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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WRIT PETITION NO.2293 OF 2021

AND

W.M.P.NOS.2586 AND 2588 OF 2021

M.Dhanasekaran

.. Petitioner

Vs.

1. The State of Tamil Nadu
Represented by its Principal
Secretary to Government
Housing and Urban Development Department
Secretariat, Chennai-600 009.
2. The Registrar of Co-operative
Societies (Housing)
No.48, Ritherton Salai
Vepery
Chennai-600 007.
3. The Deputy Registrar of Co-operative
Societies (Housing)
Vellore Region
Vellore.
4. The Chairman
Thiruvathipuram Co-operative Housing Society(Ltd.)
6/12, East Mada street
Thiruvathipuram - 604 407.
Cheyyar Taluk
Thiruvannamalai District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to Na.Ka.No.157/2017E dated 28.05.2018 of the 3rd respondent and Lr.No. Nil, dated 07.11.2019 and Lr.No.Nil, dated 08.12.2020 of the 4th respondent, quash the same and consequently, direct the



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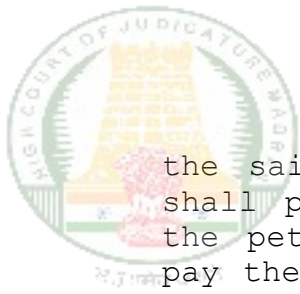
respondents to waive the interest and penal interest as per the scheme issued by the 1st respondent in G.O.(Ms)No.40, Housing and Urban Development (HCS) Department dated 16.03.2015.

For Petitioner	:	Mr.G.Elanchezhiyan
For R1	:	Mr.S.Ravikumar
		Special Government Pleader
For R2 and R3	:	Mr.S.Prabhakaran
		Government Advocate
For R4	:	Mr.L.P.Shanmugasundaram

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to Na.Ka.No.157/2017E dated 28.05.2018 of the 3rd respondent and Lr.No. Nil, dated 07.11.2019 and Lr.No.Nil, dated 08.12.2020 of the 4th respondent, quash the same and consequently, direct the respondents to waive the interest and penal interest as per the scheme issued by the 1st respondent in G.O.(Ms)No.40, Housing and Urban Development (HCS) Department dated 16.03.2015.

2.According to the petitioner, he has availed a housing loan of Rs.2,90,000/- from the 4th respondent Co-operative Society on 13.12.1999 agreeing to repay the same in 120 equal monthly instalments by fixing the amount as Rs.5,132/- per month together with interest at the rate of 17.5% per annum. According to the petitioner, he has paid Rs.2,51,956/- to the 4th respondent till 17.12.2010. Since the petitioner has not paid loan instalments periodically, the 4th respondent Society closed the loan account of the petitioner and initiated arbitration proceedings under Section 90 of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as 'the Act'). The Arbitrator passed award against the petitioner for a sum of Rs.4,61,528/- without giving any notice and opportunity to the petitioner. The petitioner gave a representation to the respondents including the Chief Minister's cell for granting concession to enable him to pay the principal amount in two instalments. The 4th respondent during February 2011 issued a letter rejecting the request of the petitioner for waiver of interest and penal interest as he is not entitled to concession given by the Government. Based on the Arbitration Award, the 4th respondent brought the house property for sale. The petitioner filed Writ Petition No.6800 of 2016 challenging the said award. This Court by the order dated 24.02.2016 dismissed the Writ Petition granting liberty to the petitioner to pay a sum of Rs.1,00,000/- on the next day before the 2nd respondent and if

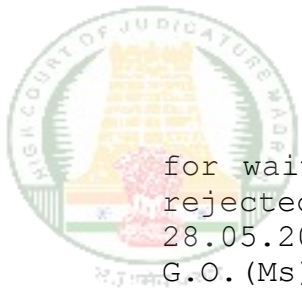


the said amount is paid by the petitioner, the 2nd respondent shall postpone the sale. This Court has also given liberty to the petitioner to give a representation to the respondents to pay the amounts in instalments. According to the petitioner, he gave representations dated 21.11.2017 and 23.11.2017 for waiver of interest and penal interest. The 3rd respondent by the impugned order dated 28.05.2018 rejected the request of the petitioner. The 4th respondent by the notice dated 07.11.2019 and 08.12.2020 called upon the petitioner to pay sum of Rs.9,02,378/- and Rs.9,45,126/- respectively. The 4th respondent has also informed the petitioner that failing payment of said amounts, further action would be taken. Hence, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner contended that arbitration award has been passed without issuing notice to the petitioner. The petitioner is entitled to waiver of interest and penal interest as per G.O.(Ms)No.40, Housing and Urban Development (HCS) Department dated 16.03.2015. In the impugned order, the 3rd respondent has not given any reason for rejecting the request of the petitioner. By filing counter, the respondents cannot improve their case and prayed for setting aside all the three impugned orders of the respondents.

4.The respondents 3 and 4 filed separate counter affidavits and denied all the averments.

