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W.P.No.1814 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2024

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.1814 of 2022

M.Karpambigai

...Petitioner

Vs.

1. The Under Secretary,
(Tamil Nadu Housing Board, MIG Scheme),
St. George Fort, Secretariat, Chennai.
2. The Allottee Service Manager/
The Executive Engineer Revenue Officer,
Tamil Nadu Housing Board,
K.K.Nagar Kottom, No.C-48, 2nd Avenue,
Anna Nagar, Chennai – 40.
3. Kalavathi
4. The Marketing Management and Service,
Tamil Nadu Housing Board,
K.K.Nagar Division, No.C-48, 2nd Avenue,
Anna Nagar, Chennai – 40.

(R4, impleaded vide order of this Court dated 11.07.2024 made in WMP.No.19976 of 2024 in W.P.No.1814 of 2022.)

...Respondents



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Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to forbear the 1st and 2nd respondents from taking steps to lock and seal the petitioner's house premises situated at No.D2/4 T.N.H.B Colony, Puliur, Sivan Koil South Street, Kodambakkam, Chennai-24 and consequently direct the 1st and 2nd respondents to execute sale deed in favour petitioner based on authorisation letter dated 10.07.2014 given by 3rd respondent by granting time to petitioner to settle balance Rs.4,42,752/- one time MIG Scheme based on petitioner's representation dated 17.08.2020.

For Petitioner : Mr.R.Chandran

For Respondents : Mr.D.Veerasekaran, for R1, 2 & 4
: Notice not ready, for R3

ORDER

The petitioner has filed this Writ petition seeking to forbear the 1st and 2nd respondents from taking any steps to lock and seal the petitioner's house premises situated at No.D2/4 T.N.H.B Colony, Puliur, Sivan Koil South Street, Kodambakkam, Chennai-24 and to consequently direct the 1st and 2nd respondents to execute the sale deed in favour of the petitioner based on authorisation letter dated 10.07.2014 given by the 3rd respondent by



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granting time to petitioner to settle balance Rs.4,42,752/- one time MIG

Scheme, based on petitioner's representation dated 17.08.2020.

2. The case of the petitioner is that the petitioner purchased the house situated at No.D2/4 T.N.H.B Colony, Puliur, Sivan Koil South Street, Kodambakkam, Chennai from one G.Venkatesan, husband of the the 3rd respondent, after paying the entire sale consideration and the 3rd respondent also executed a sale deed dated 09.08.2014 in favour of the petitioner and pursuant to the said purchase, the petitioner is in continuous possession and enjoyment of the said house premises from the year 2014 onwards. While so, during the 1st week of August 2020, the petitioner received a letter from the 2nd respondent dated 21.07.2020 bearing No.K.K.Na.Ko.B2/5398/93, giving final date for getting sale deed. Upon receipt of the same, though the petitioner made multiple attempts to contact the 3rd respondent, however, he was unable to reach the 3rd respondent. Thereby, the petitioner sent a representation dated 17.08.2020 to the 1st and 2nd respondents seeking to execute sale deed in her favour, based on the authorisation letter dated 10.07.2014 given by the 3rd respondent to the 2nd respondent, upon payment



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of entire due amount of Rs.4,42,752/- by the petitioner. However, till date, no orders have been passed on the petitioner's representation. While so, the petitioner received a letter dated Nil.11.2021, wherein an exorbitant amount of Rs.7,91,965/- has been demanded by the officials and it is further stated that, if the balance amount is not paid within one week, lock and seal of the premises will be initiated. Hence, the petitioner has come up with this Writ petition.

3. Though very many grounds have been raised, the learned counsel for the petitioner submitted that, as on date, the total outstanding amount payable by the 3rd respondent to the housing board is Rs.8,24,082/- and the petitioner is ready to pay the same within the time stipulated by this Court and thereby, this Court may issue necessary direction to the Housing board to execute sale deed in favour of the petitioner in respect of the subject property.

