



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2017

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

Writ Petition (MD) No.18209 of 2013

and

M.P(MD)No.1 of 2013

P.Kathiresan

... Petitioner

Vs.

1.The Tamil Nadu Housing Board,
No.493, Nandanam,
Anna Salai, Chennai,
through its Managing Director.

2.The Executive Engineer &
Administrative Officer,
Tamil Nadu Housing Board,
Tirunelveli Housing Unit, Anbu Nagar
Tirunelveli 11.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the 2nd respondent in Lr.No.R5/5779/1999/Relief GO 115/2013, dated 05.07.2013 and quash the same and further direct the 2nd respondent to execute the sale deed in favour of the petitioner forthwith in respect of the property bearing Plot No.HIG A8 (Sankaraperi-SMT) TNHB Colony, Thoothukudi measuring an extent of 1500 sq ft. along with building therein.

For Petitioner : Mr.M.P.Senthil
For Respondents : Mr.K.Balasubramani

ORDER

The case of the petitioner is as follows:-

The petitioner was allotted a house in HIG group bearing Plot No.A8 at Sankaraperi-SMT scheme, Tuticorin through allotment order dated 16.09.1999. As per the allotment order, the tentative cost of the land was fixed at Rs.4,46,500/-. Pursuant to the allotment order, the petitioner had entered into a lease-cum-sale agreement with the respondent Housing Board. Though the petitioner had remitted the entire cost of the building in the



year 2001 itself, the second respondent had not executed the sale deed in his favour. On the petitioner's request, the second respondent issued a communication dated 21.02.2011, demanding an outstanding amount of Rs.1,23,007/-, which was subsequently, altered to Rs.1,42,029/-.

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2. According to the petitioner, there was no previous demand with regard to the additional claim of Rs.1,42,029/-. While that being so, the second respondent had issued another communication dated 05.07.2013, demanding a sum of Rs.7,68,943/- and calling upon the petitioner to remit the said sum for the purpose of execution of the sale deed. In the said communication dated 05.07.2013, a sum of Rs.3,34,549/- was shown as the difference in land cost and a sum of Rs.2,90,724/- was levied as interest with a further maintenance charge of Rs.4,800/-. According to the petitioner, the communication is arbitrary since there was no demand on the part of the second respondent after determination of the final cost arrived at for the land. Aggrieved against the same, the present writ petition has been filed.

3. Heard Mr.M.P.Senthil, learned counsel for the petitioner and Mr.K.Balasubramani, learned counsel for the respondents.

4. Learned counsel appearing for the petitioner submitted that the second respondent is not justified in demanding such a huge amount to the final cost after about 13 years. He would further submit that the second respondent had already charged interest on the cost of the housing plot and that the levy of further interest on the difference in land cost is arbitrary.

5. Though the learned counsel for the petitioner had raised several grounds in the writ petition, he mainly urged upon the ground that interest can be determined only from the date of determination of the final cost and not from the date of allotment. In support of his claim, the learned counsel appearing for the petitioner had relied upon the following decisions:-

"(i) In *V.Muralidharan Vs.State of Tamil Nadu* reported in 2007 Writ L.R.710;

(ii) In *The Tamil Nadu Housing Board & others Vs.Avadi Thaniraivu Thittamani Othukeeduthararkal Nalavazhu Sangam and others* reported in 2007 Writ L.R.883;

(iii) In *The Chairman and Managing Director, Tamil Nadu Housing Board Vs. S.Ragavan* made in Civil Appeal No.1805 (etc., batch), dated 02.09.2008 and

(iv) In *S.Paramasivam Vs.State of Tamil Nadu* made

in W.P.(MD) No.5980 of 2011 dated 15.07.2011."



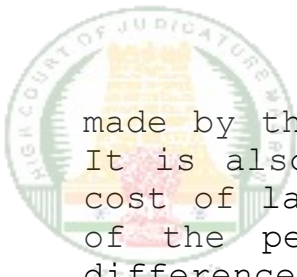
6. Per contra, the learned Standing Counsel for the respondent-Housing Board submitted that when the Housing Board's funds have been utilised for the purpose of acquiring the land, they are entitled to charge interest for the same from the date of allotment. The learned Standing Counsel further submitted that owing to various factors pertaining to acquisition, the determination of final cost was delayed and as such, there was no laches on their part in arriving at the final cost.

7. I have carefully considered the rival submissions made by the learned counsel on either and perused the entire materials available on record.

