

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 19995 of 2008

Sarala Arivuazhagi

... Petitioner

Versus

1. Tamil Nadu Housing Board,
rep. by its Managing Director,
Nandanam,
Chennai-600 035.

2. Executive Engineer,
Villupuram Housing Unit,
Tamil Nadu Housing Board,
East Pondy Road,
Maharajapuram,
Villupuram-605 602.

3. District Elementary Education
Officer,
Gandhi Nagar, 6th Street,
Thiruvannamalai District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for records and quash the order passed by the 2nd respondent vide letter R1/1191/97, dated 28.04.2008 issued by the 2nd respondent read with letter dated 10.06.2008 and the letter dated 22.07.2008 in notice number 11595/13/08 of the 3rd respondent.

For Petitioner : Ms.D.Nagasaila

For Respondents : Mr.R.Bharathkumar for R1 & R2

No appearance for R3

O R D E R

This Writ Petition has been filed challenging the order passed by the 2nd respondent directing the petitioner to pay a sum of Rs.1,89,325/- towards interest payable to the respondents Housing Board for belated payment of cost of the house allotted

to the petitioner.

2. Earlier, the petitioner was allotted with a HIG tenement at Villupuram, by the Tamil Nadu Housing Board on 29.06.1990. He has paid the initial deposit of Rs.99,500/-. The original allotment was under the hire purchase scheme, thereafter, on the request of the petitioner, the scheme was converted into an outright purchase. The cost of the plot was fixed at Rs.2,88,700/-, and the possession was handed over to the petitioner in March 1997. After the allotment, the petitioner, being a Government employee has applied for loan, after sanction of loan, the petitioner has paid a sum of Rs.1,80,350/- on 24.03.2000, and the balance of Rs.1,08,350/- on 08.01.2001. Thus, she has paid the entire cost of the house apart from a sum of Rs.7,000/- for other charges. After payment of entire house cost, a sale deed was also executed in favour of the petitioner in the year 2007. Thereafter, by the impugned notice, the 2nd respondent Housing Board directed the petitioner to pay a sum of Rs.1,85,917/- on the ground that, there is an error in calculating the total cost payable, which has been found during internal audit. After receipt of notice, the petitioner has sent a representation to the respondents stating that, she has already paid the entire amount, therefore, there is no necessity for her to pay the said amount. But, that representation was not considered. Hence, the present Writ Petition has been filed challenging the order of 2nd respondent.

3. The 2nd respondent has filed a counter affidavit stating that, originally, the house was allotted under the hire purchase scheme. The cost of the house was fixed at Rs.2,88,700/-. She was directed to pay initially, a sum of Rs.1,01,000/-, and to pay the remaining amount on monthly instalments. Thereafter, as the petitioner wanted to settle the entire cost of the house, she has applied for loan, since she was a Government employee. As per the Government Order, the petitioner, being a Government employee need not pay initial deposit. Since the allottee has agreed to pay the entire cost of the house, the initial deposit made by the petitioner was refunded to her on 28.09.1997 after adjusting the interest amount from the initial deposit paid by her. Thereafter, a sale deed was also executed on 22.08.2007. Subsequently, the internal audit has raised objections stating that, a sum of Rs.88,169/- has been refunded to the petitioner, that was not properly taken into account while preparing the outstanding statement. Thereafter, the outstanding due was revised as per the audit objection, and there is no irregularity in it.

4. Ms.D.Nagasaila, learned counsel appearing for petitioner would submit that, initially, the house was allotted under the hire purchase scheme, for which, the petitioner has made initial

deposit. Thereafter, the allotment was converted into an outright purchase, and the cost of the house was also fixed at Rs.2,88,700/-. The petitioner has also paid the entire land cost to the respondents 1 and 2. Since the scheme has been converted from hire purchase scheme to outright purchase, the initial deposit made by the petitioner towards hire purchase scheme has been refunded to the petitioner. Now, the respondents have calculated the loan amount along with the amount refunded to the petitioner with interest. If at all, the petitioner is liable to pay any interest, she has to pay from the date of hire purchase scheme to till the date of sanctioning loan, once the entire cost has been paid, thereafter, the petitioner need not pay any interest.

5. Per contra, Mr.R.Bharathkumar, learned standing counsel appearing for respondents Housing Board would submit that, the original allotment was made under the hire purchase scheme, for which, the petitioner had paid initial deposit. Subsequently, the amount has been refunded to the petitioner. While calculating the amount payable by the petitioner, the initial deposit refunded to the petitioner was not taken into account. Now, that amount along with interest are said to be recovered from the petitioner based on the internal audit.

6. I have heard and considered the rival submissions made by the learned counsel appearing for the petitioner as well as learned standing counsel appearing for respondents Housing Board and perused the materials available on record carefully.

7. It is an admitted fact that, originally, the petitioner was allotted a house under the hire purchase scheme, for which, she has made a initial deposit. Thereafter, the scheme has been converted into outright purchase, and the land cost was fixed at Rs.2,88,700/- by an order dated 24.03.1997. The petitioner was directed to pay the full amount within a period of six months. Pursuant to the same, the petitioner has paid the amount in two instalments on 24.03.2000 and on 08.01.2001. When the earlier allotment was made under the hire purchase scheme, the petitioner has paid the initial deposit under the above scheme, and after converting the scheme into outright purchase, the petitioner is entitled to get the amount refunded, which was rightly refunded to the petitioner. Now, for the amount refunded to the petitioner, the respondents are taking steps to recover the amount. Once the house has been allotted to the petitioner under outright sale, and the entire cost of house has been paid by the petitioner as fixed by the respondents Housing Board, the initial deposit paid by the petitioner has to be necessarily refunded to the petitioner, for which, the respondents cannot claim any interest.

8. However, since there was a delay in paying the land cost, as per the allotment, the petitioner is liable to pay interest for the delayed payment, and it is also admitted by the learned counsel appearing for petitioner. Now, the respondents Housing Board worked out the interest payable for the belated payment, for a sum of Rs.59,373/-, for which, the petitioner is willing to pay the amount. At this stage, the respondents Board submit that, the petitioner is also liable to pay interest for the period of pending Writ Petition. That argument cannot be accepted for a simple reason that, the entire plot cost has been paid as early as in the year 2001, and for the delay in paying that cost, the petitioner is liable for interest and the petitioner need not pay any interest thereafter. Hence, the contentions of the learned counsel appearing for respondents Board cannot be accepted. In the above circumstances, as already held, the petitioner is liable to pay interest for the belated payment of plot cost to the tune of Rs.59,373/-.

9. In the result, the Writ Petition stands allowed, and the petitioner is directed to pay interest for the belated payment of house cost for a sum of Rs.59,373/- within a period of eight weeks from the date of receipt of the copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.
2. Executive Engineer,
Villupuram Housing Unit,
Tamil Nadu Housing Board,
East Pandy Road,
Maharajapuram,
Villupuram-605 602.

3. District Elementary Education
Officer,
Gandhi Nagar, 6th Street,
Thiruvannamalai District.

+1cc to Mr.D.Nagasaila, Advocate, S.R.No.99224
+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No. 99857

W.P. 19995 of 2008

MP (CO)
GN (29/01/2020)



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