



W.P(MD)No.12124 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12124 of 2021

and

W.M.P.(MD)No.9541 of 2021

The President,
MDA HSG 108, Srivilliputhur Taluk,
Cooperative Housing Society Ltd.,
13/1, NGGO Colony, Srivilliputhur PO,
Virudhuangar District 626 125.

... Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Development,
Secretariat, Chennai 600 009.

2.The Registrar (Housing)
Tamil Nadu Cooperative Housing Board Complex,
II Floor, 493, Annasalai,
Nandanam, Chennai-600 035.

3.The Managing Director,
Tamil Nadu Cooperative Housing Federation,
48, Rithortam Road,
Veparty, Chennai-7.

4.The Deputy Registrar (Housing),
3D, Road, Maninagaram,
Virudhunagar Region,
Virudhunagar District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the first respondent to reimburse Rs.2,30,42,260-87 the waived amount towards the Housing Loans availed by the members of the Petitioner society with interest, Penal Interest, incidental charges etc, as charged/chargeable by the third respondent from the date of due and until reimburse by fixing a reasonable time.

For Petitioner : Mr.S.Seenivasagam

For Respondents : Mr.K.S.Selva Ganesan
Additional Government Pleader for R1, R2 & R4

:Mrs.Kanmani Annamalai
Standing Counsel for R3

ORDER

Heard the learned counsel on either side.

2. The writ petitioner is a registered cooperative housing society. The society had disbursed housing loans in favour of its members. Pursuant to the policy decision taken by the Government, waiver was granted. All that the petitioner now demands is that the waived amount should be duly reimbursed to the society by the Government. Since the petitioner's request has not been complied with, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner draws my attention to the order dated 31.08.2020 made in W.P.(MD)No.18046 of 2019 in which similar issue was raised and adjudicated. Paragraph Nos.5 to 9 of the said order read as follows:-



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“5. I have carefully considered the rival submissions and gone through the materials on record. It is not in dispute that the waiver scheme for the benefit of borrowers from the Housing Loan Societies was announced by the Government vide G.O.Ms.No.113, dated 20.05.2008 and extended vide G.O.Ms.No.37, dated 14.11.2008 and G.O.Ms.No.21, dated 09.02.2009 & G.O.Ms.No.236, dated 29.10.2010. The petitioner being a Housing Society was obliged to implement the aforesaid waiver scheme. It has accordingly passed on the benefit to the borrowers. Having directed the Housing Societies to grant the benefit of waiver, it is not open to the Government to now take the stand that it will not bear the burden. The Society did not grant the benefit of waiver on its own. It was mandated to do so. It would be an act of unfairness if the Government is permitted to wriggle out of its obligations.

6. The learned counsel for the respondents would point out that the petitioner has failed to challenge the Government letter dated 23.07.2013 in which it was clearly stated that a subsequent decision was taken not to compensate the penal interest component. But it is settled principle of law that the Government letter cannot prevail over the Government order.

7. In any event there is no logic in the stand of the respondents that as a result of granting loans to ineligible persons, the societies have brought about financial ruin. That is because it is such ineligible borrowers who have been directly benefitted by the announcements of the waiver scheme. The respondents now contend that the person who disbursed loan should suffer. I find neither logic nor fairness in the stand subsequently taken by the respondents. There is again no merit in the contention that the subsequent stand of the Government was not questioned.

8. The learned counsel for the petitioner would point out that the Government letter dated 23.07.2013 was addressed to the Registrar of Cooperative Societies with a copy marked to the second respondent Federation. Likewise, the letter dated 26.02.2004 issued by the Registrar of Co-operative Societies was addressed to the Federation. There is nothing on record to indicate that these letters were served on the petitioner society. The petitioner cannot be



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blamed for couching the writ prayer as one seeking issuance of Writ of Mandamus.

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9.However, this petition cannot be straightaway allowed as prayed for merely because I have upheld the stand of the petitioner. As already pointed out, the Government had directed the burden of the penal interest to be borne by the Federation and the respective Societies in a particular ration. The federation has not chosen to question the stand of the Government. It is also only the petitioner society that has come forward with this writ petition. Therefore, the Government has to undertake the exercise of assessing the compensation payable to the petitioner so that the Society does not have to bear any burden arising out of the implementation of the waiver scheme. The petitioner is therefore directed to send a fresh representation to the respondents. It is open to the respondents to call for any further particulars as they deem fit and the reconsideration process shall be conducted speedily to determine the extent of reimbursement to be made by the Government so that the petitioner is not made to bear any burden for having complied with the mandate of G.O.Ms.No.113 dated 20.05.2008 and the subsequent G.Os. The entire exercise shall be completed within a period of sixteen weeks from the date of receipt of a copy of this order.”

4. This Writ Petition is also allowed on the same lines. No costs.

Consequently, connected miscellaneous petition is closed.

30.03.2023

Index : Yes / No

Internet : Yes/ No

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To

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G.R.SWAMINATHAN, J.

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