BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

WA (MD)No.1393 of 2011
and M.P.No.1 of 2011 and 1 of 2012

The Madurai Paddy Commission,
Agents Association rep. by its Treasurer
R.Gopikannan .. Appellant/ Petitioner

Vs.

1.The Commissioner
Department of Agricultural Marketing
and Agri Business,
CIPET Road, Thiru.Vee.Kaa. Industrial Estate
Guindy, Chennai.

2.The Madurai Market Committee
Represented through its Secretary
145A Anna Nagar, Madurai. .. Respondents/ respondents

Prayer : Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 14.11.2011 in W.P.(MD) No.920 of 2011.

Prayer in WP(MD). 920/ 2011 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To pass an order or writ particularly in the nature of writ of Certiorarified Mandamus to call for the records pertaining to the proceeding of the 2nd respondent dt.18.01.11 in A2/3126/2010 and quash the same as illegal and also directing respondent to receive the payments made by the allottees as per order of Hon ble Supreme Court dt.04.01.2011 and execute sale deed.

For appellant	:	Mr.T.Lajapathi Roy
For respondents	:	Mr.D.Sasikumar Additional Government Pleader for R1 No appearance for R2

JUDGMENT

J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.

This writ appeal has been filed against the order passed by the learned Single Judge, dismissing the writ petition filed by the association challenging the proceedings of the second respondent dated 18.01.2011 and seeking for a consequential direction to the respondents to receive the payment made by allottees as per the order passed by the Apex Court dated 04.01.2011 and to execute the sale deed in favour of each allottee.

2. Heard the learned counsel for the appellant and the learned Special Government Pleader for the first respondent.

3. The present case has a checkered history. The members belonging to the petitioner association were originally carrying on business in a densely populated area at East Veli Street, Madurai. In order to ease the traffic congestion and the other problems that were faced by the traders and the general public, the respondents recommended to the Government to construct a market at Mattuthavani. The proposal was favourably considered by the Government and accordingly, they decided to construct the market at Mattuthavani. This proposal was given vide publicity and a foundation stone was also laid in the year 1999. According to the petitioner Association, the market was for the welfare and benefit of the merchants as well as the public and it was decided to construct 314 shops, out of which 154 shops were to be allotted for the paddy commission merchants/agents, 100 shops for flower merchants and 60 shops for input traders. The allotment orders were issued on 01.02.2006 and as per the allotment order, the allottees will be entitled to remit the amount in instalments and the same will attract interest at the rate of 16% per annum.

4. Accordingly, the traders entered into an agreement and representations were also made for refixation of the price that was fixed. Since the representation was not considered, the association approached this Court and filed WP(MD) No.6055/2007 seeking for a direction to consider the representation. Directions were issued by this Court and the second respondent, through a communication dated 10.04.2008, informed the petitioner that they have already entered into an agreement with the second respondent agreeing to pay 16% interest and the said condition is binding. That apart, it was also informed that the land cost was fixed taking into consideration the prevailing rate and if the same is reduced, it will result in financial loss.

5. The above communication was questioned by the petitioner association and another association by filing W.P.(MD) Nos.5116 and 5150/2008 before this Court.

6. The learned Single Judge, by an order dated 15.09.2009 disposed of the writ petitions by taking into consideration the offer made by the association that all the members are willing to pay the entire cost in one single instalment. Taking into consideration the offer made by the association, the learned Single Judge directed that the second respondent can calculate 16% interest from 31.01.2007 to 31.07.2007 and consider the claim made by the members of the association for foreclosure as per their representation dated 03.07.2007. Once the entire amount is paid, the sale deed was directed to be executed in favour of the members of the association. It was also made clear that if any of the member does not want to exercise the option for foreclosing the loan, they will not be entitled for any benefit under the order and it was left open to the respondents to proceed further in accordance with law.

7. The above order passed by the learned Single Judge became the subject matter of challenge before the Division Bench in WA(MD) Nos.275 and 276 of 2010. A Division Bench, through an order dated 02.12.2010 allowed the writ appeals and held that the learned Single Judge ought not to have restricted the period of calculation of interest and that the same would create huge financial loss for the market committee. Accordingly, the order of the learned Single Judge was set aside.

8. The association took the matter on appeal before the Apex Court and the Apex Court was not inclined to interfere with the judgment in the writ appeals. However, the Apex Court took into consideration the counter affidavit filed by the market committee and held that the allottees are liable to pay only simple interest at the rate of 16% per annum and not compound interest as alleged by the members of the association.

9. Taking cue from the order passed by the Apex Court, a representation was made by the appellant on 14.01.2011, wherein, 95 members expressed their intention to pay the entire amount in a single instalment along with 16% simple interest. Accordingly, a total sum of Rs.2,24,22,430/- was sent to the respondents.

