

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1254 of 2018 and
CMP No.10344 of 2018

- 1.The Tamil Nadu Housing Board,
Rep. by its Managing Director,
Anna Salai, Nandanam,
Chennai - 600 035.
- 2.The Executive Engineer and
Administrative Officer,
Besant Nagar Division,
No.48, Dr.Muthulakshmi Salai,
Adyar, Chennai - 600 020.....Appellants/Respondents 2 & 3

-vs-

- 1.S.Veeraraghavan
- 2.S.VatsalaRespondents 1 & 2/Petitioner
- 3.The Government of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development,
Secretariat,
Chennai - 600 009. Respondent 3/1st Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P No.3333 of 2012 dated 21.07.2017 and Petition filed under Article 226 of the constitution of India praying to issue a writ or certiorari filed mandamus Calling for the records pertaining to G.O.Ms.No.37 Housing and Urban Development (Na4-1) Department dated 14.2.2011 and quash the condition Nos.(a) and (e) in so far as the petitioners are concerned and consequently directing the respondents to refund the amount paid by the petitioners herein towards the penal interest and interest for 5 months for each years giving the benefits of the above G.O.Ms.No.37 Housing and Urban Development (Na4-1) Department dated 14.2.2011

For Appellant : Mr.V.Anandhamurthy
For Respondents: Mr.M.K.Kabir
Senior Counsel for
Mr.R.Sankarappan

J U D G M E N T

[Judgment of the Court was delivered by
K.K. SASIDHARAN,J.]

The learned single Judge extended the benefits of the Government Order in G.O.Ms.No.37 Housing and Urban Development Department, dated 14 February 2011 waiving the penal interest even to the allottees, who paid the entire amount well before the issuance of the Order by quashing Condition Nos.(a) and (e) of the Government Order taking into account the payment made by them earlier without prejudice to their right. The order is under challenge at the instance of the Tamil Nadu Housing Board.

2. The Tamil Nadu Housing Board pursuant to the application submitted by the respondents 1 and 2 allotted residential flats to them under the Higher Income Group (HIG) at Luz, Mylapore, Chennai. It was under the Scheme of outright purchase. The respondents 1 and 2 remitted the initial cost. Since final cost was not arrived at, the respondents 1 and 2 filed writ petitions in W.P.No.13631 of 2009 and W.P.No.837 of 2010 respectively. The respondents 1 and 2 in the said writ petitions filed interlocutory applications indicating that they are ready to make full payment in accordance with the demand without prejudice to their claim in the writ petitions. The miscellaneous petitions were allowed by issuing a direction to respondents 1 and 2 to pay whatever amount demanded by the Housing Board without prejudice to their contentions in the writ petitions. Thereafter, the respondents 1 and 2 paid the amount as per the demand notice, resulting in the execution of Sale Deeds in their favour by the Housing Board. The writ petitions filed by them were ultimately dismissed by the learned single Judge by order dated 23 November 2010.

3. The Government of Tamil Nadu taking into account the delay in recovering the amount from the allottees issued an order in G.O.Ms.No.37 Housing and Urban Development Department, dated 14 February 2011, giving certain concession in the matter of payment of interest and penal interest. The order was very clear that the amount already paid would not be refunded, meaning thereby, the Government Order would apply to only those who are in arrears.

4. The respondents 1 and 2 made a claim for refund of the amount pursuant to the order in G.O.Ms.No.37 dated 14 February 2011. The said order dated 14 February 2011 was put in issue before the Writ Court in W.P.No.3333 of 2010. The learned single Judge found that in the miscellaneous petitions filed by the respondents 1 and 2 after the dismissal of the writ petitions in W.P.Nos.13631 of 2009 and 837 of 2010, liberty was given by the learned single Judge to initiate

appropriate proceedings before the competent forum. The learned single Judge was of the view that Conditions Nos.(a) and (e) of the Government Order in G.O.Ms.No.37 dated 14 February 2011 would stand in the way of allowing the claim made by the respondents 1 and 2. The learned single Judge therefore quashed both the conditions and directed the Housing Board to refund the amount paid by the respondents 1 and 2.

5. We have heard the learned Additional Government Pleader on behalf of the Housing Board and the learned Senior Counsel for the respondents 1 and 2.

6. The respondents 1 and 2 submitted applications for allotment of HIG Flat at Luz, Mylapore under outright purchase. The allotment was made by order dated 26 September 1995 and 17 August 1999 to respondents 1 and 2 respectively. The allottees paid the initial cost pursuant to the demand made by the Housing Board. Since final cost was not determined, they could not pay the remaining amount, which was a condition precedent for executing the Sale Deed by the Housing Board. The respondents 1 and 2 therefore filed writ petitions in W.P.Nos.13631 of 2009 and 837 of 2010 respectively to direct the Housing Board to accept the final payment and to execute the Sale Deed. The respondents 1 and 2 filed interlocutory applications in the respective writ petitions and pursuant to the order passed by the learned single Judge dated 22 June 2010, the Housing Board received the balance amount and executed individual Sale Deeds in their favour.

7. The writ petitions were subsequently taken by the learned single Judge for hearing. The learned single Judge dismissed the writ petitions on merits.

8. The respondents 1 and 2 having found that the Government have issued an order in G.O.Ms.No.37 dated 14 February 2011 waiving penal interest filed miscellaneous petitions before the Writ Court in W.P.Nos.13631 of 2009 and 837 of 2010. Since writ petitions were not pending, the learned single Judge rejected their claim. While dismissing the miscellaneous petitions, the learned single Judge made an observation that it is open to the parties to approach the competent forum for redressal of their grievances.

