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W.P.(MD).No.17618 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 01.09.2022

ORDER PRONOUNCED ON : 05.09.2022

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P.(MD).No.17618 of 2013

M.Ziauddin

.....Petitioner

Vs

1.The Managing Director
Tamil Nadu Housing Board
493, Anna Salai
Nanthanam
Chennai 35

2.The Executive Engineer and Administrative Officer
Tamil Nadu Housing Unit
Kajamalai Colony
Trichy 20

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the second respondent to execute the sale deed in favour of the petitioner in respect of house No.M22 under MIG in NH Scheme at Pudukkottai within stipulated time and also directing the respondents to pay compensation of Rs.5/- lakhs to the petitioner.



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For Petitioner : Mr.K.Baalasundharam

For Respondents : Mr.M.Suresh
Standing Counsel

ORDER

The present writ petition has been filed for writ of mandamus directing the second respondent to execute a sale deed in favour of the petitioner and for payment of compensation of Rs.5,00,000/- to the writ petitioner.

2.According to the petitioner, he was allotted a house No.M22 under MIG in Pudukkottai NH Scheme, Phase III by way of an order dated 12.06.1992. As per the said allotment order, a tentative amount of Rs.86,315/- has to be paid within a period of 30 days from the date of receipt of the said allotment order. The said amount was paid by the writ petitioner on 24.08.1992 and a certificate was also issued to the said effect. Thereafter, the possession of the house was handed over to the writ petitioner on 04.10.1992. Therefore, the petitioner has contended that he had paid the entire sale consideration and possession was also handed over to him, but they have not executed the sale deed in his favour.

3.The petitioner had further contended that he has not received any communication from the Tamil Nadu Housing Board with regard to the



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payment of any additional amount. Though he has been regularly visiting the office of the second respondent demanding execution of the sale deed, they have not responded properly. The petitioner had further contended that on 05.08.2011, the second respondent herein has sent a communication to the petitioner that the house was allotted to the petitioner on tentative cost and now a final cost has been arrived at. Therefore, the petitioner has to pay difference in amount along with interest and thereafter, receive the sale deed. The petitioner had sent a representation on 01.07.2013 demanding the sale deed on the ground that he has already paid the entire amount. A legal notice was issued by the petitioner on 10.09.2013 demanding execution of sale deed and also a demand for compensation of a sum of Rs.5,00,000/- for the delay in execution of the said sale deed. Since there was no response, the present writ petition has been filed.

4.The second respondent has filed a counter contending that the cost mentioned in the original allotment order is only a tentative cost and it is not a final cost as contended by the writ petitioner. However, the respondent had pointed out that the allotment order was not under hire purchase, but it was under outright purchase basis.

5.The respondent had further contended that since the plot allotted to the writ petitioner was a corner plot and the measurement of the extent has



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varied, it had to be measured again to arrive at a final land cost. The learned counsel had further contended that the petitioner had filed O.S.No.76 of 2003 before the Additional District Munsif Court, Pudukkottai seeking mandatory injunction for execution of a sale deed. The said suit was dismissed on 14.03.2005 with a direction to the respondent not to reduce the extent of 222.96 square meter allotted to the petitioner as per the allotment order.

6.The respondent had further contended that the amount paid by the writ petitioner is only a tentative cost and the petitioner should not only pay difference land cost but also pay the interest. Since the petitioner had not permitted the officials to measure the actual extent of the plot, the final land cost could not be arrived at and hence, they were not able to issue a sale deed in favour of the writ petitioner. The respondent had further contended that they have issued a notice on 30.10.2014 to the writ petitioner demanding a sum of Rs.1,27,162/- as the final cost, in view of the increase in the extent of the plot allotted to him. Hence, the learned counsel for the respondents had prayed for dismissal of the writ petition.

7.I have considered the submissions made on either side and perused the materials available on record.



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8. There is no dispute that the petitioner was allotted MIG No.22 by way of an allotment order dated 12.06.1992 specifically indicating that the cost mentioned in the said allotment order is tentative in nature. The allotment order further points out that if the measurement of the land is more or if it is a corner plot, the petitioner has to pay an additional amount whenever it is informed to the allottee. The respondent board has produced a working sheet dated 26.08.2022 in which the outstanding dues are mentioned as Rs.2,19,985/-.