10. On receipt of the representation, the impugned letter dated 18.01.2011 was issued by the respondents returning back the cheque that was sent by the association.

11. The impugned letter became the subject matter of challenge before the learned Single Judge and the learned Single Judge dismissed the writ petition through an order dated 14.11.2011, without going into the merits of the case and more on the ground of

technicality. Aggrieved by the same, the present writ appeal has been filed before this Court.

12. When the appeal came up for hearing on 21.09.2022, this Court passed the following order:

> "The appellant Association had moved the writ petition before this Court in W.P.(MD) No.5150 of 2008 for a direction to the respondents to allow the members of the Association to pay the remaining sale consideration of their respective shops without insisting for any payment of interest. This writ petition along with the connected W.P.(MD) No.5116 of 2008 came to be disposed of on 15.09.2009. The learned Single Judge disposed of the writ petitions by issuing the following directions :
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> > "10. Having regard to the facts and circumstances of the case and also the offer made by the association that all-the members are willing to pay the entire cost in one single instalment, I deem it appropriate that such opportunity to foreclose the instalment plan ought to be provided to the allottees. Since the objection has been raised by the respondents by stating that they could have applied only on 31.01.2007 the said date could be taken as a date on which the petitioner shall be entitled to foreclose the loan. Of course, this condition has been imposed so that the, shops in question are being utilised by the allottees for the one year period from the date of allotment. So, until that particular date namely 31.07.2007, the second respondent shall be entitled to calculate the interest at the agreed rate of 16% or treating that as a cut off date, the second respondent shall consider the claim made by the members of the petitioners association for foreclosure in the representation dated 03.07.2007 and after accepting the entire sale consideration execute the sale deed in favour of the members association. If any one of the members who do not exercise the above option for foreclosing the loan, they shall not be entitled to any of the benefit under this order and it is open to the respondents to proceed in accordance with the contract."
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> 2. Aggrieved by the above order, the respondents filed W.A.(MD) Nos.275 and 276 of 2010. The Division Bench allowed the writ appeals by an order, dated 02.12.2010 and the relevant portion in the order is extracted hereunder :-
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> > "31. As per the terms and conditions of the contract, when interest is payable and also penal interest on the defaulted instalments, the learned Single Judge was not justified in directing the appellants to execute the sale deed by collecting

interest only till 31.01.2007 and thereafter to forego the interest. If the order of the learned Single Judge is to be sustained, the 2nd appellant Market Committee would suffer huge financial loss and it would not be in a position to meet its financial commitments and would become a financial wreck."

3. Aggrieved by the above order of the Division Bench, a Special Leave Petition (Civil) No(s).35040 - 35041 of 2010 came to be filed before the Apex Court and the Apex Court through an order, dated 04.01.2011 dismissed the Special Leave Petition as follows :

"We find no reason to interfere as it is evident from (i) para 16 of the judgment of the High Court; (ii) the order dated 10.4.2008 of the first respondent and (iii) para 7 of counter affidavit of the Secretary of the Madurai Market Committee filed before the Madras High Court dated November, 2008 that what is payable by the allottees on the price is only simple interest at 16% per annum and not compound interest at 16% per annum."

4. Pursuant to the above order, the Market Committee namely, the second respondent through an order, dated 18.01.2011, refunded the amount paid by the Association pertaining to 95 traders. This was put to challenge in the writ petition and the writ petition was dismissed more on the ground of technicality.

5. The learned counsel for the appellant submitted that the members belonging to the Association are willing to pay the balance sale consideration along with simple interest at the rate of 16 % per annum and the same is not being accepted by the respondents.

6. The learned counsel submitted that this payment is being made pursuant to the order passed by the Apex Court, wherein, the stand taken by the Market Committee was recorded and it was held that only simple interest at the rate of 16% per annum is payable by the allottees.

7. Considering the limited issue involved in this writ appeal, this Court directs the learned Additional Government Pleader appearing on behalf of the respondents to take instructions in this regard and report before this Court.

8. Post this writ appeal under the caption "part heard" on 28.09.2022.”

Pursuant to the above order, the writ appeal came up for hearing today.

13. The learned Additional Government Pleader on the basis of the written instructions received from the second respondent submitted that as per the agreement, the allottee is bound to pay the EMIs along with interest at the rate of 16% per annum over the period of eight years. That apart, if there is any delay in payment of the EMI, the allottee is also liable to pay penal interest. Hence, according to the learned Additional Government Pleader, since there is a considerable delay in paying the consideration, the members belonging to the association are liable to pay penal interest also. It was further submitted that the allottees, who were similarly placed, had paid the penal interest apart from the principal and the simple interest at the rate of 16%. It was, therefore, submitted that if the allottees pay the amount along with the penal interest, the same will be taken into consideration by the second respondent and the sale deed will be executed in favour of such allottees.

