

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	04.03.2018
Orders pronounced on	02.4.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.4636 of 2014andM.P.No.1 & 2 of 2014

P.Poonguzhali

...

Petitioner

Vs.

The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
J.J. Nagar Division,
Thirumangalam,
Anna Nagar, Chennai 600 101.

...

Respondent

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the respondent herein culminated in the impugned letter No.JJ5/2390/2010, dated 4.2.2013, reiterated in letter No.J.J.A1/3441/2010, dated 11.6.2013 and letter No.J.J.A1/3341/2012 dated 21.11.2013 on the file of the respondent and quash the same and consequently, direct the respondent to hand over possession and execute the sale deed in favour of the petitioner in respect of the petitioner in respect of the LIC flat No.L49/24 in second floor at Ambattur PH I & II (608), Chennai under "Self Finance Scheme" with a plinth area of 476 sq.ft. pursuant to allotment order, dated 12.4.2010 in letter No.MRA2/3441/2010.

For Petitioner : Mr.O.M.Prakash, Sr. Counsel
for Mr.Ramalingam
For Respondents : Mr.V.Anandamurthy,
Standing Counsel for TNHB

ORDER

According to the petitioner, during the month of December, 2009, the respondent herein has called for applications from interested and eligible persons to purchase a LIG (Lower Income Group) Flat under the Self Finance Scheme at Ambattur Phase I & II, Chennai. The advertisement in fact had invited applications for (1) 48 H.I.G., Nolambur Scheme, (2) 44 M.I.G. flats at Mogappair Eri Scheme and 608 LIG flats at Ambattur Phase I & II Scheme. The last date of submission of the applications was 8.1.2010. On seeing the advertisement made by the respondent, the petitioner applied for purchasing a L.I.G. flat, Ambattur Phase I & II scheme under the Self Finance Scheme vide application No.3441, dated 30.12.2009. Petitioner's father had also made an application for a M.I.G. flat in the Mogappair Eri Scheme as he also did not own any property. As per the terms and conditions of the respondent Board, the petitioner remitted a sum of Rs.58,000/- being the first instalment by demand draft bearing No.498217, dated 29.12.2009 drawn on Indian Overseas Bank, Chennai along with the application. On receipt of the applications from various applicants, the allotment will be made to the selected applicants by conducting lot observing categorywise reservation. The lots will be conducted by the

Allotment Committee constituted by the Government. After conducting the lots, the remaining flats if any, will be allotted on first cum first served, basis to all the remaining applicants. As far as the subject scheme is concerned, the entire advertised flats of 608 were not allotted for want of applicants and the respondent had in fact advertised for remaining flats in the later advertisements in 2011 and 2012 as 15 and 7 respectively. After scrutinizing the application submitted by the petitioner, the respondent herein has allotted a flat namely LIG flat No.L49/24 in second floor at Ambattur PH I & II (608) under "Self Finance Scheme" with a plinth area of 476 sq.ft. in and by an registered allotment order, dated 12.4.2010 in letter No.MRA2/3441/2010 and was directed to pay the balance outstanding amounts, including the 5% as per clause 11 of the application. As directed by the respondent, the petitioner had paid the entire amount as follows:

<i>Instalment</i>	<i>Description</i>	<i>Amount (Rs.)</i>	<i>Due date</i>	<i>Paid on</i>
2nd	5% of the flat cost	41,300/-	20.04.2010	15.06.2010
3rd	30% of the flat cost	2,97,900/-	30.06.2010	28.08.2010
4th	20% of the flat cost	1,98,600/-	30.09.2010	01.10.2010
5th	20% of the flat cost	1,98,600/-	31.12.2010	29.12.2010
6th	20% of the flat cost	1,98,600/-	31.03.2011	31.03.2011

On payment of entire amount by the petitioner, the respondent confirmed the allotment in favour of the petitioner and construction of the flat at petitioner's cost being a Self Finance Scheme. However, the respondent had sent a communication in letter No.JJ5/2390/2010 dated 4.2.2013

stating that the allotment made in favour of the petitioner has been cancelled on the ground that double allotment made, contrary to the terms in the application and the petitioner was directed to receive 50% as refund out of the total amount paid by the petitioner by signing advanced stamped receipt. Hence, the petitioner has filed the present writ petition before this Court for the aforesaid prayer.

