IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.13201 of 2013
&
M.P.No.1 of 2013

Mrs.M.Sivadevi ...Petitioner

Vs.

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

2.The Executive Engineer & Administrative Officer
Mogappair Division, Tamilnadu Housing Board,
III Floor, Aringar Anna Shopping Complex,
Thirumangalam, Chennai - 600 101 ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records for the impugned letter No.Allot.1.3/7493/11 dated 08.02.2013 issued by the 1st respondent and thereby quash the same as invalid and illegal and consequently direct the respondents to take appropriate action to execute a sale deed for the house building situate at Flat No.SC, 2nd Floor, Premier Tower, TNHB Flat at 20, Venugopal Street, Mogappair, Chennai - 37, allotted to the petitioner by the 1st respondent vide order dated 31.01.2007.

For Petitioner : Mr.Velmurugan

For Respondents : Mr.R.Bharathkumar

O R D E R
(Through Video Conferencing)

The letter dated 08.02.2013 issued by the Tamil Nadu Housing Board claiming interest for the belated payment of installments by the petitioner is under challenge in the present Writ Petition.

2. The petitioner applied for an allotment of a flat in Mogappair Village Self Finance Scheme-II, Mogappair Division. She was allotted a Flat No.SC in the second floor at Mogappair Village Self Finance Scheme-II, Mogappair Division vide Allotment Order dated 31.01.2007 by the 1st respondent for a total cost of Rs.26,31,000/-. The petitioner has paid an initial deposit of Rs.2,80,000/- on 31.01.2007 as demanded by the 1st respondent.

3. The petitioner states that she had applied for an housing loan with Punjab National Bank, wherein, she is employed, for the payment of three installments towards the purchase of the said flat and it was technically sanctioned. The Bank insisted on a sale agreement between the petitioner and the Housing Board and there was a delay in completing the formalities. Thus, the petitioner was not in a position to pay the installments as per the schedule mentioned in Allotment Order dated 31.01.2007.

4. The learned counsel for the petitioner reiterated that the delay was beyond the control of the petitioner and further on the ground that the Bank would not sanction the loan in the absence of the sale agreement and other documents, the petitioner cannot be blamed for the belated payment of the installments, which occurred due to certain administrative reasons.

5. At the outset, it is contended that the petitioner has not committed any default and it was only due to the delay in sanctioning of loan by the Punjab National Bank that she could not pay the installments as per the schedule in Allotment Order dated 31.01.2007. It is contended that the petitioner is working in a Bank and therefore she has to follow the procedure for taking the loan. Considering these factors, the interest claimed by the respondents has to be waved.

6. The learned counsel appearing for the Tamil Nadu Housing Board had objected the said contentions by stating that the terms and conditions are stated in the Allotment Order in clear terms. The Allotment Order dated 31.01.2007 was served to the petitioner and accordingly the final amount has to be paid on or before 31.10.2007. However, there was a huge delay in responding to the Allotment Order by the petitioner. The petitioner responded to the Allotment Order only through her letter dated 06.06.2008 after a lapse of more than 1 year and 5 months. Such a delay in responding to the Allotment Order is not explained even in the present Writ Petition. Thus, the delay is occurred due to the inaction of the petitioner in responding to the Allotment Order dated 31.01.2007.

7. It is further contended that as per terms and conditions of the Allotment Order 30% of the flat's cost has to be paid before 30.04.2007, 40% of the flat's cost has to be paid before 30.07.2007 and the balance 20% of flat's cost has to be paid on or before 30.10.2007.

8. Further, it is clearly mentioned in the Allotment Order that interest will be charged at 9% for the delayed payment. Based on the Allotment Order, the agreement of sale of flat was also entered into between the petitioner and the respondents, Tamil Nadu Housing Board. Even in the said agreement, it is clearly agreed between the parties that interest has to be paid. In the said agreement of sale, it is clearly mentioned that if there is a delay on the part of the Housing Board, the Housing Board is liable to pay 4% interest to the purchaser for the delayed completion of project or otherwise. When the terms and conditions are mutually agreed between the parties, the High Court cannot interfere with such an agreed contentions in the Writ Petition filed under Article 226 of the Constitution of India, if at all any dispute arises regarding calculations, it has to be settled in the manner known to law.

