

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED :17.08.2017

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WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**W.P (MD)No.14978 of 2017****and****W.M.P (MD)No.11802 of 2017**

S.Suba

: Petitioner

Vs.

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

: Respondent

PRAYER: Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records in connection with the impugned demand notice of the respondent in his proceedings in Lr.No.RTI/338/2017 dated 17.03.2017 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.HIG-22, without insisting/demanding any excess amount in the name of difference in land cost, interest and maintenance charges etc.

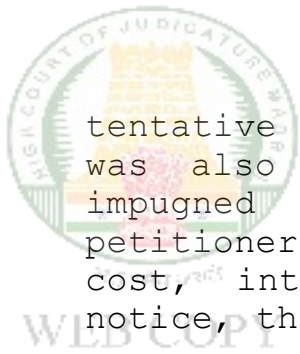
For Petitioner
For Respondent

: Mr.AR.Jeya Rhuthran
: Mr.K.Balasubramanian
Standing Counsel for TNHB.

ORDER

The petitioner seeks to quash the demand notice, dated 17.03.2017 issued by the respondent and consequently direct the respondent to execute sale deed in respect of house allotted to the petitioner bearing No.HIG-22 without insisting/demanding any excess amount in the name of difference in land cost, interest and maintenance charges etc.

2.According to the petitioner, the respondent-Housing Board allotted HIG house to the petitioner, by order, dated 08.06.1998 and the petitioner has also executed a lease-cum-sale agreement. As per the order of allotment, the petitioner had also paid the



tentative cost of land and other required deposits and possession was also handed over to the petitioner. Subsequently, the impugned notice, dated 17.03.2017 had been issued to the petitioner, directing the petitioner to pay difference in land cost, interest and maintenance charges etc. Challenging the notice, the present writ petition has been filed.

3. Though the petitioner questioned the demand on difference of land cost, interest and maintenance charges etc., she restricts her claim only in respect of interest on difference of land cost and agreed to pay the other demands.

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 and not from the date of original order of allotment.

5. Learned counsel for the respondent contended that the owners of the land approached the civil court seeking enhancement of compensation and based on the award, the respondent Board has now finalized the cost of the land and therefore, the petitioner is liable to be pay the demand made in the impugned order.

6. The issue of payment of interest is no longer res integra, in view of the decision of this court made in W.P(MD)No.18547 of 2013, dated 07.11.2016, wherein this court has held as follows:-

" 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 21.05.2004 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 21.05.2004, the final land cost was determined by the



respondent and demand notices have been issued from June, 2004. The tenor of the notice dated 10.06.2004 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 21.05.2004. 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 21.05.2004, we make it clear that interest on the revised land cost as well as capitalisation charges would be payable with effect from 21.05.2004. As already indicated the counsel appearing for the petitioners have fairly conceded that interest can be charged from 21.05.2004. Therefore, the allottees are liable to pay the interest on and from 21.05.2004."

8.The said decision was followed by a learned single Judge of this Court in W.P(MD)No.5990 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 ie., 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 ie., the date of final determination of land cost."

<https://hcservices.ecourts.gov.in/hcservices/> view of the same, the petitioner has to pay interest only from the date of finalization of land costs ie., 06.05.2013.



7. In the case on hand, since the petitioner has agreed to pay difference of land costs, he may be directed to pay the differential land costs and in so far as the interest levied on the petitioner is concerned, it is liable set aside, by giving direction to the respondent to calculate the interest on the final costs from the date of finalization of land costs, till the payment of land costs at the rate agreed by the parties.

8. In view of the submission made on either side and also the undertaking given by the petitioner to pay the difference of land costs, this court hereby directs the petitioner to pay the land costs within a period of eight weeks from the date of receipt of this order copy. In so far as the interest levied on the petitioner is concerned, following the judgment cited supra, the impugned order is set aside and the respondent is directed to calculate the interest on the finalization cost from the date of finalization of the land costs, till the payment is made by the petitioner. On such compliance, the respondent is directed to execute the sale deed in favour of the petitioner, within a period of four weeks therefrom.

9. The writ petition stands allowed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To,

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

+1cc to M/S. AR.JEYARHUTHRAN, Advocate, SR.No.72931.

W.P (MD) No.14978 of 2017
and
W.M.P (MD) No.11802 of 2017
17.08.2017

skn/er