

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.9696 of 2010

Dr.G.Jayachandran

... Petitioner

Vs

1.Tamil Nadu Housing Board,
Rep by its Managing Director,
493, Anna Salai,
Nandanam,
Chennai 600 035.

2.The Executive Engineer &
Administrative Officer,
Tamil Nadu Vellore Housing Board,
Chennai 630 009.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of the 2nd respondent culminating in issuance of the letter bearing No.A-1/1963/10, dated 15.09.2017 and quash the same and further direct the 2nd respondent to execute sale deed in respect of house bearing MIG II 211, Phase V, Vellore, in favour of the petitioner.

Prayer amended as per order dated 23.03.2018, in
WMP.No.8489 of 2018 in W.P.No.9696 of 2010

For Petitioner : Mr.S.Rajendrakumar for
M/s.Norton and Grant

For Respondents : Mr.D.Nandakumar

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O R D E R

Heard Mr.S.Rajendrakumar, learned counsel for the petitioner and Mr.D.Nandakumar, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the records on the file of the 2nd respondent culminating in

issuance of the letter bearing No.A-1/1963/10, dated 15.09.2017 and quash the same and further direct the 2nd respondent to execute sale deed in respect of house bearing MIG II 211, Phase V, Vellore, in favour of the petitioner."

3. The case of the petitioner is as follows:-

The petitioner has applied for allotment of Middle Income Group type house (hereinafter referred to as MIG) in vellore, Phase V scheme. On consideration of his application, an allotment was made to the petitioner in house No.211, in the said scheme vide allotment order No.VR 3/72/02, dated 18.02.2002. Originally, the tentative cost of the housing unit was fixed at Rs.4,26,600/-. The petitioner was directed to pay a sum of Rs.1,49,400/- as initial payment and balance of Rs.2,77,200/- in monthly instalments with interest. Accordingly, the petitioner had paid an initial amount of Rs.1,49,400/- on 28.02.2002. Thereafter, the petitioner had paid first monthly instalment of Rs.3,465/- on 03.04.2002.

4. The petitioner in order to avoid monthly commitment and interest, had decided to borrow loan amount from financial institution and on availing the loan amount, the entire balance of sale consideration of Rs.2,77,200/- had been paid by the petitioner by a banker's cheque dated 02.04.2002, drawn at Bank of Baroda to the respondent Board. In acknowledgment of the receipt of the amount, the second respondent also issued a bill No.B Q 022047, dated 11.04.2002. Subsequently, on 19.06.2003, a demand was made for Rs.720/- towards maintenance charge and that was also paid by the petitioner. A further demand was made for Rs.5,860/- and the same was also paid on 22.10.2008.

5. According to the petitioner, the entire consideration for allotment of the housing was settled by him within two months from the date of allotment. The respondents have also certified that the petitioner had paid the entire tentative cost with full interest by proceedings dated 28.10.2008. On completion of five years from the date of allotment, the petitioner submitted a representation for transfer of title and in response to that, the petitioner was directed to pay a further sum of Rs.5,860/- which was also duly paid as stated above on 22.10.2008. Thereafter, the petitioner requested for execution of the sale deed in his favour, but, there was no action forthcoming from the respondents in compliance of the request made by the petitioner, the petitioner renewed his request by his representation on 19.01.2009, requesting the second respondent to execute the due sale deed, since five years period had been over after the allotment was made to the petitioner on 18.02.2002.

6. In response to the representation, the petitioner was communicated with reply on 28.01.2009, stating that the land

allotted under the subject scheme was the subject matter of some pending litigation and on account of which the final cost had not been fixed and once the final cost was determined, the petitioner would be duly intimated and on payment of the difference amount, if any, the sale deed would be finally executed in respect of the housing unit allotted to the petitioner.