5.Mr.S.Prabhakaran, learned Government Advocate appearing for the respondents 2 and 3 and Mr.L.P.Shanmuga Sundaram, learned counsel appearing for the 4th respondent separately contended that the petitioner after availing housing loan, agreed to repay the loan in 120 equal monthly instalments and defaulted in payment of instalments. He paid only ten instalments, that too only a minimum amount of Rs.1,000/- or Rs.1,500/-. The petitioner is a wilful defaulter. As far as award passed under Section 90 of the Act is concerned, when the property was brought for sale, the petitioner filed Writ Petition No.6800 of 2016 challenging the award passed under Section 90 of the Act. This Court by the order dated 24.02.2016 dismissed the Writ Petition. Therefore, the petitioner now cannot contend that award has been passed without giving notice to the petitioner and the said contention is invalid. The learned Government Advocate appearing for the respondents 2 and 3 further submitted that this Court directed the petitioner to pay a sum of Rs.1,00,000/- on the next day and give representation to pay the amounts in instalments. The petitioner remitted a sum of Rs.1,00,000/-, but he did not give any representation seeking to pay the amounts in instalments. Instead, he gave representations on 21.11.2017 and 23.11.2017



for waiver of interest and penal interest. The said request was rejected by the 3rd respondent by the impugned order dated 28.05.2018. The petitioner is not entitled to the benefit of G.O.(Ms)No.40, Housing and Urban Development (HCS) Department dated 16.03.2015 and hence, he is not entitled for waiver of interest and penal interest. The petitioner has filed Writ Petition after three years of rejection. When the property was brought for sale, the petitioner paid a sum of Rs.40,000/- on 07.12.2017, a sum of Rs.5,000/- on 04.12.2018 and another sum of Rs.5,000/- on 15.12.2018. The petitioner failed to pay the amounts in instalments and he is not entitled to benefit of Government order as the said G.O. is not applicable to the person like petitioner. The petitioner is liable to pay interest and penal interest as claimed by the 4th respondent. The petitioner has agreed to pay interest and penal interest, if he commits any default in payment of monthly instalments and only after acceptance of the condition, the loan was sanctioned. The petitioner is not entitled to claim relief as G.O.(Ms)No.40, Housing and Urban Development (HCS) Department dated 16.03.2015 is not applicable to the petitioner and prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the 1st respondent, the learned Government Advocate appearing for the respondents 2 and 3 and the learned counsel appearing for the 4th respondent and perused the entire materials on record.

7.From the materials on record, it is seen that the petitioner is challenging the impugned order of the 3rd respondent dated 28.05.2018 as well as the 4th respondent dated 07.11.2019 and 08.12.2020 on two grounds. Firstly, according to the petitioner, he is entitled to waiver of interest and penal interest as per G.O.(Ms)No.40, Housing and Urban Development (HCS) Department dated 16.03.2015. The petitioner gave representation to the respondents for waiver of interest and penal interest. The said request was rejected by the 4th respondent by his proceedings dated 23.02.2011. The petitioner did not challenge the said order. On the other hand, the petitioner gave representations dated 21.11.2017 and 23.11.2017 to the Chief Minister's cell and the respondents for waiver of interest and penal interest. The said representations were referred to 3rd respondent. The 3rd respondent by the order dated 28.05.2018 rejected the request of the petitioner on the ground that the petitioner is not entitled to waiver of interest and penal interest in view of the fact that after collecting deposits from the members, the mortgage loan was granted to the petitioner. Further, the 4th respondent had obtained an arbitration award and execution proceedings is pending. It is



seen that the petitioner has challenged the arbitration award by filing Writ Petition. This Court dismissed the said Writ Petition. Therefore, the Arbitration Award passed against the petitioner is valid and executable. The 3rd respondent has considered the request of the petitioner for waiver of interest and penal interest in consonance with G.O.(Ms)No.40, Housing and Urban Development (HCS) Department dated 16.03.2015 and rejected the same on the ground that the petitioner is not entitled to benefit of said G.O. The petitioner obtained mortgage loan agreeing to repay the said amount in 120 equal monthly instalments of Rs.5,132/-. The petitioner after paying instalments for ten months, failed to pay any amount for ten years. The petitioner is being a chronic defaulter and used to pay certain amount when the property is brought for sale, he is not entitled for waiver of interest or penal interest. The impugned notices dated 07.11.2019 and 08.12.2020 of the 4th respondent are therefore valid and legal. In addition to that the 4th respondent has obtained Arbitration Award. The 3rd respondent rejected the request of the petitioner by impugned order dated 28.05.2018. The reasons given by the 3rd respondent are valid and legal. There is no error in the impugned orders of the respondents 3 and 4.

8.For the above reasons, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1. The Principal Secretary to Government
The State of Tamil Nadu
Housing and Urban Development Department
Secretariat, Chennai-600 009.
2. The Registrar of Co-operative
Societies (Housing)
No.48, Ritherton Salai
Vepery, Chennai-600 007.



3. The Deputy Registrar of Co-operative Societies (Housing)
Vellore Region, Vellore.

4. The Chairman
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6/12, East Mada street
Thiruvathipuram - 604 407.
Cheyyar Taluk
Thiruvannamalai District.

+1cc to M/s.G.Elanchezhiyan, Advocate, S.R.No.14286

+1cc to the Special Government Pleader, S.R.No.14636

W.P.No.2293 of 2021
and W.M.P.Nos.2586 and 2588 of 2021

SKM(CO)
RLP(28/03/2022)