

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.NO.40167 OF 2006

M.P.NO.1 OF 2006

A.Muthusamy

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Housing Board,
Anna Salai, Chennai.
2. The Executive Engineer cum
Administrative Officer (Incharge)
Salem Housing Board Division,
Salem - 8.
3. The Workshop Superintendent,
Government Regional Workshop (Health),
Salem - 7.

... 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 the letter of the second respondent addressed to the third respondent vide letter Na.Ka.No.R14/10999/01 dated 31.08.2006 and quash the same as illegal.

For Petitioner : Mr.M.Sridhar

For Respondents: Mr.R.Bharath Kumar

for TNHB [R1& R2]

Mr.K.Magesh

Special Government Pleader [R3]

ORDER

This Writ Petition has been filed challenging the letter of the second respondent addressed to the third respondent vide letter Na.Ka.No.R14/10999/01 dated 31.08.2006 and quash the same as illegal.

2. The petitioner was working as a special fitter in the third respondent office. While he was in service, he applied to the District Collector for availing home loan and had given a consent letter from his Department for deducting the installment dues from his salary on 13.06.2002. Thereafter, several times, he requested the second respondent to issue certificates for getting loan in his department but despite his best efforts, the clerks working in the second respondent office, did not provide the certificates essential for him to get loan from his department. Though, he was continuously knocking the door of the second respondent office, the second respondent was evasive to hear his request. Since there was no response from the second respondent regarding the issuance of certificates, he sent a representation to the second respondent on 04.09.2002, stating that the office of the second respondent did not issue relevant certificates to enable him to obtain loan from his office. Even though, there was no response from the second respondent. The omission on the part of the second respondent office was the reason of the petitioner for not obtaining loan from his office. Thereafter, suddenly, the third respondent addressed a letter to the second respondent stating that since the petitioner did not obtain loan within 6 months, he is liable to pay the interest for the house allotted to him and the dues has to be recovered from his salary. The third respondent, before issuing the said letter neither enquired the facts for non-issuance of the relevant certificates nor gave any opportunity to the petitioner to explain as to why he could not avail loan from his department. Since the letter issued by the third respondent was illegal and arbitrary, he was forced to file a writ petition in W.P.No.45170/2002. Though this Court granted interim stay on 09.01.2002, the said writ petition was dismissed for non-prosecution. Hence, he filed the present writ petition, since the earlier writ petition was not disposed of on merits. Further, the respondents canceled the house allotted to the petitioner on 01.02.2005 on the ground that the writ petition filed by him, was dismissed. Thereafter, the second respondent sent a letter dated 31.08.2006 to the third respondent, which was also communicated to the petitioner, in which the second respondent had directed the third respondent to deduct not less than Rs.5,000/- per month starting from September, 2006 from his salary, since he did not pay the interest amount of Rs.89,256/- for the house allotted to him for the period of January, 2002 to February, 2006. The respondents allotted the house to the petitioner in the year 2002 itself but did not issue necessary certificates to him to get loan from his department. If the second respondent had issued the necessary certificate, the petitioner would have purchased the house. Though the house was allotted to him in the year 2002, he was not allowed to enter into the house and the allotment was also canceled on 01.02.2005. The efforts made by the petitioner for

availing the house loan, has been in vain and paying the interest for the house, the allotment for which, was canceled, is unnecessary and therefore, he has filed this writ petition.

3. A counter affidavit has been filed by the first and second respondents, stating that the certificates have been sent to the petitioner by unregistered parcel on 23.08.2002 and the allegation made by the petitioner that the second respondent has not issued the relevant certificates, is incorrect and the allegation leveled against the second respondent, is not sustainable.

4. The learned counsel for the petitioner would contend that no certificate was received by the petitioner. If at all, the petitioner received the same, he would have availed the loan from the department and paid the dues to the housing board. Since he did not receive any certificates from the second respondent, he could not get loan from the department.

5. When the matter came up for hearing on last occasion, the learned standing counsel for the respondents 1 and 2, submitted that they have sent a letter and it was duly served to the petitioner. This Court, directed the respondents to file the acknowledgment or proof of serving of the certificates to the petitioner in-time, i.e., in the year 2010 itself. Today, when the matter is taken up, the learned counsel for the respondents would submit that they have sent a letter through an ordinary post and they did not have any proof that the petitioner has received it.

6. The main contention of the petitioner is that, in order to avail the loan from the third respondent, the necessary certificates had to be issued by the second respondent and the same was not issued in time, so the petitioner was not able to produce the same before the third respondent and could not avail the loan but was directed to pay the dues to the first respondent. Though the house was sanctioned by the first respondent within the stipulated time, since the second respondent did not give the relevant certificates, he could not obtain loan from the third respondent and paid the dues of the first respondent. Therefore, the first respondent, subsequently, canceled the petitioner's allotment and sold the house to the third party.

7. Now the fact remains that the petitioner has not availed the property; has not occupied even for a single day and before occupation, the allotment was canceled and subsequently, the property was sold to the third party. Therefore, under these circumstances, it is unfair that the person who had not taken possession in the house, has to pay the interest for the same.

Due to the inaction committed by the second respondent, the first respondent cannot recover any money from the petitioner's salary through the third respondent. Therefore, the impugned letter sent to the petitioner is liable to be set aside, since the said allotment was subsequently canceled and the property was sold to the third party and the petitioner is not in occupation of the house, and there was no loss incurred to the respondents.

8. Hence, in view of the above facts and circumstances of this case, the letter of the second respondent addressed to the third respondent is liable to be set aside and the same is set aside, accordingly, the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Housing Board,
Anna Salai, Chennai.
2. The Executive Engineer cum Administrative Officer (Incharge)
Salem Housing Board Division,
Salem - 8.
3. The Workshop Superintendent,
Government Regional Workshop (Health),
Salem - 7.

+lcc to Mr.R.Bharath Kumar, Advocate, S.R.No.41403
+lcc to the Government Pleader, S.R.No.41691

UM(CO)
CS/21/01/2021

W.P.No.40167 of 2006

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