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W.P.No.27831 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2023

Pronounced on : 01.09.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.27831 of 2022  
and WMP.No.27115 of 2022

M/s.Hallmark Industries  
Having Office at :  
A-30, MEPZ - SEZ  
Tambaram  
Chennai - 600 045  
Represented by its Manager  
Jai Mukesh Gokal

... Petitioner

Vs.

1.The Executive Engineer  
K.K.Nagar Division  
Tamil Nadu Housing Board  
3rd Floor, C-48, 2nd Avenue  
Anna Nagar, Chennai - 600 012.

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

... Respondents



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**Prayer :** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in Letter No.K.K.Na.B-2/6095/1996 dated 24.05.2022 on the file of the first respondent and quash the same as illegal, arbitrary and against the principles of nature justice and consequently direct the first respondent to settle the accounts as per the Amnesty Scheme of 2009 with the petitioner and consequently allot the four houses bearing T-16-Allotment letter No.KRA6/6092/96 dated 16.04.1996, T-19-Allotment letter No.KRA6/6093/96 dated 16.04.1996, T-22-Allotment letter No.KRA6/6094/96 dated 16.04.1996 and T-23-Allotment letter No..KRA6/6095/96 dated 16.04.1996 respectively in favour of the petitioner upon the payment of the fee as applicable.

For Petitioner : Mr.R.Shankaranarayanan  
Senior Counsel assisted by  
Mr.N.P.Vijayakumar

For Respondents : Mr.D.Veerasekaran

### **ORDER**

The petitioner herein challenges the proceedings of the Tamil Nadu Housing Board dated 24.05.2022 under which it confirmed the cancellation of allotment of 4 HIG flats, namely T-16, T-19, T-22 and T-23 in MEPZ-SEZ, Tambaram. The case of the petitioner may be bullet pointed as below:



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(a) On 16.04.1996, the petitioner was allotted six HIG twin houses in MEPZ-SEZ bearing Nos.T-16, T-19, T-22, T-23, T-14 and T-26. As per the order of allotment, the petitioner has to make a down payment and then to pay the balance in equated monthly instalments. The petitioner had been paying the monthly instalments for all the tenements allotted to him but not very regularly. Due to irregular payments or default in paying the EMIs, the Tamil Nadu Housing Board vide its proceedings dated 02.01.2003 cancelled the allotment for all but house No.T-14

(b) The petitioner began to correspond with the Tamil Nadu Housing Board highlighting his difficulty in making prompt payments due to certain financial crisis it faced in the business, and also how to revoke cancellation of the five apartments is essential for the petitioner to house its women tailors from far off place.

(c) The parlay correspondence has ultimately secured the petitioner one house bearing No.T-26 vide proceedings of the Tamil Nadu Housing Board dated 05.06.2008, and also the house in T.14 vide proceedings dated 20.01.2016.

(d) While so, the Tamil Nadu Housing Board came out with a scheme to



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condone the cases of the defaulters among its allottees vide its notification dated 20.07.2009, wherein it stipulated 15.08.2009 as the last date for the defaulters to submit their consent letter. This notification also has a reference that it had been published both in Tamil and English newspapers namely, Dinakaran, Dinamalar, Indian Express, dated 15.07.2009.

(e) In response to this scheme, the petitioner, vide its communication dated 30.07.2009, addressed to the first respondent about its willingness to pay the balance defaulted amount along with any penalty for belated payment for each of the remaining houses bearing T.16, T.19, T.22 and T.23 separately. This came to be rejected by the TNHB vide proceedings dated 22.09.2009. This proceedings does not disclose any specific reasons why the petitioner's request to streamline the default in terms of the scheme announced by TNHB on 2009, was not considered. All it says is that the Revocation Committee did not accept it.

(f) The petitioner would now address a communication dated 09.10.2009 to the TNHB, yet again reiterating that it is ready to comply with the conditions stipulated in the scheme announced on 20.07.2009. The respondent stuck to its earlier stand, and rejected it yet another time,



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vide its correspondence dated 12.11.2009.

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(g) Undeterred the petitioner would now write to the respondent yet again and followed it up with W.P.No.14743 of 2010, challenging the proceedings of the TNHB dated 22.09.2009 and 12.11.2009. On 06.12.2018, this petition came to be allowed by a learned Single Judge of this Court. It is now relevant to extract paragraph Nos.11 & 12 of the said order :

*"11. At this juncture, the learned Senior Counsel appearing for the petitioner submitted that if the houses originally allotted to the petitioner are still available, the same may be directed to be re-allotted to the petitioner, on payment of the entire dues along with fine, if any, payable by them, for which, the learned Standing Counsel appearing for the respondents, on instructions, submitted that at present, the said houses are not in occupation and its surroundings are with bushes.*

*12. In view of the discussions held above, this writ petition stands allowed and the impugned communications/orders issued by the respondents 1 and 2 are set aside. The matter is remanded back to the respondents for fresh consideration, in the light of the communication dated 20.07.2009 sent by the first respondent to the second respondent and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a*



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*period of eight weeks from the date of receipt of a copy of this order. .... ."*

- (h) Pursuant to the passing of this order, the petitioner again renewed its request vide letter dated 01.08.2019, for granting him an amnesty for the payment defaulted amount, and to transfer the aforesaid four houses viz., T.16, T.19, T.22 and T.23. And this continued for a while, and finally the TNHB vide its proceedings dated 10.09.2019, invited the petitioner for an enquiry at 3.00 p.m., on 26.09.2019.
- (i) In reply to the same, the petitioner has addressed a letter dated 26.09.2019 to the first respondent requesting to reconsider his application seeking cancellation of eviction order issued by the respondent and to reinstate him. It also undertook to make full and final payment as per the terms of the amnesty scheme.
- (j) The TNHB will now respond with a communication, dated, 12.11.2020, whereunder it would require the petitioner to produce a certificate from the Ministry of Commerce, Union of India, to the effect that the aforesaid four houses of TNHB are required for the purposes of the petitioner. This was again reiterated vide another communication dated 13.01.2021 by TNHB.



