

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.36027 of 2005

and

W.P.M.P.No.38850 of 2005

S.Damodaran

...Petitioner

Vs

1. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.

2. The Executive Engineer and
Administrative Officer,
Besant Nagar Division,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Road,
Adyar, Chennai - 600 020.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorari, calling for the records of the 2nd respondent relating to the proceedings dated 29.07.2005 and made in letter No.AL-12/2309/92 and subsequently intimated through letter dated 25.10.2005 directing the petitioner to pay a sum of Rs.2,70,686/- towards penalty and Rs.1,500/- towards revocation fee in respect of the petitioner's Plot No.880 LIG II, Tamil Nadu Housing Board at Velacherry, Chennai-600 042 and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.G.Nagarajan

For Respondents : Mr.Bharath kumar
Standing counsel for TNHB

O R D E R

The challenge in the present writ petition is to an order dated 25.10.2005, whereby the respondent Board had demanded a sum of Rs.2,70,686/- towards penalty along with a sum of Rs.1,500/- towards revocation fee of the earlier cancellation order. The order dated 25.10.2005, is pursuant to the letter dated 29.07.2005, whereby the petitioner was requested to pay the aforesaid sum on or before 15.08.2005.

2. The learned counsel for the petitioner submitted that the Government in G.O.Ms.No.115, Housing and Urban Development Department, dated 31.05.2013 and G.O.Ms.No.83, Housing and Urban Development Department, dated 08.05.2014 have relaxed levy of penalty on belated payments and therefore, the impugned order cannot be sustained.

3. The learned Standing counsel for the respondent Board submitted that the Government orders cited by the learned counsel for the petitioner would not be applicable to cases where the allotment orders have already been cancelled and is applicable only to the defaulters. Even otherwise, he would submit that the petitioner was a defaulter in making payment of monthly instalments in time and in view of the agreement between the Board and the allottee, they are liable to pay the penalty.

4. I have given careful consideration to the submissions made by the respective counsels.

5. On a perusal of the impugned order dated 29.07.2005 and 25.10.2005, it is seen that the petitioner's allotment dated 01.09.1992 for Plot No.880 LIG II, Tamil Nadu Housing Board at Velacherry, Chennai-600 042 came to be cancelled on 25.03.2001, for non payment of the arrears of monthly instalments. In the Revocation Committee meeting held by the Board on 09.02.2004, a decision came to be taken to give the petitioner an opportunity to pay the due amount of Rs.2,70,686/- towards penalty and Rs.1,500/- towards revocation fee, on or before 15.08.2005.

6. Apparently, the order dated 25.10.2005 had impliedly withdrawn the earlier cancellation order dated 29.07.2005 by granting further time to the allottee to make the payment. Moreover, the demand made in the order dated 29.07.2005 includes a sum of Rs.1,500/- which is towards revocation fee. As such, it could only be deemed that the earlier cancellation has been revoked in view of the demand of revocation fee in the order dated 25.10.2005.

7. As pointed out by the learned counsel for the petitioner, through G.O.Ms.No.115, Housing and Urban Development Department, dated 31.05.2013 and G.O.Ms.No.83, Housing and Urban Development Department, dated 08.05.2014, the levy of interest and penalty have been withdrawn, which Government orders are said to be in force till date.

8. While that being so, the respondent Board may not be justified in claiming the amount through the impugned orders towards interest and penalty. Even assuming that these Government orders are applicable only to the cases of defaulters and not to the allottees, in view of the specific averments in the impugned order that they have extended the time to the petitioner to enable him to pay the demanded sum and have also demanded a sum of Rs.1,500/- towards revocation fee, the cancellation orders have been impliedly withdrawn and the petitioner could be considered as a defaulter and thereby would be entitled to the benefit of the Government orders.

9. In view of the aforesaid Government Orders, the impugned orders demanding payment of interest and penalty cannot be sustained.

10. For the foregoing reasons, the impugned orders made in letter No.AL-2309/92 dated 29.07.2005 and 25.10.2005 on the file of the second respondent are quashed. The writ petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

11. The second respondent is directed to execute a Sale Deed in favour of the petitioner herein towards the subject property, without demanding any interest or penalty and the said process shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

-Sd/-
Assistant Registrar
// True Copy //

Sub Assistant Registrar

vum

To

1. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.

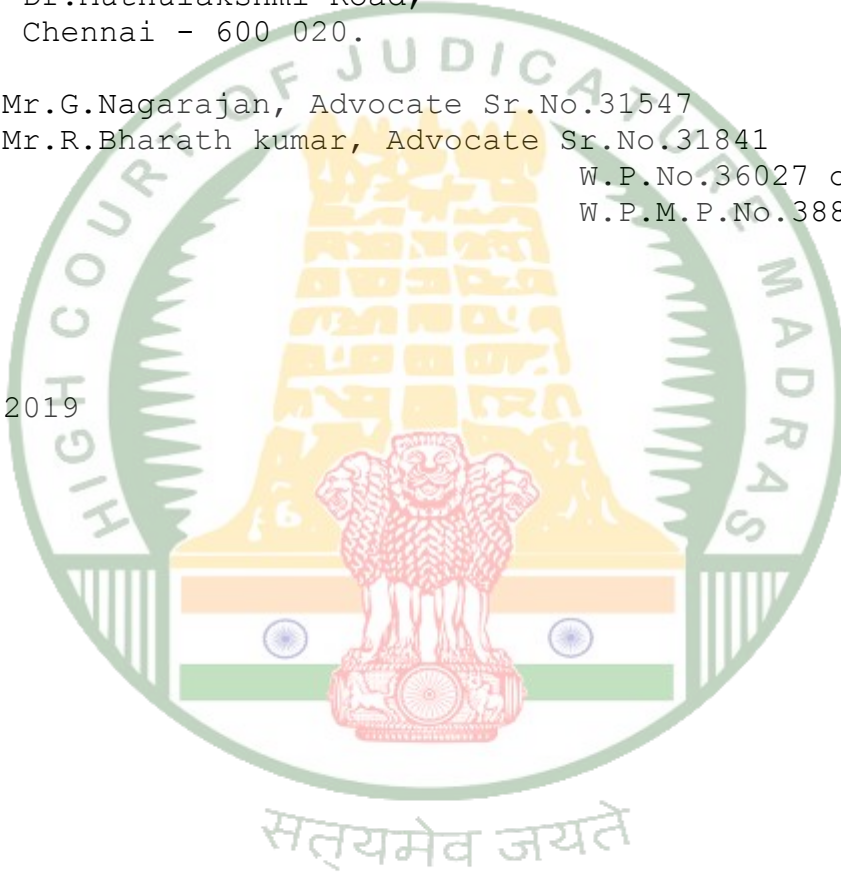
2. The Executive Engineer and
Administrative Officer,
Besant Nagar Division,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Road,
Adyar, Chennai - 600 020.

- 1 cc to Mr.G.Nagarajan, Advocate Sr.No.31547
- 1 cc to Mr.R.Bharath kumar, Advocate Sr.No.31841

W.P.No.36027 of 2005 and
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NRJK(CO)

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