

**SUPREME COURT OF INDIA**

Kerala State Housing Board

Vs.

Kerala State Housing Board, Nellikode Housing Colony Allottees Assn.

C.A.No.7835 of 2011

(R.V.Raveendran and A.K.Patnaik JJ.)

14.09.2011

**ORDER**

**A. K. PATNAIK, J.**

1. Leave granted.

2. Civil Appeal arising out of S.L.P.(C) No.10580 of 2006 is against the judgment dated 28.02.2006 in Writ Appeal No.1760 of 2004 of the Division Bench of the Kerala High Court. Civil Appeal arising out of S.L.P.(C) No.21478 of 2008 is against the order dated 13.06.2008 in Writ Appeal No.1968 of 2007 disposing of the Writ Appeal in terms of the judgment dated 28.02.2006 in Writ Appeal No.1760 of 2004. Civil Appeal arising out of S.L.P.(C) No.21817 of 2008 is against the order 13.06.2008 in Writ Appeal No.1940 of 2008 disposing of the Writ Appeal in terms of the judgment dated 28.02.2006 in Writ Appeal No.1760 of 2004. These three appeals are being disposed of by this common order as common questions of fact and law arise in the appeals.

3. The facts very briefly are that in the years 1984 and 1985 land was acquired for allotment of plots under the Chevayur Housing Scheme and the Nellikode Housing Scheme respectively undertaken by the Kerala State Housing Board (for short `the Board'). The landowners did not accept the compensation offered for the acquired land and sought a reference to the Civil Court under Section 18 of the Land Acquisition Act, 1894. While the dispute in regard to quantum of compensation was pending, the Board entered into agreements of sale with various allottees of the plots of land during the years 1988-1990 and made a provision therein that the Board shall be entitled to re-fix the final price of the property agreed to be sold to

the allottees taking into account inter alia the enhanced compensation awarded by the Courts and Tribunals and that the decision of the Board in fixing the revised price of the property shall be conclusive and final. It was also expressly agreed in the agreements of sale that after finalization of the price of the property agreed to be sold by the Board, the allottee shall pay to the Board together with interest at the rate of 15% per annum, the difference between the tentative price fixed and the price finally fixed for the property by the Board within thirty days of the date of a registered notice demanding the payment thereof or in such quarterly installments over a period not exceeding two years to be determined by the Board. After the reference cases were finalized and disposed of in the year 1997, the Board deposited the enhanced compensation with interest, but did not promptly serve the demand notices on the allottees for payment of the difference between the tentative price and the final price with interest and it was only in the year 1999 that the Board served the notices on the allottees to pay the said difference with interest at the rate of 15% per annum.

4. The allottees then filed Writ Petitions before the Kerala High Court and the learned Single Judge passed orders refusing to interfere with the claim of interest on the enhanced amounts of compensation on the differential amount till 1997 when the references were finally disposed of by the Court and the Board deposited the enhanced compensation with interest. The learned Single Judge, however, found that individual account statements giving the relevant details and calculations of the amounts demanded had not been served on the allottees and held that this was on account of the lethargy of the officials of the Board and, therefore, the Board was not entitled to any interest on the differential amount from the allottees for the period from 1997 till the date of service of individual account statements on the allottees.

5. Aggrieved by the orders of the learned Single Judge, the Board filed Writ Appeals before the Division Bench of the Kerala High Court and by the impugned judgments and orders the Division Bench dismissed the appeals. In the impugned judgments and orders, the Division Bench of the High Court agreed with the view taken by the learned Single Judge that the Board was not entitled to claim any interest and that too at the rate of 15% per annum for the period from the date of deposit of enhanced compensation in 1997 till the date of service of the individual account statements saying that the Board cannot punish the allottees for its own lethargies. Aggrieved, the Board is in appeal before us.

