



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.02.2018
CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.A(MD) No.154 of 2018
and C.M.P. (MD) No. 808 of 2018

1. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 009.
2. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Madurai Special Division,
Ellis Nagar, Madurai. ... Appellants/Respondents 2, 3

Vs.

1. L. Rajagopal ... 1st Respondent/Petitioner
2. State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing Unit and Urban Development Department,
Fort St. George,
Chennai - 600 009. ... 2nd Respondent/1st Respondent

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 21.02.2017 made in W.P. (MD) No. 9332 of 2010.

Prayer in WP(MD). 9332/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI FIED MANDAMUS to call for records pertaining to the impugned communication in Letter No. M.H.25/8209/09 dated 07.09.2009 on the file of the respondent No. 3 and quash the same as illegal and consequently to direct the respondent No. 3 to refund the excess amount to the tune of Rupees Fifty Four Thousand Three Hundred and Sixty Four only Rs. 54,364/- collected from the petitioner in respect of HIG Flat H-1183, with interest of 15% per annum for the aforesaid amount with effect from 01.01.2001.

For Appellant : Mr. S. Nagarajan

For 1st Respondent : Mr. G. Anto Prince
<https://hcservices.ecourts.gov.in/hcservices/> for M/s. T. Lajapathi Roy

J U D G M E N T

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

The appellants are official respondents 2 and 3 in W.P.(MD) No.9332 of 2010.

2.The first respondent/writ petitioner made a challenge to the impugned communication of the second appellant dated 07.09.2009, under which, the claim of interest made by him for belated refund of a sum of Rs.54,364/-, came to be rejected. The said Writ Petition after contest, came to be allowed on 21.02.2017, wherein the said impugned communication was set aside with a direction to refund Rs.54,364/- to the petitioner together with interest at 12% per annum with effect from 01.01.2001 till date within a stipulated time.

3.The learned counsel appearing for the appellants invited the attention of this Court to Circular No.S3/55100/86 dated 01.12.1986, and would submit that as per clause 6, if the tentative cost is found to be higher than the final cost now arrived at based on these instructions the tentative cost already intimated may be confirmed as final cost. Since the said circular forms part of the allotment order, the first respondent is equally bound by the same. As such, he is not entitled to claim interest for the refund of Rs.54,364/- and prays for interference.

4.Per contra, the learned counsel for the first respondent has invited the attention of this Court to the *common judgment* dated 12.08.2010, made in W.A.(MD) No.452 to 455 of 2010 (*The Chairman-cum-Managing Director, Tamil Nadu Housing Board, Nandanam, Chennai and another v. P.Kasinathan*) and would submit that the matter in issue is squarely covering the aforesaid facts and that it also pertains to the claim of interest for excess amount collected and the learned Judge has taken note of the conduct of the party coupled with the delay in the claim has rightly awarded interest from 01.01.2001 at 12% per annum and prays for dismissal of the writ appeal.

5.This Court has considered the rival submissions and also perused the materials placed on record.

6.It is not in dispute that the appellants/Housing Board collected excess amount of Rs.54,364/- and this Court has taken note of the judgment rendered by the Hon'ble Supreme Court, which reduces the land costs from Rs.6,32,630/- to Rs.3,49,100/- and also taken note of the fact that the Hon'ble Apex Court has also allowed final costs with 5% normal profit.

7.Though it is vehemently contended by the learned counsel appearing for the appellants that in the light of the applicability of the circular dated 01.12.1986 to the first respondent, the



tentative cost is the final cost, this Court is of the considered view that the said contention deserves to be out rightly rejected for the reason that the common judgment dated 12.08.2010 in W.A.(MD) No.452 to 455 of 2010 has attained finality.

8.At this juncture, the learned counsel appearing for the appellants would submit that in paragraph 10 of the aforesaid common judgment the interest was reduced from 9% to 6% with a further direction that it should be paid from the date of excess payment made by the allottees till the date of actual payment made by the Housing Board and prays for appropriate modification.

9.On the above said submissions, this Court heard the learned counsel appearing for the first respondent/writ petitioner, who would submit that despite the finality of the judgment dated 12.08.2010 made in W.A.(MD) Nos.452 to 455 of 2010, the appellants/Housing Board had chosen to file the frivolous appeal and hence, prays for retention of 12% interest per annum on the delayed payment payable from 01.01.2001.

10.In the light of the reasons stated above, coupled with the above cited decision dated 12.08.2010, made in W.A.(MD) No.452 to 455 of 2010, which squarely covers the issue involved in this appeal, this Court is of the considered view that the interest awarded by the learned Single Judge at 12% p.a. is to be reduced to 9% p.a. as against 6% p.a. as claimed by the appellants for the reason that despite the finality reached in view of the judgment dated 12.08.2010 in W.A.(MD) No.452 to 455 of 2010, this Writ Appeal has been filed and this Court taking into consideration paragraph 6 of the above cited common judgment is inclined to order payment of interest with effect from the date of excess payment made by the first respondent till the actual payment/repayment made by the Housing Board to it.

11.In the result, the Writ Appeal is partly allowed and the impugned order dated 21.02.2017, made in W.P.(MD) No.9332 of 2010, insofar as awarding 12% interest per annum payable from 01.01.2001, is modified and the first respondent is entitled to interest at 9% p.a. from the date of excess payment made by him to the Housing Board till the actual payment/repayment made by the Housing Board. The appellants are directed to comply with the said order within a period of four weeks from the date of receipt of a copy of this order. However, there is no order as to costs. Consequently, connected C.M.P.(MD) No. 808 of 2018 is closed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar



To

The Secretary to Government,
Housing Unit and Urban Development Department,
Fort St. George,
Chennai - 600 009.

+One cc to The Special Government Pleader, SR.No.51908

+One cc to M/s.T.Lajapathi Roy, Advocate, SR.no.51702

+One cc to M/s.S.Nagarajan, Advocate, SR.No.51711

sj

RL/5C/4P/SV/MMS/SAR2/13/3/2018

W.A(MD)No.154 of 2018
and C.M.P. (MD) No. 808 of 2018

27.02.2018