



WEB COPY



W.P.(MD).No.5657 of 2013

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**ORDER RESERVED ON : 28.11.2022**

**ORDER PRONOUNCED ON : 30.11.2022**

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

**W.P.(MD).No.5657 of 2013  
and M.P(MD).Nos.1 to 3 of 2013**

S.Rajkumar

....Petitioner

Vs

1.The Executive Engineer Cum Administrative Officer  
Tamil Nadu Housing Board  
Thanjavur Housing Unit  
Pudukkottai Road  
Thanjavur

2.The Managing Director  
Tamil Nadu Housing Board  
493, Anna Salai, Nandanam  
Chennai 600 035

3.The Government of Tamil Nadu  
Represented by its Secretary  
Housing and Urban Development Department  
Fort St.George, Secretariat,  
Chennai 600 009

....Respondents

**Prayer:** This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent letter in Letter No.R3/3533/02 dated 12.11.2012 and quash the same as illegal and consequently direct the first respondent to execute the sale deed in favour of the petitioner in respect of house M.I.G.181, Tamil University Campus, Thanjavur.



**W.P(MD).No.5657 of 2013**

For Petitioner : Mr.B.Jameel Arasu  
For R1 & R2 : Mr.M.Suresh  
Standing Counsel  
For R3 : Mr.M.Lingadurai  
Special Government Pleader

### **ORDER**

The present writ petition has been filed challenging an order passed by the first respondent dated 12.11.2012 under which they have demanded a sum of Rs.94,792/- for execution of the sale deed in favour of the petitioner.

2.According to the petitioner, the lands under reference were originally acquired for the purpose of Tamil University at Thanjavur to accommodate the delegates who attended the World Tamil Conference during January 1995. An extent of 50 acres of land of Tamil University, Thanjavur was earmarked and it was handed over to the officials of the Tamil Nadu Housing Board, Thanjavur by an order dated 02.05.1994 and the houses were constructed by Tamil Nadu Housing Board.

3.The learned counsel for the petitioner had contended that the said lands were transferred to Tamil Nadu Housing Board by G.O.Ms.No.312, Revenue (L-2) Department, dated 26.04.1994. Hence, the lands were not acquired for the purpose of any individual scheme of the Tamil Nadu Housing



**W.P(MD).No.5657 of 2013**

Board. He had further submitted that during May 2000, a public advertisement was made that readily built houses were available for sale in Thanjavur adjacent to the Tamil University, Thanjavur. The petitioner had applied for purchase of one M.I.G House and M.I.G No.181 having an extent of 1650 sq.feet Phase-II was allotted to the petitioner. As per the original order of allotment, the tentative cost is Rs.3,70,900/- including the land cost. The petitioner had paid the said amount in entirety. The first respondent has also given a clearance certificate on 15.11.2005 to the effect that the entire cost have been paid by the writ petitioner. Hence, according to the learned counsel for the petitioner, the petitioner is entitled to get a sale deed executed by the first respondent herein.

4.The learned counsel for the petitioner had further contended that despite several representations, the first respondent has not chosen to execute the sale deed in his favour on the ground that they have not fixed the final price of the land. He had further stated that the first respondent had fixed the final price at the time of allotment of the house itself and there is no chance for escalation of the land cost. The first respondent had addressed a letter on 12.11.2012 directing the petitioner to pay an additional amount on or before 27.03.2013. According to the petitioner, the said communication is based upon G.O.Ms.312, Housing and Urban Development Department, dated 14.02.2011 which is not applicable to him. Since the Government land alone



W.P(MD).No.5657 of 2013

was utilised for construction of the house, the question of escalation of price due to land acquisition proceedings is not applicable to the facts of the present case.

5.The learned counsel for the petitioner had further contended that the Government of Tamil Nadu had issued G.O.Ms.No.67, Housing and Urban Development Department, dated 23.03.2010 and as per the said Government Order, only at the raw land cost adopted by the Housing Board for fixing the tentative land cost at the time of allotment the land shall be alienated to the Tamil Nadu Housing Board by Government. It shall be the final land cost for the allottee and no further demand due to the reason of revision in Government land cost should be made on them.

