



W.P.(MD).No.3697 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 16.08.2022

ORDER PRONOUNCED ON : 18 .08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.3697 of 2013
and M.P(MD).No.1 of 2013**

R.Maria Janaki

....Petitioner

Vs

1.The Chairman and Managing Director
Tamil Nadu Housing Board
Nandanam
Chennai 600 035

2.The Executive Engineer & Administrative Officer
Tamil Nadu Housing Board
Tirunelveli Housing Unit
Anbu Nagar
Tirunelveli 625 011

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his proceeding in Lr.No.R5/403/91/Relief GO.215/2012 dated 27.12.2012 and quash the same as devoid of merits and consequently direct the respondents to issue the sale deed in favour of the petitioner for her house at HIG No.3 at Palai Phase-4, Housing Unit, Thamirapathy Colony, Tirunelveli within the period stipulated by this Court.



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For Petitioner : Mr.Ananth C.Rajesh

For Respondents : Mr.S.Velmurugan
Standing Counsel

ORDER

The present writ petition has been filed challenging an order passed by the second respondent herein under which the Housing Board directed the writ petitioner to remit a sum of Rs.4,73,551/- towards sale consideration of the allotment of a plot and thereafter, collect the sale deed.

2.An order of allotment was issued by the Housing Board by an order dated 04.01.2001 under which she was allotted a HIG House No.3 at a tentative cost of Rs.5,02,000/- . As per the said allotment order, an initial deposit of Rs.2,04,000/- should be deposited within a period of 21 days. The balance cost should be deposited at equated monthly instalment of Rs.5,000/- for 156 months. In case of any default in payment of the monthly instalment on or before 10th of every month, a penal interest at the rate of 21% will be charged for the belated payment. This order of allotment was challenged in O.S.No.606 of 2001 on the file of the I Additional District Munsif Court, Tirunelveli. In the said suit, a prayer was sought for to declare the allotment



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order is null and void and not in consonance with G.O.Ms.No.29 dated 22.01.2001 and for mandatory injunction to issue an allotment order pursuant to the said G.O and also prayed for a permanent injunction not to collect additional interest. The said suit was dismissed by the trial Court on 31.01.2003. The writ petitioner had filed A.S.No.28 of 2003 on the file of the Principal Subordinate Court, Tirunelveli. The learned Subordinate Judge was pleased to allow the said suit and granted a decree as prayed for.

3. According to the petitioner, she has deposited a sum of Rs.1,80,518/- on 07.12.2004. On 23.11.2006 a calculation memo was served upon the writ petitioner demanding a sum of Rs.3,70,190/-. Thereafter, G.O.Ms.No.215 Housing Board and Urban Development dated 28.09.2012 was passed extending certain waiver and benefits to the allottees of the housing board. Based upon the said Government order, the present impugned order was passed directing the petitioner to remit a sum of Rs.4,73,551/- on or before 31.12.2012 and to collect the sale deed. The said order is under challenge in the present writ petition.

4. According to the learned counsel for the writ petitioner, the amount that has been arrived at in the impugned order is not in consonance with G.O.Ms.No.29. The learned counsel had further contended that a Civil Court



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has already declared the order of allotment demanding excess amount is null and void and directed the authorities to comply with G.O.Ms.No.29 and the said order has become final. Without complying with the said judgment and decree, the present impugned order has been passed. Hence, he prayed for allowing the writ petition.

5.Per contra, the learned Standing Counsel appearing for the Housing Board had contended that the decree of the Civil Court was passed on 21.10.2003. Thereafter, a calculation memo has been issued to the writ petitioner on 23.11.2006. The calculation memo itself points out that the working sheet has been prepared only based upon the Government order No. 29 dated 22.01.2001. As per the said working sheet, the petitioner has to pay a sum of Rs.3,70,190/- as on 23.11.2006. However, the petitioner has not chosen to pay the said amount. Thereafter, the Government of Tamil Nadu granted certain waiver and benefits to the allottees of the Housing Board who are yet to receive sale deed as per G.O.Ms.No.215 dated 28.09.2012. Conferring the said benefit, a fresh order was issued on 27.12.2012 directing the petitioner to remit the amount. Hence, the impugned order is not in violation of G.O.Ms.No.29 dated 22.01.2001 or in violation of the decree of the Civil Court. Hence, he prayed for dismissal of the writ petition.



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

7.There is no doubt that the petitioner was allotted HIG House by an order dated 04.01.2001. According to the petitioner, she is entitled to the benefit under G.O.Ms.No.29 dated 22.01.2001. A perusal of the said G.O, points out that the Housing Board should not collect interest for the period between the date of completion of construction and the date of allotment. This benefit was to be conferred upon the houses that were constructed before 30.06.2000, but could not be sold till 31.12.2000. Hence, it is clear that this benefit is only for the calculation of the principal amount on the date of issuance of allotment order in favour of the allottee. In other words, the Housing Board should not add any interest for the period prior to the order of allotment from the date of completion of the construction. However, once the allotment has been made in favour of an allottee, if he defaults in payment of equated monthly instalment, necessarily all the conditions imposed in the order of allotment will follow.

8.In the present case, the petitioner has filed a civil suit challenging his order of allotment on the ground that it is in violation of G.O.Ms.No.29 dated 22.01.2001. As stated supra, the said G.O. would only result in reduction of



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the tentative principal cost of the building and it will not alter any one of the conditions of the Housing Board after the order of allotment is made.

9.In fact after the Civil Court decree, the Housing Board has issued a working sheet to the writ petitioner on 23.11.2006 specifically indicating that it is issued in consonance with G.O.Ms.No.29 dated 22.01.2001. Even thereafter, the petitioner has not proceeded to pay the said amount. Thereafter, some more concessions were conferred upon the allottees by way of G.O.Ms.No.215 dated 28.09.2012. Extending the said benefit, a fresh order was passed by the Housing Board on 27.12.2012 under which the petitioner was directed to remit a sum of Rs.4,73,551/- towards sale consideration.

10.The narration of the above said sequence of events will clearly indicate that the petitioner cannot have any grievance for the amount demanded by the Housing Board towards sale consideration of the HIG plot allotted to her. The petitioner has accepted the conditions in the allotment order and has proceeded to purchase the same and he has also deposited some amount pursuant to the said allotment order. The petitioner is time and again relying upon G.O.Ms.No.29 dated 22.01.2001, but it is applicable only up to the date of allotment order in favour of an allottee. It is not the case of the writ petitioner that the principal cost is not in tune with G.O.Ms.No.29. The



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allotment order itself points out that the Housing Board is entitled to impose an interest at the rate of 21% if there is any default in payment of instalment.

Admittedly, the petitioner has committed default in payment of EMI. For the said default, she cannot invoke G.O.Ms.No.29. That apart, the allotment order clearly mentioned that it is only a tentative cost and hence, any enhancement in the principal cost based upon the enhancement in the land acquisition proceedings has to be paid by the writ petitioner.

11.In view of the above said discussion, I do not finding any infirmity or illegality in the impugned order. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.08.2022

Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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