

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No. 44671 of 2002
and
W.M.P.No. 65402 of 2002

A.Sundaram

...Petitioner

..Vs..

- 1.The Government of Tamil Nadu,
rep. by its Secretary, to Government,
Housing & Urban Development Dept.,
Fort St.George, Chennai-9
- 2.The TamilNadu Housing Board rep. By its
Chairman & Managing Director,
Nandanam, Chennai-35
- 3.The Executive Engineer (Spl. Division II)
Tamil Nadu Housing Board,
R.S.Puram, Coimbatore-2.
- 4.The Executive Engineer,
Tamil Nadu Police Housing Corporation,
Coimbatore Region, Coimbatore.

...Respondents

Prayer: -Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent and 3rd respondent in relation to the G.O.Ms.No.466 Housing and Urban Development Department dated 25.04.1995 and in relation to the letter No.Rs/578/30 dated 25.10.2002 respectively and quash the same in so far as the petitioner is concerned and to extend the benefit given under the G.O.Ms.No.174 Housing and Urban Development dated 07.02.1991 to the petitioner.

For petitioner : Mr.R.Saseetharan

For Respondents : Mr.K.Ravikumar,
Additional Government
Pleader for R1

For Respondent : Mr.V.Anandamurthy,
TNEB - R2 and R3

ORDER

The prayer sought for in the writ petition is for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent and third respondent in relation to G.O.Ms.No.466, Housing and Urban Development Department, dated 25.04.1995 and in relation to letter No.Rs/578/30 dated 25.10.2002 respectively and quash the same in so far as the petitioner is concerned and to extend the benefit given under G.O.Ms.No.174, Housing and Urban Development Department, dated 07.02.1991 to the petitioner.

2.The short facts which are required to be noticed for the disposal of the Writ Petition are as follows :

The Petitioner had been a permanent employee of the Tamil Nadu Housing Board, Coimbatore Division. However, on deputation, the petitioner had been working as a Technical Assistant, Tamil Nadu Police Housing Corporation, Coimbatore. While so, he applied for allotment of a house in MIG "D" in No.AR 070394. By order dated 06.05.1997, the second respondent allotted "D" type MIG house in Singanallure Phase II. Pursuant to the allotment, the proportionate cost was mentioned as Rs.3,93,300/- out of which a sum of Rs.1,37,700/- as an initial deposit had been paid by the petitioner and he was directed to pay six months interest for initial deposit, which comes to about Rs.13,740/-.

3. The petitioner, in order to get loan by way of building advance, applied to the employer on 21.04.1997. In the meanwhile, the remaining amount was directed to be paid (i.e) Rs.2,55,600/- with 18% interest per annum at the rate of monthly installment of Rs.4,254/- plus maintenance charges of Rs.120/-. The entire re-payment period was fixed as 14 years. In fact, the interest was calculated from the date of ready for occupation.

4. The said interest fixed and directed to be paid by the petitioner, was on the basis of a Government Order, whereby the employees of Boards were liable to pay interest for the entire loan amount from the period ready for occupation till the date of sanctioning of the loan by the employer.

5. In fact, the said rigorousness of compelling to pay the interest from the date of ready for occupation for the entire amount till the date of sanctioning of the loan, had been considered and reduced by the Government under G.O.M.S.No.174,

Housing and Urban Development Department, dated 07.02.1991. However, subsequently, by yet another Government Order in G.O.M.S.No.466, Housing and Urban Development Department, dated 25.04.1995, the said concession extended to the Government Servants and employees of Central Government, Board, Corporation or local body for making payment of interest, only in respect of $1/3^{\text{rd}}$ or $1/4^{\text{th}}$ of the cost of the flat/house respectively and the interest on monthly installments of loan, was taken away from the purview of the Board, Corporation or local body and Central Government employees. In other words, the concession of paying only interest for $1/3^{\text{rd}}$ or $1/4^{\text{th}}$ of the cost of the flat/house, as the case may be, from the date of ready for occupation till the date of sanction of loan was made applicable only to the State Government employees and the said concession which was originally extended under G.O.174 dated 07.02.1991, had been taken away for the employees of Central Government, Board, Corporation or local body employees by virtue of the said G.O.M.S.No.466.

