

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.3333 of 2012

and

M.P.No.1 of 2012

1. S.Veeraraghavan
2. S.Vatsala

.. Petitioners

..Vs..

1. The Government of Tamil Nadu
Rep by its Secretary
Housing and Urban Development
Secretariat, Chennai 600 009.
2. The Tamil Nadu Housing Board
Rep by its Managing Director
Anna Salai, Nandanam,
Chennai 600 035
3. The Executive Engineer and Administrative Officer,
Besant Nagar Division,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Salai,
Adyar, Chennai 600 020

.... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus calling for the records pertaining to G.O.Ms.No.37, Housing and Urban Development (Na 4-1) Department dated 14.02.2011 and quash condition Nos.(a) and (e) insofar as the petitioners are concerned and consequently directing the respondents to refund the amount paid by the petitioners herein toward the penal interest and interest for 5 months for each year giving the benefit of the above G.O.Ms.No.37, Housing and Urban Development (Na 4-1) Department dated 14.02.2011.

For Petitioner : Mr.M.K.Kabir, Senior Counsel
for Mr.R.Sankarappan

For Respondents 1 and 2: Mr.V.Yuvakumar

O R D E R

The petitioner has filed the above Writ Petition seeking to issue a Writ of certiorari mandamus calling for the records pertaining to G.O.Ms.No.37, Housing and Urban Development (Na 4-1) Department dated 14.02.2011 and quash condition Nos.(a) and (e) insofar as the petitioners are concerned and consequently directing the respondents to refund the amount paid by the petitioners herein toward the penal interest and interest for 5 months for each year giving the benefit of the above G.O.Ms.No.37, Housing and Urban Development (Na 4-1) Department dated 14.02.2011.

2. The petitioners had applied for allotment of flats in the Luz Scheme developed by the second respondent-Housing Board and they were allotted S-47 and T-27 respectively. There seems to be certain litigation between the parties with respect to the additional costs payable by the petitioners. The Board also demanded additional interest and penal interest for their default in not paying the land costs to the land owners. Hence, the petitioners herein had filed W.P.Nos.13631 of 2009 and 837 of 2010 respectively.

3. After filing the writ petition, this Court, by Order dated 22.06.2010, had directed the petitioners to pay whatever the amount demanded by the Housing Board subject to the condition of lease-cum-agreement. The Housing Board was also directed to receive the amount and release the sale deed in favour of the petitioners. The order is passed without prejudice to the contention of both the parties. Accordingly, the petitioners had also paid the sums demanded by the Housing Board. Eventually, the writ petitions were dismissed.

4. While so, the first respondent had issued G.O.M.S.No.37, Housing and Urban Development Department dated 14.02.2011 waiving the petitioners' penal interest and interest for 5 months for each year. As the petitioners were not given this facility, the petitioners moved M.P.No.1 of 2011 seeking a modification. While passing the orders in the said M.P, it was observed by the Court that the interpretation as the applicability of the G.O.Ms.No.37 cannot be gone into in modification application. However, the petitioners were given liberty to challenge the G.O.Ms.No.37, Housing and Urban Development department dated 14.02.2011 in the manner known to law. Accordingly, the above writ petition is now filed challenging the condition Nos.(a) and (3) insofar as the petitioners are concerned.

5. Heard both sides and perused the materials available on record.

6. The contention of the petitioners is that when they had paid the entire interest and penal interest without prejudice to their rights and the first respondent has given the benefits to the other allottees who had not paid the interest and penal interest, the petitioners cannot be denied the benefits under the Government Order merely because they have already paid the same.

7. It is further contended that the Government Order seeks to give remission in payment of penal interest and interest to allottees who have cleared the liability which in fact attempts to treat the defaulters as a separate class for grant of concession and the benefit is denied to persons who have, though challenged their liability and have remitted the same without prejudice pending adjudication of their challenge. It is also contended by the learned Senior counsel that the Government cannot in law discriminate amongst allottees and extend concession to persons who have failed to clear their liability by granting remission in payment of interest and penal interest when allottees under the scheme are a class by themselves and have to be treated equally. When the petitioners have paid the entire amount pursuant to the orders of this Court without prejudice to their rights, it is open to the petitioners to claim waiver and the benefits of G.O.Ms.No.37.

8. The order of this Court dated 22.06.2010 specifically directed the Housing Board to receive the amount and release the sale deed executed in favour of the petitioners without prejudice to the contention of both the parties. The order dated 02.12.2011 sought for modification to extend the benefits of G.O also specifically gave liberty to the petitioners to challenge the G.O.Ms.No.37 to the extent that the petitioners are aggrieved. As stated earlier, merely because the petitioner had paid the entire amount and got the sale deed, they cannot be denied the benefits of the said G.O. As per the said G.O, the petitioners stand to benefit substantially. Hence, there would be a direction to the respondents to extend the benefits of G.O.Ms.No.37, Housing and Urban Development department dated 14.02.2011 to the petitioners and condition Nos.(a) and (e) are hereby quashed only with respect to the petitioners as they had paid the entire demand without prejudice to their rights pursuant to the order of this Court.

9. With the above direction, the Writ Petition is allowed.
No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srn
To

1. The Secretary
Government of Tamil Nadu
Housing and Urban Development
Secretariat, Chennai 600 009.
2. The Managing Director
Tamil Nadu Housing Board
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3. The Executive Engineer and Administrative Officer,
Besant Nagar Division,
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No.48, Dr.Muthulakshmi Salai,
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+2 ccs to Mr.Sankarapan Advocate sr 51504
+2 ccs to Mr.Yuvakumar Advocate sr 51502

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