



W.P(MD)No.19442 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.19442 of 2023 and
WMP(MD) 16081 of 2023

R.Maria Janaki

... Petitioner

Vs

1.The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
Tirunelveli Housing Unit,
Anbu Nagar,
Tirunelveli – 625 011.

2.The Manager (Marketing & Service),
O/o The Executive Engineer and Administrative Officer,
Tirunelveli Housing Unit,
17D-C-Colony,
Perumalpuram,
Tirunelveli – 627 007.

...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 of the second respondent made in his letter No.R-3/403/1991 dated 13.12.2022 and quash the same as without jurisdiction and consequently direct the respondents to



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execute the sale deed pertaining to House No.HIG 3, at Palai Phase - IV Scheme in the name of the petitioner, within the stipulated period by this Court.

For Petitioner : Mr.Ananth C.Rajesh
For Respondents : Mr.S.Velmurugan
Standing Counsel

ORDER

The petitioner is an allottee of a house constructed by the Tamil Nadu Housing Board, Tirunelveli Housing Unit, Palai Phase IV Scheme, Thamirapathi Colony, Tirunelveli. By the order impugned in this writ petition, the Manager (Marketing & Service), Office of the Executive Engineer and Administrative Officer, Tirunelveli Housing Unit instructed the petitioner to pay the balance cost of Rs.13,96,235/-, for the allotment of the house HIG 3 under Palai Phase IV Scheme on or before 31.12.2022. Challenging the same, this writ petition is filed on the ground that the notice was issued without any jurisdiction.

2.The learned counsel appearing for the petitioner submits that the second respondent is not an authority to issue the



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allotment order or to cancel the order. Therefore, the demand made by the second respondent is without any jurisdiction. When the authority is not having any power to cancel the document, he is not supposed to mention in the impugned order that on default of payment, the order of allotment would be cancelled.

3.Mr.S.Velmurugan, learned Standing Counsel who takes notice for the respondents by referring the earlier order passed by this Court in WP(MD) No.3697 of 2013, dated 18.08.2022 submits that the petitioner's attempt to prevent the Housing Board from demanding any amount has already been rejected by this Court on 18.08.2022 and this petitioner said to have preferred an appeal as against the order of this Court in WP(MD) No.3697 of 2013. However, it was not even numbered. According to the learned Standing Counsel, the Tamil Nadu Housing Board has constructed certain houses at Tirunelveli and has allotted the houses as per the Scheme Palai Phase IV, issued by the Government in Government order in G.O(Ms) No.29, Department of Housing and Urban Development, dated 22.01.2001, by fixing a cost as Rs.5,02,000/-.



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The petitioner is one the purchasers of the houses. Pursuant to the above said Government Order, the petitioner was directed to pay an initial amount of Rs.2,04,000/-. The petitioner has deposited a sum of Rs.1,80,518/- on 17.12.2004 and filed a civil suit in O.S.No.606 of 2001 before the I Additional District Munsif Court, Tirunelveli for a declaration that the allotment order made in favour of the petitioner is not in consonance with the Government Order in G.O(Ms) No.29, Department of Housing and Urban Development, dated 22.01.2001. The suit filed by the petitioner was dismissed. Challenging the judgment and decree passed in O.S.No.606 of 2001, the petitioner has filed an appeal in A.S.No.28 of 2003, which was allowed by the learned Principal Sub Judge, Tirunelveli on 29.10.2003. Subsequently, the petitioner has also paid a sum of Rs.22,600/- on 17.04.2001, Rs.10,505/- on 12.10.2001 and Rs.1,80,518/- on 17.12.2004 and totally he has paid a sum of Rs.2,13,623/- for the house allotted to her. According to the petitioner, without considering the payments made by the petitioner and without providing any calculation memo as per the Government Order in G.O(Ms) No.29, Department of Housing and Urban



