

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2020

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.21824 of 2014
and
M.P.Nos.1 & 2 of 2014
(heard through VC)

D.Siraj Begum

... Petitioner

Vs

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-9.
 2. The Managing Director,
Tamilnadu Housing Board,
Nandanam, Chennai-35.
 3. The Executive Engineer/Administrative Officer,
Tamilnadu Housing Board,
Ayyan Thirumaligai Road,
Hasthampatti, Salem.
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 3rd respondent in his letter No.R4/1856A/04 dt 31.7.2012 and quash the same and consequently directing the respondents to return back the excess amount of Rs.13,00,000/- to the petitioner which was collected by the respondents under threat of execute the sale deed.

For Petitioner : Mr.C.Prakasam

For R1 : Mr.V.Shanmugasundar
Special Government Pleader

For RR2 & 3 : Mr.R.Bharath Kumar

O R D E R

The petitioner has laid challenge to the order of the third respondent in his letter No.R4/1856A/04 dt 31.7.2012 and consequently sought for a direction to the respondents to return back the excess amount of Rs.13,00,000/- to her.

2. The third respondent Housing Board constructed housing flats at Namakkal Vagurampatti and offered the same to the public for purchase. As there were no takers, as expected, the Board decided to sell them under reduction scheme by reducing the cost of the flats. As per the said reduction scheme, the petitioner had applied for allotment of HIG Flats and she was also allotted with a flat in HIG Flat in H-81 on 04.10.2004. A communication was also issued by the third respondent in Letter No.R-2/1856A/2004, dated 04.10.2004, as per which, the cost of the flat was fixed at Rs.5,23,100/- and the advance amount was fixed at Rs.2,09,300/- and the balance amount has to be paid in Equated Monthly Installments (EMIs) for 13 years. However, the petitioner claimed to have purchased the flat outright, by paying the entire cost of Rs.5,23,100/- on 15.12.2004. Thereafter, when the petitioner had requested the third respondent for execution of the sale deed, it was informed by the respondent Board that the flat HIG, which was allotted to the petitioner, was included in the reduction sales scheme, by mistake and she was directed to pay an additional sum of Rs.10,04,970/- as arrears for the above said flat. The petitioner also had paid the said amount of Rs.10,04,970/-, without any objection. After the payment of the additional amount, on 31.01.2011, a sale deed was executed by the respondents Board in favour of the petitioner.

3. The case of the petitioner is that having allotted the flat under reduction sales scheme, the respondents have changed their stand stating that it was by mistake included in the reduction sales scheme and after a lapse of five years, they demanded the additional sums of the money, which she was forced to pay. Therefore, the petitioner demanded the refund of the excess amount, but the same was rejected by the respondents Board in the impugned order dated 31.07.2012.

4. The respondent has filed a counter-affidavit signed by the Secretary and Personnel Officer, in which, it is stated that the cost originally informed to the petitioner at the time of allotment was only tentative, and the final outstanding due was informed to the petitioner on 28.07.2010. It is also stated that as per the Allotment Rules of the Tamil Nadu Housing Board, the petitioner also paid the amount and received the sale deed on 31.01.2011. It is further stated in the counter-affidavit

that in view of the Board's Resolution in Resolution No.9.01 dated 03.08.2009, the request of the petitioner for the refund of the amount, where the sale deed has already been issued, was rejected.

5. The fact remains that the original allotment order was issued on 04.10.2004 and the entire amount of Rs.5,23,100/- was paid by the petitioner. Thereafter, the respondents had realised the mistake that the flat allotted to the petitioner was not coming under the reduction sales scheme and insisted the petitioner to pay another sum of Rs.10,04,970/- for the purpose of executing the sale deed. The said amount was also paid by the petitioner without any murmur and she got the sale deed executed in her favour. In such circumstances, the question now required to be determined is whether the petitioner is entitled for the refund of the excess amount paid by her, as alleged by her, for the execution of the sale deed.

6. Admittedly, the petitioner had not challenged the demand of the additional sum and also excluding the flat allotted to her from the reduction sales scheme. Having paid the amount without any objection, asking for refund of the same later that too after more than three years is only a second thought and it is not a genuine claim. In such circumstances, the petitioner cannot have any indulgence from this Court.

7. In the result, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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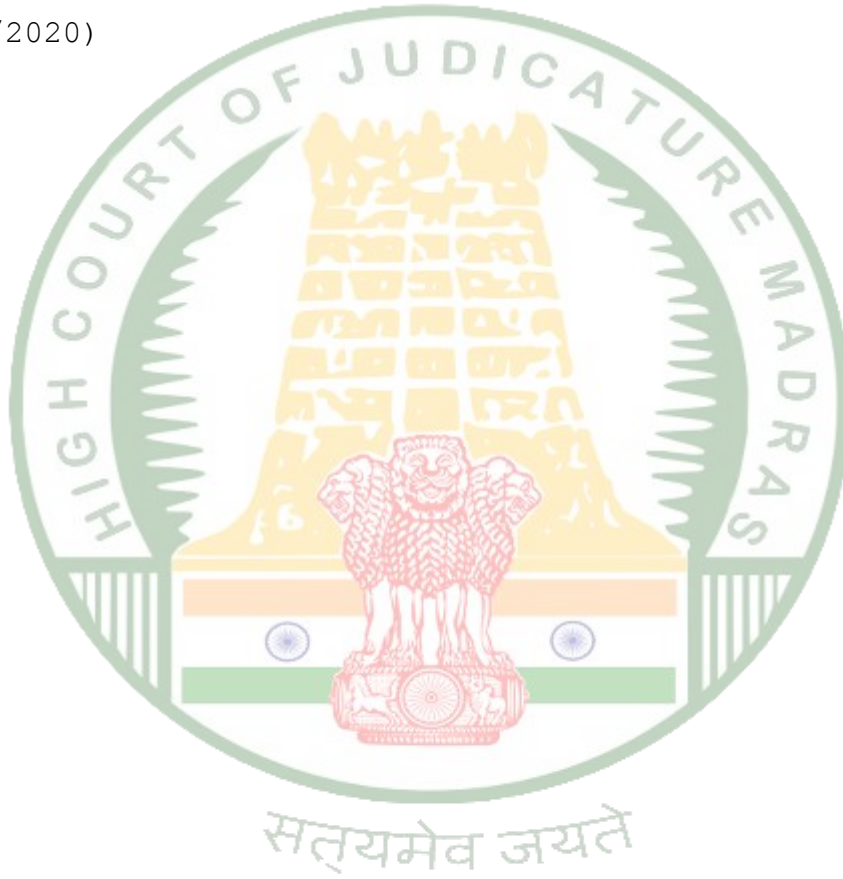
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RSV(CO)
RMP(30/09/2020)



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