9. The request made by the respondents 1 and 2 to extend the benefit of the order in G.O.Ms.No.37 dated 14 February 2011 was rejected by the Housing Board. The respondents 1 and 2 taking advantage of the liberty granted by the learned single Judge filed a writ petition to quash the onerous conditions contained in the Government Order in G.O.Ms.No.37 dated 14 February 2011 before the Writ Court with a prayer to extend them the benefits given by the said Government Order.

10. The learned Senior Counsel for the respondents 1 and

2 contended that the allottees were made to pay the entire amount pursuant to the interim order. According to the learned Senior Counsel, those who have paid the money within the cut-off period are in a disadvantageous position when compared to the defaulters who got the benefit of the Government Order in G.O.Ms.No.37.

11. There is absolutely no merit in the said contention for the simple reason that it was only the respondents 1 and 2, who approached the Writ Court for a direction to fix the amount so as to enable them to pay the final cost and to get the Sale Deed executed. It is true that only pursuant to the interim direction given by the learned single Judge, the respondents 1 and 2 paid the amount. However, the fact remains that the writ petitions were ultimately dismissed by the learned single Judge.

12. The Government Order in G.O.Ms.No.37 dated 14 February 2011 was issued taking into account the difficulty to recover the amount from the allottees. The defaulters constitute a separate class. They have not approached the Court earlier for a direction to compute the final cost and thereafter, register the documents on receipt of the amount. There is no question of extending the benefit of the waiver scheme to those who have already paid the amount. In case, the benefit is given even to those who have already made the payment, it would open the floodgate. The banks are also coming up with various waiver schemes, which would apply only to those who are in arrears. Similarly, Government have announced Samadhan Scheme in respect of Sales Tax arrears, Property Tax arrears and arrears relating to registration of documents. Such Schemes would apply to only those who fulfill the eligibility criteria. It is not for the Court to say that the benefit should be extended even to those who have already paid the amount. It is essentially a policy decision taken by the Government to extend the benefit of the Scheme only to those who are in arrears. This aspect was not considered by the learned single Judge. We are therefore of the view that the appellants must succeed.

13. The order dated 21 July 2017 is set aside. The writ petition in W.P.No.3333 is dismissed.

14. In the upshot, we allow the intra court appeal filed by the Housing Board without any liability to the parties to pay the cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

svki
To

1 The Secretary,
The Government of Tamil Nadu,
Housing and Urban Development,
Secretariat, Chennai - 600 009.

2 The Managing Director,
The Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.

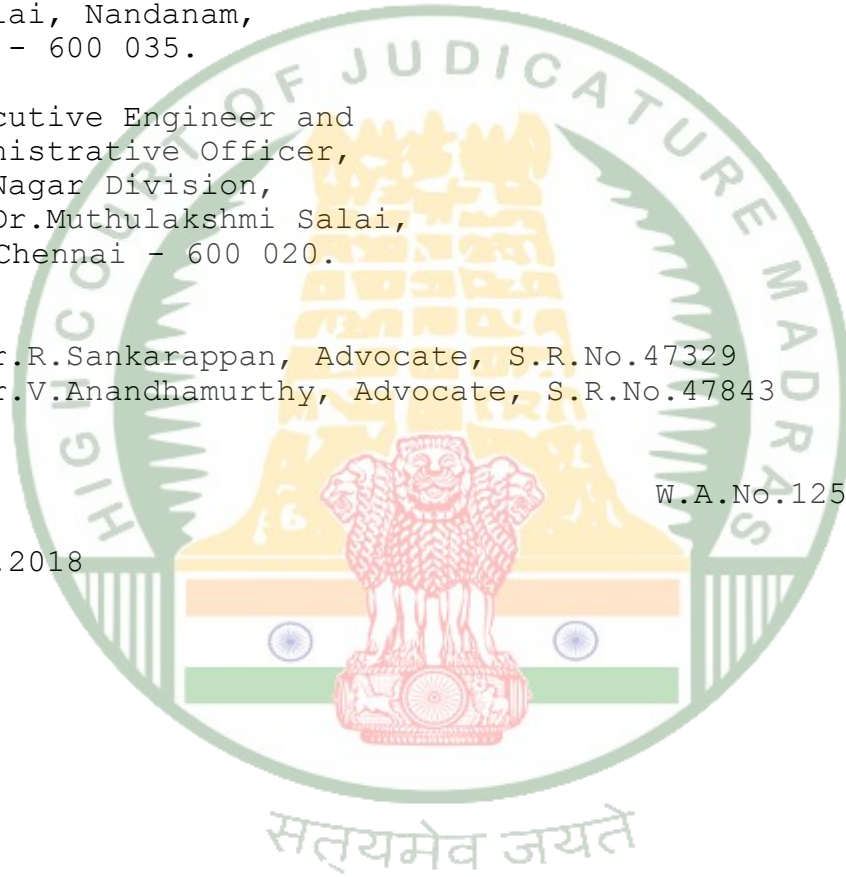
2.The Executive Engineer and
Administrative Officer,
Besant Nagar Division,
No.48, Dr.Muthulakshmi Salai,
Adyar, Chennai - 600 020.

+1cc to Mr.R.Sankarappan, Advocate, S.R.No.47329

+1cc to Mr.V.Anandhamurthy, Advocate, S.R.No.47843

NRJK (CO)
SMI/03.08.2018

W.A.No.1254 of 2018



WEB COPY