

Allottee's Ser. Manger. T. Nadu Hng. BD. & Others

v.

R. Chinnathambi

(Supreme Court Of India)

HON'BLE MR. JUSTICE DEEPAK VERMAAND HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

Civil Appeal No. 1481 Of 2012 (Special Leave Petition (Civil) No. 6588 Of 2009) | 02-02-2012

1. Leave granted.

2. Mr. Guru Krisna Kumar, Additional advocated General for the Stated of Tamil Nadu with Mr.B Balaji, appeared for Appellants & Mr.S.Nanda Kumar, learned counsel appeared for the Respondent.

3. Appellant/Tamil Nadu Housing Board & others are before us, against the judgment & order passed by Division Bench of the High Court of Madras in Writ Appeal No.684 of 2002, decided on 10.04.2008, preferred by Respondent herein.

4. Respondent, a Government employee, serving as a doctor in the government General Hospital was allotted a flat No.H102/G1 in 80 HIG 'C' type House, Valmik Nagar, Thiruvanmiyur Extension, Chennai, at Appellant No.1 vide communication dated 26.02.1998, under 'Hire Purchase System'. The said allotment was cancelled on deposit 10%, as Respondent had filed to deposit 10% of the amount of total cost of the flat worked out by Appellant No. 1 at Rs.8,47,200. As per the conditions Imposed by Appellants for allotment of the flat, he was supposed to have deposited 10% of the aforesaid amount within 21 days form the date of issuance of allotment letter to him. He failed to deposit the said amount. Thus, Appellants had cancelled the allotment to the Respondents on 11.11.1998.

5. On 05.5.1998, he made a prayer to the Appellants for changing the location of the flat to ground floor on account of personal difficulties. By 15.3.1998 the period of 21 days as granted to the Respondent for depositing the amount by the Appellants had already expired. Thereafter, Respondent deposited a sum of Rs.15,200 on 05.5.1998, further amount of Rs.30,492 on 25.11.198 & another sum of Rs. 27,017 on 14.12.1998. The total of the aforesaid amount would not come to 10% of he amount required to be deposited by Respondent. But the aforesaid dates would reveal that subsequent two deposits were made by Respondent with the Appellants, after cancellation of the allotment, with the Appellants, after

cancellation of the Appellants, after cancellation of the allotment of 11.11.1998. The Appellants had accepted the said amounts.

6. According to the Appellants, Respondent was a chronic defaulter & had not paid the amounts which were falling due but still approached the Court trying to take an advantage of various circulars issued by the State Government from time to time even though he was not entitled to get the benefits thereof.

7. It is not in dispute that Respondent had furnished all other details which were required to be furnished by him except that he committed defaults in payment of the initial amount & the installments falling due thereafter.

8. Respondent filed a Writ Petition before learned Single Judge for directing the Appellants to hand over the possession of the flat or return the amount paid with interest. The Appellants contested the Writ Petition before the learned single judge & submitted that the Government Orders of which the Respondent is trying to take advantage of, would not be applicable to him as his allotment was much prior in point of time. After considering the matter from all angles, learned Single Judge was of the opinion that no case for interference was made out, thus, he proceeded to dismiss the Respondent's Writ petition.

9. Feeling aggrieved therefor, Respondent filed aforesaid Writ Appeal, before Division Bench of the High Court. The Division bench with an intention to work out equities between the parties, granted relief to the Respondent & set aside the impugned order passed by learned Single Judge.

10. The operative part of the impugned order passed by Division bench reads as under:

(i) The Respondent are directed to consider the case of the appellant/Writ petitioner as per G.O.M.S. No.174, Housing & Urban Development Department dated 07.01.1991 & the Housing Board Memo in 1-3/8028/91 date 20.04.1992. & also as per G.O.Ms No.29 dated 22.01.2001 & fix the cost of the flat & the interest liable to be paid by him & pass appropriate order within a period of six weeks from the date of receipt of a copy of this order.

(ii) the respondents shall calculate the amount which is liable to be paid by the appellant/writ petitioner for Hire Purchase on the basis of the A & B Certificate issued by the respondent dated 21.05.1998 for the eligibility to avail the House Building Advance which was already granted for out-right purchase of the flat. The calculation shall be made in the presence of the appellant/writ petitioner, after an intimation to him;

(iii) After arriving the calculations, the appellant/writ petition is granted a time of four to make the payment & the respondent Board shall executed the sale deed in his favour within four weeks thereafter.

11. Pursuant to the order passed by Division Bench of the High Court, the Appellants here after calculating the amounts payable by Respondent issued a letter to him on 16.5.2008, asking him to pay the balance cost of Rs. 17,98,592 excluding the payments already made by him for the said flat. Admittedly, Respondent did not comply with the said direction.

12. The Appellant thereafter issued yet another letter to him 22.8.2008 giving him one more opportunity to pay a total amount of Rs. 26,73,106 by or before 31.8.2008, so as to enable him to get the Sale Deed executed in his favour. Respondent did not comply with this order also.

13. In the light of the aforesaid facts & features of the case, we have heard learned counsel for the parties at length & perused the record.

14. We are of the considered opinion that in the given facts & circumstance of the case & keeping in mind the fine gesture of the Appellants, where on account of pendency of the aforesaid matter, they have kept one flat vacant because of this litigation, & Respondent has since retired with effect from 31.1.2011, we deem it fit & proper that the Appellants may consider to allot the said flat to Respondent only. The question that arises for consideration is as to the what rate Respondent should be asked to pay interest to the Appellants.

15. We have been given to understand that in the letter dated 16.5.2008 issued to the Respondent after pronouncement of the impugned judgment by the Division Bench, the rate of interest was calculated only at 18% on the amounts due & payable by Respondent & it did not have an element of penal interest. But in the letter issued on 22.8.2008, when a sum of Rs.26.73.106 was demanded from the Respondent, it also had an element of penal interest in it. Thus, we see the within a short period of three months, there has been a steep increase in the amount required to be paid by Respondent on account of inclusion of penal interest in it.

16. As mentioned hereinabove, solely, with an intention to work out equities between the parties & not to put either of the parties to irreparable injury, loss or harm, in our considered opinion, interest at the rate of 12% per annum may be charged by the Appellants from the Respondent without penal interest. A fresh demand be made by the Appellants after re-calculation at the aforesaid rate of interest to the Respondent & he be called upon to make the

payment of at least 10% of the total amount due, within a period of 15 days from the receipt of the said demand, the balance of the 90% of the amount due would be payable by him positively within a period of six months. From the date of the demand. No further latitude can be made to make the payment either of the first instalment of the balance of the 90% of original demand within a period of six months, as a necessary consequence whereof, the allotment of flat in favour of the Respondent would automatically stand cancelled.

17. Since more than ten years have passed ever since the flat was allotted to the Respondent, he is also called upon to satisfy the other norms which were fixed by the Appellants for the allotment of flats to the allottees.

18. Once the full amount has been deposited by the Respondent with the Appellants as a necessary consequence thereof, the Appellants would execute the sale deed of the said flat in favour of the Respondent within a period of 15 days thereafter.

19. Needless to say that possession of the said flat would be delivered to Respondent only after he has made full payment to the Appellants.

20. With the aforesaid directions this Appellant stands allowed to the above extent, & the order of Division Bench & the learned Single Judge stand modified. Parties to bear their respective costs.