

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2020

DELIVERED ON : 06.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.7258 OF 2010

&

M.P.NOS.1 & 2 OF 2010 & 1 OF 2011

Manimegalai

.. Petitioner

vs.

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

2. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit,
Salem.

...Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India for writ of certiorarified mandamus calling for the entire records relating to the proceedings of the first respondent made in Lr.No.allotment Revoc/522/80/2009 dated 11.01.2010 and quash the same and direct the respondents to Register and release the Sale Deed bearing in favour of the petitioner in respect of the proceedings residential flat bearing House M1/8, MIG Kottakoundanpatty projects, Salem to the petitioner by considering her representation dated 07.03.2010. In the light of the TNHB Resolution No.9.05 dated 23.04.2007 passed by the Department dated 16.07.2004 for interest freezing with respect to the petitioner above said house concern.

For Petitioner : Mr.C.Kanagaraj

For Respondents : Mr.R.Bharath Kumar,
Standing Counsel

ORDER

This writ petition has been filed challenging the letter dated 11.01.2010 passed by the first respondent revoking the cancellation of the allotment made in favour of the petitioner for House bearing No.M1/8, MIG Kottakoundanpatty projects, Salem subject to the payment of Rs.6,36,540/- within a period 60 days from the date of receipt of a copy of the impugned letter.

2. The case of the petitioner is that she was allotted a residential house bearing No.M1/8, MIG Kottakoundanpatty projects, salem by the Tamil Nadu Housing Board on 30.06.1999 at a total cost of Rs.2,69,300/-. According to her, as per the allotment order, she was directed to pay 10% as advance and the same was also paid by her. It is her case that subsequently, she has paid a sum of Rs.1,18,766/- in instalments till December 2000 and thereafter, due to personal reasons, she could not continuously remit the instalment amount to the second respondent. According to her, she was evicted from her house by the officials of the second respondent on 25.12.2000 and thereafter, the second respondent has sealed the residential house allotted to her due to non-payment of dues. It is also the case of the petitioner that the allotment was also cancelled.

3. According to her, she received the impugned communication dated 11.01.2010 from the first respondent stating that the cancellation made against her dwelling house allotted to her is revoked and she was directed to pay a sum of Rs.6,35,540/- within 60 days for reallocation of the house in her favour. According to her, she submitted a representation dated 07.03.2010 to the first respondent requesting them to consider the fact that the residential house was surrendered by her on 25.12.2000 itself and the same remained unoccupied and therefore, the interest imposed for the period of non-occupation may kindly be waived. According to her, despite her representation, no reply has been received from the first respondent for the request made by the petitioner with regard to the waiver of interest. In such circumstances, this writ petition has been filed. Subsequent to the filing of the writ petition, pursuant to the interim order granted by this Court, the petitioner has also paid a sum of Rs.1,50,550/- to the Tamil Nadu Housing Board, in all, a total sum of Rs.2,69,316/- has been paid

4. A counter affidavit has been filed by the second respondent stating that the petitioner has paid only a sum of

Rs.1,18,766 in instalments till December, 2000 which includes 10% towards initial payment. According to them, thereafter, no payment was made by the petitioner. It is their case that they sent several reminders to the petitioner demanding the payment of outstanding dues in respect of allotment.

5. According to them, the petitioner committed default in payment of Rs.1,39,937/- as on August 2002 and she has also not paid the instalments as per the allotment order. It is their case that several notices were sent to the petitioner demanding payment of instalments which are as follows:

"Notice 84(2), dt. 09.07.2001, 15.11.2001, 14.12.2001 and 11.06.2002

Notice 84(1), dt. 08.07.2002

Notice for Eviction, dt.15.10.2001, 20.07.2004 & 03.08.2004."

6. According to the respondents, even after the receipt of the aforementioned notices, the petitioner has not paid the instalments. Hence, according to the respondents, they were constrained to evict the petitioner and take back the possession of the house from her.

7. The respondents have admitted that they had sent the impugned letter dated 11.01.2010 to the petitioner. According to them, despite the receipt of the said letter, the petitioner failed to remit the amount, instead she has challenged the same in this writ petition.

