

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.11.2018

CORAM :
THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR
W.P.No.15223 of 2011

T.R.Prabu

..Petitioner

Vs.

1.The Secretary to Government
Housing and Urban Development Department,
Fort- St George,
Secretariat,
Chennai 600009.

2.The Chairman and Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai-35.

3.The Executive Engineer and
Administrative Officer
Vellore Housing Unit
Sathurvacheri
Vellore - 632 009.

..Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order bearing Lr. No. A-12/9696/96 dated 28.02.2011 of the 3rd respondent and quash the same and consequently forbear the respondents from levying any interest or penal interest on the purchase cost of the house for the delayed payment of initial deposit and to pass such further orders.

For Petitioner : Mr. T.R. Rajgajentharn

For Respondents : Mr. A. Zakir Hussain
Government Advocate for R1

Mr. V. Anandhamoorthy,
SC for TNHB for R2 & R3

O R D E R

This Writ Petition is filed to quash the order bearing Lr. No. A-12/9696/96 dated 28.02.2011 of the 3rd respondent and consequently forbear the respondents from levying any interest or penal interest on the purchase cost of the house for the delayed payment of initial deposit.

2. The learned counsel for the petitioner would submit that the petitioner was allotted a house bearing No.84 Phase -I at Vellore Housing unit of Tamil Nadu Housing Board, Tirupathur for a tentative rate of Rs.4,00,000/-, on an outright purchase. The petitioner paid the initial deposit amount under the hire purchase scheme and was ready to pay interest on the initial deposit amount. The respondent levied interest at the rate of 18% per annum on the tentative cost and also levied penal interest at the rate of 3% per annum instead of levying on initial deposit. According to the petitioner, the respondent issued the impugned proceedings by levying interest on the purchase cost instead of calculating interest on the initial deposit amount and arrived at Rs.7,91,758/- as due. According to the learned counsel for the petitioner the respondent Board is entitled to claim interest only on the initial deposit and not on the entire cost and from the date of allotment of the flat. Challenging the aforesaid order, the petitioner has filed the present writ petition before this Court. The learned counsel for the petitioner would further submit that the petitioner has not been furnished with the details of the interest calculation and hence the impugned order is liable to be quashed.

3. The learned counsel for the respondent Board would submit that the petitioner is liable to pay the interest from the date of allotment and therefore the contention of the petitioner is liable to be rejected. In support of his contention, the learned counsel for the respondent Board relied upon the judgement of the Division Bench of this Court passed in W.A. No.1230 of 2014 dated 02.11.2017. In paragraph Nos. 9, 10 & 11 of the said judgement, it has been held as follows :

" 9. Eventhough the civil appeals were disposed of by the Hon'ble Supreme Court on 30 September 2010, the fact remains that only after a period of two years, the Housing Board determined the amount payable by the allottees. The delay in calculating the amount cannot be attributed to the allottees. The Housing Board ought to have determined the final cost within a reasonable period, after the disposal of the civil appeals. We are therefore of the view that the Housing Board is not entitled to interest after the disposal of the civil appeals.

10. We give liberty to the Housing Board to calculate the amount payable by the allottees. The Board is entitled to calculate interest upto 31 December 2010. This cut off period is prescribed by giving three months time to the Housing Board to calculate the amount, taking into account the order dated 30

September 2010, in the civil appeals disposed of by the Hon'ble Supreme Court. Though the allottees are liable to pay interest from the initial date of allotment to the date of determination of final cost, which we fixed at 31 December 2010, they are not liable to pay interest beyond the said date.

11. We are informed that the Housing Board has announced a waiver scheme to waive interest. The learned Additional Advocate General submitted that allottees in the subject case are also entitled to the benefits of the waiver scheme. According to the learned Additional Advocate General, the interest amount to be waived would be deducted in each case and only the balance amount would be recovered from the allottees."

In view of the aforesaid judgement, the contention of the petitioner cannot be accepted and the same is liable to be rejected. Therefore, the petitioner is liable to pay the interest from the date of allotment as decided by this Court, in the aforesaid Writ Appeal.

4. The second contention of the petitioner is that the respondent Board had issued the impugned notice to the petitioner without providing any opportunity and also has not furnished the statement of cost indicating the development cost and the details of the statutory interest, in the light of the decision of the Hon'ble Supreme Court in Tamil Nadu Housing Board vs. Service Society and anr., reported in (2011) 11 SCC 13.

5. The learned counsel for the respondent fairly conceded to the decision of this Court passed in batch of cases in W.P.Nos. 13243/2013 etc., dated 08.01.2014, based on the legal finding of the Hon'ble Supreme Court. In paragraph Nos. 22 and 23 of the order, it is held as follows :-

" 22. The Tamil Nadu Housing Board is permitted to collect the differential cost and statutory interest in accordance with the judgment in service society.

23. In the result, the impugned notices are all set aside. The concerned division is directed to prepare a statement of cost indicating the development cost and land cost and statutory interest in the light of the judgement in Service Society. The notice calling upon the allottees to pay the balance amount must

accompany a copy of the statement of cost. In case petitioners have made payments pursuant to the impugned notices, such payments shall be given due credit. The petitioners should be given reasonable time to pay the balance amount after service of notice."

In the aforesaid order, the respondent Board has not furnished the statement of cost, including the land development cost and the interest. On that simple ground, the impugned order passed by the respondent Board is quashed and the matter was remanded back.

6. Following the aforesaid decisions, this Court is inclined to pass the following order :-

1. The impugned order passed by the 3rd respondent is quashed and the matter is remitted back to the 3rd respondent to furnish the statement of particulars with regard to the land cost, development cost and the interest to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order ;
2. On receipt of the said particulars, the petitioner shall submit his objection, if any, to the 3rd respondent within a period of four weeks, thereof ;
3. Thereafter, the 3rd respondent is directed to consider and pass orders, in accordance with law.

7. The Writ Petition is allowed, to the above extent. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

To

1.The Secretary to Government
Housing and Urban Development Department,
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Chennai 600009.

2.The Chairman and Managing Director
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Administrative Officer
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+1cc to Mr.V.Anandhamurthy, Advocate, S.R.No.78505
+1cc to the Government Pleader, S.R.No.78774

W.P.No.15223 of 2011

SKV(CO)

rrs 21/12/2018