

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.09.2016

Coram:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.P.No.3298 of 2014

R. Rama

... Petitioner

Vs

1.Tamil Nadu Housing Board
Rep. By its Managing Director
No.331, Anna Salai
Nandaman, Chennai-35.

2.The Allottee Service Manager
K.K.Nagar Division
Tamil Nadu Housing Board
Ashok Nagar Shopping Complex
Chennai-83.

3.The Manager, Marketing & Service
Tamil Nadu Housing Board
Ashok Nagar Shopping Complex
Chennai-83.

4.The Executive Engineer &
Administrative Officer
Tamil Nadu Housing Board
Ashok Nagar Shopping Complex
Chennai-83.

...Respondents

Prayer : This writ petition has been filed to issue a Writ of Mandamus, directing the respondents 1 to 4 to refund the sum of Rs.7,10,000/- paid by the petitioner towards the cost of the Flat No.A-20 at 208, HIG Scheme, Ashok Pillar Salai, K.K.Nagar, Chennai-83 with interest @ 24% p.a.

For Petitioner : M/s.S.S. Jhothivani

For Respondents : Mr.V. Anandhamurthy

O R D E R

Heard.

2. This writ petition has been filed, praying that this Court may be pleased to issue a Writ of Mandamus, directing the respondents 1 to 4 to refund the sum of Rs.7,10,000/- paid by the petitioner, towards the cost of the Higher Income Group

(hereinafter referred to as 'HIG') Flat No.A-20, at Ashok Pillar Salai, K.K.Nagar, Chennai, together with interest @ 24% p.a.

3. It has been stated that the petitioner is belonging to the Scheduled Caste Community. A flat had been allotted in favour of the petitioner under the Scheduled Castes/Scheduled Tribe category, on 26.2.1998, by the respondent Tamil Nadu Housing Board. The total cost of the flat was Rs.11,82,500/-.

4. Based on the agreement entered into between the petitioner and the respondent Tamil Nadu Housing Board, the petitioner had been paying the monthly instalments, regularly. As the petitioner was paying the monthly instalments, regularly, the flat was handed over to the petitioner, on 18.11.1998. However, the petitioner was not in a position to pay the balance amount, due to the respondent Tamil Nadu Housing Board, on account of the financial crunch and therefore, the petitioner had approached the Indian Bank for a loan. However, the loan could not be obtained from the Indian Bank, as the respondents 1 to 4 had failed to issue Form Nos. 1 and 2 to enable the petitioner to obtain a loan.

5. In such circumstances, the petitioner had submitted several representations to the respondent Tamil Nadu Housing Board, to repay the amount of Rs.7,10,000/- paid by the petitioner towards the allotment of the HIG flat along with the interest thereon.

6. Since there was no proper response from the respondent Tamil Nadu Housing Board, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

7. A counter affidavit has been filed on behalf of the fourth respondent, dated 8.9.2016, denying the claims made by the petitioner.

8. It has been stated that the respondent Tamil Nadu Housing Board had passed a resolution, dated 28.6.1999, which reads as follows:-

"Consider the loss occur to Board, the Board has passed the Resolution to recover the amount from the allottee, if the allottee surrender/not accepting the allotment after paying the initial amount for some reason, the penal interest (16%) will be calculated on the total cost of the house/plot from the date of ready for occupation/allotment to the date of surrender/taken over by the Board".

9. It has been stated that, as the petitioner had failed to pay the balance amount, due to the respondent Tamil Nadu Housing Board, the allotment made in favour of the petitioner had been cancelled and the flat had been reallotted to a third party, by way of a registered sale deed, dated 7.12.2007, and therefore, the petitioner is not entitled to the refund of the amount paid by her, as prayed for, in the present writ petition, as she had failed to comply with the terms and conditions of the allotment order.

10. It has also been stated that, in fact, a sum of Rs.8,36,619/- is to be recovered from the allottee, for her failure to pay the balance amount, due to the respondent Tamil Nadu Housing Board. As the petitioner, who was the original allottee, had paid a sum of Rs.6,98,250/-, the balance amount of Rs.1,38,369/- is to be recovered from the petitioner.

11. In view of the submissions made by the learned counsels, appearing on behalf of the petitioner, as well as the respondents, and on a perusal of the records available, it is clear that the petitioner had been allotted a HIG flat bearing Door No.A-20, at Ashok Pillar Salai, K.K.Nagar, Chennai. Even though, she had paid a sum of Rs.6,98,250/-, as admitted by the respondent Tamil Nadu Housing Board, the balance amount had not been paid by the petitioner, in respect of the said allotment.

12. In such circumstances, the respondent Tamil Nadu Housing Board had cancelled the allotment and re-allotted the same to a third party. However, the respondents have not placed before this Court, the terms and conditions of the allotment order, allotting the HIG flat in favour of the petitioner.

13. It is also an admitted fact that the petitioner had paid a sum of Rs.6,98,250/- towards the allotment of the HIG flat in her favour. The respondents have also admitted that the HIG flat, bearing Door No.A-20, had been reallotted to a third party, after cancelling the allotment made in favour of the petitioner.

14. In such circumstances, this Court is of the view that, when the allotment of the HIG Flat in question made in favour of the petitioner, had been cancelled and the same had been reallotted to a third party, it is not fair and correct on the part of the respondent Tamil Nadu Housing Board to retain the amount paid by the petitioner and therefore, the petitioner is entitled for the refund of the amount.

14. Even though there has been a delay in making a claim for the refund of the amount paid by the petitioner, by way of filing this writ petition, this Court finds it appropriate

to direct the first respondent herein, to refund the amount of Rs.6,98,250/-, to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. However, the petitioner is not entitled to any interest for the said amount. Hence, the Writ Petition stands allowed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

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+1 cc to M/s.S.S.Jothivane,advocate,sr.51107

+1 cc to M/s.V.Anandhamurthy,advocatesr.51200.

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