotment date was intimated to the allottees. It was contended that the standard method of capitalization adopted by the Board ought not to have been disturbed by the High Court and that the decision will affect the right of the appellant-Board to capitalize the interest component on the cost of construction, under other schemes.

8. We have carefully considered the contention regarding capitalization.

“We find that on the peculiar facts of these cases, the High Court has directed that the capitalization should be done only from the date when the flat/house was made ready for occupation till date of allotment, instead of from the cut off date. On the facts and circumstances of the Ellisnagar scheme, it may not be necessary to modify the direction relating to the manner of calculation of capitalization charges. As the capitalization directed by the High Court is with reference to the special facts of the scheme and its implementation, the various orders of High Court passed from time to time in various litigations, and the Lok Adalat negotiations and broad understandings, the said direction regarding the manner of calculating capitalization charges, will not be a precedent for any other scheme where the Board has adopted or proposes to adopt the standard method of capitalization. The interest payable by the allottees on the capitalization amount shall however be with effect from the date of GOM No.63, dated 2.2.2001 and not 21.5.2004.”

9. We accordingly dispose of these appeals by making the following modifications to the operative part of common order dated 16.10.2006 of the High Court :

(i) In Para 25(a), the date `1.1.2001' should be substituted for `21.5.2004'.

(ii) In Para 25(b) and (c), the date `2.2.2001' shall be substituted for `21.5.2004'.

(iii) To substitute the following in place of last sub-para of Para 25 :

10. The Board shall intimate the respondents-allottees, the amount due by them as per the order of the High Court as modified above, within three months from today. The respondents - allottees shall pay the amount so demanded within three months of the date of demand. On payment of the amounts due by the allottee, the Board shall execute the deed of conveyance in favour of the allottee. No costs.