



W.P.(MD)No.14832 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.07.2024

Pronounced on : 21.08.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.14832 of 2021

and

W.M.P.(MD)Nos.11725 and 11726 of 2021

Capt.Dr.S.Muthukannan

... Petitioner

Vs.

- 1.The Principal Secretary to the Government of
Tamil Nadu,
Housing and Urban Development,
Fort St. George,
Chennai-600009.
- 2.The Chairman,
Tamil Nadu Housing Board,
493, Nandanam Road,
Chennai-600035.
- 3.The Managing Director,
Tamil Nadu Housing Board,
493, Nandanam Road,
Chennai-600035.
- 4.The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,



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Madurai Housing Unit,
Ellis Nagar, Madurai-625010.

5.The Manager,
Sales & Service,
Tamil Nadu Housing Board,
Madurai Housing Unit,
Ellis Nagar, Madurai-625010.

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent relating to the impugned order dated 21.09.2020 of Letter No.2(1)/5017/2015 which was addressed to the petitioner and quash the same as illegal, arbitrary and devoid of merits and consequently direct the third respondent to consider the petitioner representation dated 22.03.2021, herein to grant petitioner existing privilege towards the House No.T-107, Ellis Nagar Madurai Housing Unit, Madurai TNHB, Madurai.

For Petitioner : Mr.P.Pranesh Rao
For R1 : Mr.V.Om Prakash
Government Advocate
For R2 to R5 : Mr.V.J.Kishok Kumar
Standing Counsel

ORDER

The Writ Petition is directed against the order dated 21.09.2020 passed by the third respondent and for directions to the third respondent to



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consider the writ petitioner's representation dated 22.03.2021 to grant writ petitioner existing privilege towards the House No.T-107, Ellis Nagar Madurai Housing Unit, Madurai TNHB, Madurai.

2. Admittedly, the writ petitioner is an ex-serviceman and Doctor by profession.

3. It is not in dispute that the writ petitioner had applied for a house under Tamil Nadu Housing Board Madurai Ellisnagar Scheme through application No.8716/1999 and he was allotted with T-107 at Ellis Nagar, Madurai vide allotment order dated 07.06.1994 and that the writ petitioner had paid Rs.1,47,360/- as directed in the allotment letter and agreed to pay the remaining amount in monthly installments. It is also not in dispute that the writ petitioner had applied for home loan through District Collector, Madurai and the same was also sanctioned.

4. The case of the writ petitioner is that the writ petitioner sent a letter dated 21.11.2006 requesting for allotment of additional land adjacent to his house No.T-107 for the purpose of construction of emergency



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hospital / care centre to take care of the patients in the late evening at Ellis Nagar as there were no good hospital nearby, that despite multiple representations, Tamil Nadu Housing Board (hereinafter called as 'TNHB') vide letter dated 23.06.2008 has refused to allot the land adjacent to his house No.T-107, that as per the directions passed by the Hon'ble Supreme Court in Civil Appeal No.1805 dated 02.09.2008, sale price for the houses allotted came to be fixed on 27.05.2004, that TNHB has sent a calculation sheet directing the writ petitioner to pay Rs.8,45,931/- in addition to the amount already paid, that since TNHB has fixed the value for the entire extent of 3400 sq.ft. including the land situated adjacent to his house, the writ petitioner was under the impression that TNHB has again fully convinced based on the writ petitioner's further appeal for allotment of the additional land and allotted the same, that the writ petitioner has paid Rs.9,00,000/- as directed by TNHB, that the writ petitioner has not received any further communication from TNHB for the registration of T-107 and the additional land of 1900 sq.ft., that on 28.11.2014, TNHB personnel brought a drawing for 2250 sq.ft. as against the entire land and obtained his signature, that though the writ petitioner had initially refused to sign the drawing, he co-operated with them based on the personnel



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assurance of TNHB that they will immediately register at least 2250 sq.ft.

land in his name, that the writ petitioner has not received any further letter nor response to his request for 5 more years but suddenly he received a letter from TNHB dated 10.12.2020 stating that the writ petitioner has been allotted only 1500 sq.ft. as part of T-107, that they have also calculated excess payment of Rs.6,54,640/- out of Rs.9,00,000/- and ordered interest of Rs.3,07,681/- and sent a cheque for Rs.9,62,321/-, that the writ petitioner had refused to accept the cheque and sent it back to TNHB, that the writ petitioner had invested his hard earned money of Rs.9,00,000/- in a critical time in 2009 just two years before his retirement, that the writ petitioner had then sent a detailed representation dated 22.03.2021 to the third respondent indicating all the details, that since there was no response, the writ petitioner was constrained to file a writ petition in W.P.(MD)No.41 of 2021 but the same was dismissed as withdrawn with liberty to file a fresh writ petition and that thereafter the present writ petition came to be filed.

5. The fourth respondent has filed a counter affidavit stating that the writ petitioner was allotted with HIG TWIN TYPE house No.T-107 of



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Ellis Nagar Scheme at Madurai vide allotment order dated 07.06.1994 under the Government Discretionary quota, that actual extent of the subject property is 1500 sq.ft., that there existed disputes regarding fixation of final cost of land value in the said Scheme and the same went up to the Hon'ble Supreme Court and was finalized, that the writ petitioner in the meanwhile sought for allotment of excess land situated adjacent to his property but the same was rejected on 23.06.2008 by TNHB, that TNHB never allotted any excess land to the writ petitioner, that FMB sketch for the house No.T-107, Ellis Nagar to the extent of 2250 sq.ft. relied on by the writ petitioner was prepared at his instance but without approval of TNHB, that since the writ petitioner has paid excess amount to TNHB, a cheque for Rs.9,62,321/- dated 09.12.2020 in favour of the writ petitioner was sent to him through RPAD on 10.12.2020 but the same was returned, that the vacant site adjacent to the writ petitioner's property is required for future purposes as part and parcel of implementation of the said Scheme and any allotment shall be made through public auction/bid or mode prescribed by law and cannot be at the whims and fancy of the writ petitioner and that therefore the writ petition is liable to be dismissed.