7. While matter stood thus, the second respondent instead of informing the petitioner about the final cost to be arrived at by the Board in respect of the housing unit allotted to the petitioner, had issued a notice purported to be issued under Section 84(2) and 85(1) of the Tamil Nadu Housing Board Act, demanding payment of monthly/half-yearly instalment due for payment upto February 2010, for a sum of Rs.4,454/- and on failing to pay such amount, the sum will be recovered as arrears of land revenue. In respect of the said demand, the petitioner submitted a letter on 04.03.2010, stating the details of payments made by him earlier and also pointing out the fact that in respect of the same scheme, the allottees of HIG flats were favoured with the transfer of title and the sale deeds were executed on completion of five years from the date of allotment.

8. In the said circumstances, the petitioner requested for execution of sale deed forthwith without any further delay. However, the representation of the petitioner was not considered by the Board and they insisted on the payment being settled as per the notice dated 09.02.2010, for a sum of Rs.4,454/-. Therefore, the petitioner has approached this Court, seeking to challenge the above said demand notice.

9. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit. In the counter affidavit, in more than one paragraphs it is clearly admitted by the respondents that the impugned notice dated 09.02.2010, had been issued by mistake and therefore, the same was withdrawn by the subsequent letter dated 23.03.2010.

10. Therefore, in view of the admitted fact that the impugned notice was issued by mistake and the same having been withdrawn by the respondent Board itself, this Court finds that nothing survives for consideration as far as the original notice impugned in the writ petition. While so, the respondents have come up with the fresh demand by proceedings of the Board dated 15.09.2017, claiming a sum of Rs.4,14,408/-.

11. According to the respondent Board, the final cost arrived at towards the land value was Rs.2,11,154/- and interest was calculated on the entire payment at Rs.2,03,686/- and therefore, the petitioner was liable to pay both the land cost

of Rs.2,11,154/- as well as the interest of Rs.2,03,686/-, totally Rs.4,14,408/-, being the difference amount. According to the respondent Board, if this amount is paid in one lumpsum, the sale deed will be issued to the petitioner. As regards the contention of the petitioner that in respect of HIG allottees, the sale deeds were executed in their favour, it was contended on behalf of the Board that in respect of HIG flats, the Board itself fixed the final price by Price Fixation Committee and the resolution was passed in that regard. Therefore, the petitioner cannot compare the allottees of MIG flats with the allottees of HIG flats.

12. The learned counsel for the petitioner would at the outset contended that in respect of the fact that the entire tentative cost as demanded by the Board, has been settled by the petitioner within two months from the date of original allotment, the Board periodically kept insisting on such payment which was due and payable to the Board. However, only to buy peace and to get the sale deed executed in his favour, the petitioner made certain payments demanded by the Board. However, not satisfied with the prompt payments made by the petitioner, the Board issued the original impugned notice dated 09.02.2010, claiming a further sum of Rs.4,454/- and subsequently, the Board itself had realised the mistake and the said notice was withdrawn.

13. While so, after the matter was taken up for hearing and when the Board was confronted by this Court about the actual payment due from the petitioner, if any, the Board by way of additional document and additional affidavit, the final cost of the land value had been finally disclosed. However, in addition to that, the Board was also charged interest for the entire amount payable by the petitioner against the house allotted by the Board as if the petitioner had defaulted by making the payment.

14. The learned counsel appearing for the Board reiterated the averments contained in both the original counter affidavit as well as in the additional counter affidavit.

15. This Court has considered the rival submissions of the learned counsels appearing for the parties and perused the materials and pleadings placed on record. First of all, it has to be seen that the petitioner has settled the entire tentative amount to the Board, within a period of two months from the date of original allotment in 2002 and the said payment was also duly acknowledged by the Board. In fact, the petitioner had availed loan from the financial institution in order to avoid such uncertainty and made the entire payment through the loan availed by him. Despite that, the Board had been making demands for some payments and such demands have also been complied with by the petitioner without resorting to any dispute or challenging such

demand and though according to the petitioner, such demands were not legally enforceable. In spite of the same, the Board had issued a demand in 2010, for sum of Rs.4,454/- which demand was purported to be issued under Section 84(2), 85(1) of the Tamil Nadu Housing Board Act, as if there was a due from the petitioner.

