

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.7.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.608 of 2013 and
M.P.No.2 of 2013

- 1 The Chairman and Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai-35.
- 2 The Executive Engineer and
Administrative Officer, Coimbatore Housing
Unit, Tatabad, Coimbatore-641 012. ... Appellants/Respondents 2 & 3

Vs.

- 1 K.Kotaiah ... 1st Respondent/Writ Petitioner
- 2 The State of Tamilnadu
Rep by its Secretary to Govt.,
Housing Unit and Urban Development
Department, Fort St. George,
Chennai - 9. ... 2nd Respondent/1st Respondent

Prayer : Writ Appeal filed under Section 15 of Letters Patent to set aside the order passed in W.P.No.17784 of 2011 dated 24.09.2012 on the file of this Court.

For Appellants	: Mr.D.Veerasekaran Standing Counsel
For Respondents 1	: Mr.R.Kannan
For Respondent - 2	: Mr.U.M.Ravichandran, Spl.G.P.

ORDER

(Order of the Court was delivered by **P.B.BALAJI, J.**)

The instant writ appeal has been filed by the Tamil Nadu Housing Board challenging the common order dated 24.9.2012 in W.P.No.17784 of 2011.

2. The short question involved in the instant appeal is as to the correctness of the order passed by the learned Single Judge, directing the appellant Board to collect interest on the final land cost, from the date indicated in the demand notice issued by the appellant Board.

3. The learned Single Judge has taken into account the Circular issued by the Tamil Nadu Housing Board dated 20.6.1988. Clause 7(c) of the Circular reads as follows:

"The collection of interest should be only from the date of intimation of difference in cost. For this purpose, such intimation should be sent only by Regd. Post with Ack. Due in future. In all old cases, the date of despatch of the intimation of difference in cost, may be taken for the purpose of calculation of interest."

4. The case of the writ petitioner is only with regard to levy of interest on the final cost determined and calling upon him to pay the difference between the final cost and tentative land cost, together with

interest, from the date of the original allotment. According to the counsel appearing for the writ petitioner/first respondent, the interest for the difference in the tentative land cost and final land cost could be levied only from the date of finalization of the final land cost, whereas in the instant case, for the difference in the land cost, interest has been levied from the date of allotment, which is unjust and improper on the appellant board's part.

5 Heard Mr.D.Veerasekaran, Standing Counsel appearing for the appellant Board, Mr.R.Kannan, counsel appearing for the writ petitioner/first respondent and Special Government Pleader appearing for the second respondent and perused the materials available on record.

6 The learned Standing counsel appearing for the appellant board invites our attention to the Circular issued by the Tamil Nadu Housing Board in Memo No.CA.I/33871/88 dated 20.6.1988 wherein the issue of difference in cost between the tentative and final cost is dealt with. It reads as follows:

a) While arriving at the final cost, the following procedure should be followed. The cost as per completion report should be arrived at first and capitalisation of interest and collection charges should be added to the completion report cost. The cost so arrived at only should be compared with the tentative cost already intimated to the allottees and whichever is higher of these two months

should be taken as final cost and difference between the final cost thus arrived at and the tentative cost already intimated should be collected.

b) The allottee should be given month month time for the payment of difference in cost in one lumpsum without interest or in instalments as per instructions issued in proceedings No.61357/CA.I-a/75/ dated 17.5.1976 with interest (copy enclosed).

c) The collection of interest should be only from the date of intimation of difference in cost. For this purpose, such intimation should be sent only by Registered Post with ack. due in future. In all old cases, the date of dispatch of the intimation of difference in cost, date of dispatch of the intimation of difference in cost, date of dispatch of the intimation of difference in cost may be taken for the purpose of calculation of interest.

d) Working sheets should be prepared separately for additional cost and tentative cost."

7. Relying upon the aforesaid clause, the learned Standing counsel appearing for the appellant would content that the final cost itself has been computed taking into account capitalisation of interest and therefore, the impugned order directing the appellant Board not to collect interest from the date of allotment is erroneous and the same is liable to be set aside.

8. Per contra, the learned counsel appearing for the first respondent/writ petitioner would submit that Clause (c) of the very same clause relied upon by the Standing Counsel appearing for the appellant Board cited supra, would clearly state that "*The collection of interest should be only from the date of intimation of difference in cost.*"

9. As seen from the Circular relied upon by the Standing Counsel appearing for the appellant Board dated 20.6.1988, there is no doubt in our minds that the final cost is arrived at after taking into account capitalisation of interest and other collection charges only. Further, the question is not with regard to the entitlement of the Board to collect differential cost, but, it is only interest on the said differential cost which is canvassed by the petitioner in the instant writ petition.

10. Clause (c) clearly mandates collection of interest only from the date of intimation of difference in cost. That being so, the impugned order calling upon the writ petitioner/respondent herein from the date of allotment goes against the very Circular issued by the appellant Board. These factors have been rightly considered by the learned Single Judge. We find no infirmity in the order passed by the learned Single Judge.

11. Mr.D.Veerasekaran, learned Standing Counsel brought to our notice that about 34 allottees have paid the entire amount and also taken sale deeds. Mr.Kannan, learned counsel appearing for the first respondent/writ petitioner has submitted that pending writ proceedings, some of the writ petitioners have paid the impugned demand and obtained sale deed, only under protest. In all cases where the amount has been paid under protest, such of the petitioners, would be entitled for refund. Therefore, the appellant Board shall consider the cases individually, for refund. If the writ petitioner had paid the impugned demand of interest under protest, he/she shall be entitled to refund of the same. If the writ petitioner had chosen to pay the same without any protest, then the question of refund does not arise. The said exercise shall be completed within a period of 12 weeks from the date from the date of receipt of copy of the order.

With the above directions, the writ appeal stands dismissed. No costs. Connected miscellaneous petitions are closed.

(D.K.K.J.) (P.B.B.J.)
24.7.2023

Speaking/Non Speaking order
Index: Yes
vaan

To

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