14. The learned counsel for the appellant submitted that as per the agreement dated 03.09.2000, the payment of penal interest would arise only if the amount is remitted in instalments and not otherwise. It was further submitted that the members belonging to the association had already expressed their intention to pay the entire amount in one go and what was in dispute was with regard to the payment of interest. Initially, the respondents were insisting for the payment of 16% compound interest, whereas, the members were willing to pay 16% simple interest. It was contended that while that is the actual dispute, the respondents cannot now insist for payment of penal interest, which will not arise in the facts of the present case.

15. We have carefully considered the submissions made on either side and perused the materials available on record.

16. As rightly contended by the learned counsel for the appellant, the payment of penal interest will arise only in a case where the amount is paid by way of EMI and there is a delay in payment of EMI. In other words, the EMI has two components, namely, the principal and 16% simple interest. If there is a delay in payment of EMI within the time stipulated in the agreement, the allottee has to pay penal interest also. In the present case, the allottees were willing to pay the entire amount in a single instalment and they did not opt for paying the money in instalments. For some reason, the respondents were insisting for the payment through EMI for a period of eight years and this was probably done keeping in mind the interest that will be collected for the entire period. Since the respondents did not want to lose the interest, they were not willing to collect the amount in one go and were insisting for payment in instalments.

17. The above dispute ultimately boiled down to the payment of

either 16% simple interest or 16% compound interest. Ultimately, the Apex Court, while dismissing the appeal through order dated 04.01.2011, made it clear that what is payable by the allottees on the price is only the simple interest at the rate of 16% per annum. Accordingly, the association acted upon the order passed by the Apex Court and made the payment by calculating the simple interest at the rate of 16% per annum. The second respondent, through the impugned letter dated 18.01.2011, had merely returned back the amount only on the ground that they are in the process of getting legal opinion and only after getting an opinion, they will be able to take further course of action.

18. This is a case where the respondents ought to have closed the issue immediately on receipt of the representation dated 14.01.2011. If any clarification was required, the respondents could have called the office bearers of the association and should have come to a final conclusion on the payment of the final amount by the members of the association, instead, the matter has been going back and forth from the year 2009 onwards. Ultimately, it is the respondents, who are losing the income and the members of the association have already occupied the shops. The only income that is derived from the members of the association is the service charges paid by them and the actual amount that is due and payable for the shop is yet to be received by the respondents.

19. The justification given by the respondents for the collection of penal interest from the members of the association is unsustainable. This Court has already given a finding to the effect that the payment of penal interest will not arise in this case since the members of the association were willing to pay the amount in a single instalment with simple interest at the rate of 16% per annum. Just because some of the allottees were willing to pay the penal interest, that does not mean that the members of the association can also be saddled with penal interest. Such payment of penal interest cannot be insisted by the respondents, when the same does not arise on the facts of the present case.

20. In view of the above, this Court is inclined to interfere with the impugned letter dated 18.01.2011 and the same is hereby set aside. There shall be a direction to the petitioner association to make a fresh representation to the second respondent. The representation shall specifically enlist the name of the member and the amount payable by him towards the principal and simple interest at the rate of 16% per annum from 31.01.2007 till 15.10.2022. The total amount that is payable shall be paid by way of Demand Draft in favour of the second respondent. The second respondent, on receipt of the same, shall proceed to execute the sale deed in favour of the concerned allottee. If any of the allottee does not exercise this option, they shall not be entitled for any favour under this order and it will be left open to the respondents to proceed further in accordance with the agreement entered into with the concerned

allottee. This process shall be completed within a period of three months from the date of receipt of the judgment.

21. In the result, the order passed by the learned Single Judge in **(*)W.P.(MD) No.920 of 2011** dated 14.11.2011 is hereby set aside and this appeal is allowed in the above terms. No costs. consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

(*)Corrected as per the order of this Court dated 27/02/2023 made in CMP (MD)12136/2022 in WA(MD)No.1393 of 2011

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/11/2022

Sub Assistant Registrar(CS)

RR

To

(*) To be substituted to the order already despatched on 02.11.2022

The Commissioner
Department of Agricultural Marketing
and Agri Business,CIPET Road,
Thiru.Vee.Kaa. Industrial Estate, Guindy, Chennai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-47824[F] dated 29/09/2022)

WA(MD)No.1393 of 2011
28.09.2022

AMS(31.10.2022) 8P 3C
RK (16/03/2023) 8P 3C