4. Per contra, the learned counsel appearing on behalf of the respondent Tamilnadu Housing Board submitted that, the E type Flat No. D-



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2/4, at 64 HIG Flat, Puliur Self Finance Scheme, Puliur, Kodambakkam of Tamil Nadu Housing Board was initially allotted to one G.Venkatesan, husband of the 3rd respondent, vide Lr.No.G1/5398/93, dated 28.06.1993 under Self Finance Scheme, at a tentative cost of Rs.1,36,900. After payment of first four installments, the allottee had made a request, in his representation dated 16.05.1995, for change of flat to HIG "D" type and agreed to pay the difference in cost, pursuant to which, Flat No. HIG.D.2/4 was allotted to him vide letter No.G1/5840/93, dated 20.09.1995 with a request to the pay Rs.2,000/- towards deposit, Rs.92,700/- towards difference in cost of the flat and Rs.500/- for change of flats, totaling to Rs.93,200/- and the final cost of flat of Rs.4,32,800/- was intimated to the allottee vide letter No.G1/5840/1993, dated 21.05.1996 and the allottee was requested to make payment of difference in cost of Rs.2,03,200/- on or before 30.06.1996 and it was conveyed in unequivocal terms that penal interest would be charged for belated payment. Later, HIG Flat No.D-2/4 was handed over to him vide Letter No.G1/5840/93, dated 26.02.1997. Further, difference in land cost with interest of Rs.3.03,191/- was arrived as of December 2013, which was also intimated through Letter



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No.KKNB6/35620 A/93, dated 11.12.2013 with a request to pay the outstanding on or before 10.03.2014. However, till date, the outstanding was not settled by the 3rd respondent and thereby, action was taken to evict the 3rd respondent from the premises in accordance with law. The 3rd respondent had requested name transfer of the property in her name, vide her letter dated 26.08.2014, after the demise of her husband Mr.G.Venkatesan on 22.11.2012 and accordingly, the name transfer was effected in favour of the 3rd respondent vide letter No.KKN/B6/5398/93, dated 03.12.2014. Further, the 3rd respondent had submitted the affidavit undertaking to settle the entire outstanding during execution of sale deed. However, till date, the outstanding was not settled by her and consequently, sale deed has not yet been entered into by the respondent Board. Learned counsel further relied upon Clauses 19, 20 & 23 of the Agreement of Sale, entered into between the 2nd and 3rd respondents, wherein it is stated as follows:

19. The purchaser shall not during the pendency of this sale agreement and until the sale deed is executed in favour of the purchaser by the vendor enabling the purchaser to become the full and true owner of the flat/house in any manner whatsoever,



assign, transfer or deal with his/her rights in favour of third parties, to this agreement. The vendor shall not be bound to recognize any such transfer or assignment in favour of third parties, and notwithstanding such purported assignment done contrary to those conditions, the purchaser shall continue to be liable to the vendor for all the obligations contained in this indenture.

20. Until execution of final sale deed in favour of the purchaser the schedule mentioned flat/house remains the property of the Tamil Nadu Housing Board.

23. It is expressly agreed between the parties herein that the terms and conditions express or implied in this agreement will be binding on the purchaser until the sale deed is executed by the vendor in favour of the purchaser".

As per the aforementioned terms and conditions of the agreement, the 3rd respondent had not obtained the sale deed for the said property from the 2nd respondent after settling the dues to the Respondent – Board and thereby, the property in question remains as the property of the Tamil Nadu Housing Board even today. Therefore, the alleged agreement executed by the petitioner with the 3rd respondent will not bind the respondent Board in any manner as it is not valid in the eyes of law and the same is in violation of clauses 19, 20 and 23 (stated supra). Hence, neither the petitioner nor the



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3rd respondent can claim any right over the said property, as no title exists in their favour as on date and any contract as the agreement executed by the 3rd respondent with the third parties will not bind the Respondent Board. The title of the property was not conveyed to the 3rd respondent so far as she had failed to clear the outstanding to Tamil Nadu Housing Board and as a result ownership of the flat still remains with the Respondent - Board. Further, the 2nd respondent is not responsible for the agreement executed by the Petitioner with the 3rd respondent as the same is not legally binding on Tamil Nadu Housing Board as it is illegal and 'void ab initio' and amounts to breach of contract, which is the subject matter of Civil Courts. Further, the 3rd respondent had never approached the 2nd respondent to settle the outstanding dues even though several letters have been sent. Further the eviction process was initiated by issuing eviction notices dated on 31.10.2019, 27.12.2020, 19.01.2021 & 12.11.2021. Accordingly, he prayed for dismissal of this Writ petition.

