

## **Chairman, Tamil Nadu Housing Board, ... vs T.N. Ganapathy on 7 February, 1990**

**Equivalent citations: 1990 AIR 642, 1990 SCR (1) 272, AIR 1990 SUPREME COURT 642, 1990 (1) SCC 608, (1990) 2 CIVLJ 685, (1990) 1 CURCC 493, (1990) 2 GUJ LR 852, (1990) 1 LJR 691, (1990) 1 RRR 470, (1990) 1 BLJ 666, (1990) 1 JT 172 (SC), (1991) CIVILCOURTC 321, 1990 UJ(SC) 2 492, (1990) 1 ALL WC 690, 1990 (1) JT 128, (1990) 1 RENCER 586, (1990) 1 SCJ 547**

**Author: L.M. Sharma**

**Bench: L.M. Sharma, K. Ramaswamy**

PETITIONER:

CHAIRMAN, TAMIL NADU HOUSING BOARD, MADRAS

Vs.

RESPONDENT:

T.N. GANAPATHY

DATE OF JUDGMENT 07/02/1990

BENCH:

SHARMA, L.M. (J)

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SHARMA, L.M. (J)

RAMASWAMY, K.

CITATION:

1990 AIR 642                      1990 SCR (1) 272

1990 SCC (1) 608              JT 1990 (1) 172

1990 SCALE (1)134

ACT:

Code of Civil Procedure, 1908: Order 1 Rule 8 --Suit filed in representative capacity--Interest to be common or common grievance to be redressed--Persons need not have same cause of action.

HEADNOTE:

In pursuance of a Housing Scheme the Tamil Nadu Housing Board, Madras had allotted residential plots over the land acquired under the Land Acquisition Act, to different groups of applicants including the low-income group on terms and

conditions stipulated in the lease deed Exh. B-3 sometime in the year 1963. After a lapse of more than a decade of the allotment, fresh demands were made from the allottees in 1975. Objecting to the same, the respondent herein filed a suit for self and on behalf of all the allottees of low-income group settled in the Colony named Ashok Nagar, praying for a permanent injunction restraining the Board from enforcing the demand.

The defendant-Board questioned the very maintainability of the suit in a representative capacity and also pleaded that it was entitled to finally determine the correct prices for the plots after taking into account the final award of the compensation for acquired land and until then the prices were tentative. The trial court negatived the objection to the maintainability of the suit but dismissed it on merits. The first appellate court confirmed the decree. On second appeal, the High Court reversed the finding on merits. The High Court held that it was open to the Board to determine within a reasonable time what portion of the demand included the excess on account of compensation awarded by the courts for acquisition of the land and realize the same after serving fresh demand notices. But since the impugned demand included both the excess amount of compensation as also the additional developmental charges injunction was granted in regard to the entire demand as the two amounts were not separately mentioned. Dismissing the appeal of the Board, this Court,

HELD: The provisions of Order 1 of Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the

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persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. [276C-D]

The Court, while considering whether leave under the Rule should be granted or not, should examine whether there is sufficient community of interest to justify the adoption of the procedure provided under the Rule. [276E]

Persons who may be represented in a suit under Order I, Rule 8 need not have the same cause of action. [277F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3002 of 1983.

From the Judgment and Order dated 20.8.1982 of the Madras High Court in S.A. No. 83 of '1982.

G. Ramaswamy (N.P.), Mrs. Anjani and K. Ramkumar for the Appellant.

P.S. Poti and K.V. Sreekumar for the Respondent. The Judgment of the Court was delivered by SHARMA, J. This appeal by special leave arises out of a suit filed by the respondent in representative capacity for permanent injunction against the appellant Tamil Nadu Housing Board from demanding and collecting from the allottees any additional amount for settlement of lands with buildings in the colony Ashok Nagar fully described in the plaint.

2. In pursuance of a Housing Scheme the appellant-Board proceeded to settle a large number of residential plots to different groups of applicants including one described as low-income group. A number of allottees, including the plaintiff-respondent, were selected and settlement in their favour was made in 1963. A copy of the document executed separately in respect to the plots is on the record of this case as Exh. B-3, setting out the terms and conditions of the lease. The term as mentioned in the 15th clause, which is quoted below, has been referred to by the parties in support of their respective cases:

"15. The Lessor agrees to sell the property more particu-

larly 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 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 has become final by a conclusive adjudication thereon by the concerned Tribunals and Courts. The final decision of the Administrative Officer of the Lessor as to 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 at the said price on the terms and conditions hereinafter mentioned. Excepting the fixation of price with reference to the claim or 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 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 courts for the lands as aforesaid."

Tentative price for the property was fixed, subject to a final determination within a stipulated period under the agreement and the allottees occupied the properties on that basis. After a lapse of more than a decade fresh demands were made in 1975 threatening dispossession in case of non-payment, which led to the filing of the suit. It is stated in the plaint that the cases of all the allottees in low-income group of Ashok Nagar made under the lease deeds are identical and the plaintiff was representing them in asking for permanent injunction restraining the Board from enforcing the belated supplementary demands.

