



W.P(MD)No.12719 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.09.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.12719 of 2015

and

M.P(MD)No.1 of 2015

T.Thirunarayanan

... Petitioner

Vs.

1.The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai-35.

2.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Ellis Nagar Housing Unit,
Ellis Nagar,
Madurai,
Madurai District.

3.The District Collector,
District Collector's Office,
Madurai,
Madurai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to second respondent proceedings made in Letter No.A3/422/88 dated 09.02.2015, quash the same and further



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direct the second respondent to issue demand notice on the basis of the Hon'ble Apex Court order dated 02.09.2008.

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For Petitioner : Mr.R.Sundar
For R1 & R2 : Mr.R.Sivakumar
Standing Counsel
For R3 : Mr.A.Baskaran
Additional Government Pleader

ORDER

The present writ petition has been filed challenging a demand notice issued by the respondent authorities, under which they have demanded a sum of Rs.5,33,563/- (Rupees Five Lakhs Thirty Three Thousand Five Hundred and Sixty Three only) towards additional cost for the plot along with the interest.

2. The demand made by the respondent housing board was challenged by many allottees before the Hon'ble Supreme Court. The Hon'ble Supreme Court by an order, dated 02.09.2008 made in C.A.No. 1805 of 2007, has permitted the respondent authorities to demand additional cost for the plot and permitted the authorities to calculate interest for the additional cost from 01.01.2001 till 30.11.2008. The



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Hon'ble Supreme Court in Paragraph No.9 of the order, has directed the respondent authorities to raise a demand on the allottees within a period of three months from the date of the order. On receipt of the said demand notice, the allottees were directed to deposit the demand amount within a period of three months.

3. According to the petitioner, at the time of allotment, he was residing in Madurai. However, in the year 2005, he had shifted his residence to Trichirappalli. By two communications, dated 03.10.2005 and 23.02.2006, he has informed the respondent authorities about the change of his address to Trichirappalli.

4. The respondent authorities are said to have issued a demand notice to the writ petitioner in compliance with the orders of the Hon'ble Supreme Court on 26.11.2008 along with a working sheet. This demand notice has been sent to the Madurai address of the writ petitioner. According to the writ petitioner, he has not received the said notice. Thereafter, the writ petitioner has sent a representation on 31.03.2009, requesting the respondent authorities to send a demand notice as per the judgment of the Hon'ble Supreme Court. Even the said



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request was not acceded to by the respondent board. Hence, the petitioner was constrained to file W.P(MD)No.4045 of 2009 before this Court seeking a Mandamus, directing the board authorities to issue a demand notice as per judgment of the Hon'ble Supreme Court.

5. The learned Single Judge of this Court, by an order, dated 29.09.2009 had directed the respondent authorities to issue a fresh demand notice within a period of two months from the date of copy of that order. The petitioner was also directed to pay the said amount. Thereafter, the respondent authorities have issued a fresh demand notice on 25.11.2009 demanding a sum of Rs.4,29,744/- (Rupees Four Lakhs Twenty Nine Thousand Seven Hundred and Forty Four only). According to the petitioner, the said demand is not in consonance with the judgment of the Hon'ble Supreme Court and the interest was not calculated up to 30.11.2008, but it was calculated up to the date of the impugned order, dated 25.11.2009. Hence, the petitioner was constrained to file W.P(md)No.3022 of 2010.

6. The learned Single Judge of this Court by an order, dated 23.04.2014 had set aside the said demand notice and directed the



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respondent authorities to issue a fresh demand notice in consonance with the orders of the Hon'ble Supreme Court within a period of two weeks. Thereafter, the present impugned notice, dated 09.02.2015 has been issued by the respondent Board. In the said impugned notice, the board has demanded a sum of Rs.5,33,563/- (Rupees Five Lakhs Thirty Three Thousand Five Hundred and Sixty Three only). The said demand notice is under challenge in the present writ petition, mainly on the ground that the interest portion has not stopped up to 30.11.2008, but it has been calculated up to the date of the present impugned order.

7. The learned counsel for the petitioner had submitted that had a proper demand notice been issued within a period of three months from the date of the order of the Hon'ble Supreme Court, they would have paid the said amount. However, in the present case, no such demand notice was issued to the writ petitioner within a period of three months from the date of order of the Hon'ble Supreme Court. The learned Single Judge in his order, dated 29.09.2009 in W.P(MD)No.4045 of 2009 in Paragraph No.4 has held that the first demand notice, dated 26.11.2008 has not been sent to the correct address of the writ petitioner or there is negligence on the part of the respondent/Board. The Hon'ble



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Single Judge in W.P.No.3022 of 2010, in Paragraph No.5 has categorically found that there is no proof that the first demand notice as per the order of the Hon'ble Supreme Court, dated 26.11.2008 has ever been served upon the writ petitioner.

8. In view of the findings of the both the learned Single Judges of this Court, it is clear that a demand notice as directed by the Hon'ble Supreme Court has not been served upon the writ petitioner within a period of three months from the date of the order of the Hon'ble Supreme Court. Thereafter, the respondent board has been issuing demand notices to the writ petitioner, in which the interest is calculated not up to the date of the judgment of the Hon'ble Supreme Court, but up to the date of the relevant demand notices. Hence, these notices have been put to challenge by the writ petitioner on earlier occasion. The present impugned demand notice has also calculated the interest portion up to the date of the demand notice.

9. The question of levying interest would arise only when a demand has been legally raised and it has been served upon the writ petitioner/allottee. In a case where, a demand has not been raised or a



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demand has been raised but not served upon the allottee, the question of levying interest does not arise. Only in cases where demand has been made and default has been committed by the allottee, the question of levying interest would arise. In the present case, as found by the learned Single Judges of this Court, a demand notice as directed by the Hon'ble Supreme Court has not at all been served upon the petitioner. Two other demand notices that were served upon the petitioner were not in consonance with the judgment of the Hon'ble Supreme Court. In view of the above said findings, this Court is inclined to set aside the present impugned order, dated 09.02.2015.

10. Since the Hon'ble Supreme Court has directed the respondent board to levy interest on the additional cost from 01.01.2001 and has also directed the respondent board to make a demand for the said additional cost within a period of three months from the date of the order of the Hon'ble Supreme Court, this Court is of the categorical view that any claim for interest would stop on 30.11.2008. Thereafter, the respondent board cannot claim any interest, unless it is proved that the allottee has been served with the demand notice in consonance with the Hon'ble Supreme Court judgment and he has committed default in



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payment of the said amount. In the present case, no such demand notice has ever been issued by the respondent board to the writ petitioner, demanding interest on the additional cost from 01.01.2001 to 30.11.2008. Hence, the impugned order, in which the interest has been calculated up to the date of the impugned order is set aside.

11. In view of the above said discussion, this Court passes the following order:

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

(ii) The second respondent is directed to issue a fresh demand notice along with the working sheet calculating rate of interest for the additional cost from 01.01.2001 to 30.11.2008.

(iii) The said demand notice shall be issued within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The petitioner/allottee on receipt of the said demand notice, shall pay the said amount within



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a period of eight weeks. from the date of receipt of a copy of the demand notice. In case, if the petitioner/allottee did not pay the amount within a period of eight weeks from the date of receipt of such a demand notice, the respondent board are at liberty to impose interest from the date of default committed by the petitioner.

12. With the above said observation, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.09.2022

Index : Yes / No
Internet : Yes / No

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R.VIJAYAKUMAR ,J.

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