



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:23.01.2020

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THE HONOURABLE MRS.JUSTICE J.NISHABANUW.P(MD)No.19497 of 2015

T.S.Nandalal

... Petitioner

Vs

1.The Chairman,
Tamil Nadu Housing Board,
Anna Salai,Nandhanam,
Chennai-600 035.

2.The Managing Director,
Tamil Nadu Housing Board,
Anna Salai,Nandhanam,
Chennai-600 035.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the second respondent i.e.Managing Director, Tamil Nadu State Housing Board, Chennai relating to proceedings No.DC2/11131/2005 dated 05.04.2013 and the records relating to the first respondent i.e.the Chairman, Tamil Nadu Housing Board, Chennai in proceedings No.DC2/15470/2013 dated 20.08.2013 and quash the same regarding the portion relating to recovery of a sum of Rs.1,73,681/- alone from the DCRG of the petitioner.

(Prayer amended vide court order dated 21.01.2020 made in WMP(MD). No.872/2020)

For Petitioner : Mr.S.Visvalingam
For R.1&2 : Mr.S.Nagarajan for
Mr.M.Saravanan
Standing Counsel

ORDER

This Writ Petition has been filed praying for issuance of a Writ of Certiorari to call for the records of the second respondent i.e.Managing Director, Tamil Nadu State Housing Board, Chennai relating to proceedings No.DC2/11131/2005 dated 05.04.2013 and the records relating to the first respondent i.e.the Chairman, Tamil Nadu Housing Board, Chennai in proceedings No.DC2/15470/2013 dated 20.08.2013 and quash the same regarding the portion relating to recovery of a sum of Rs.1,73,681/- alone from the DCRG of the petitioner.

2. The short facts, as projected by the petitioner is as follows:-

2.1. The petitioner would aver among other things that he was an employee of the respondent herein and retired on his superannuation on 30.11.2004. After 14 long years, the respondent issued a charge memo to the petitioner stating that he permitted one Pappu to pay 1/10th initial deposit for HIG Plot No.32 at Annupanadi in contravention to the collection of 60% of initial deposit amount and intimated revised monthly instalment of Rs.3,548/- thereby caused a loss of Rs.1,73,681/- to the



respondents. The petitioner gave a detailed explanation on 19.07.2005 stating that the allottee belongs to Scheduled Caste and according to the earlier provisions of the Tamil Nadu Housing Board, the allottees belonging to Scheduled Caste has to pay only 10% of the advance amount instead of 60%. The instructions of the World Bank Scheme that the Schedule caste persons also should pay 60% of the deposit amount were received only during the month of May 1991. Therefore, 10% deposit was collected from the allottee before the receipt of the instructions issued by the World Bank. Further, when the allottee was asked to pay remaining 50% of the deposit amount, he filed W.P.No.882 of 1992 on the file of the Principal Seat, wherein, the Executive Engineer, Tamil Nadu Urban Development Project Division, Mela Anuppanadi, Madurai has filed a counter affidavit, wherein, in paragraph No.5 of the counter affidavit, it is pleaded as follows:-

" I state that the second respondent has received an order from the Secretary, Project Management group of World Bank, Madras stating that the concession extended in G.O.Ms.No.2063 dated 09.11.1979 is not applicable to the Tamil Nadu Urban Development Project of World bank and all the allottees including the Scheduled caste, Scheduled Tribe people should pay the initial payment as decided by the World Bank. The above order was received during the month of May 1991...."

Stating all these facts that the World Bank Order was received only in the month of May 1991 and by then, the allotment order was issued to the allottee, the petitioner preferred an appeal before the Tamil Nadu State Housing Board, Chennai and the same was rejected on 20.08.2013. Thereafter, the petitioner filed second appeal before the Secretary to Government, Housing and Urban Development Department, Chennai and the same was also dismissed. Hence, the petitioner is before this Court for the relief stated supra.

3. The learned counsel for the petitioner assails the impugned order on the ground that first of all, it has been issued after 14 years and the secondly, even in the counter affidavit filed by the respondents they themselves admitted that the instructions to collect 60% of the amount was received after the allotment was done to the allottee and their superiors had duly approved the allotment to the allottee without objecting to the same. Therefore, viewed from any angle, the petitioner could not be found fault with. Therefore, he prays for setting aside the order impugned in this Writ Petition.

4. *Per contra*, the learned Standing Counsel appearing for the respondents would submit that irregularities were found by the respondents as regards allotment done to the allottee and therefore, the respondents have issued the charge memo against the delinquent and he would pray to sustain the order impugned in this Writ Petition.

5. Heard the learned counsel appearing for the petitioner and learned Government advocate for the respondents and perused the materials available on record.



6. It is not in dispute that as per the Counter affidavit of the respondents in W.P.No.882 of 1992, the allotment order was done on 06.02.1991 and the World Bank clarification has been received by the Tamil Nadu Housing Board stating that Scheduled Caste also should pay 60% of the advance amount only during the month of May 1991. By then, the allotment was done to the allottee. The superior officers had also duly approved the loan granted to the allottee. Therefore, as rightly pointed out by the learned counsel for the petitioner that the issuing the charge memo after 14 long years has no legs to stand. The action of the respondents only reminds me the story of *rip van winkle* on the reason that after fourteen long years, in the evenings of his life of the petitioner, the respondents have issued the charge memo, which is really an unfortunate one. Time and again this Court as well as the Supreme Court have held that issuing the charge memo after enormous delay could not be sustained in the eye of law. Upon consideration of the relevant materials, pleadings and the legal submissions made on behalf of the parties, this Court is of the view that there has been an enormous delay in framing charges against the particular, particularly, this Court is satisfied that the action of the petitioner in collecting 10% of the advance amount for allotment of the house to the allottee could not be found fault with for the reasons that the petitioner did his duty as per the orders were in force at that point of time. Therefore, it will not invite any disciplinary action, that too, after a passage of 14 long years. Apart from this, such long delay by itself would constitute prejudice. I have garnered support from the judgment reported in **(2005) Supreme Court 636, P.V.Mahadevan and MD,TN.Housing Board.**

7. In the light of the above, this Writ Petition stands allowed. However, there will be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Chairman,
Tamil Nadu Housing Board, Anna Salai,
Nandhanam, Chennai-600 035.
2. The Managing Director,
Tamil Nadu Housing Board, Anna Salai,
Nandhanam, Chennai-600 035.

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-2656[F] dated 23/01/2020)

W.P(MD)No.19497 of 2015

23.01.2020