BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)Nos.1845 and 1846 of 2016
and
W.M.P (MD) Nos.21510 and 21513 of 2016

1.S.Johns Rani ... Petitioner in W.P(MD) No.1845/2016

2.G.Antony ... Petitioner in W.P(MD) No.1846/2016

Vs.

The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Tirunelveli Housing Unit,
Kamarajar Salai, Anbu Nagar,
Tirunelveli – 627 011. ... Respondent (in both cases)

PRAYER in W.P.(MD) No.1845 of 2016 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to order in Letter No.R5/1552/96/Relief GO 115/2013 dated 05.07.2013 and quash the same and consequently direct the respondent herein to execute sale deed in respect of the house allotted to the petitioner bearing No.SMT-M40 Type MIG Group B as per the full and final settlement letter dated 21.02.2011 of the respondent herein within a stipulated time.

(Prayed amended vide Court order dated 02.12.2022 in W.M.P.(MD) No. 21508/2022)

PRAYER in W.P.(MD) No.1846 of 2016 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to order in Letter No.R5/1458/1998 dated 16.04.2013 of the respondent herein and Lr.No.R5/1552/96/Relief GO 115/2013 dated 05.07.2013 and quash the same and consequently direct the respondent herein to execute sale deed in respect of the house allotted to the petitioner bearing No.SMT-M41 Type MIG Group B as per the full and final settlement letter dated 21.02.2011 of the respondent herein within a stipulated time.

(Prayed amended vide Court order dated 02.12.2022 in W.M.P.(MD) No. 21509/2022)

For Petitioner : Mr.T.Pon Ramkumar (in both writ petitions)

For Respondent : Mr.S.Velmurugan (in both writ petitions)

COMMON ORDER

The respective petitioner in these two writ petitions was an allottee of a house by the Tamil Nadu Housing Board (TNHB). The petitioner in W.P. (MD) No.1845 of 2016 was the allottee of house No.M40 of Type MIG and the petitioner in W.P. (MD) No.1846 of 2016 was the allottee of house No.M41 of Type MIG. The respective allotment order specified the tentative cost of the respective house. The said tentative cost included both the tentative land cost and building cost. Subsequently, a notice was issued to the respective petitioner on 21.12.2011. The above mentioned demand notice was issued under G.O.Ms.No.37, Housing and Urban Development Department, dated 14.02.2011. In the said notice, the TNHB indicated the total amount payable based on the tentative land cost. After giving credit to amounts paid until such date by the respective petitioner, the amount outstanding was demanded. Such outstanding was required to be paid on or before 13.06.2011.

2. After receipt of the above notice, the respective petitioner paid the amount demanded under such notice prior to the stipulated deadline. Thereafter, the TNHB refused to execute the sale deed in favour of the respective petitioner. The present writ petitions were filed in the said facts and circumstances seeking a direction to the respondent for execution of a sale deed in favour of the respective petitioner.

3. Learned counsel for the petitioner invited my attention to the demand letter issued by the TNHB. He points out that the said demand letter contains details of the tentative cost, interest, interest (ID) etc. and that the total amount was arrived at on such basis. The entire outstanding demanded by the TNHB was paid by the respective petitioner. Learned counsel submits that the TNHB fixed the final land cost belatedly in the year 2013 and that the petitioner cannot be penalized on that account. In particular, he submits that the petitioner should not be mulcted with interest liability on account of the default by the TNHB in fixing the final land cost in time. By relying on the judgment dated 16.10.2006 of a Division Bench of this Court in a batch of writ petitions, of which W.P.No.6036 of 2002 was the lead case, he contended that interest should not be charged for the period prior to the date of fixation of final land cost. As per G.O.Ms.No.37, he submits that interest is chargeable only at the rate of six percent per annum. In this case, he submits that either no interest should be levied or interest should be levied at the maximum of six percent per annum. Learned counsel also submits that the calculation of the differential land cost at Rs.1,59,710/- and Rs.2,21,279/- as regards house No.M40 and M41, respectively, is incorrect

and that the correct differential land cost should be calculated by subtracting the tentative land cost of Rs.61,800/- from the final land cost of Rs. 1,70,600/-.

