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**Court :** Andhra Pradesh

**Decided On :** Apr-10-2007

**Reported in :** 2007(3)ALD779

**Judge :** L. Narasimha Reddy, J.

**Acts :** Land Acquisition Act - Sections 18; Andhra Pradesh Housing Board (Allotment, Management and Sale of MIG/LIG Houses) Regulations, 1975 - Regulations 23, 23(2) and 23(3)

**Appeal No. :** WP Nos. 8256 and 8963 of 2000

**Appellant :** S. Muddu Krishna and ors.

**Respondent :** Executive Engineer (Hg), A.P. Housing Board and ors.

**Advocate for Def. :** P.V. Sanjeeva Rao, SC

**Advocate for Pet/Ap. :** D. Sudhakar Rao, Adv.

**Judgement :**

**L. Narasimha Reddy, J.**

1. The questions involved in both the writ petitions are one and the same. Hence, they are disposed of through common judgment.
2. W.P. No. 8 256 of 2000 was filed, initially by 12 petitioners. At various stages, Petitioner Nos. 1, 3, 4, 6, 7 and 10 have withdrawn. W.P. No. 8 963 of 2000 was filed by 4 petitioners, and petitioners 3 and 4 therein, have withdrawn.
3. Petitioners are allottees of houses, constructed by the A.P. Housing Board, at Vizianagaram. The allotment was done through drawal of lots, and the allottees were inducted into possession, after the construction was completed. By the time the allottees were inducted into possession, the cost of the buildings was not finally determined. On the basis of tentative cost, arrived at by the respondents, installments were fixed, and the petitioners are paying the same, from time to time. The respondents issued letters of demand dated 11-3-2000, signed on 12-4-2000, requesting the petitioners to pay the amounts specified therein, being the difference between final cost and tentative cost. Petitioners assail the same on several grounds. Their principal contention is that the impugned notice is violative of Regulation 23(2) of the A.P. Housing Board (Allotment, Management and Sale of MIG/LIG Houses) Regulations 1975, (for short 'the Regulation'), inasmuch as it was issued beyond the period stipulated therein. Other contentions are also urged.
4. Respondents 1 and 2, on the one hand, and respondent No. 3, on the other hand, filed counter-affidavits. On behalf of the Housing Board it is stated that, final cost of the buildings could not be determined, on account of the uncertainty, that prevailed as to the cost of the land, acquired for the purpose of the project, and the pendency of claims of the contractors. It is stated that the 3rd respondent had accorded permission for the determination, which was made beyond two years, from the date of delivery of possession. The 3rd respondent is, almost a formal party, and there is no serious opposition from it.
5. Sri D. Sudhakara Rao, learned Counsel for the petitioners, emphatically argued that Regulation 23 has a definite purpose to serve, and it prescribes the limitation of two years for determination of the final cost of the buildings, without permission of the Government, and it does not provide for ex post facto permission. He contends that the action of the respondents 1 and 2, in issuing the impugned

notice, is arbitrary and cannot be sustained in law.

6. Learned Standing Counsel for the respondents 1 and 2, and learned Government Pleader for respondent No. 3, on the other hand, submit that the object underlying Regulation 23(2) is, to enable the Government to have control on the acts and omissions of the Housing Board, and the same does not confer any right on the petitioners. They contend that the petitioners cannot be said to have suffered any detriment on account of the delayed determination of the final cost.

7. The fact that the petitioners are allottees of the respective houses, and that they have paid the tentative cost of the buildings, determined by the respondents 1 and 2, is not in dispute. There is no controversy that respondents 1 and 2 did not determine the final cost, by the time the petitioners were inducted into possession of the buildings. It took more than a decade, for the respondents, to determine the final cost of the buildings. Strong reliance is placed upon Regulation 23(3), while assailing the impugned notices. The provision reads as under:

23(3): The final fixation of sale price should be done within two years from the date of allotment of the house. The said period may however be extended by Government in the case of such of the houses whose final cost cannot be fixed within two years prescribed, because the matters relating to land compensation to the payment of final bills to the Contractors are pending in the Court.

8. In the ordinary course, whenever any building is constructed, or other civil works are taken up, the final cost thereof, becomes evident, at the stage of completion of the work. However, the works undertaken by the Housing Board stand on a slightly different footing, in this regard. The reason is that, the uncertainty, as regards certain factors; continues even after the buildings are constructed. For example, the determination of compensation, payable for the land, that is acquired for construction of houses; is a long-drawn affair. While the constructions are undertaken, soon after the possession of the land is taken, the proceedings under the Land Acquisition Act, be it, in the form of an award enquiry, or reference under Section 18, or an appeal to the High Court, and in some cases to the Supreme Court, would be pending, even for decades. The cost of the land, would have a direct bearing on the cost of the building. It is only after the compensation payable

for the land is finally decided, that a clear picture would emerge about the cost of the building. Similarly, in certain cases, the estimates undergo changes due to variation of prices of the materials, such as cement and steel, and the claims made by the contractors, in this regard, need to be finalized. Even this picture would emerge quite sometime, after the completion of the construction.

9. Regulation 23(3) gives a margin of two years for determination of final sale price, from the date of the allotment of the house. It is not as if the determination thereafter, is prohibited. The only requirement is that the permission of the Government is to be obtained.

10. It is no doubt true, that respondents 1 and 2 issued demand notices, after determining the final sale price, without obtaining the permission of the Government, and that the same came to be withdrawn by them, after writ petitions were filed. Such withdrawal, however, does not take away the right of the respondents 1 and 2, to raise the demand, in accordance with law. The demands were issued after the Government accorded its permission. Government extended the period, beyond two years.

11. Much stress is laid upon the words 'ex post facto', used in the impugned notices. On a close examination thereof, it becomes evident that the expression superfluous. Once the Government is conferred with the power to extend the time, to determine the final sale price, beyond two years, and when there does not exist any ceiling on that, the petitioner cannot raise any objection. At any rate, the restriction placed through Regulation 23(3), is only for internal administration and control, and it does not have any bearing on the rights and obligations of the allottees of houses, on the one hand, and the A.P. Housing Board on the other hand. This much, however, can be said that, the Housing Board cannot penalize the allottees for the delay, on its part, in determining the final sale price. Therefore, this Court is not inclined to interfere with the impugned demand notices. The petitioners, however, cannot be burdened with interest, for the period, from the date of allotment, till the date of the notice.

12. For the foregoing reasons, the writ petitions are disposed of, upholding the determination of final cost of the houses of the petitioners, and directing that,

(a) The petitioners shall be liable to pay the difference between the final sale price and tentative sale price, and not the interest thereon, from the date of allotment, till the date of the demand, through the impugned notices.

(b) The petitioners shall deposit the difference of the sale price, within four weeks from today. In default, they shall be liable to pay the said amount, with interest at 7% per annum from the date of filing of the writ petitions, till the date of deposit.

(c) The Housing Board shall execute the sale deeds in favour of the petitioners within one month from the date of payment of the final cost, as indicated above.

13. There shall be no order as to costs.

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