8. It is also stated in the counter affidavit that an interim stay was granted by this Court on 09.04.2010 in M.P.No.2 of 2010 filed in this writ petition. The Interim order dated 09.04.2010 reads as follows:

" as per the allotment order dated 30.06.1999, the petitioner had paid Rs.118766/- and the balance amount of Rs.150534/- for the said demand of Rs.269300/-, the petitioner is willing to deposit the said amount within three months. In view of the same, there will be an order of interim stay on payment of the said balance amount within three months from today."

9. According to the respondents, the petitioner had paid a sum of Rs.1,50,550/- on 01.04.2011, pursuant to the interim order dated 09.04.2010 passed by this Court. According to them, thereafter, the petitioner filed a contempt application No.499 of 2011 in M.P.No.2 of 2010 in the above writ petition against the 2nd respondent which was closed subsequently.

10. In the counter affidavit, the respondents have made it clear that unless the petitioner pays the balance amount of Rs.6,41,829/- due as on 30.11.2011, she is not entitled for execution of the sale deed for the house bearing No.M1/8, MIG Kottakoundanpatty project, Salem.

11. Heard Mr.C.Kanagaraj, learned counsel for the petitioner and Mr.R.Bharath kumar, learned standing counsel for the respondents.

12. The learned counsel for the petitioner submitted that the impugned order is arbitrary and illegal, since the petitioner surrendered the residential house as early as on 25.12.2000 itself and it remained unoccupied till this date and therefore, levy of interest for the period from 25.12.2000 is illegal.

13. The learned counsel for the petitioner also drew the attention of this Court to G.O.Ms.No.37 dated 14.02.2011 issued by the Housing and Urban Development Department and submitted that the Government has waived 50% interest in respect of allotment made before 31.03.2008. According to him, in view of the aforesaid Government Order, the impugned letter is arbitrary and illegal as the Tamil Nadu Housing Board have claimed excess amount from the petitioner.

14. Per contra, learned standing counsel for the respondents would submit that the petitioner is a defaulter in the payment of the instalments and that is the reason for cancellation of her allotment. He also drew the attention of this Court to the several notices sent by the respondents demanding payment of the instalment amounts as per the allotment order. According to him, since the petitioner failed to pay the instalment amounts, despite reminders, the respondents cancelled the allotment.

15. The learned standing counsel drew the attention of this Court to the letter dated 18.08.2009 sent by the petitioner to the Tamil Nadu Housing Board (Revocation committee) seeking for

revocation of cancellation of allotment. Referring to the said letter, the learned standing counsel submitted that the petitioner has undertaken to pay the entire outstanding amount to the Tamil Nadu Housing Board. According to the learned standing counsel, only at the request of the petitioner, the cancellation of allotment was revoked by the Tamil Nadu Housing Board on 21.11.2009. According to him, it was made clear in the revocation order dated 21.11.2009 that all the original allottees will have to pay the outstanding dues together with the penalty fee. According to the learned standing counsel for the respondents, only on the assurance given by the petitioner to pay the entire outstanding dues which includes the penalty fee, the respondents offered to revoke the cancellation of allotment.

16. The learned standing counsel for the respondents would submit that the impugned letter dated 11.01.2010 demanding a sum of Rs.6,36,540/- from the petitioner for restoring the allotment and for execution of sale deed in favour of the petitioner is only in accordance with terms and conditions of the revocation order passed by the Tamil Nadu Housing Board on 21.11.2009. Hence, according to him, the impugned letter of demand is perfectly valid and legal.

Discussion:

17. Admittedly, the petitioner who was allotted the house in the year 1988 was a defaulter and her allotment was cancelled by the Tamil Nadu Housing Board in the year 2002 itself. The petitioner made a request for revocation of cancellation of allotment only on 18.08.2009. Accordingly, the respondents have passed the revocation order on 21.11.2009 and offered to revoke the cancellation of allotment on condition that the petitioner pays the entire outstanding dues as well as the penalty fee charged in one lumpsum. In fact, in his letter dated 18.08.2009 making a request for revocation of cancellation of allotment, the petitioner has unconditionally agreed to pay the outstanding dues to the Tamil Nadu Housing Board. Acting upon the said letter, the Tamil Nadu Housing Board has offered to revoke the cancellation of allotment by the revocation order dated 21.11.2009 subject to the payment of the entire outstanding dues together with penalty fees by the petitioner. Instead of paying the outstanding dues together with penalty fees, the petitioner has filed this writ petition challenging the demand of Rs.6,36,540/- made by the Tamil Nadu Housing Board to revoke the cancellation of allotment. The Tamil Nadu Housing Board has demanded a sum of Rs.6,36,540/- from the petitioner in the following manner

