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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.10712 of 2018

Dr. (Mrs.) T.S.Swathi Rethnavathi .. Petitioner

-vs-

1. The Government of Tamil Nadu
rep.by its Secretary
Housing & Urban Development Department
Fort St.George
Chennai 600 009
2. The Executive Engineer & Administrative Officer
(Korattur Division)
Tamil Nadu Housing Board
Ashok Nagar Shopping Complex
Chennai 600 083
3. The Manager (Sales and Service)
Tamil Nadu Housing Board
K.K.Nagar Division
Chennai 600 083
4. The Managing Director
Tamil Nadu Housing Board
493, Anna Salai
Nandanam
Chennai 600 035
(R4 impleaded as per order dt.
6.8.2019 in WMP 19054/18
in WP 10712/18) .. Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for all the records of third and fourth respondents relating to letter bearing No.Ka.Na.Kho/B2/9260/99 dated 28.12.2017 of the third respondent in respect of H.I.G., individual house bearing No.1-2, F.T.Z., Phase III, Tambaram Sanatorium and Clause 6 of circular bearing No.ODU I-6/8697/2009 dated 12.8.2017 of fourth respondent and quash the same and consequently direct them to



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bearing house No.I-2 at a tentative cost of Rs.10,62,500/- and the respondents also received the initial deposit of Rs.2,65,625/- being the 25% of tentative cost and that the balance sum of Rs.7,96,875/- was liable to be paid by the petitioner in equated monthly installments of Rs.13,620/- with interest at the rate of 19% per annum for a period of 15 years with effect from January, 2000. Later on, the Tamil Nadu Housing Board by letter dated 24.2.2000 bearing No.A6/9260/99 informed the petitioner about the handing over of the said HIG individual house and the petitioner also took physical possession of the said HIG house vide letter dated 8.2.2001. Since then, the petitioner has been paying the monthly installments to the Housing Board. It is the further case of the petitioner that she raised a loan of Rs.6,49,180/- from ICICI Bank Ltd., and a cheque dated 27.3.2002 bearing No.738460 for Rs.6,49,180/- was issued by the ICICI bank in favour of the Tamil Nadu Housing Board towards the balance cost of the said HIG house bearing No.I-2, F.T.Z. Phase III Tambaram. Adding further, the learned counsel for the petitioner submitted that the petitioner has thus paid a total sum of Rs.16,08,040/- towards the said house, which is in excess of the total amount payable by the petitioner. Therefore, the petitioner met the Manager (Sales and Service) of the Tamil Nadu Housing Board/third respondent for preparation of the draft sale deed with a request to refund the excess amount after adjusting the total cost of the said HIG individual house. Thereafter, the petitioner also received a letter bearing No.Ka.Ka.Na.Kho/B2/7226/98 dated 26.4.2017 from the third respondent asking the petitioner to furnish various documents for completion of formality in execution of the sale deed in respect of the said house. Immediately the petitioner furnished the relevant documents by letter dated 2.6.2017 sent through registered post. In that letter, the petitioner also brought to the notice of the respondents about the excess amount paid by her and thereupon sought the statement of accounts besides refund of the excess amount. Finally, the third respondent informed the petitioner by letter dated 4.12.2017 enclosing a copy of the notification dated 12.8.2017 issued by the Tamil Nadu Housing Board highlighting clause 6 of the circular stating that the excess amount paid cannot be refunded. Once again the petitioner in her letter dated 23.12.2017 replied that clause 6 of the notification is attracted in the case of an allottee requesting for refund of the total cost who was unable to go for execution of the sale deed. But in the present case, the petitioner has paid the excess amount that was wrongly received by the respondents, which they are not entitled for. Hence the petitioner has rightly asked for the refund of the excess amount. As the respondents also have clearly admitted the case of the petitioner in the Tamil Nadu Housing Board abstract



dated 9.10.2017 signed by the Assistant, Superintendent and the Assistant Revenue Officer that there was an excess amount paid, namely, outstanding due minus Rs.1,86,108/-, it goes without saying that the petitioner had paid an excess amount of Rs.1,86,108/- which ought to be refunded to the petitioner. Referring to one another working sheet prepared by the respondents enclosed at page 100 of the typedset indicating the excess amount of Rs.1,54,584/-, the learned counsel for the petitioner again emphatically stated that the respondents have crystal clearly admitted the case of the petitioner that she has paid the excess amount. Therefore, the excess amount shall be directed to be refunded with a further direction to the respondents to execute the sale deed for the house in question in favour of the petitioner.

