

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.NO.3944 OF 2019
AND
C.M.P.NO.25527 OF 2019

Mrs. P.Poonguzhali ... Appellant

-vs-

The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
J.J. Nagar Division, Thirumangalam,
Anna Nagar, Chennai - 600101. ... Respondent

Prayer:-

Appeal filed under Clause 15 of the Letters Patent Act
against the impugned order dated 02.04.2019 passed in
W.P.No.4636 of 2014.

W.P.No.4636 of 2014:-

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.A.1/3341/2012 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 LIG
Flat No. L 49/24 in Second Floor at Ambattur PH I & II (608)
Chennai under 'Self Finance Scheme' with a plinth area of 476
Sq.feet pursuant to Allotment order dated 12.04.2010 in letter
No.MRA2/3441/2010.

For Appellant	: Mr.P.Elayarajkumar for M/s.Ramalingam and Associates
For Respondent	: Dr.R.Gouri

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

This appeal arises out of a writ petition that was filed by the appellant, praying for quashing of the impugned communication issued by the Housing Board, cancelling the allotment of LIG Flat No. L 49/24 on the ground that the said allotment was contrary to the conditions of allotment as contained in the application form particularly Clause 12, which provides that not more than one application form can be submitted by a family. In the instant case, it is admitted that the appellant and his father had both applied, the appellant under the LIG Scheme and his father under the MIG Scheme of the same Housing Board. The sale deed was executed in respect of the MIG Flat that had been applied for by the appellant's father and during audit objection when it was found that the claim of allotment of the petitioner was not in accordance with the said terms and conditions, the respondent proceeded to cancel the same. The only issue that remained for further consideration, apart from the cancellation, was about the amount of refund to which the appellant may be entitled on cancellation.

2. We had considered these submissions and passed the following order on 06.12.2019:-

"Heard learned counsel for the appellant.

2. Having gone through the impugned judgment, we find that the learned Single Judge has, in paragraph 6 thereof, held that the appellant was entitled to only refund of 50% of the total amount paid by the appellant on cancellation of second allotment.

3. On the other hand, the appellant has contended that vide letter dated 04.02.2013, the respondent Housing Board had informed the appellant about deduction of 50% amount, but after the representation was filed, the letter dated 21.11.2013 indicated a deduction of Rs.10,000/- only and for refund of the balance amount. Learned counsel contends that this in conformity with Condition no.9 of the terms and conditions of allotment, copy whereof has been filed as an enclosure to the typed set of documents.

3. From the counter-affidavit of the respondent Housing Board, we find that an assertion has been made in paragraph 6 about an audit objection indicating the deduction of 50% amount.

4. The aforesaid facts that have emerged from the

pleadings, therefore, are required to be ascertained as to whether the Housing Board is entitled to recover 50% of the amount in the event of cancellation of the second allotment or not.

Issue notice to the respondent, by both modes, returnable by 30.01.2020. Steps to be taken within ten days.

List on 30.01.2020. "

3. Today, learned counsel for the Housing Board has produced before us the resolution of the Housing Board dated 10.12.2010, which is extracted hereinunder :-

"Tamil Nadu Housing Board Allotment - Mogappair Division Construction of 48 HIG flats at Mogappair East under Self Financing Scheme - Advertisement released Condition included in the application - Matter placed before the Board for information and ratification.

The Board resolved that in case of withdrawal by the allottees of self finance schemes at any point of time, after the application or issue of Provisional Allotment Order, fifty percent of the amount paid by the allottee may be forfeited and the remaining fifty percent of the amount paid may be refunded."

It is urged that in view of the said provision, the Board was entitled to retain 50% of the amount.

4. We have considered the submissions raised and the fact that there were two applicants, namely the appellant and his father, is not disputed. In this view of the matter, the cancellation of one of the application forms is clearly justified in terms of Clause 12 of the terms and conditions for moving an application for allotment.

5. Apart from this, so far as refund is concerned, the learned Single Judge has permitted only 50% of refund, which, in our opinion, may be traceable to the Board resolution dated 10.12.2010 that does not appear to have been placed before the learned Single Judge. The said resolution categorically states that in case of withdrawal by an allottee under a Self Financing Scheme at any point of time, either at the stage of application or after the provisional allotment order, 50% of the amount paid by the allottee may be forfeited. The said resolution in no way is attracted on the facts of the present case inasmuch as the appellant had nowhere sought withdrawal of any application. To the contrary, it is a cancellation by the Board itself.

Consequently, we cannot interpret the said resolution to be also applicable in cases of cancellation unless there is any specific term to that effect. In the absence of any such provision specifically made in the application form or brochure or terms and conditions of allotment, we cannot import the said resolution for allowing the Board to impose such penalty on the appellant. Consequently, the direction for forfeiture of 50% of the amount being unjustified, the impugned judgment to that effect, cannot be sustained. We, accordingly, allow the appeal and set aside the impugned judgment upholding 50% of deduction by the Housing Board. We further direct that the entire amount shall be refunded with 6% interest except a sum of Rs.10,000/-, which shall be retained by the Housing Board.

6. With the disposal of this appeal, it will be open now to the Housing Board to proceed to undertake fresh proceedings for allotment or otherwise of the premises in question. No costs. Connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sni

To

The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
J.J. Nagar Division, Thirumangalam,
Anna Nagar, Chennai - 600101.

+2cc to M/s.Ramalingam and Associates, Advocate, S.R.No.14449

W.A.No.3944 of 2019

RSV(CO)
CS/13/03/2020

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