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(k) Left with little option, the petitioner issued a legal notice dated 02.12.2020, wherein the TNHB was reminded that the petitioner is requesting for the benefit under the scheme introduced by the TNHB on 20.07.2009.

(l) TNHB ultimately responded to it with the impugned proceedings dated 24.05.2022, whereunder it merely states that the rejection earlier made was confirmed. This is now under challenge.

2. Mr.R.Shankaranarayanan, the learned senior counsel appearing for the petitioner, submitted that to start with the petitioner was a defaulter, but it has approached the TNHB to consider its case under the amnesty scheme introduced by the respondents on 20.07.2009. This scheme was open for all the defaulters, and the only requirement is that the defaulters must be willing to pay the defaulted amount along with penalty. Even when the petitioner indicated to the TNHB of its willingness to abide by the conditions stipulated in the scheme vide a set of separate communications dated 30.07.2009, (wherein it also emphasised that these houses are necessary to house its employees, who come from a very poor section of society and far off places). There are no other strings attached to this scheme, but despite it they are



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seeking it, the TNHB has not come out with a speaking order as to why the case of the petitioner does not merit consideration under the scheme.

3. The second respondent has filed its counter, and the contents of which was submitted by the counsel for the respondents. The learned counsel appearing for the respondents submitted that for non-payment of instalments for the four buildings in question, these allotments came to be cancelled sometime in 2003, and hence the petitioner is not entitled for the revocation of cancellation of allotment.

4. This Court carefully perused the scheme dated 20.07.2009. All it requires is any request for revocation for cancellation of allotment filed upto 15.08.2009, will be taken up for consideration, provided the defaulted allottees are willing to pay the defaulted amount plus the penalty. The petitioner had responded to this scheme with its request letters dated 30.07.2009, which implies, the first of the conditions that the request must be made within 15.08.2009, was fulfilled. The context of these request letters also indicate the petitioner's willingness to pay the defaulted amount plus the penalty. It is nowhere made clear in any of the correspondences of TNHB as



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to why it has considered that the petitioner's case does not deserve to be considered. Indeed, the petitioner had moved this Court in W.P.No.14743 of 2010, and despite the directions given by this Court, the TNHB has not considered it necessary to consider it appropriately. A perusal of the order in W.P.No.14743 of 2010, indicates that till an order was passed by this Court, these four houses were not allotted to anybody, and they are kept vacant now in the midst of bushes.

5. This Court cannot fathom what runs in the mind of TNHB. In 2003, it had cancelled the allotment of these four houses to the petitioner. Thereafter, it came out with the amnesty scheme referred to above only in 2009. This Court wonders what prevented the TNHB from allotting these houses to some third parties even prior to that. It was not done, and even today these buildings which are stated to be in a dilapidated condition and are not allotted to anybody. There is hardly any commercial prudence of rejecting the petitioner's request, and allowing the building go dilapidated. It does not appeal to common sense. This Court hardly sees any reason why the TNHB chooses to trek the path that it is now trekking. Neither it will allot the buildings to third parties (in all probability, the condition of the buildings



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must be so bad for sheer non-user for 16 years now), nor will it revoke the cancellation of allotment made in 2003, and allow the petitioner to use the property, nor will it ever explain why it considered that the request of the petitioner does not deserve to be considered within the amnesty scheme introduced in 20.07.2009.

6. This Court holds that the decision of TNHB in rejecting the request of the petitioner is arbitrary and suffers very serious non-application of mind. Hence, this Court decides to quash the above impugned proceedings.

7. This Court has lost trust in TNHB that it would abide by the orders of this Court, if it is now required to consider the case of the petitioner yet again, for the reason that it did not abide by the trust this Court reposed on TNHB vide its order dated 06.12.2018 in W.P.No.14743 of 2010.

8. To conclude, this Court allows this petition and sets aside the impugned proceedings of the first respondent dated 24.05.2022. The respondents are directed to communicate to the petitioner the total arrears amount plus the penalty which the petitioner is liable to pay, and also to stipulate the time



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within which it has to be paid, within a period of four weeks from the date of receipt of a copy of this order. And upon receipt of the payment, the respondents are directed to revoke the cancellation of allotment made vis-a-vis the HIG houses T.16, T.19, T.22 and T.23 in Phase-III in MEPZ-SEZ, Tambaram, and put the petitioner in possession of these buildings. No costs. Consequently, connected miscellaneous petition is closed.

01.09.2023

Index : Yes / No  
Speaking order / Non-speaking order  
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To:

1.The Executive Engineer  
K.K.Nagar Division  
Tamil Nadu Housing Board  
3rd Floor, C-48, 2nd Avenue  
Anna Nagar, Chennai - 600 012.

2.The Managing Director  
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N.SESHASAYEE.J.,

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Pre-delivery order in  
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