6. Consequent upon G.O.M.S.No.466, the Tamil Nadu Housing Board, the second respondent herein had sent a communication to the present employer of the petitioner (i.e) the fourth respondent herein that the petitioner has to pay interest for the entire cost of the flat for the period from the date of ready for occupation till the date of sanctioning of the loan, which according to them had been calculated at Rs.2,30,910/- and the said amount was directed to be paid by the petitioner in 60 installments.

7. Aggrieved by the said order of demand of interest for the entire cost of the flat for the said period based on the withdrawal of the concession, by G.O.M.S.No.466 dated 25.04.1995, the petitioner, challenging G.O.M.S.No.466 as well as the impugned order dated 25.10.2002, has filed this writ petition with the aforesaid prayer.

8. I have heard Mr.R.Saseetharan, the learned counsel for the petitioner who would submit that, the concession had already been extended not only to the State Government employees, but also to the employees of the Board, Corporation or local body by virtue of G.O.Ms.No.174, Housing and Urban Development Department, dated 07.02.1991. However, such concession without any plausible reason, was taken away detrimental to the benefit of the employees of Board, Corporation and local bodies. In fact, it was hostile discrimination among the employees of the Government, Board, Corporation and local bodies which are quasi Governmental organisations. The learned counsel for the petitioner would submit that, as against the said discrimination shown between the other employees and the Government employees, some of the aggrieved persons approached this court by filing Writ Petitions, which were allowed by this Court directing the

respondents therein (i.e) the Government and Housing Board to extend the benefit of paying the interest for 1/3rd or 1/4th of the cost of the flat or house for the period between the date of ready for occupation and date of sanctioning loan which was to be extended to all these employees also, as against which, though intra-Court appeal was filed in W.A.Nos. 1771 and 1848 of 2005 and 342 and 562 of 2006, the said writ appeals were dismissed by Division Bench order of this Court dated 24.01.2008. Therefore, the issue has been concluded and hence, the petitioner is entitled to enjoy the benefit of G.O.M.S.No.174 and therefore, the Judgment rendered in the Intra Court Appeal and G.O.M.S.No.466 can be made applicable to the petitioner and consequential impugned order directing the petitioner to pay the interest for the entire cost for the period, has to be interfered with.

9. I have heard Mr.K.Ravikumar, learned Additional Government Pleader appearing for the first respondent and also heard Mr.V.Anandamurthy, the learned Standing Counsel appearing for Tamilnadu Housing Board.

10. The learned Additional Government Pleader appearing for the first respondent has produced a copy of the order passed by the Division Bench of this Court on 24.01.2008 in WA. No. 1771 of 2005 etc.batch. He has also submitted that pursuant to the said order passed by the Division Bench of this Court, a Special Leave Petition was filed before the Hon'ble Supreme Court by the Government. However, the same was dismissed on the ground of delay. He would further submit that at any rate, the order passed by the Division of this Court has become final. The Government has accepted the said order in order to avoid contempt as per the request of the Tamil Nadu Housing Board and accordingly, passed a Government Order in G.O.M.S.No.113, Housing and Urban Development Department, dated 25.01.2012, by which the position which was prevailing prior to issuance of Government Order (i.e) G.O.Ms.No.466 was restored.

11. I have heard the said submissions made by the learned counsels appearing for both sides and perused the materials placed before this court.

12. The issue raised in the Writ Petition is no more res integra, in view of the decision made by the Division bench of this Court in the aforesaid Judgment dated 24.01.2008 in the matter of Chairman, Tamil Nadu Housing Board and another -vs- R.Arunagiri and others in WA No.1771 of 2005 etc batch. In the said Judgment, the Division bench has passed the following order:

"2. The Writ Petitioners are the employees of the Tamil Nadu Housing Board. They were allotted

houses under MIG scheme. They applied for housing loan and the loan was belatedly sanctioned by the Housing Board. But interest was charged for the period from the date the building was ready for occupation till the date of allotment order is capitalized. Aggrieved of the same, the petitioners approached the authorities and the same was rejected. Hence, they filed W.P.Nos.3361 of 2003, 6421 of 2003, 7291 of 2003 and 7224 of 2003 respectively. The subject matter of the writ petitions relates to extending the concession regarding payment of interest which was originally granted as per G.O.Ms.No.174 Housing and Urban Development Department dated 7.2.1991. This Court by orders dated 15.9.2004, 15.9.2003, 18.4.2005 & 18.4.2005 respectively allowed those writ petitions. Aggrieved of the same, the Board has filed these writ appeals.

