



W.P.(MD).No.16075 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 02.11.2022

ORDER PRONOUNCED ON : 14.11.2022

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

**W.P.(MD).No.16075 of 2014
and M.P(MD).No.1 of 2014**

A.Jothi

....Petitioner

Vs

The Executive Engineer and Administrative Officer
Tamil Nadu Housing Board
Tirunelveli Housing Unit
Kamarajar Salai, Anbu Nagar
Tirunelveli 627 011

....Respondent

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent in his proceedings in Lr.No.R5/2656/99 Relief G.O.115/2013 dated 05.07.2013 and quash the same and consequently direct the respondent to execute sale deed in respect of the house allotted to the petitioner bearing No.HIG-A-9 without insisting /demanding any excess amount in the name of difference in land cost, interest and maintenance charges etc.

For Petitioner : Mr.T.Ponramkumar

For Respondent : Mr.S.Velmurugan
Standing Counsel



W.P(MD).No.16075 of 2014

ORDER

WEB COPY

The present writ petition has been filed challenging an intimation issued by the Tamil Nadu Housing Board demanding a sum of Rs.8,66,619/- from the writ petitioner towards the difference in land cost for HIG 'A' category house purchased by the writ petitioner.

2. According to the writ petitioner, HIG 'A' category house was allotted to the writ petitioner on 28.04.1999 and a tentative cost of land was fixed at Rs.4,28,000/-. Out of the said amount, Rs.4,00,000/- was paid through a cheque and balance amount of Rs.28,000/- was paid after obtaining loan from the Housing Board. The possession was handed over to the petitioner on 18.08.1999 and he had paid the entire maintenance charges up to 01.04.2004.

3. The learned counsel for the petitioner had further contended that he had received a letter on 21.02.2011 fixing the tentative cost at Rs.4,28,000/- and demanded a sum of Rs.4,35,651/- as outstanding dues. A representation was made through the association that no land acquisition proceedings are involved and hence, the enhancement is not bonafide. However, another letter dated 16.04.2013 was addressed to the petitioner directing the petitioner to deposit a sum of Rs.1,80,374/- within a period of three months. The petitioner was issued with the present impugned notice dated 05.07.2013 demanding a sum of Rs.8,66,619/-. The main component of the said outstanding dues is the



W.P(MD).No.16075 of 2014

difference in land cost along with interest. According to the learned counsel for the petitioner, the lands in which houses were constructed and allotted to him were not subjected to any land acquisition proceedings and hence, the question of enhancement in the land cost would not arise after allotting the said house to the writ petitioner. Without any rhyme or reason, the respondent board has increased the cost of land and hence, the order impugned in the writ petition has to be quashed.

4.Per contra, the learned Standing Counsel appearing for the respondent board had contended that the property in which house has been constructed and allotted to the writ petitioner was subjected to the land acquisition proceedings and after conclusion of acquisition proceedings, final land cost was fixed by the Financial Adviser, Tamil Nadu Housing Board on 09.05.2013. As per the original allotment order, the tentative cost was Rs.61,800/- per ground as on 30.06.1996. However, after acquisition proceedings and passing of award, the final cost was fixed by the Board at Rs.1,70,600/- per ground as on 30.06.1996. Based upon the said final cost arrived at on 09.05.2013, the intimation impugned in the writ petition was issued on 05.07.2013 demanding a sum of Rs.8,66,619/-.

5.The learned counsel for the respondent had further submitted that the order of allotment clearly specified that the land cost is only tentative in nature. He had further pointed out that a certificate was issued to the writ



W.P(MD).No.16075 of 2014

petitioner on 28.04.1999 to the effect that the Housing Board would transfer the title in favour of the allottee, on payment of difference in cost, if any, due to the fixation of the final price. Hence, according to the learned counsel for the Housing Board, the final price has been fixed by the Board on 09.05.2013 and the present impugned order has been issued only in consonance with the said fixation of the final price. The respondent Board has also filed a Working Sheet as on 14.10.2022. As per the said Working Sheet, the difference in land cost (Principal) is Rs.3,66,077/- and interest for the said amount is Rs. 8,73,704/- . Hence, as per the said Working Sheet, the outstanding due as on today is Rs.14,92,646/-. A perusal of the working sheet indicates that the interest for the difference in land cost has been calculated from April 1996 onwards till October 2002 namely the date of filing of the Working Sheet before this Court. Hence, according to the respondent Board, the petitioner is liable to pay the said amount as on today to get a sale deed executed in his favour. Hence, he prayed for dismissal of the writ petition.

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

7.It is not in dispute that at the time of allotment of house, the land cost that was fixed is only a tentative cost. The certificate issued to the petitioner on 28.04.1999 clearly indicates that on payment of difference in cost, if any,



W.P(MD).No.16075 of 2014

due to the fixation of the final price they would transfer the title in favour of the writ petitioner. Hence, it is clear that the Housing Board has reserved their right to fix the final price at a later point of time depending upon the outcome of the land acquisition proceedings, development charges and other related charges.

8.A perusal of the order passed by the Financial Adviser to the Tamil Nadu Housing Board dated 09.05.2013 clearly indicates that the final cost of the land has been fixed at Rs.1,70,600/- per ground as on 30.06.1996. The Working Sheet annexed to the said final assessment order clearly refers to about the acquisition proceedings and the date of award passed in various proceedings. Hence, it is clear that the land in which the house has been constructed and allotted to the writ petitioner has been subjected to the land acquisition proceedings and hence, any enhancement by the Land Acquisition Tribunal in awarding the compensation would naturally have to be collected from the allottee namely the writ petitioner. Hence, the payment of difference in land cost to a tune of Rs.3,66,077/- (Principal) cannot be found fault with. However, the respondent Board has calculated interest from April 1999 onwards to the said principal amount. Whether they are entitled to impose interest from the said date is the issue to be decided.

9.The final cost has been fixed by the Housing Board on 09.05.2013 and the same has been intimated to the writ petitioner under the impugned



W.P(MD).No.16075 of 2014

order dated 05.07.2013. Along with the impugned order, no Working Sheet has been annexed. However, the working Sheet furnished during the hearing indicates that the interest has been imposed upon the writ petitioner for the said difference in land cost from April 1999 onwards.

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



W.P(MD).No.16075 of 2014

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



WEB COPY

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.....”

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



W.P(MD).No.16075 of 2014

made a demand. In the present case, the award has been passed between between 1988 to 1993. Hence, it is clear that even on the date of allotment namely in the year 1999, the acquisition proceedings have got concluded. The Tamil Nadu Housing Board had arrived at a final cost only on 09.05.2013 and has made a demand on 05.07.2013. However, interest for the above said principal amount has been calculated from April 1999 onwards.

13.In view of the Hon'ble Division Bench Judgments cited supra, the respondent Board will be entitled to claim interest only from July 2013 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 June 2013. The respondent Board shall be entitled to claim interest for difference in land cost from July 2013 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.

14.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 respondent Board.



W.P(MD).No.16075 of 2014

(ii).The respondent Board is directed to issue a fresh demand notice as per directions given by this Court 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.

(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.

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

14.11.2022

Internet : Yes/No
Index : Yes/No
msa



W.P(MD).No.16075 of 2014

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

W.P.(MD).No.16075 of 2014
and M.P(MD).No.1 of 2014

14.11.2022