9. The learned counsel for the petitioner has made a submission that the delay was not at the instance of the petitioner and she was in want of completing the bank procedures. Therefore, the interest charged may be waived.

10. Per contra, the learned counsel for the respondents replied by stating that it is based on terms and conditions that the impugned letter is issued and the interest is charged upto the date, on which the final payment is made by the petitioner in the year 2010 and beyond that period interest has not been charged by the Tamil Nadu Housing Board. In this regard, the learned counsel for the respondents relied on the calculation sheet which is enclosed by the respondents in their typed set of papers. The said calculation sheet is extracted hereunder:

"TAMIL NADU HOUSING BOARD J.J.NAGAR DIVISION
WP No.13201 OF 2013 filed by Tmt.L.Siva Devi
Mogappair Eri Scheme-II 36 HIG Flats No.SC

Allotment order date 31.01.2007
Total Cost of the Flat = Rs.26,31,000/-
Tmt.L.Siva Devi paid the initial Deposit on 25.01.2007 = Rs.2,80,000/-
Balance amount paid without interest on 14.07.2010 Rs.23,51,000/-

Total amount paid by the allottee = Rs.26,31,000/-

II nd due Rs.7,72,400/- due date 30.04.2007
III rd due Rs.10,52,400/- due date 30.07.2007
IV th due Rs.5,26,200/- due date 30.10.2007

II nd due - Interest Calculated from 5/07 to 7/10 for Rs.7,72,400/-

$$\frac{772400 \times 39 \times 9}{1200} \quad \text{Rs.2,25,927/-}$$

III rd due - Interest Calculated from 8/2007 to 7/2010 for Rs.10,52,400/-

$$\frac{1052400 \times 36 \times 9}{1200} \quad \text{Rs.2,84,148/-}$$

IV th due - Interest Calculated from 11/2007 to 7/2010 for Rs.5,26,200/-

$$\frac{5926200 \times 33 \times 9}{1200} \quad \text{Rs.1,30,234/-}$$

Total Interest Rs.6,40,309/-

Further interest 8/2010 to 03/2020 for 6,40,309/-

$$\frac{640309 \times 116 \times 9}{1200} \quad \text{Rs.5,57,069/-}$$

Total interest - II nd due	Rs.2,25,927/-
Total interest - IlI rd due	Rs.2,84,148/-
Total interest - IV th due	Rs.1,30,234/-
Further interest	Rs.5,57,069/-
Service charges	Rs.35,700/-
Maintenance charges	Rs.10,500/-
Due as on 31.03.2020	Rs.12,43,578/-

Manager Marketing & Service
J.J.Nagar Division"

11. A perusal of the above statement reveals that the interest is calculated from May 2007 to July 2010 and no cost has been charged beyond the date of final settlement admittedly made by the petitioner.

12. The learned counsel for the petitioner made a submission that the agreement was entered into between the petitioner and the respondents on 13.06.2008 and till such time the interest has to be waived. This Court if of the considered opinion that the Allotment Order dated 31.01.2007 clearly indicated that the payment for the flat has to be paid byway of three installments and the dates and amounts are also clearly mentioned. Further, it is also clearly mentioned in the Allotment Order that interest will be charged at the rate of 9% for the delayed payment.

13. The letter of the petitioner dated 06.06.2008 further reveals that the petitioner made a request to pay balance amount. She wants to avail the bank loan, for which she required NOC and Allotment Order from the Tamil Nadu Housing Board. The letter itself was given to the Tamil Nadu Housing Board after a lapse of 1 year and 5 months from the date of the Allotment Order. This being the factum, this Court is not inclined to consider the case of the petitioner to waive the interest, where the parties had agreed the terms and conditions. Beyond this, the Allotment Order itself includes the terms and conditions in clear terms. Thus, the petitioner has not made any case to waive the interest as demanded by the respondents.

14. Accordingly, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Executive Engineer & Administrative Officer,
Mogappair Division, Tamilnadu Housing Board,
III Floor, Aringar Anna Shopping Complex,
Thirumangalam, Chennai - 600 101.

+1cc to Mr.R.Bharath Kumar, Advocate Sr No.57567
+1cc to Mr.M.Velmurugan, Advocate Sr No.57509

W.P.No.13201 of 2013
&
M.P.No.1 of 2013

GSM (CO)
PR (26/11/2021)