

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.10.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Writ Petition No.4157 of 2019

N.Kamatchi

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai - 600 035.

2.The Executive Engineer and Administration Officer,
Anna Nagar Division, Tamil Nadu Housing Board,
Thirumangalam Complex,
Thirumangalam,
Chennai - 600 101.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus, praying to direct the 2nd respondent to execute and register sale deed in favour of the writ petitioner in respect of the property at No.33/1, Golden Apartment, East Cross Road, Maha Kavi Bharathi Nagar, Vyasarpadi, Chennai - 600 039 and to return the excess amount of Rs.1,06,912/- to the writ petitioner.

For Petitioner :Mr.Suresh Sampath
and B.Arvind Srevatsa

For Respondents :Mr.R.Bharathkumar
Standing Counsel

ORDER

Heard Mr.Suresh Sampath and B.Arvind Srevatsa, learned counsel appearing for the petitioner and Mr.R.Bharathkumar, learned Standing Counsel appearing on behalf of the respondents.

2. Initially, Tamil Nadu Housing Board allotted flat No.33/1, Golden Apartment, East Cross Road, M.K.B.Nagar, to one Kannan for Rs.3,76,300/- same was cancelled and allotted to the petitioner herein on 21.05.2004. When the flat was allotted to the petitioner, the value of the flat was fixed at Rs.10,76,800/- and a demand notice was issued. The

petitioner filed a writ petition in W.P.No.27122 of 2005, seeking detail and basis on which the said demand made and prayed to fix proper value for the house. On 06.04.2011, the said writ petition was allowed directing the housing board to furnish detail for the fixation of the value. The Housing Board has passed an order dated 26.08.2011, directing the petitioner to pay a sum of Rs.18,23,700/- being the cost of the flat as on 26.08.2011. An opportunity was given to the petitioner to pay the cost in installments-EMI at the rate of Rs.6,928/- for thirteen years with interest at the rate of 18% provided the petitioner pays initial deposit of Rs.2,23,490/-. However, the petitioner has not paid any money as directed by the Housing Board, vide communication dated 26.08.2011.

3. Later, when the petitioner sought for possession of the flat and sought for revision of the installments, the Housing Board vide its letter dated 01.12.2011 has directed the petitioner to make an initial deposit of Rs.8,44,800/- as a condition precedent for permitting her to occupy the residential flat and to pay EMI of Rs.9,600/- on or before 31.12.2011, failing which, she will face cancellation of the allotment. Again a reminder letter dated 16.10.2012 was issued by TNHB to the petitioner. This letter was challenged by the petitioner in W.P.No.30471 of 2012.

4. In the said writ petition, this Court has set aside the impugned letter of the Housing Board dated 16.10.2012, after observing as below:

" The petitioner was expected to pay the amount in installments of Rs.6,928/- p.m. The installment was increased to Rs.9,600/- rent August 2004 by the proceedings dated 2 December 2011. According to the Housing Board, the petitioner failed to pay the arrears thereafter and that was the reason for increasing the total amount payable to her. The Government have issued several orders in the interest of allottees. The Government wanted to help the allottees by waiver of penal interest and to put them in possession of the flat. Even though the allotment was made as early as on 6 July 2004, the fact remains that the flat is even now she is not in a position to occupy the flat. The housing board has been receiving the amount payable by the petitioner taking into account the capitalization method. The impugned order does not contain any indication about the calculation made by the Board and as to how they have arrived at a sum of Rs.8,44,800/- payable by the petitioner. Even though in the counter affidavit it was contended that the petitioner was given the

benefit of G.O.Ms.No.214 dated 29 August 2012, the fact remains that working sheet is not before this Court. Therefore, I am of the view that the matter requires fresh consideration by the Housing Board."

5. This Court directed the Housing Board to consider the matter afresh in the light of the payment so far made by the petitioner and taking into account the Government Order in G.O.Ms.No.215, dated 29.08.2012.

6. Pursuant to the above order passed by this Court in W.P.No.30471 of 2012, dated 09.10.2013, the Housing Board has handed over the flat to the petitioner on 14.03.2014, re-fixing the initial payment of Rs.63,855/- and EMI at the rate of Rs.9,600/-. It is the pertinent to note that, the petitioner from December 2012 has started paying the EMI. However, the possession was handed over to her only on 14.03.2014.

7. Presently, the grievance of the petitioner is that while the cost of the flat was fixed at the rate of Rs.6,38,543/-, so far, she has paid a sum of Rs.7,45,455/-, i.e. Rs.1,06,912/- in excess. While so, the second respondent herein is making a further demand of Rs.10,88,497/- vide letter dated 26.12.2017. Hence, the present writ petition seeking a direction to the second respondent to execute and registered sale deed in favour of the petitioner without insisting upon any further payments and also to return the excess amount of Rs.1,06,912/-.

8. The second respondent herein had filed a counter reiterating their demand of Rs.10,88,497/- alleged to be the due payable by the petitioner as on 20.12.2017.

9. The learned counsel appearing for the Housing Board would submit that a detailed calculation memo has been furnished to the petitioner along with the letter dated 26.12.2017, wherein, the waiver of penal interest granted to the allottees as per G.O.M.S.No.215 and 104 was taken into account.