9. A perusal of the above said working sheet clearly indicates that the difference in land cost has been arrived at Rs.31,384/-. However, an interest has been charged for the said amount to a tune of Rs.1,12,459/- as per Sheet (F). The interest portion has been calculated from the date of allotment and not from the date on which it was intimated to the writ petitioner namely on 30.10.2014.

10. The learned counsel for the petitioner had relied upon a Division Bench judgement of our High Court reported *in 2007 (5) CTC 439 (The Tamil Nadu Housing Board, rep. By its Board of Directors Vs. Avadi Thaniraivu Veetumanai Thittamani, Othukeeduthararkal Nalavazhu Sangam rep. By its President)* in Paragraph Nos. 12 to 14 are as follows:



“12. It is also the admitted case that no demand for the said amount was made by the appellants till July, 2001. The said demand having not been made till such time, the appellants are not entitled to claim interest from March, 1993 to July, 2001. In the affidavit filed in support of the stay petition in W.A.M.P.No.5600 of 2004, though it is stated that the allottees were asked to pay the difference amount, the date of demand is not mentioned. The demand in writing was made only on 30.7.2001. The mistake committed by the officials of the appellants department in not demanding the amount till the end of July, 2001, cannot be put against the allottees and therefore the appellants are not justified in claiming interest from March, 1993 to July, 2001. The demand was made on 30.7.2001 and the respondents challenged the same before this Court by filing writ petition. The said writ petition was allowed by the learned single Judge on the premise that several persons were given sale deeds by the appellants without collection of capitalisation fee and interest. The same was explained by the appellants by filing additional counter affidavit in this writ appeal, wherein it is clarified that the registration of the sale deeds to certain persons are by bona fide mistake and the said mistake was found during audit and the persons, who are responsible for the said mistake are being proceeded departmentally and that the persons, who were given sale deeds are also directed to pay difference amount with interest. Hence the allegation of discrimination is found against the respondents.

13. In the light of the above statement contained in the additional counter affidavit, we are of the view that the reasonings given by the learned single Judge are unsustainable and the members



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of the respondent societies are bound to pay the said capitalisation amount with 12% interest per annum from February, 1992, to March, 1993, and also from August, 2001, till the date of actual payment.

14. The writ appeal is allowed permitting the appellants to recover the capitalisation amount with 12% interest from February, 1992 till March, 1993, with 12% interest per annum and also interest from August, 2001, till the date of payment. There will be no order as to costs”.

11.A perusal of the above said judgment will clearly indicate that the liability to pay interest on the additional cost would arise only from the date of demand. Therefore, interest can be levied only from the date of demand for such additional cost and not from the date of original order of allotment.

12.In the present case, the original order of allotment has been granted on 12.06.1992 and a demand for additional cost has been raised only on 30.10.2014. The respondent had contended that the petitioner had not permitted to measure the lands and hence, the additional cost could not be informed to the petitioner in time. The respondent would have made the order of allotment only after measuring the lands and the building. Hence, the contention of the respondents that the petitioner is not permitting to measure the land allotted to him is not legally sustainable. It is not the case of the respondents that after allotment some changes were made in the boundary stones. No communication has been placed on record from the respondents



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seeking permission of the petitioner or making allegations as against the petitioner for not permitting the respondent authorities from measuring the land. If really the petitioner has not permitted the respondent to measure the land, it is not known how a communication was sent to the writ petitioner on 30.10.2014 indicating the final cost. Hence, in view of the Hon'ble Division Bench judgement cited supra, the respondent authorities would be entitled to levy interest on the additional cost only from 30.10.2014 and not prior to that date.

13.The respondents are directed to issue a detail communication to the writ petitioner in the light of the above said findings of this Court along with a working sheet. After the petitioner had remitted the said amount, the respondents are directed to execute the sale in favour of the writ petitioner.

14.The writ petition is allowed to the above extent. No costs.

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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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