3. It is seen from the records that originally as per G.O.Ms.No.174 dated 7.2.1991, the employees of the Tamil Nadu Housing Board were given the benefit. Subsequently, G.O.Ms.No.466 dated 25.4.1995 was passed restricting the benefit to the Government Servants alone. Several representations were sent by the employees of the Tamil Nadu Housing Board to again extend the benefits as per the original Government Order. The Tamil Nadu Housing Board considered those representations and decided to recommend to the Government to extend the benefit as there will be no financial loss to the Board if the interest on initial deposit and monthly instalment are collected till the House Building Advance is sanctioned to the Government servants. Accordingly resolution No.9.04 dated 28.8.2003 was passed and a proposal was forwarded to the Government. It is submitted that the proposal, which was sent to the Government in the year 2003 is still pending and no orders have been passed on that till date.

4. Therefore we consider it appropriate to direct the Government to restore the concession granted in G.O.Ms.No.174 dated 7.2.1991 to the employees of the Tamil Nadu Housing Board which was originally extended and subsequently stopped as per G.O.Ms.No.466 (Housing & Urban Development Department) dated 25.4.1995 as there is no financial loss to the Housing Board. Accordingly, we direct the Government to extend the benefit with regard to payment of interest to all the employees of the Central Government, Board, Corporations and

local body employees. The writ appeals are disposed of accordingly. Consequently, the connected Mps are closed. No costs."

13. It seems that as against the said order of the Division Bench of this Court, the Tamil Nadu Housing Board preferred a Special Leave Petition in S.L.P No.20327 to 20330 of 2011. The said SLP was dismissed by the Hon'ble Apex Court on 06.01.2012, following which the Government decided to accept the verdict of this Court and therefore, has come forward to issue G.O.M.S.No.113, Housing and Urban Development Department, dated 21.05.2012 which reads as follows:

"3. The MIG House No.B105 Mannargudi SMT Scheme Phase-II was allotted on 30.4.1997 to Thiru K.Arunagiri, Technical Assistant, Tamil Nadu Housing Board and he has requested the Tamil Nadu Housing Board to calculate interest as ordered in the G.O. First read above. However Tamil Nadu Housing Board has rejected his request as the order is applicable only to Government Servants and not to the Corporation/Board Employees. Aggrieved by the above, Thiru Arunagiri and 3 others have filed W.P.No.3361/2003, W.P.No.6421/2003, W.P.No.7224/2003 and W.P.No.7291/2003 and the Hon'ble High Court in its order dated 15.9.2004 and 15.4.2005 in the above W.Ps has directed that the delay was only due to the Housing Board in belatedly sanctioning the House Building Advance, the petitioner is not liable to pay interest for the period from 5.6.1997 to 22.2.2001. Against the order, Tamil Nadu Housing Board has filed a W.A.Nos.1771/05, 1848/05, 342/06 and 564/06. The Hon'ble High Court in its common judgement dated 24.1.2008 has disposed the above appeals and directed Government to restore the concession granted in G.O.Ms.No.174, Housing and Urban Development Department, dated 7.2.1991. The Tamil Nadu Housing Board has filed SLP No.20327 to 20330/2011 against the above order of the Hon'ble High Court Madras. The Hon'ble Supreme Court of India in their order dated 6.1.2012 dismissed the above SLPs on the ground of delay.

4. The Advocates on behalf the petitioners have requested the Government to pass orders in the matter in accordance with orders of the Hon'ble Courts, otherwise, contempt proceeding will be initiated against the respondents. Accordingly Government after consideration issue the following orders:-

(i) The Managing Director, Tamil Nadu Housing Board is requested to collect interest from the allottees of all the Employees of Central Government,

Board, Corporation and Local Bodies at the prevailing rate for 1/3rd or 1/4th cost of the flat/house as the case may be and interest on the monthly instalments above, from the date of ready for occupation till the date of sanction of Housing Building Advance.

(ii) The Procedure should be adopted in respect of all allotments made on or after 1st January 1985, as stipulated in G.O.(Ms).No.1666, Housing and Urban Development Department, dated 16.12.1988.

(iii) The interest should be calculated as stipulated in items (i) and (ii) above and the excess amount so far paid by the allottee, if any should be adjusted towards future interest to be paid by the allottee till the sanction of House Building Advance or towards the balance cost of the flat/house. The excess amount paid by the allottee should be refunded if the entire cost of the flat/house has been paid in full, as the case may be.

5. This order issues with the concurrence of Finance Department vide its U.O.No.14646/Finance(BPE)/2012, dated 16.3.2012."