6.The learned counsel had further submitted that in violation of the above said Government Order, the order impugned in the writ petition has been issued directing the writ petitioner to pay an additional sum towards enhanced land cost. The said order is clearly in violation of G.O.Ms.No.67, dated 23.03.2010 and hence, the same is liable to be set aside

7.Per contra, the learned Standing Counsel appearing for the respondents 1 and 2 had contended that the allotment order dated 12.11.2012 specifically points out that a sum of Rs.3,70,900/- is a tentative land cost. The learned Standing Counsel had further contended that the petitioner has only



**W.P(MD).No.5657 of 2013**

paid the tentative cost of the house, but he has to pay the difference between the final cost arrived at by the Board and the tentative cost already intimated to him with due interest. He had further contended that the District Revenue Officer, Thanjavur District had recommended the land value at Rs.12/- per sq.ft in the year 1999 and capitalized cost of Rs.13.36 per sq.ft as on 30.06.2000 for the Government land and the land cost Rs.21.28 sq.ft for the year 1994 which amount was claimed by Tamil University and this was capitalised and taken into account as Rs.39.75/- sq.ft as on 30.06.2000. He had further contended that the lands were handed over to the Housing Board in the year 1994 and hence, the difference in land cost has been paid by the Tamil Nadu Housing Board to the Revenue Department and in turn the allottee is under an obligation to pay the same to the Board with due interest as per the condition of the allotment. Hence, he prayed for dismissal of the writ petition.

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

9.There is no dispute that the petitioner was allotted M.I.G.181 Phase-II. The allotment order clearly indicates that it is only a tentative cost and the increase in difference in land cost, if any, should be paid by the allottee in time. It is also not in dispute that the petitioner had paid the entire



W.P(MD).No.5657 of 2013

tentative cost and a certificate has also been issued by the Housing Board on 03.12.2008.

10.The petitioner had relied upon G.O.Ms.No.67, Housing and Urban Development Department, dated 23.03.2010. The said Government Order is applicable only in cases where the government alienates the land belonging to the revenue department to the Tamil Nadu Housing Board for implementing various housing scheme. In the preset case, the State Government has not alienated any of its properties to the Tamil Nadu Housing Board directly. The lands were acquired for Tamil University. Thereafter, a portion of the lands were transferred from Tamil University to Tamil Naud Housing Board after completion of World Tamil Conference in the year 1995. In Phase-I of the Housing project, the houses were constructed for the purpose of accommodating delegates for the World Tamil Conference. After the said conference was over, the same has been converted into staff quarters of the Tamil University. The balance land remained vacant with the Tamil University and the same was transferred to the Tamil Nadu Housing Board. In the said vacant land, the Housing Board has undertaken construction activities which has been named as Phase No.II. Hence, the contention of the writ petitioner that the houses were constructed for the purpose of accommodating delegates of the World Tamil Conference is not correct.



W.P(MD).No.5657 of 2013

11.In the present case, the final land cost has been arrived at by the Tamil Nadu Housing Board by their proceedings dated 19.01.2011. The said final cost has been communicated to the writ petitioner on 22.02.2011. The respondents have produced a working sheet which indicates that the interest for difference in land cost has been calculated from April 2003 till September 2022 for the principal amount of the difference in land cost.

12.The Hon'ble Division Bench of our High Court in a judgment reported in **2004 (1) CTC Page 178 ( K.v.Krishnan Vs. The Chairman and Managing Director, Tamil Nadu Housing Board, Chennai and another)** in Paragraph Nos. 16 and 17 has held as follows:

*“16. It did not even consider that such an additional amount should have been claimed for a long number of years thereafter, as is evident from its conduct. It refunded to the allottee here on 12.6.91, nearly three years after the date of allotment, a sum of Rs.7,862/- which would have been wholly unwarranted had the allottee been regarded as a person who was liable to pay sums in excess of the amount of that refund. It chose to intimate the allottee about this additional amount only 13 years later, in the year 2001. There is no explanation forthcoming for this extraordinarily long delay.*

*17. The only excuse that has been offered is that the allottee had not, in this period, asked for the sale deed. If the housing board was entitled to the sum it was duty bound to inform the allottee of that demand so that the allottee could pay it at the earliest possible time. The Board cannot by remaining silent regard the additional amount as*