3. Besides, objecting to the maintainability of the suit, the defendant-Board pleaded that it was entitled in law to finally determine the correct price for the settlement of the properties even

belatedly, and the challenged demands were perfectly valid. It was stated that the land for the scheme had been acquired under the provisions of the Land Acquisition Act, and until the final award of the compensation for the acquired lands was made, the value of the lands was not capable of being ascertained. The trial court overruled the technical pleas, but, dismissed the suit on merits. The first appellate court confirmed the decree.

4. The plaintiff filed a second appeal to the Madras High Court, and the Housing Board a cross-objection against the adverse findings. The High Court while confirming the maintainability of the suit reversed the finding on merits and passed a decree. The impugned demand included the excess compensation awarded by courts for acquisition of the land as also the development charges, cost of amenities and buildings, etc., without splitting up the two demands. The High Court held that it was open to the Board to determine within a reasonable time what portion of the additional demand represented the excess compensation awarded for the lands and to take steps for its realisation after service of a demand notice on the allottee, but, granted a decree for injunction in regard to the entire demand at the present stage as the two amounts have not been separately mentioned.

5. The learned counsel for the appellant has pressed two points in support of the appeal, namely, the decision of the High Court on the merits of the dispute is erroneous and that the provisions of Order 1, Rule 8 of the Code of Civil Procedure in any event are not applicable to the case and the suit, as a representative suit, is not maintainable.

6. The second paragraph of clause 15 of the lease deed explicitly directs the Board to assess the final amount on account of the development charges, cost of amenities and buildings, etc. within a period of three years from the date of the allotment, and there does not appear to be any reason for construing the provisions differently. The High Court at considerable length considered this aspect, pointing out the unexplained long delay of about a decade after completion of the constructions, etc. on the part of the Board. There was no difficulty at all in making the final calculation in time, and taking steps for recovery of the same. We entirely agree with the view of the High Court. 'The Court was also right in permitting the Board to make a fresh additional demand in regard to the enhancement in the compensation for the acquired lands and the respondents do not have any objection to that part.

7. On the question of maintainability of the suit in a representative capacity under Order 1, Rule 8 of the Code of Civil Procedure, it has been contended that since the injury complained of is in regard to demand of money and that too by a separate demand against each' of the allottees, giving rise to different causes of action, the Rule 1 has application. The learned counsel proceeded to say that it is not known whether each of the allottees in Ashok Nagar had been even served with an additional demand before the suit was filed; and further emphasised that those who had been so served are interested in defeating only the demand individually referable to each of them. Each one of them is not interested in what happens to the others. It is, therefore, suggested that only such of the allottees who have already been served with additional demands are entitled to maintain an action in court, and they also should do it by filing separate suits. We do not find any merit in the argument. The provisions of Order 1 of Rule 8 have been included in the Code in the public interest so as to avoid

multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievances which they seek to get redressed. In *Kodia Goundar and Another v. Velandi Goundar and others*, [LR 1955 Madras 339, a Full Bench of the Madras High Court observed that on the plain language of Order 1, Rule 8, the principal requirement to bring a suit within that Rule is the sameness of interest of the numerous person on whose behalf or for whose benefit the suit is instituted. The Court, while considering whether leave under the Rule should be granted or not, should examine whether there is sufficient community of interest to justify the adoption of the procedure provided under the Rule. The object for which this provision is enacted is really. to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object for its enactment. There are no words in the Rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction as the present one.

8. Coming to the relevant circumstances in the present case it will be seen that all the allotments in Ashok Nagar were made under the same Scheme and all the relevant facts are common. The basis of the impugned demand of the appellant is equally applicable to all the allottees and the plea of the plaintiff is available to all of them. The trial court was, therefore, perfectly right in permitting the plaintiff to proceed under Order 1, Rule 8 of the Code of Civil Procedure. Nobody in this situation can complain of any inconvenience or injustice. On the other hand, the appellant is being saved from being involved in unnecessary repeated litigation.

9. It is true that each of the allottees is interested individually in fighting out the demand separately made or going to be made on him and, thus, separate causes of action arise in the case, but, that does not make Order 1. Rule 8 inapplicable. Earlier there was some doubt about the Rule covering such a case which now stands clarified by the Explanation introduced by the Code of Civil Procedure (Amendment) Act, 1976, which reads as follows:

"Explanation--For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

The objects and reasons for the amendment were stated below:

"OBJECTS AND REASONS: Clause 55; sub-clause (iv),--Rule 8 of Order 1 deals with representative suits. Under this rule, where there are numerous persons having the same interest in one suit, one or more of them may, with the permission of the Court, sue or be sued, on behalf of all of them. The rule has created a doubt as to whether the party representing others should have the same cause of action as the persons represented by him. The rule is being substituted by a new rule and an explanation is being added to clarify that such persons need not have the same cause of action."

There is, therefore, no doubt that the persons who may be represented in a suit under Order 1, Rule 8 need not have the same cause of action. The trial court in the present case was right in permitting the respondent to sue on behalf of all the allottees of Ashok Nagar. We, therefore, do not find any merit in this appeal which is dismissed with costs. Before closing, however, we would like to point out that the plaintiff has represented only those in the low income group in Ashok Nagar who will be governed by this judgment, and nothing what has been said or decided in this case is applicable to any other group or colony.

R.N.J.

Appeal dismissed.