



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

dated : 07.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

WEB COPY

Writ Petition(MD) No.18547 of 2013

and

M.P(MD)No.1 of 2013

Jeya Seelan Sundar Singh Samuel

...Petitioner

Vs.

The Executive Engineer &
Administrative Officer,
Tirunelveli Housing Unit,
Anbu Nagar,
Tirunelveli - 627 001.

... Respondent

Prayer : Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in connection with the impugned order of the respondent in proceedings Lr.No.R5/1325/96/Relief G.O.115/2013 dated 05.07.2013 and quash the same as arbitrary and illegal and consequently direct the respondent to execute sale deed in respect of the house allotted to the petitioner bearing No.MIG-B-9 without insisting / demanding and excess amount in the name of difference in land cost, interest and maintenance charges etc.

For Petitioner : Mr.A.R.Jeya Rhuthran
For Respondents : Mr.K.Balasubramanian

ORDER

Challenging the notice issued by the respondent Housing Board directing the petitioner to pay the difference of land cost of Rs.1,46,147/- and also interest on the difference of land cost to a sum of Rs.1,71,344/-, the present writ petition has been filed.

2.According to the petitioner, the respondent Housing Board allotted MIG house to the petitioner, by an order dated 27.02.1997 and he has also executed a lease cum sale agreement. As per the order of allotment, he has paid the tentative cost of land of Rs.2,15,500/- and also paid the other required deposits. The possession was handed over to the petitioner on 15.02.1999. Subsequently, the impugned notice dated 05.07.2013 has been issued to the petitioner to pay the differential land cost along with interest. Challenging the above notification, the present writ petition has been filed.

3.Even though the petitioner challenged both the demands of land cost as well as interest, he restricts his claim only in respect of interest on difference of land cost and he agreed to pay only the difference of land costs and he only

questioning the interest levied by the Housing Board.

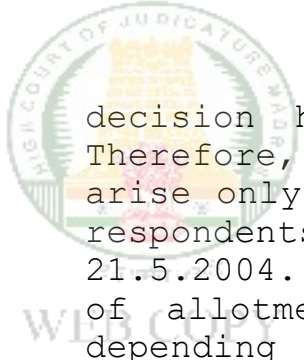
4. According to the learned counsel for the petitioner, the respondent Housing Board is entitled to demand interest from the date of resolution passed by the Board fixing the final costs alone and not from the date of original order of allotment. The learned counsel for the petitioner also relied upon a decision of this Court reported in 2007 Writ L.R 710, which was also followed in another batch of writ petition in W.P(MD)No.5980 of 2011 etc., batch dated 15.07.2011.

5. The respondent board filed a counter affidavit stating that the land owner filed a petition seeking enhancement of compensation and on this petition the compensation has been enhanced. Now, based on that, the petitioner was directed to pay the difference of land cost as well as the interest from the date of allotment. After passing of the land acquisition proceedings, the respondent board has finalized the scheme cost in its resolution dated 06.05.2013 fixing the final costs as Rs.1,70,600/- per ground as on 30.06.1996.

6. The learned counsel appearing for the respondent submitted that in those decisions relied on by the learned counsel for the petitioner, the land acquisition proceedings was over, hence, the petitioners in the above cases were directed to pay interest from the date of finalization and those judgments are not applicable to the facts of the present case.

7. I have carefully considered the submission of the petitioner as well as the respondent board. Insofar as the payment of interest on the difference of land cost has been now settled by the Judgment of the Division Bench of this Court 2007 Writ L.R 710 (cited supra), wherein, the Division Bench has held at paragraph 21 as follows:-

"21. The question now to be decided is what is the period from which interest is payable both in respect of final land cost and capitalisation charge. As for the period from which interest can be claimed is concerned, the final determination of land cost was made on 21.5.2004 with effect from 31.12.2000 as per Board's resolution and it is agreeable to the writ petitioners/allottees. When the demand was made in March, 2001, the final land cost did not reach a finality. It came up for further consideration before the authorities from time to time and only before the Lok Adalat, the parties came to an almost near agreement on the final cost. Even thereafter respondents did not approve and finalise the land cost and it is only pursuant to the Board's resolution dated 21.5.2004, the final land cost was determined by the respondent and demand notices have been issued from June, 2004. The tenor of the notice dated 10.6.2004 clearly states that the land cost and capitalisation cost should be paid within a particular date, failing which interest will be calculated. It is, therefore, clear that the demand itself is prospective. The respondents wanted to conclude the issue only after the Board's resolution and such



decision has been communicated in June, 2004 and thereafter. Therefore, the liability of the allottees to pay interest would arise only in default of payment of the amount as demanded by the respondents in June, 2004 pursuant to the Board's resolution dated 21.5.2004. So, the Department cannot charge interest from the date of allotment. Eventhough logically interest should be charged depending upon the date of service of notice, in order to avoid any unnecessary confusion and complication in such matter, on the basis of the fair concession made by the counsel appearing for the petitioners/allottees to the effect that interest can be charged from the date of Board's resolution dated 21.5.2004, we make it clear that interest on the revised land cost as well as capitalisation charges would be payable with effect from 21.5.2004. As already indicated the counsel appearing for the petitioners have fairly conceded that interest can be charged from 21.5.2004. Therefore, the allottees are liable to pay the interest on and from 21.5.2004."

8.The said decision was followed by a learned single Judge of this Court in W.P(MD)No.5980 of 2011 etc., dated 15.07.2011, wherein, it has been held as follows:-

"12.In the decision of the Division Bench of this Court in V.Muralidharan v. State of Tamil Nadu reported in 2007 Writ L.R. 710, a similar claim was made by the Housing Board to the allottees under the Ellis Nagar Housing Board Scheme. Among other issues, the issue relating to payment of interest on difference in land cost was considered and in that decision, it was held that the relevant date for calculation of interest will be the date when the final determination of the land cost was made i.e. 21.05.2004 based on the Board's resolution dated 31.12.2000 and the interest was directed to be paid from 21.05.2004 i.e. the date of final determination of land cost."

9.In view of the same, the petitioner has to pay interest only from the date of finalization of land costs i.e., 06.05.2013. Since the petitioner has agreed already to pay difference of land costs, the petitioner is directed to pay the differential land costs within a period of eight weeks from the date of receipt of a copy of this order. Sofar as the interest levied on the petitioner is set aside and the respondents are directed to calculate the interest on the final costs from the date of finalization of land costs, namely, 06.05.2013 till the payment of land costs at the rate agreed by the parties.

10.With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True copy/



To
The Executive Engineer &
Administrative Officer,
Tirunelveli Housing Unit,
Anbu Nagar, Tirunelveli - 627 001.

+1 CC to M/s.MR.K.BALASUBRAMANI, Advocate, SR No. 465.

+1 CC to M/s.MR.A.R.JEYARHUTHURAN, Advocate, SR No. 66758.

SKN/RRG

PSM/PN/10.02.2017/4P/4C

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