2. In the counter affidavit filed by the respondent, it is stated that the petitioner has jointly with her father Thiru P.Paulrasu applied in Application No.3441 for the allotment of LIG flats (608 LIG) at Ambattur Scheme. In the same manner, Thiru P.Paulrasu has applied in Application No.2390 jointly with her daughter/petitioner herein for the allotment of 44 MIG flat at Moggapair Eri Scheme. In the application No.2390 for allotment of MIG flat, they have mentioned their namely jointly as P.Paulrasu and P.Punguzhali and in Application No.3441 for 608 LIG flat, Ambattur Phase I & II Scheme, they mentioned their name jointly as P.Punguzhali and P.Paulrasu. As per the condition No.12 for the registration of application from annexed with the application for more than one application form should be applied in one family. If such violation will find out in future application will be summarily rejected. The petitioner has furnished same address in both application. Even though the petitioner has not own any property at the time of applying for the allotment of flats at Moggappair Eri Scheme and Ambattur Phase 1 & II, when the petitioner has got allotment in

joint name for MIG flat No.G/12 (44 MIG flat), the petitioner should have voluntarily withdrawn from the second allotment on 12.4.2010. The petitioner has not surrendered the later allotment of flat L49/24 (608 LIG) as per the TNHB Rules and Regulations. It is stated that the Assistant who is looking after the allotment of 608 LIG at Ambattur scheme, was not aware of the earlier allotment of MIG flat No.G1/12 in favour of joint name viz., the petitioner and her father. It is further stated that the petitioner suppressed the fact of the earlier allotment of flat made in her favour. It is submitted that when the Local fund Audit party came to her office for inspection of the records for the financial year 2011-2012, they have raised audit objection that two allotments were made to same person viz., the petitioner and her father and therefore, directed to cancel the later allotment of flat No.L49/24 and the 50% of the total amount paid by the petitioner should be recovered and shown to audit for dropping their audit objection. Therefore, as per the audit objection, the respondent has cancelled the allotment of flat No.L49/24 at Ambattur Phase I & II. The Board in its letter, dated 17.6.2013 addressed to the petitioner stating that the order has already been issued regarding refund of deposit in Board's resolution No.9.2.2012, dated 27.7.2012. The representation made by the petitioner, dated 23.9.2013 to resume allotment of flat No.L49/24 at Ambattur Phase I & II scheme was rejected by the Board vide letter, dated 21.11.2013.

3. Heard the learned counsel for the petitioner, learned Government Advocate appearing for the respondents 1 to 4, learned counsel for the 5th respondent and perused the materials available on record.

4. According to the respondent, as per condition No.12 of the registration of application annexed with the application form, not more than one application should be applied in one family. It is not disputed by the petitioner that the petitioner jointly with her father Thiru P.Paulrasu, has applied in Application No.3441 for the allotment of LIG flat (608 LIG) at Ambattur Scheme. Similarly, the petitioner jointly with her father submitted another application in Application No.2390 for allotment of MIG flat at Mogappair Eri Scheme, by violating the allotment condition No.12 annexed with the application form. The applications for allotment of MIG flats at Mogappair Eri Scheme and the applications for allotment of LIG flats at Ambattur Phase I and II are separated and the applications for two different Schemes are processed separately. Therefore, the respondent Board could not identify the double allotment made to the petitioner's family. Further, it is also stated by the respondent that during audit conducted by the Local Fund Audit party, they raised objection for double allotment made to the same person viz., P.Paulrasu and P.Punguzhali in flat No.MIG G1/12 at Mogappair Eri Scheme and Flat No.L49/24 at Ambattur Phase I & II Scheme and therefore, the impugned order has been passed

cancelling the second allotment of flat No.L49/24 made in favour of the petitioner. Further, the respondent Board was directed that 50% of the total amount should be recovered and shown to audit for dropping the audit objection.

5. Now, the petitioner seeks an order from this Court to retain both MIG flat G1/12 at Mogappair Eri Scheme and Flat No.L49/24 at Ambattur Phase I & II Scheme which were obtained by violating the condition No.12 of the registration of application. It is clear from the condition No.12 of the registration of application form that not more than one application should be applied in one family. Therefore, this Court is of the view that the respondent Board has rightly passed the order impugned in the present writ petition by cancelling the second allotment made in favour of the petitioner.

6. However, the petitioner is entitled for refund of the 50% of the total amount paid by the petitioner, for cancelling the second allotment of flat No.L49/24 made in favour of the petitioner and her father, along with interest @ 6% p.a. from 21.11.2013 the day on which the request of the petitioner for retaining both the allotments were rejected by the respondent Board.

In view of the above, this Court is inclined to interfere with the impugned order passed by the respondent in so far as awarding of interest alone. The writ petition is partly allowed on the aforesaid terms. No Costs. Consequently, connected miscellaneous petitions are closed.

2.4.2019

Internet:Yes/No
Index:Yes/No
Speaking / Non-Speaking order
vaan

To
The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
J.J. Nagar Division,
Thirumangalam,
Anna Nagar, Chennai 600 101.



WEB COPY

D.KRISHNAKUMAR, J.

vaan



Pre-Delivery order in
W.P.No.4636 of 2014
and M.P.No.1 & 2 of 2014

WEB COPY

Dated: 2.4.2019