14. By virtue of issuance of G.O.M.S.No.113, Housing and Urban Development Department, dated 21.05.2012 the position has now been made clear and the concession which was extended to all the Government employees, Board employees etc, under G.O.M.S.No.174 has now been restored. In view of the issuance of G.O.M.S.No.113, dated 21.05.2012, which have been given effect to for the allotment of house/Flat, made on or after 01.01.1985. Hence, the said G.O. could be made applicable to the case of the petitioner also. Since the petitioner was given allotment of house some time in the year 1997, certainly he would be covered under the benefit conferred now by the Government through G.O.M.S.No.113, dated 21.05.2012.

15. As per the said G.O.M.S.No.113, the Tamil Nadu Housing Board has to collect interest from the allottees of all employees of the Central Government, Board, Corporation and local bodies at the prevailing rate for 1/3rd or 1/4th cost of the flat /house, as the case may be, and the interest on the monthly installments from the date of ready for occupation till the date of sanction of Housing advance.

16. By virtue of the said applicability of G.O.M.S.No.113, the demand made through the impugned order of the Tamil Nadu Housing Board dated 25.10.2002 in so far as the petitioner to make the payment of Rs.2,30,910/- as a full interest for the full amount for the said period in 60 equal monthly installment, may not be justified and therefore, it has to be interfered

with. By virtue of G.O referred to above now the Housing Board is entitled to claim the interest from the petitioner only for 1/3 of the cost of the flat which was allotted to the petitioner for the said period (i.e) from the date of ready for occupation till the date of sanctioning of the housing loan advance.

17. In view of the issuance of G.O.Ms.No.113 dated 21.05.2012, the import of G.O.Ms.No.466 dated 25.04.1995, Housing and Urban Development Department dated 25.04.1995, which is also impugned herein has become denuded or infructuous and therefore, the validity of the said G.O. need not be gone into at this juncture.

18. For all these reasons stated above, this Writ Petition is disposed of with the following order:-

(i) The impugned Government Order (i.e) G.O.Ms.No.466, Housing and Urban Development Department, dated 25.04.1995 shall not be made applicable to the petitioner, as his allotment was made subsequent to 01.01.1984 and by virtue of issuance of G.O.Ms.No.113, Housing and Urban Development, dated 21.05.2012.

(ii) In view of the above, the consequential impugned order issued by the Tamil Nadu Housing Board dated 25.10.2002 demanding the petitioner for the interest of the full cost of the flat allotted to him, cannot be sustained and therefore, the impugned order dated 25.10.2002 is quashed.

(iii) Consequently, the respondent-Housing Board shall calculate the interest at the cost of 1/3 of the flat allotted to the petitioner and for the said 1/3 cost, interest can be calculated from the date of ready for occupation till the date of sanctioning of the housing loan advance to the petitioner. Accordingly, the said interest alone shall be directed to be paid by the petitioner in 60 monthly equal installments. It is made clear that since the issue has been pending all these years, the respondent-Housing Board shall not claim further interest for the said interest amount from the petitioner.

19. It is brought to the notice of this Court by the learned counsel for the petitioner that without prejudice his rights to challenge the impugned proceedings herein, he has already paid interest by calculating 1/3 cost of the flat allotted to him. Therefore, the said fact shall be verified by the respondent-Board and if the said interest on 1/3 cost has already been paid by the petitioner, the same shall be adjusted, and still if any amount is to be paid, it can only be, as per the calculation of interest as directed above pursuant to G.O.Ms.No.113, dated 21.05.2012, can be recovered from the petitioner.

There shall be no order as to costs. Consequently,
connected miscellaneous petition is closed.

srn

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary, to Government,
Government of Tamil Nadu,
Housing & Urban Development Dept.,
Fort St.George, Chennai-9
2. The TamilNadu Housing Board rep. By its
Chairman & Managing Director,
Nandanam, Chennai-35
3. The Executive Engineer (Spl. Division II)
Tamil Nadu Housing Board,
R.S.Puram, Coimbatore-2.
4. The Executive Engineer,
Tamil Nadu Police Housing Corporation,
Coimbatore Region, Coimbatore.

+1cc to Mr. Advocate, SR.No.60789/18

+1cc to the Govt.Pleader, Vide Sr.No.60878/18

W.P.No.44671 of 2002
and
W.M.P.No.65402 of 2002

Kak(03/07/2019)

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