8. It is not in dispute that the plot No.A-8 was allotted to the petitioner on 16.09.1999 and that the petitioner had paid the entire tentative cost fixed at the time of allotment.

9. The first question that needs to be addressed in the present writ petition is as to whether the Housing Board is justified in levying interest on the difference of land cost from the date of allotment of the subject land in favour of the petitioner. The order which is impugned in the present writ petition is by way of an intimation directing the petitioner to remit the outstanding dues of Rs.7,68,943/-. There is no reference to any previous demand made with regard to the determination of difference in land cost. The learned Standing Counsel for the respondent Board also does not dispute this fact. While that being so, I do not find any justification on the part of the Housing Board to straight away inform the petitioner about the difference in land cost without giving him an opportunity to put forth his objections. There is also no proper explanation as to why there was a long delay of almost 13 years in determining the final cost of the land. It is pertinent to mention here that the respondents have not chosen to file a counter affidavit in this regard. In any case, in my view, when the second respondent has chosen to arrive at a figure towards difference in land cost, he ought to have informed the petitioner about the same and called upon him to offer his objections if any on the determination of the difference in land cost. In the absence of the same, the only conclusion that can be arrived is that the petitioner was not given a due opportunity which amounts to violation of the principles of natural justice.

10. The next question that needs to be addressed is as to the power of the respondents to claim interest on the difference in land cost from the date of allotment. As stated above, the first instance when the petitioner was made aware of the difference in land cost was through the impugned order dated 05.07.2013. On a bare reading of the impugned order, it is seen that the outstanding dues was arrived on the basis of calculation



made by the respondents which was not revealed to the petitioner. It is also seen that the petitioner has imposed interest on the cost of land which the petitioner does not dispute. The grievance of the petitioner is only on imposition of interest on the difference in land cost.

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11. In normal circumstances, whenever a demand is made and the allottee fails to remit the amount demanded, the cost of action for payment of interest would arise in view of the default on the part of the allottee. In the present case, the question of default for non payment of difference in the land cost will not arise since the petitioner was at no point of time informed about such a demand. It was only through the impugned order that the petitioner was informed of the difference in land cost and curiously, the second respondent had chosen to impose interest on the same without even informing the petitioner of such a demand. As such, it can only be concluded that the respondents are not justified in claiming interest from the date of allotment on the difference in land cost, particularly when interest of Rs.1,40,380/- has already been awarded on the cost of the land which is Rs.4,46,500/-. Hence, the claim in the present impugned intimation on the interest at Rs.2,90,724/- is arbitrary.

12. When an identical issue arose in **V. Muralidharan Vs. State of Tamil Nadu reported in 2007 Writ L.R. 710**, the Hon'ble Division Bench of this Court had taken a view that the period from which interest can be claimed in respect of final land cost, can only commence from the date on which the Housing Board had resolved and determined the final land cost. Paragraph 21 of the said judgment reads 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 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."

The above order was also affirmed by the Hon'ble Supreme Court in Civil Appeal No.1805 of 2007, dated 02.09.2008.

13.Likewise, in **The Tamil Nadu Housing Board & others Vs.Avadi Thaniraivu Thittamani Othukeeduthararkal Nalavazhu Sangam and others** reported in **2007 Writ L.R.883**, the another Hon'ble Division Bench of this Court had taken a similar view. Paragraph 12 of the said judgment reads as follows:

"12.It is also the admitted case that no demand for the said amount was made by the appellants till July, 2001. The said demand having not been made till such time, the appellants are not entitled to claim interest from March, 1993 to July, 2001. In the affidavit filed in support of the stay petition in W.A.M.P.No.5600 of 2004, though it is stated that the allottees were asked to pay the difference amount, the date of demand is not mentioned. The demand in writing was made only on 30.7.2001. The mistake committed by the officials of the appellants department in not demanding the amount till the end of July, 2001, cannot be put against the allottees and therefore the appellants are not justified in claiming interest from March, 1993 to July, 2001. The demand was made on 30.7.2001 and the respondents challenged the same before this Court by filing writ petition. The said writ petition was allowed by the learned single Judge on the premise that several persons were given sale deeds by the appellants without



collection of capitalisation fee and interest. The same was explained by the appellants by filing additional counter affidavit in this writ appeal, wherein it is clarified that the registration of the sale deeds to certain persons are by bona fide mistake and the said mistake was found during audit and the persons, who are responsible for the said mistake are being proceeded departmentally and that the persons, who were given sale deeds are also directed to pay difference amount with interest. Hence the allegation of discrimination is found against the respondents."

