

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

CORAM

THE HONOURABLE Mr. JUSTICE D.KRISHNAKUMAR

W.P.No.35039 of 2016
and WMP.Nos.30209 & 30210 of 2016

S.S.Elangovan

.. Petitioner

Vs

- 1.The Government of Tamil Nadu,
Rep by its Secretary,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.
- 2.The Registrar of Co-operative Societies (Housing)
No.22, 4th Main Road,
Gandhi Nagar, Adyar,
Chennai - 600 020.
- 3.The Additional Registrar /
Managing Director
Post Box No.486,
No.48, Ritherton Salai,
Vepery, Chennai - 7.
- 4.The Deputy Registrar
of Co-operative Societies (Housing)
Salem Division,
Fairlands,
Salem - 636 016.
- 5.The Secretary,
The Salem Co-operative Housing
Society Ltd., No.S.1329
Salem - 636 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the notice made in 123/2ARC dated 02.08.2016 issued by the 5th respondent and quash the same and further directing the respondents 4 and 5 to extend the benefit of G.O.Ms.40 dated 16.03.2015 waiving the interest and penal interest on the mortgage loan in Loan No.16662 obtained from the respondent Society.

For Petitioner : Mr.A.Nagarathinam

For Respondents : Mrs.T.Girija
Government Advocate [RR1 to RR5]

ORDER

The petitioner has filed this Writ Petition seeking to quash the notice made in 123/2ARC dated 02.08.2016 issued by the 5th respondent and to direct the respondents 4 and 5 to extend the benefit of G.O.Ms.40 dated 16.03.2015, waiving off the interest and penal interest on the mortgage loan in Loan No.16662 obtained by him from the respondent Society.

2. Heard Mr.A.Nagarathinam, learned counsel appearing for the petitioner and Mrs.T.Girija, learned Government Advocate appearing for the respondents 1 to 5.

3. The case of the petitioner is that on 26.12.2001, he had borrowed a sum of Rs.1,25,000/- by mortgaging his property with the fifth respondent, by executing a signed blank promissory note for construction of additional building in his premises at Salem. The interest was at the rate of 18% per annum on the principal amount, for a period of 10 years and accordingly every month he has to pay a sum of Rs.2,271/-. Till date the petitioner had paid a sum of Rs.1,22,019/-.

4. The petitioner has relied on the Government Orders issued in G.O.No.113 dated 20.5.2008, G.O.No.98 dated 20.4.2012 and G.O.Ms.No.112 dated 05.06.2013. According to the petitioner, as per the said G.Os., the borrowers who have obtained loan from Co-operative House Building Societies, are entitled to the benefit of the waiver of interest and entire penal interest, in case the borrowers are ready to pay the entire defaulted loan amount at one time.

5. The petitioner received a notice from the fifth respondent dated 08.07.2013, wherein he was asked to pay a total sum of Rs.3,95,452/- within seven days from the date of receipt of notice, or else attachment proceedings would follow. The petitioner in his reply letter dated 11.07.2013 to the fifth respondent has stated that he is entitled to the benefit of 50% reduction of total interest and waiver of entire penal interest for the loans obtained from the Co-operative House Building Societies, as per the said Government Orders. Thereafter, the fifth respondent sent a letter dated 27.07.2013, wherein he had mentioned that the petitioner's loan period had expired and moreover, the waiver off interest and penal interest would apply only to the borrowers who had applied loan for construction of a

new building and not for the borrowers who had applied loan for expansion of the existing building or for renovation of a building etc., and in such a case, the petitioner is not entitled for the benefit of the G.O.

6. The petitioner also contended that due to the delay on the part of the respondents to give the statement of account explaining the balance debt that the petitioner is entitled to pay, the benefit of concession extended for waiver of interest as per G.O.Ms.No.122 (Housing and Urban Development Department) dated 05.06.2013, had lapsed.

7. The learned counsel for the petitioner submitted that the third respondent had sent a Circular No.332 dated 25.03.2015, wherein it has stated that relying on the G.O.Ms.No.40 dated 16.3.2015, the scheme of waiving interest and penal interest would apply to all kinds of loans. Thereafter, the petitioner sent a letter to the fifth respondent on 01.4.2015 requesting to furnish statement of accounts providing the loan details. Despite receipt and acknowledgement of the said letter by the fifth respondent on 07.4.2015, the fifth respondent issued impugned notice No.123/ARC dated 02.08.2016, directing the petitioner to pay a sum of Rs.6,64,884/- towards the entire loan, otherwise the property will be subjected to attachment. The petitioner also sent a representation dated 10.08.2016 to the fifth respondent requesting to provide the balance amount the petitioner has to pay for closure of loan amount, after waiving off the interest and penal interest the petitioner is entitled to, in connection with G.O dated 16.3.2015.

8. The main contention raised by the petitioner is that when the petitioner is entitled to the benefit of the Government Order passed in G.O.Ms.No.40 (Housing and Urban Development Department) dated 16.03.2015, the fifth respondent without considering the said G.O., has issued a show cause notice dated 02.08.2016, directing him to pay a sum of Rs.6,64,884/- towards the entire loan within seven days from the date of receipt of notice, and that too after receipt and acknowledgment of petitioner's request on 07.04.2015, which is much prior to issuing the impugned notice dated 02.08.2016.

9. The learned Government Advocate appearing for the respondents submitted if the representation made by the petitioner is in line with the benefit extended in the Government Order, to the borrowers of housing loan in the Co-operative Housing Society, then the petitioner's request would be considered in accordance with law.

10. In the light of the submission made by the learned counsel for the petitioner and the learned Government Advocate, without expressing opinion on merits, this Court is inclined to permit the petitioner to make a fresh representation to the fifth respondent Society within a period of two weeks from the date of receipt of a copy of this order, and thereupon on receipt of the said representation, the fifth respondent Society is directed to consider and pass orders on merits and in accordance with law, as expeditiously as possible within a period of three months thereafter from the date of receipt of fresh representation.

11. With the above direction, this Writ Petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ds

To:

- 1.The Government of Tamil Nadu,
Rep by its Secretary,
Housing and Urban Development Department,
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- 2.The Registrar of Co-operative Societies (Housing)
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Salem Division,
Fairlands,
Salem - 636 016.

5.The Secretary,
The Salem Co-operative Housing
Society Ltd., No.S.1329
Salem - 636 001.

+1cc to Government Pleader sr.18680

+1cc to Mr.A.Nagarathinam,Advocate sr.17759

+1cc to Mr.L.P.Shanmugasundaram,Advocate sr.17996

W.P.No.35039 of 2016

pa(co)
ss(3/5/2017)



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