10. The contention of the learned counsel for the Housing Board is that the allotment to the petitioner was made in the year 2004 and the petitioner is liable to pay the EMI with interest from the date of allotment. The calculation is made as per value fixed for the flat and interest at the rate of 18% from the date of allotment, thus, fixing the value of the flat at Rs.6,38,543/-. Taking as the cut of date as 01.08.2004, the date on which flat was ready for occupation, the price of the flat was fixed as Rs.18,23,700/- as on 26.08.2011 which includes the interest payable to the costs of

the flat. Accordingly, the EMI and initial deposit was refixed and the same was communicated to the petitioner. The petitioner has not paid the initial deposit as well as the EMI regularly. Therefore, the petitioner is liable to pay a sum of Rs.10,88,497/- as on 26.12.2017 and subsequent interest till date and if the petitioner pays the due sale deed will be executed in her favour.

11. The specific contention of the second respondent is that the petitioner has paid EMI for 70 months up to 24.09.2018, whereas, she is liable to pay EMI for 156 months, so far he has paid only 44% of the monthly installments prescribed.

12. The reason for fixing higher price and refusal to apply the concessions given under G.O.Ms.No.29, dated 29.01.2001 is stated in the counter affidavit in the following manner:

"3. I state that subsequently the Flat No.33/1 MIG at MKB Nagar was allotted to petitioner Tmt.Kamatchi Ammal on 06.07.2004 under G.D.Q. vide G.O.Ms.No.101, Housing and Urban Development Department, dated 21.05.2004. The cost of the flat was fixed at Rs.10,76,800/-. Thereafter, the petitioner has not come forward to pay the initial deposit amount and submit the relevant documents as required by the TNHB. Since the allottee has not paid the initial deposit and not furnished the required documents, a show cause notice dated 20.05.2005 was issued to the allottee and direct to pay the amount and submit the documents. Thereafter, the petitioner Tmt.Kamatchi Ammal has filed W.P.No.27122 of 2005 against the show cause notice and seeking to fix the cost of the flat as per G.O.Ms.No.29, dated 29.01.2001.

4. I state that the Government passed the G.O.Ms.No.29, Housing and Urban Development Department dated 29.01.2001 for the disposal of the flats constructed by the Tamil Nadu Housing Board before 30.06.2000 and unsold till 31.12.2000. Based on the G.O., the TNHB has issued time bound circular dated 17.07.2001 for the disposal of the unsold to one Mr.P.Kannan under GDO on 07.04.1998 vide G.O.Ms.No.291 date 31.12.1997. Subsequently, the above flat was reallocated to the petitioner after cancelling the allotment order in favour of P.Kannan. Moreover as per the Board's circular dated 17.07.2001 the flats at

cheaper cost should be allotted to the public, who participates in the lot conducted by the TNHB. The petitioner has got the allotment of flat No.33/1 MIG at MKB Nagar under G.D.Q. vide G.O.Ms.No.101, dated 21.05.2004. Therefore, the petitioner is not entitled to get benefit of the allotment as per G.O.Ms.No.29 and Board circular dated 17.07.2001. The Government order was issued in the Lr.No.2D No.169, dated 21.05.2000 and the allotment was made to the petitioner was before the Government order, hence the benefit issued in the Government order is not applicable to the petitioner."

13. Thus the subject flat was once allotted to Thiru.Kannan for Rs.3,76,300/- on 07.04.1998. When re-allotted to the petitioner on 06.07.2004, the price has been exorbitantly fixed at Rs.10,76,800/- which is the point of contention in this writ petition as well as the earlier round of litigation.

14. From the submission made by both the parties, this Court finds, the petitioner ignore to consider her liability to pay the interest. She taking into account the payment made towards the cost of the flat claims that she has remitted more than the costs of the flat. At the same time, the second respondent though handed over the possession of the flat to the petitioner only on 14.03.2014, tries to collect money by adding exorbitant rate as interest for the building value from the date of its completion.

15. Neither the allottee nor the Housing Board assigned justifiable reasons for arriving the costs of the flat.

16. The value of the flat according to the respondent has been fixed as Rs.6,38,543/-, as on 26.08.2011 with 18% interest payable from 06.07.2004 (the date of allotment). This price has been ascertained time and again by the Housing Board. While so, allottee is liable to pay the principal and interest only based on the price fixed by the Housing Board and as intimated to the allottee and nothing more. The next issue to be considered is as to when the liability to pay the EMI commenced. As far as the petitioner is concerned, she was entitled to get possession of the flat immediately on the allotment order issued to her on 06.07.2004. But that allotment order did not get finalised in view of the representation given by the petitioner to revise the value fixed for the flat and subsequent filing of the writ petition. The actual possession was taken by the petitioner only on 14.03.2014. This delay was due to non payment of initial deposit by the petitioner.

17. On 26.08.2011, the Housing Board has communicated to the petitioner about the value of the flat been reduced from Rs.10,76,800/- to Rs.6,38,543/- only at that point of time the finality of the price arrived. Even then, the allottee was not immediately handed over possession of the flat. The possession was given to the petitioner only on 14.03.2014. In such circumstances, the Housing Board/second respondent is liable to execute the sale deed taking into account by arriving the value of the flat allotted to the petitioner as Rs.6,38,543/- as on 06.07.2004 (the date of allotment) with simple interest at the rate of 18% per annum from 06.07.2004 till date, minus Rs.7,45,455/- paid so far by the petitioner. The petitioner is directed to pay the balance amount calculated as above to the second respondent within four weeks. On such payment the sale deed should be executed in favour of the petitioner within a period of four weeks from the date of payment.

18. Accordingly, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai - 600 035.

2.The Executive Engineer and Administration Officer,
Anna Nagar Division, Tamil Nadu Housing Board,
Thirumangalam Complex,
Thirumangalam,
Chennai - 600 101.

+1cc to M/s.R.Ramya, Advocate SR.87595

+1cc to Mr.R.Bharathkumar, Advocate SR.88152

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GP(CO)
CB(29/11/2019)