14. Following the aforesaid judgments, a learned Single Judge of this Court had also passed a similar order in W.P.No.5980 of 2011, 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.

13. When the matter was taken up on appeal to the Honourable Supreme Court, the issue relating to the relevant date above was modified to read as the date when the Board's resolution was actually passed. In other words, instead of 21.05.2004, the day after the Board's resolution i.e., 01.01.2001 was to be taken as the relevant date for payment of interest. In that case, the Board's resolution was passed on 31.12.2000 and the Honourable Supreme Court fixed the relevant date for payment of interest as 01.01.2001. The present case is no different from V.Muralidharan's case and the said decision will squarely apply to the present cases insofar as interest on the difference in land cost.

14. Drawing the same analogy to the present case, the Board's resolution even as per the counter affidavit and the copy of the resolution which has been now produced by the learned Counsel for the respondent Housing Board, is dated 03.02.2011 whereby the final land cost has been determined.

15. In view of the decision of the Honourable Apex Court and the decision of the Division Bench of this



Court in V.Muralidharan's case, relating to allotment in the Ellis Nagar Housing Board Scheme which is similar to the present case, the interest on the difference in the land cost shall be reckoned from the date of Board's resolution No.6.05 to 6.08 and 6.40 dated 03.02.2011.

15.Learned Standing Counsel for the respondents-Board relying upon the judgment of a Hon'ble Division Bench of this Court in O.S.A.No.252 of 2010 and W.P.No.9768 of 2010, dated 10.12.2011 submitted that the respondent-Board is entitled to seek for difference in land cost and consequently charge interest on the same. The relevant paragraphs relied upon by the learned Standing Counsel is extracted below:-

"52.Referring to the amount utilised from Board's fund, the learned single Judge observed that no details are forthcoming as to how the Board's fund had been utilised. As per Section 110(1) and (2) of Tamil Nadu Housing Board Act, there must be a settled capital and revenue account for every scheme and the expenditure and realisation should be entered in the receipt of capital and revenue account of the Scheme. The learned single Judge held that no details are placed before the Court as to how the Board's general funds Rs.815.770 lakhs has been transferred to the Nolambur Scheme. Accepting the plaintiff's case and faulting the Housing Board, the learned single judge held as under:-

"..Considering the admitted fact that the Board has a separate fund for each of the schemes' for accounting purposes and that no details are placed before this Court that the Board had utilised its funds for the scheme, the calculation given by the plaintiff as to the availability of funds merits acceptance."

53.The learned single Judge erred in not considering Ex.D.9 in proper perspective. Ex.D.9 restricts the transfer of Board's general funds of 875.770 lakhs to Nolambur Scheme. Even though there was no borrowal from other financial institutions, when Board's fund has been utilised, the Housing Board is entitled to charge interest for the general funds so transferred to the particular scheme. As per Section 110 (1) and (2) of Tamil Nadu Housing Board Act, even though there is a settled capital and revenue account for every scheme and expenditure and realisation is entered into the capital and revenue account of that particular scheme, there is no impediment for utilisation of Board's general funds of the Board implemented in specific project. It was not necessary for the Board to



place all the necessary, details as to how the general funds were transferred to Nolambur Neighbourhood Scheme, only for demonstrating the reasonableness of the fixation of final price, Exs.D.8 and D.9 working sheets were produced. The plaintiff cannot be permitted to pick up loop holes from those working sheets to substantiate its case.

16.The petitioner does not dispute that the respondents are entitled to claim difference in land cost. It is the case of the petitioner that since the respondents had at no point of time demanded towards difference in land cost, they are not entitled to penal interest for such a claim. The aforesaid order of the Hon'ble Division Bench had not rendered any finding with regard to the grounds raised by the petitioner and as such, the judgment may not be of much help to the respondents-Board.

17.In view of the above findings, in my view, the respondents claim on interest on the difference in land cost, without making a demand at any point of time, is unjustifiable. As such, the impugned order insofar as the levy of interest of a sum of Rs.2,90,724/- towards the difference in land cost is concerned, is quashed. Consequently, the second respondent is directed to send a revised demand to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

18.With the above observation, the writ petition stands allowed. No costs. Consequently, M.P.(MD)No.1 of 2013 is closed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

+1 cc to M/S.M.P.Senthil, Advocate in SR.No. 4405

+1 cc to The Special Government Pleader in SR.No. 4723

sms

AE/BS/09.02.2017 : 8P/3C

Order made in
Writ Petition (MD) No.18209 of 2013
and M.P(MD)No.1 of 2013
25.01.2017