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Development, dated 22.01.2001, the respondents have made a demand on 27.12.2012 and that was challenged by the petitioner in WP(MD) No.3697 of 2013. This Court, by order dated 18.08.2022 has dismissed the writ petition.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.The order impugned in this writ petition is a demand notice issued by the second respondent calling upon the petitioner to pay the balance cost of Rs.13,96,235/- on or before 31.12.2022. By the order impugned, the second respondent has also intimated the petitioner that on failure of payment, the order of allotment would be cancelled. This is only a caution to the petitioner, reminding that the petitioner is expected to make the payment on or before 31.12.2022 and it does not mean that the second respondent is going to cancel the order of allotment of the house to the petitioner. It is to be noted that the earlier demand notice issued by the respondent Board was already challenged by the petitioner in WP(MD) No.3697 of 2013



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before this Court and this Court considered the case of the petitioner has dismissed that writ petition by order dated, 18.08.2022 and the relevant portion is extracted as under:-

7. There is no doubt that the petitioner was allotted HIG House by an order dated 04.01.2001. According to the petitioner, she is entitled to the benefit under G.O.Ms.No.29 dated 22.01.2001. A perusal of the said G.O, points out that the Housing Board should not collect interest for the period between the date of completion of construction and the date of allotment. This benefit was to be conferred upon the houses that were constructed before 30.06.2000, but could not be sold till 31.12.2000. Hence, it is clear that this benefit is only for the calculation of the principal amount on the date of issuance of allotment order in favour of the allottee. In other words, the Housing Board should not add any interest for the period prior to the order of allotment from the date of completion of the construction. However, once the allotment has been made in favour of an allottee, if he defaults in payment of equated monthly instalment, necessarily all the conditions imposed in the order of allotment will follow.



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8. In the present case, the petitioner has filed a civil suit challenging his order of allotment on the ground that it is in violation of G.O.Ms.No.29 dated 22.01.2001. As stated supra, the said G.O. would only result in reduction of the tentative principal cost of the building and it will not alter any one of the conditions of the Housing Board after the order of allotment is made.

9. In fact after the Civil Court decree, the Housing Board has issued a working sheet to the writ petitioner on 23.11.2006 specifically indicating that it is issued in consonance with G.O.Ms.No.29 dated 22.01.2001. Even thereafter, the petitioner has not proceeded to pay the said amount. Thereafter, some more concessions were conferred upon the allottees by way of G.O.Ms.No.215 dated 28.09.2012. Extending the said benefit, a fresh order was passed by the Housing Board on 27.12.2012 under which the petitioner was directed to remit a sum of Rs. 4,73,551/- towards sale consideration.

10. The narration of the above said sequence of events will clearly indicate that the petitioner cannot have any grievance for the amount demanded by the



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Housing Board towards sale consideration of the HIG plot allotted to her. The petitioner has accepted the conditions in the allotment order and has proceeded to purchase the same and he has also deposited some amount pursuant to the said allotment order. The petitioner is time and again relying upon G.O.Ms.No.29 dated 22.01.2001, but it is applicable only up to the date of allotment order in favour of an allottee. It is not the case of the writ petitioner that the principal cost is not in tune with G.O.Ms.No.29. The allotment order itself points out that the Housing Board is entitled to impose an interest at the rate of 21% if there is any default in payment of instalment. Admittedly, the petitioner has committed default in payment of EMI. For the said default, she cannot invoke G.O.Ms.No.29. That apart, the allotment order clearly mentioned that it is only a tentative cost and hence, any enhancement in the principal cost based upon the enhancement in the land acquisition proceedings has to be paid by the writ petitioner.

The petitioner claims that as against the order passed by this Court in WP(MD) No.3697 of 2013, the petitioner has preferred an appeal and the same is yet to be numbered.



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6.In view of the earlier order passed by this Court, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.08.2023

NCC :Yes/No
Index :Yes/No
Internet:Yes
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B.PUGALENDHI, J.

VTN

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