6. Learned counsel for the appellant-Board submitted that there was a clause in the agreements of sale executed between the Board and the allottees that after

finalization of the price of the property agreed to be sold by the Board, the allottee shall pay to the Board together with interest at the rate of 15% per annum, the difference between the tentative price fixed and the price finally fixed for the property by the Board within thirty days of the date of a registered notice demanding the payment thereof or in such quarterly installments over a period not exceeding two years to be determined by the Board. He submitted that it was only in the year 1998 that the price was finalized and the demand notices were served in the year 1999 on the allottees to pay the difference between the tentative price and the final price together with interest at the rate of 15% per annum as per the aforesaid clause in the agreements. He further submitted that till the allottees paid the difference between the tentative price and the final price, they retained the differential amount with them and made use thereof while the appellant-Board was deprived of the use of the money. He relied on the decision of this Court in Chandigarh Housing Board, Chandigarh v. K.K. Kalsi Ors. [(2003) 12 SCC 734] wherein it has been held that in such cases where the allottees have retained the money with them and made use thereof while the Board has been deprived of the use of the money, it will be equitable for the allottees to pay a reasonable interest to the Board on such money.

7. Learned counsel appearing for the respondents, on the other hand, supported the orders of the learned Single Judge and the impugned judgment and orders of the Division Bench of the Kerala High Court contending that there was no justification whatsoever for the appellant-Board to claim any interest on the differential amount between the tentative price and the final price from 1997 till the date of service of individual account statements on the allottees.

8. We have considered the submissions of the learned counsel for the parties and we find that the reason why a clause in the agreements of sale executed by the Board and the allottees for payment of interest at the rate of 15% per annum on the differential amount between the tentative price and the final price of the land allotted to the allottees was inserted was that in the proviso to Section 34 of the Land Acquisition Act, 1894 it is provided that if the compensation for the acquired land or any part thereof is not paid or deposited within a period of one year from the date on which possession of the acquired land is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. Since references under Section 18 of the Land Acquisition Act, 1894 were pending in the Civil Court when the agreements of sale were executed by the Board and the allottees, a stipulation had to be made in the agreements of sale that as and when the Court

finally determines the compensation and the Board becomes liable to pay enhanced compensation, the Board will have to deposit not only the enhanced compensation but also interest at the rate of 15% per annum on such enhanced compensation. If this was the purpose of the clause in the agreements of sale between the Board and the allottees, once the compensation was finalized by the Court and the enhanced compensation was paid or deposited in the year 1997, the Board was not liable for any interest under the proviso to Section 34 of the Land Acquisition Act, 1894 from the date of such payment or deposit. Since the purpose of stipulating the rate of interest of 15% per annum was to take care of the liability on the enhanced compensation provided in the Land Acquisition Act, 1894 and not to enrich the Board by recovery of high rate of interest from the allottees, we agree with the view taken by the High Court that the Board was not entitled to interest at the rate of 15% per annum on the difference between the tentative price and the final price after the finalization of the compensation and payment or deposit of the enhanced compensation by the Board in the year 1997.

9. We, however, do not think that the High Court was right in taking a view that the appellant-Board was not entitled to any interest for the period from the date of payment or deposit of the enhanced compensation in 1997 till the date of service of individual account statements on the allottees. The relevant clause in the agreements of sale requires the Board to serve only a notice of demand on the allottee and such notice of demand must obviously indicate the tentative price and the final price as determined by the Board and the differential amount between the tentative price and the final price, which the allottee was required to pay along with interest. The clause did not stipulate that the individual account statements giving the details and calculations as enumerated in the orders of the learned Single Judge were also required to be served on the allottees by the Board. It is not disputed that notices of demand were served on the allottees not immediately after finalization of the compensation by the Court and payment or deposit of the enhanced amount by the Board in the year 1997, but after a period of more than an year some time in 1999. During the period the allottees did not make payment of the differential amount between the tentative price and the final price, they retained the differential amount in their hands and used the same and the Board lost the opportunity to utilize this for its activities, the Board would be entitled to interest on the differential amount at a reasonable rate as has been held by this Court in Ors. (supra). In our considered opinion, interest at the rate of 8% per annum on such differential amount between the tentative price and the final price would be reasonable, which the allottees must pay to the Board.

10. We accordingly set aside the order passed by the learned Single Judge and the impugned judgment and orders of the Division Bench of the High Court and dispose of the Writ Petitions of the respondents with the direction that the respondents will be liable to pay interest to the appellant-Board on the differential amount between the tentative price and the final price at the rate of 8% per annum from the date of deposit or payment of the enhanced compensation by the Board in 1997 till payment of the differential amounts by the allottees. The appeals are allowed to the extent indicated above with no order as to costs.