16. However, in the counter affidavit, it was admitted by the Board that the said notice was issued by mistake and the same was also withdrawn by the Board itself by their letter dated 23.03.2010. While so, by way of additional material and additional counter affidavit, the Board had come up with a present demand, demanding a sum of Rs.4,14,408/- which includes both the principal and also interest as the final payment for the release of sale deed in petitioner's favour.

17. As rightly contended by the learned counsel for the petitioner, this Court is unable to understand as to the basis of claim of interest of Rs.2,03,686/-, for the payment of the petitioner towards final land value, since admittedly, it was not the fault of the petitioner that the Board had not demanded the final land value for so many years from the date of allotment in 2002. In fact, as the records would disclose that the petitioner had been making repeated request to the Board for settlement of sale deed in his favour as he had made all the payments due to the Board. The Board had kept quite all along and only when this Court has seized of the issue, the Board has come up with present demand.

18. In the above circumstances, this court does not see any justification for making such additional demand by the Board in the form of interest being charged on the payment due from the petitioner. At the time it has to be noted that when the petitioner settled the entire amount in 2002, it was only a tentative cost arrived at by the Board and in any event, the petitioner was liable to pay the final cost to be fixed by the Board, on the basis of the outcome of the pending litigation in respect of the compensation payable as a consequence of the acquisition proceedings. In the said circumstances, the Board has now come up with the final cost of Rs.2,11,154/-.

19. This Court is of the considered view that only to give quietus to the entire issue which has been hanging fire since 2002, the petitioner can make payment of the final cost of Rs.2,11,154/- and seek for execution of sale deed as admitted by the respondent Board. At the same time, this Court does not see any iota of justification for charging interest of Rs.2,03,686/- by the respondent Board, on the final cost payable by the petitioner, since admittedly, the delay for arriving at the final cost, cannot be attributed to the petitioner in the aforesaid facts and circumstances of the case. During the course

of hearing, the learned counsel for the petitioner would contend that the present demand was made by proceedings dated 15.09.2017, when this Court was hearing the case finally.

20. In the above circumstances, the learned counsel for the petitioner filed an application for amendment of prayer, challenging the above said proceedings as well as raised additional grounds, assailing the present demand. The amendment petition has been allowed by this Court. The petitioner was also allowed to raise additional grounds, assailing the proceedings dated 15.09.2017.

21. For the above said reasons, this Court is of the view that the demand for interest of Rs.2,03,686/- is unjustified and cannot be countenanced in law and therefore, the said demand is hereby set aside. However, as far as the demand for sum of Rs.2,11,154/-, towards principal is concerned, the petitioner is liable to make good the amount. In the said circumstances, the impugned notice in letter No.A-1/1963/10, dated 15.09.2017, is hereby partially quashed. The petitioner is directed to make good the payment of final cost arrived at by the Board at Rs.2,11,154/- as demanded in the impugned notice and on settlement of the amount, the respondents are directed to execute the sale deed in favour of the petitioner without any further delay. It is made clear that the respondent Board shall not make any further demand on the petitioner in respect of the subject housing unit allotted to the petitioner in 2002. It is also made clear that on payment of the aforesaid amount by the petitioner, the Board is directed to execute sale deed in favour of the petitioner within two weeks thereafter.

22. With the above direction, the writ petition stands partially allowed. No costs.

Sd/-

Deputy Registrar

/true copy/

Sub Asst. Registrar

gsk

To

1.The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai 600 035.

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2.The Executive Engineer &
Administrative Officer,
Tamil Nadu Vellore Housing Board,
Chennai 630 009.

+ 2 cc to M/s.Norton and Grant Advocate,SR.24032

+ 1 cc to Mr.D.Nandakumar Advocate,SR.23828

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nr 03/05/2018



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