3. Heard learned counsel for the parties.

4. A reading of paragraph-4 of the counter affidavit filed by the second respondent also shows that the petitioner has paid the total cost of the house as early as the concession order issued by the Government. However, with regard to the request of the petitioner for refund of the excess amount paid by her, the second respondent in the counter affidavit has stated that the concession G.O., is not applicable to the petitioner's case and it is applicable to the allottees who are in default of payment and not received the sale deed. Moreover, in paragraph-6, it is stated that the petitioner has not paid the excess amount, therefore, the calculation of the cost of the house in the light of the concession G.O., and requesting for refund of the amount is untenable, for the reason that clause 6 of the circular states that the excess amount cannot be refunded to the petitioner. Therefore, when the counter affidavit also makes it crystal clear that the petitioner had paid the total cost of the HIG house, the question to be adjudicated by this Court is whether the petitioner has paid the excess amount or not. This also can be established from two of the working sheet abstracts issued by the respondents 2 to 4. In one of the working sheets enclosed at page-87, the certified payments have been mentioned as follows:-



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Initial Deposit	:	271000	
Monthly Installment	:	609780	
Penal Interest	:	0	
Maintenance Charge	:	240	
Land Cost	:	0	
Left Out	:	0	
Balance Cost	:	100000	
Preclosure of Lumpsum:		649180	

		1630200	

Outstanding Due		-186108	

In yet another place, page-100 of the typedset, the working sheet prepared by the respondents 2 to 4 also indicates that there is a total excess of Rs.1,54,584/- paid by the petitioner. When it is also the case of the respondents 2 to 4 that the petitioner had paid in excess, this Court finds no difficulty to direct the respondents 2 to 4 to refund the excess amount collected from the petitioner, namely, a sum of Rs.1,54,584/-. Accordingly, the impugned order is set aside and the respondents 2 to 4 are directed to refund the excess amount of Rs.1,54,584/- to the petitioner within a period of two weeks from the date of receipt of a copy of this order, failing which the said amount shall carry interest at the rate of 12% per annum till the same is paid. This Court is also constrained to impose costs of Rs.10,000/- on the respondents 2 to 4 for two reasons. When the total amount admittedly has been paid long time back, the respondents 2 to 4 ought to have immediately executed the sale deed in favour of the petitioner, which has not been done. Secondly, it is admitted by the respondents 2 to 4 that the petitioner has paid the excess amount as indicated above. In all fairness, the respondents 2 to 4 should have executed the sale deed. Although the learned counsel for the respondents 2 to 4 repeatedly requested this Court not to impose costs, this Court in principle is constrained to impose costs for the reasons mentioned above. Hence, the respondents 2 to 4 are also directed to execute the sale deed in respect of the HIG house bearing No.I-2, F.T.Z. Phase III, Tambaram Sanatorium in favour of the petitioner within a period of two weeks time. With this direction, the writ petition stands allowed with costs of



Rs.10,000/- payable by the respondents 2 to 4 to the petitioner.
Consequently, W.M.P.No.12653 of 2018 is closed.

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Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

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Housing & Urban Development Department
Fort St.George
Chennai 600 009
2. The Executive Engineer & Administrative Officer
(Korattur Division)
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4. The Managing Director
Tamil Nadu Housing Board
493, Anna Salai
Nandanam
Chennai 600 035

+1 cc to Mr.K.Rajasekaran Advocate sr94181
+1 cc to Mr.R.Bharathkumar Advocate sr94559
+1 cc to the government pleader sr94630

W.P.No.10712 of 2018

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