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Writ Petition No.5629 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.08.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition No.5629 of 2023
and WMP.No.5655 of 2023

M.Subramanian

... Petitioner

Vs

1.The Principal Secretary to Government,
The State of Tamil Nadu,
Housing and Urban Development Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Managing Director,
Tamil Nadu Co-operative Housing Federation,
No.48, Ritherdon Road,
Vepery, Chennai – 600 007.

3.The Registrar of Co-operative Societies,
Housing,
No.48, Ritherdon Road,
Vepery, Chennai – 600 007.

4.The Deputy Registrar,
Housing,
Fairlands, Salem – 16,
Salem District.

5.The Secretary,

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SLM/HSg-90, Kadayampatti,
Town Co-operative Housing Ltd.,
Nachinampatti,
Kadayampatti – 636 351,
Kadayampatti Taluk,
Salem District.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the impugned order issued by the 5th respondent dated 30.08.2022 Ref.Nil and quash the same, consequently, direct the respondents to discharge the Housing loan of the petitioner in Credit No.232/2002-2003 as per the One Time Scheme (OTS) issued by the 1st respondent dated 16.03.2015 in G.O.Ms.No.40, Housing and Urban Development Department.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader
for R1 to R4
Mr.S.Ravikumar
Special Government Pleader for R5

ORDER

This writ petition is filed challenging the order passed by the 5th respondent dated 30.08.2022 directing the petitioner to pay a sum of Rs.15,38,674/- towards balance of amount due from his loan account.

2. The petitioner is a member of the 5th respondent society and



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he borrowed a housing loan on 18.05.2022. The petitioner received a sum of Rs.4,75,000/- as principal loan amount from the 5th respondent and the same has to be repaid within a period of 10 years with interest at the rate of 14% per annum. Due to financial crisis, the petitioner was not able to repay the amount as per the loan agreement and he has paid only a sum of Rs.17,389/- on 30.03.2007 and another sum of Rs.50,000/- on 01.07.2015.

3. The first respondent issued G.O.Ms.No.40, Housing and Urban Development Department, dated 16.03.2015 for providing waiver of penal interest and default interest under one time settlement scheme. The fifth respondent issued a final demand notice on 26.10.2021 directing the petitioner to pay a sum of Rs.14,77,962/-. In response to the said demand notice, the petitioner paid a sum of Rs.8,50,000/- on 04.07.2022 and the same has been held as loan suspension under OTS scheme. Thus, totally the petitioner paid a sum of Rs.9,17,389/- towards his loan account.

4. The 5th respondent passed impugned order by directing the petitioner to pay a sum of Rs.15,38,674/- as on 31.07.2022 in order to avail the benefit of the waiver scheme announced above. Aggrieved by the same,



the petitioner has come up with this writ petition.

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5. The learned counsel for the petitioner assailed the impugned order mainly on the ground that the 5th respondent calculated interest at the rate of 14% from the date of loan till the date of impugned order. According to the learned counsel, as per the waiver scheme announced in the above mentioned Government Order, the 5th respondent is not entitled to claim interest beyond the loan period of 10 years and therefore calculation of interest till the date of impugned order is against the welfare scheme announced by the Government in the above mentioned Government Order.

6. Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.S.Ravikumar, learned Special Government Pleader, appearing for the 5th respondent by taking this Court to the counter affidavit filed by the respondents 4 and 5 submitted that the petitioner is liable to pay interest from the date of borrowing to the date of actual refund of the loan amount. The G.O.Ms.No.40 referred to above does not provide any concession to the petitioner restricting the calculation of interest only to the loan period of 10 years.



7. A reading of G.O.Ms.No.40 referred above would suggest

under one time settlement scheme the debtors are entitled to waiver of penal interest and default interest. There is nothing in the Government Order to suggest that the interest on principal sum shall be calculated only for a loan period not beyond that. The calculation memo annexed to the impugned order would suggest that there are five components in the calculation made by the 5th respondent. Out of five components the concession was given to the petitioner by deleting the penal interest and default interest. Therefore, the petitioner was given waiver to the tune of Rs.21,33,207/- by waiving penal interest and default interest. However, the petitioner was directed to pay a sum of Rs.15,38,574/- which amount shall include a sum of Rs.4,75,000/- towards principal; Rs.10,62,424/- towards interest and Rs.1,250/- towards expenses. In the absence of any express provision in the Government Order restricting calculation of the interest on the principal of sum only for the loan period, the petitioner is not entitled to say that the 5th respondent is not justified in calculating interest from the date of loan to till the date of full payment of the amount. Therefore, the submission made by the learned counsel for the petitioner is not acceptable to this Court.



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8. Accordingly, the writ petition is disposed of with a direction to the petitioner to pay the amount demanded by the 5th respondent in the impugned order together with any future interest from 01.08.2022 to till date of payment, less the amount of Rs.9,17,389/- already paid by the petitioner. On such payment, the 5th respondent shall treat the petitioner repaid the entire outstanding amount in his loan account as per the one time settlement scheme covered by G.O.Ms.No.40 and issue a certificate to that effect.

9. It is made clear that the benefit of the impugned order will be available to the petitioner only if he makes the payment on or before 02.09.2023 or otherwise, the benefit under G.O.Ms.No.40, will not be applicable for the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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S.SOUNTHAR, J.

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