W.P(MD).No.5657 of 2013

*a loan given to the allottee on which it was entitled to receive interest as also penal interest.....”.*

WEB COPY

13.The Hon'ble Division Bench of our High Court in a judgement reported in 2007(5) CTC 439 ( *Tamil Nadu Housing Board and others Vs. Avadi Thaniraivu Veetumanai Thittamani, Othukeeduthararkal Nalavazhu Sangam*) in paragraph Nos. 11 and 12 has held as follows:

*“11. The facts in this case are not in dispute. For perusal of this Court, the learned counsel appearing for the appellants produced the allotment order of one D.Rajendran, 10 Hanuman Tharayan Koil Street, Otteri, Madras. Clause (14) of the allotment order clearly states that the amount fixed is only tentative. The translated version of clause (14) of the allotment order reads thus:*

*(14) The final cost of the plot cannot be determined now. The price fixed by the CMDA after allotment alone will be the final cost of the plot. After such notification, the difference in cost should be paid with interest by the allottees.”*

*In paragraph 4 of the affidavit filed by the respondents/petitioners in the writ petition, the above position is admitted by stating as follows:*

*“..... The members of the petitioner Sangams were allotted plot under E.W.S. A section, E.W.S., B Section, L.I.G.I, L.I.G.II, MIG and HIG. At the time of allotment, the respondent board fixed tentative price for each category of land allotted to the members. Towards cost of the plot allotted, the members of the petitioner Sangams have deposited a*



**W.P(MD).No.5657 of 2013**

*part of the tentative price fixed and the balance to be paid in monthly instalments ranging from 10 to 15 years."*

*Thus, it is clear that the amount fixed at the time of allotment was only tentative, fixed in February, 1992, and the actual allotment orders are made only in March, 1993. Therefore, the appellants are entitled to fix the market rate as on the date of allotment of plots i.e., in March, 1993, and for the difference of cost from February, 1992 to March, 1993, the allottees are liable to pay interest at 12% per annum. The conditional allotment orders are also accepted by the members of the respondent Societies as such they are estopped from challenging the said demand of final costs with interest.*

*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....."*

14.A careful analysis of both the Division Bench Judgements will clearly reveal that where there is a liability upon the allottee to pay an amount to the Housing Board and the said liability has not been intimated to the



W.P(MD).No.5657 of 2013

allottee in time, the Board would not be entitled to levy interest till they have made a demand.

15.In view of the Hon'ble Division Bench Judgments cited supra, the respondent Board will be entitled to claim interest only from 23.02.2011 onwards when they had informed the petitioner about the difference in land cost. Therefore, the Board is not entitled to claim any interest on any outstanding amount till 22.02.2011. The respondent Board shall be entitled to claim interest for difference in land cost from 23.02.2011 onwards. The Board shall issue a fresh demand notice to the writ petitioner on the basis of the above said finding arrived at by this Court. The writ petitioner shall pay the amount as per the demand notice and get a sale deed executed by the respondent board.

16.In view of the above said facts, this Court passes the following orders;

(i).The order impugned in the writ petition is set aside and remitted back to the file of the first respondent.

(ii).The first respondent is directed to issue a fresh demand notice as per directions given by this Court supra with a detailed working sheet to the writ petitioner within a period of 8 weeks from the date of receipt of a copy of this order.



**W.P(MD).No.5657 of 2013**

(iii). The writ petitioner shall pay the amount within a period of 8 weeks from the date of receipt of such demand notice. If there is any delay, the Board is entitled to levy interest for the delay beyond 8 weeks. On such payment, the respondent Board is directed to execute a sale deed in favour of the writ petitioner within a period of 4 weeks from the date of receipt of entire sale consideration.

17. With the above observations, this writ petition is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

**30.11.2022**

Internet : Yes/No  
Index : Yes/No  
msa

**R.VIJAYAKUMAR, J.**



WEB COPY



W.P(MD).No.5657 of 2013

msa

Pre-delivery order made in

W.P.(MD).No.5657 of 2013  
and M.P(MD).Nos.1 to 3 of 2013

30.11.2022