4. Learned Standing Counsel for the TNHB refutes these contentions. He submits that G.O.Ms.37 dated 14.02.2011 is applicable only for projects in respect of which the final cost had been determined. In the present case, he submits that the land cost had been originally fixed tentatively at Rs.61,800/- per ground. Later, under Resolution No.6.03, dated 06.05.2013, the final land cost was fixed at Rs.1,70,600/- per ground. Consequently, he submits that the respective petitioner is required to pay the difference between the final land cost and tentative land cost along with interest thereon. Learned Standing Counsel relies upon the working sheets in the typed set of papers filed by the respondent and contends that the amounts indicated therein are due and payable in respect of house No.M40 and M41, respectively.

5. The allotment order issued to the respective petitioner indicates clearly that the amount specified therein is the tentative cost of the respective house. The final land cost, in these two cases, was fixed by resolution dated 06.05.2013. The said final land cost is Rs.1,70,600/- per ground. The said final land cost was not communicated to the respective petitioner until May 2013. Earlier, the TNHB issued a demand notice dated 21.02.2011. The amount indicated as outstanding and payable by the respective petitioner was paid by such petitioner before the stipulated deadline, as evidenced by the receipt placed on record by the respective petitioner. In the counter of the respondent, it is stated that land acquisition proceedings were pending and therefore the final cost of land could not be determined earlier. Although the said explanation cannot be disregarded, the fact remains that the final land cost was fixed and communicated to the respective petitioner only in the year 2013. Therefore, the respondent is not entitled to charge interest on the differential land cost for the period prior to the date of fixation of the final land cost.

6. As regards the differential land cost, the TNHB has specified that the differential land cost as regards house No.M40 is Rs.1,59,710/- and, as regards house No.M41, it is Rs.2,21,279/-. Sheet – F in respect of each calculation sheet contains the break-up of the differential land cost. On examining the same, I find that a detailed calculation has been provided as regards the manner of computation of the differential land cost of Rs. 1,59,710/- and Rs.2,21,279/-, respectively. Therefore, I am inclined to accept the differential land cost as calculated by the TNHB.

7. The only issue that remains is the rate of interest. Learned counsel for the petitioner contended that the respective petitioner should not be charged interest or, at a maximum, interest should be charged at six percent per annum as per G.O.Ms.No.37. On the contrary, learned Standing Counsel for the TNHB claims interest at 18 percent per annum. In the proceedings of the TNHB dated 09.05.2013, it is stated as under:-

> *"The allottees may be requested to remit the difference in cost on or before 30.06.2013 in one lumpsum, with simple interest, beyond which interest at*

10.5% per annum should be collected for the whole amount.”

Thus, it is clear that the decision was to charge interest at 10.5% per annum on the differential cost unless such amount is paid in one lumpsum on or before 30.06.2013. Admittedly, the respective petitioner did not pay the differential cost on or before 30.06.2013.

8. Both by taking into account the interest rate specified in the proceedings dated 09.05.2013 and by taking into consideration the interest rates prevailing during the relevant period, I am of the view that 10.5% per annum is a reasonable rate of interest. Such interest shall be calculated on the differential land cost in these two cases and applied from 06.05.2013 until the date of payment. Subject to receipt of the differential land cost, as calculated by the TNHB, along with interest thereon at 10.5% per annum from 06.05.2013, the TNHB is directed to execute the sale deed and provide other necessary documents to the respective petitioner.

9. W.P. (MD) Nos.1845 and 1846 of 2016 are disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

10.04.2023

NCC :No
Internet :Yes
Index :No
PKN

To

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

SENTHILKUMAR RAMAMOORTHY, J.

PKN

W.P.(MD)Nos.1845 and 1846 of 2016

10.04.2023