

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.12.2018

CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.26516 of 2005

1. K.Gunasekaran ...Petitioner
Vs.

1. Tamilnadu Housing Board,
Rep. by its Chairman,
Anna Salia, Chennai.

2. The Executive Engineer & Administrative Officer,
Besant Nagar Division,
Tamilnadu Housing Board,
No.48, Dr. Muthulakshmi Road,
Adyar, Chennai 600 020.

3. The Manager,
Marketing & Service,
Besant Nagar Division,
Tamilnadu Housing Board,
No.48, Dr. Muthulakshmi Street,
Adyar, Chennai 600 020

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in his letter No.AL-4/1184/2002 dated 22.07.2005 quash the same and consequently order the respondents to refund the amount of Rs.1,89,393/- which was received from the petitioner as differential cost in pursuance of the demand notice made in letter No.AL-4/1184/2002 dated 01.07.2004 which was quashed by this Hon'ble Court on 04.03.2005 in W.P.No.7379 of 2005.

For Petitioner : Mr.A.G.Rajan

For Respondents : Mr.V.Anandhamoorthy

ORDER

The order impugned issued by the second respondent in letter dated 22.07.2005 is sought to be quashed and further direction is sought for to refund the amount of Rs.1,89,393/-, which was received from the petitioner as differential cost in pursuance of the demand notice dated 01.07.2004.

2.The learned counsel appearing for the respondents fairly made a submission that the issues raised in the writ petition are squarely covered on the judgment of this Court dated 29.10.2018 in W.P.No.4517 of 2013. The relevant paragraphs are extracted hereunder:-

"2.The writ petitioner claims that the respondents allotted him a house bearing No.714 (LIG Category) at Thirupattur Phase - II and fixed the tentative cost for Rs.37,100/- and a further sum of Rs.13,100/- to be paid towards initial deposit within 21 days from the date of the order of allotment.

3.The learned counsel for the writ petitioner as well as the respondents brought to the notice of this Court that all the issues raised in the present writ petition had been adjudicated in a batch of writ petitions by this Court in W.P.No.18545 of 2013 on 11.02.2015, the operative portion of which is extracted hereunder :

5. After hearing the learned counsel for the parties and perusing the materials, it is seen that the issue involved in these writ petitions are squarely covered by the decision of the Honourable Supreme Court in the case of Tamilnadu Housing Board Vs. Service Society, (2011) 11 SCC 13.

6. Learned counsel appearing for the respondent Board, on instructions submitted that the issue is squarely covered by the said decision. In fact, this Court has followed the said decision in W.P.No.13509 to 13514 of 2011 and also take note of another decision in the case of K. Usharani Vs. State of Tamilnadu, represented by its Secretary to Government, Housing Unit and Urban development Department and others in W.P.No.13243 of 2013 etc. batch dated 8.1.2014 and set aside the demand and allowed the writ petition giving certain directions.

7. The order passed by this Court in W.P.No.13509 to 13514 of 2011 dated 26.3.2014 reads as follows;

2. It is submitted by the learned counsel on either side that the issue

involved in these writ petitions is squarely covered by the decision of this Court in the case of K.Usharani vs. State of Tamil Nadu, rep. By its Secretary to Government, Housing Unit & Urban Development Dept. and others rendered in W.P.No.13243 of 2013 etc. batch dated 08.01.2014.

3. In the said batch of cases, an identical issue arose, though the prayer sought for in those batch of writ petitions were slightly different. The petitioners therein sought for a direction to issue sale deed by collecting only the enhanced compensation fixed by the Honble Apex Court paid to the original land owners. It appears that this issue has arisen throughout the State of Tamil Nadu. This Court, after considering the contentions raised on both sides, following the decision of the Honble Supreme Court in the case of T.N. Housing Board v. Service Society, (2011) 11 SCC 13, has held as follows:

21. The Tamil Nadu Housing Board appears to have calculated the balance amount payable by the petitioners taking into account the Government Order in G.O.Ms.215 Housing & Urban Development Department dated 28 September 2012. Though a reference was made to the difference in land cost, there was no indication about the enhancement made by the Reference Court with modification if any, made by the Appellate Court, interest paid to the land owners and other relevant details so as to enable the allottees, to have an idea with regard to each of the components. In case the reference proceedings are pending under Section 18 of the Land Acquisition Act, either before the Reference Court or Appellate Court, calculation must be made by taking into account the maximum amount claimed by the landowners. The allottees would be benefited in case the land cost along with statutory interest is deposited early, as otherwise, they are liable for interest after the conclusion of Section 18 proceedings.

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 judgment 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.

24. The writ petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed. In the light of the above order, these writ petitions can also be disposed of on the same lines.

4. Accordingly, the impugned notices are set aside. The 2nd respondent is directed to prepare a statement of cost indicating the development cost and land cost and statutory interest in the light of the decision of the Honble Supreme Court in the case of Service Society (supra). The notice calling upon the petitioners to pay the balance amount must accompany a copy of the statement of cost and in case the petitioners have made payments pursuant to the impugned notices, such payments shall be given due credit and the petitioners shall be given reasonable time to pay the balance amount after service of notice.

8. Following the above order, these Writ Petitions are allowed and the impugned notices are quashed. The respondents 2 and 3 are directed to prepare a statement of cost indicating the development cost and land cost and statutory interest in the light of the decision of the Honourable Supreme Court in the case of Service Society (supra). The notice calling upon the petitioners to pay the balance amount must accompany a copy of the statement of costs and in case, the

petitioners have made payments pursuant to the impugned notices, such payments shall be given due credit and the petitioners shall be given reasonable time to pay the balance amount after service of notice.

9. With the above directions, the writ petitions are allowed. No costs. Connected Miscellaneous Petitions, if any, are closed.

4.Today, Mr.R.Ravichandran, Executive Engineer & Administrative Officer, Tamil Nadu Housing Board, Vellore Housing Unit, Vellore, appeared before this Court, along with the files and assisted the learned counsel for the respondents.

5.It is brought to the notice of this Court that subsequently, the Government issued G.O.(Ms).No.104, Housing and Urban Development Department, dated 15.06.2017, granting waiver of penal interest. The time limit granted in the said Government Order was extended by the Tamil Nadu Housing Board, in their memo dated 13.08.2018. Thus, the said benefits shall be granted to the writ petitioner in accordance with the terms and conditions stipulated in the Government Order cited supra."

3.In view of all the above, the said benefits shall be granted to the writ petitioner herein also in accordance with the terms and conditions stipulated in G.O.Ms.No.104, Housing and Urban Development Department, dated 15.06.2017.

4.With the above observations, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm/bga

To

1. Tamilnadu Housing Board
Rep. by its Chairman
Anna Salia, Chennai.

2. The Executive Engineer & Administrative Officer
Besant Nagar Division
Tamilnadu Housing Board
No.48, Dr. Muthulakshmi Road,
Adyar, Chennai 600 020

3. The Manager
Marketing & Service
Besant Nagar Division
Tamilnadu Housing Board
No.48, Dr. Muthulakshmi Street,
Adyar, Chennai 600 020

+1cc to Mr.V.Anandhamurthy, Advocate, S.R.No.83847

W.P.No.26516 of 2005

CNR(CO)

rrs 04/01/2019