Description	Amount in Rs.
Total Demand	709315
Total collection	118766
Outstanding Dues	590549
Penalty	44291
Dues with Penalty	634840
Revocation fee	1500
Scrutiny fee	200
Total payable	636540

18. It is the contention of the learned counsel for the petitioner that the petitioner is not liable to pay interest or penalty for the period from the date of cancellation of allotment till the date of impugned letter dated 11.01.2010, since the house remained unoccupied.

19. Based on the revocation order dated 21.11.2019, the impugned letter dated 11.01.2010 was passed by the Tamil Nadu Housing Board, wherein it has been made clear that the cancellation of allotment is revoked subject to the condition that the petitioner pays the entire outstanding dues together with penalty fees as demanded by the Tamil Nadu Housing Board. The petitioner has also agreed to pay the entire outstanding dues to the Tamil Nadu Housing Board in her letter dated 18.08.2009 seeking for revocation of cancellation of allotment. Unless and until, the petitioner pays the entire outstanding dues including the penalty fee, as per the revocation order dated 21.11.2009, she is not entitled for revocation of cancellation of allotment.

20. Only to benefit the defaulting allottees, the Tamil Nadu Housing Board, being an organ of the State, has offered to revoke the cancellation of allotment, subject to the fulfillment of certain conditions imposed by them under the revocation order. Further, in the case on hand, the cancellation of allotment in favour of the petitioner was done by the Tamil Nadu Housing Board as early as in the year 2002 itself. However, only to benefit the petitioner and other allottees, who had defaulted earlier and whose allotments were cancelled, the Tamil Nadu Housing Board gave an offer for revocation of the cancellation of allotment, subject to the fulfillment of the conditions stipulated by them.

21. In fact, the petitioner has not taken any legal steps for revocation of the cancellation of the allotment, subsequent to the cancellation of allotment of her house in the year 2002 itself. Only at the instance of Tamil Nadu Housing Board to benefit its allottees, who were the defaulters earlier, the

Tamil Nadu Housing Board accepted the request for revocation of cancellation of allotment made by the original allottees whose allotments were cancelled in the year 2009 subject to the fulfillment of certain conditions imposed by them.

22. The petitioner ought to have accepted the offer made by the Tamil Nadu Housing Board in its revocation order dated 21.11.2009, instead has exploited the Tamil Nadu Housing Board's generosity by challenging the impugned letter which has been sent consequent to the revocation order dated 21.11.2009. The revocation order passed by the Tamil Nadu Housing Board calling upon the allottees whose allotments were cancelled earlier, to pay the outstanding dues together with penalty fees and other charges is only an offer. It is for the petitioner and other allottees, whose allotments were cancelled either to accept the same or to reject the same. They do not have any right to challenge the revocation order dated 21.11.2009 or consequent letter of demand dated 11.01.2010 as it is only an offer made by the Tamil Nadu Housing Board for revocation of cancellation of allotments. There is no concluded contract as the petitioner has not accepted the offer given by the respondents. Further no explanation has been given by the petitioner as to why the allotment which was cancelled in the year 2002 itself is being challenged in the year 2010 through this writ petition.

23. For the foregoing reasons, it is clear that the petitioner has exploited the generosity shown by the Tamil Nadu Housing Board which gave an offer for revocation of cancellation of allotment by challenging the impugned letter dated 11.01.2010 which has been issued consequent to the revocation order dated 21.11.2009.

24. In the result, there is no merit in this writ petition. Accordingly, this writ petition is dismissed. However, the second respondent is directed to refund the sum of Rs.2,69,316/- to the petitioner which the petitioner has paid till date towards his allotment of residential house, after adjustment of charges which they are entitled to deduct under the original allotment order dated 30.06.1999. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.
2. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit, Salem.

+1cc to M/s.C.Kanagaraj Associates, in sr.no.9863

+1cc to M/s.R.Bharath Kumar, Standing Counsel in sr.no.10314

W.P.No.7258 of 2010

BP (CO)
CS/05/03/2020



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