5. Heard learned counsel on either side and perused the material documents placed on record.



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6. Initially, the husband of the 3rd respondent was allotted with E type Flat No. D-2/4, at 64 HIG Flat, Puliur Self Finance Scheme, Puliur, Kodambakkam of Tamil Nadu Housing Board, vide letter dated 28.06.1993 under Self Finance Scheme, at a tentative cost of Rs.1,36,900 and pursuant to his request, the 3rd respondent's husband was subsequently allotted with the Flat No.HIG.D.2/4 was allotted to him, vide letter dated 20.09.1995 and the same was handed over to him, vide Letter dated 26.02.1997. Further, difference in land cost with interest of Rs.3.03,191/- as of December 2013 was also intimated through Letter No.KKNB6/35620 A/93, dated 11.12.2013 with a request to pay the outstanding on or before 10.03.2014. Thereafter, as per the request of the 3rd respondent, the name transfer was effected in favour of the 3rd respondent vide letter No.KKN/B6/5398/93, dated 03.12.2014. Further, the 3rd respondent had submitted the affidavit undertaking to settle the entire outstanding during execution of sale deed. However, till date the outstanding was not settled by her and consequently sale deed has not yet been issued by the Respondent- Board.



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7. Though the learned counsel for the respondent board rightly relied upon Clauses 19, 20 & 23 of the Agreement of Sale, entered into between the 2nd and 3rd respondents to hold that any contract (or) agreement executed by the 3rd respondent with the third parties will not bind the Respondent Board as the title of the property was not conveyed to the 3rd respondent, since she had failed to clear the outstanding to Tamil Nadu Housing Board and thereby, ownership of the flat still remains with the respondent board, however, it is evident from records that, the 3rd respondent, without clearing the dues payable to the respondent board, had sold the subject property to the petitioner and got settled in America.

8. Be that as it may. It is evident from the act of the 3rd respondent that the 3rd respondent is not anxious and desirous to settle the dues to the respondent Board and had merely dragged the petitioner into the net and had gone away by entering into the sale deed. The fact remains that though the title to the property still rests with the Board, the petitioner having entered into the sale transaction with the 3rd respondent, the petitioner had entered into the shoes of the 3rd respondent. Though the respondent Board is



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not required to enter into any transaction with the petitioner, however, the fact that the petitioner has purchased the property from the 3rd respondent by executing the sale deed, though it has been done with a dishonest intention by the 3rd respondent, but no dishonest intention is attributable to the petitioner, and thereby, this Court is of the view that the ends of justice would be met only if the respondent Board is directed to execute the sale deed in favour of the petitioner by relying upon the already entered sale deed by the petitioner and the 3rd respondent as this Court is of the view that, it cannot be expected from the 3rd respondent that she will cooperate to execute sale deed in favour of the petitioner by joining hands with the 2nd respondent Board.

9. Considering the fact that the petitioner herself has come forward to pay the total outstanding of Rs.8,24,082/- to the respondent housing board, despite purchasing the subject property from the 3rd respondent for a valid sale consideration, this Court, exercising its inherent and extraordinary jurisdiction under Article 226 of the constitution directs the petitioner to pay the entire due of Rs.8,24,082/- to the respondent housing board, within a



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period of two weeks from the date of receipt of a copy of this order and upon receiving the said amount the 2nd respondent is directed to execute sale deed in favour of the petitioner in respect of the subject property within a period of two weeks thereafter.

10. It is made clear that this order shall not be cited as a precedent in future. With the above observations and directions, this Writ petition stands allowed. No costs.

22.10.2024

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Index	: Yes/No
Speaking order	: Yes/No
NCC	: Yes/No



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M.DHANDAPANI, J.

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