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6. It is not in dispute that the writ petitioner was originally allotted with 1500 sq.ft. in T-107 at Ellis Nagar housing scheme. It is pertinent to note that the writ petitioner's request to allot additional land of 1900 sq.ft. situated adjacent to the writ petitioner's house T-107 came to be rejected by the Deputy Secretary to Government, Housing and Urban Development Department vide order dated 28.05.2007.

7. It is also not in dispute that the dispute with regard to fixation of final cost of land value in Ellis Nagar Housing Scheme went up to the Hon'ble Supreme Court and the same was finalized on 26.11.2008 as per the order of the Hon'ble Supreme Court dated 02.09.2008.

8. No doubt, the writ petitioner was directed to pay a sum of Rs.8,45,931/- and the writ petitioner has also paid the said amount. It is also not in dispute that the amount claimed by TNHB was not only for 1500 sq.ft. allotted to the writ petitioner in T-107 but also to the adjacent land which was claimed by the writ petitioner and the same was rejected by TNHB earlier.



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9. The learned counsel appearing for the writ petitioner would submit that the writ petitioner was under the impression that TNHB considering the repeated requests made by the writ petitioner, they have agreed to allot the adjacent land and on that basis, demanded the said amount for the entire extent of 3400 sq.ft. It is not the case of the writ petitioner that immediately after receiving the communication dated 26.11.2008 directing him to pay a sum of Rs.8,45,931/-, approached the TNHB and verified with the concerned authorities whether the amount was claimed for the entire extent of 3400 sq.ft. and any order came to be passed allotting the additional land to the writ petitioner.

10. The learned Standing Counsel appearing for the respondents 2 to 5 would submit that there was a mistake committed by the Madurai office of TNHB in claiming more amount and that is why after coming to know about the same, they have sent the excess amount along with interest but the cheque was returned by the writ petitioner.

11. The learned counsel appearing for the writ petitioner would submit that TNHB officials have shown a plan, wherein, the writ petitioner



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was allotted with 2250 sq.ft. of land and obtained his signature and that they have not offered any reason or explanation for allotting only 1500 sq.ft. and that too in the year 2020. The learned Standing Counsel appearing for the respondents 2 to 5 would submit that the said plan was not approved by TNHB and the same came to be prepared only at the instance of the writ petitioner. But this Court is not inclined to go into those allegations but the fact remains that, the third respondent has passed an order allotting T-107 measuring 1500 sq.ft. alone to the writ petitioner and never allotted any additional land to the writ petitioner. In the absence of any order allotting additional land in addition to 1500 sq.ft. already allotted to the writ petitioner, receiving more amount or showing map with additional measurements and that too by the local office of TNHB, cannot be taken advantage of by the writ petitioner and claimed allotment of 3400 sq.ft. of land.

12. Considering the above, the communication sent by TNHB informing that the writ petitioner has only been allotted with 1500 sq.ft. in T-107, Ellis Nagar, Madurai cannot be found fault with and their action refusing to allot additional land cannot be found fault with.



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13. No doubt, the writ petitioner has paid Rs.6,00,000/- on 26.02.2009 and Rs.3,00,000/- on 28.02.2009. As already pointed out, the writ petitioner without verifying with the concerned authorities for demanding such amount but under the misconception that the amount was claimed for the entire extent of 3400 sq.ft., has paid the amount. But at the same time, the TNHB authorities are also at fault, in receiving the excess amount without any basis and retaining of the same for years together. It is not known as to when TNHB authorities have come to know that they have received excess amount from the writ petitioner. Whatever it is, they have returned the amount of Rs.9,62,321/- which includes the excess payment of Rs.6,54,640/- and interest of Rs.3,07,681/- only on 10.12.2020.

14. As rightly contended by the learned counsel appearing for the writ petitioner, TNHB has retained the amount of Rs.6,54,640/-, which was received as excess payment from February-2009 till December-2020.

15. Considering the economic scenario and value of the money, the interest awarded is on lesser side and as such, this Court is of the view that the authorities are to be directed to pay interest at 9% per annum from the



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date of receipt of Rs.9,00,000/- till 10.12.2020, the date on which cheque was sent and the same was refused to be received by the writ petitioner.

16. In the result, the Writ Petition is dismissed with a direction to the respondents 2 to 4 to return the excess amount with interest at 9% per annum from the date on which the excess amount of Rs.6,54,640/- was received till 10.12.2020 the date on which cheque was sent by TNHB and the same was refused to be received by the writ petitioner. Consequently, connected Miscellaneous Petitions are closed. No costs.

21.08.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

- 1.The Chairman,
Tamil Nadu Housing Board,
493, Nandanam Road,
Chennai-600035.
- 2.The Managing Director,
Tamil Nadu Housing Board,
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- 3.The Executive Engineer and Administrative Officer,
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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in

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Dated : 21.08.2024