



W.P.Nos.1018 and 1020 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated :12.03.2025

Coram:

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.1018 and 1020 of 2025

W.P.No.1018 of 2025:

S.Mahalakshmi,
D/o K.A.Sankarasivam,
No.14/2A, Second Cross Street,
Anna Nagar West,
Vellore-632 001.

.. Petitioner

/versus/

1.The Managing Director,
Tamil Nadu Housing Board,
CMDA Complex,
E & C Market Road,
Koyambedu, Chennai 600 107.

2.The Manager,
Marketing & Service,
Besant Nagar Division,
Tamil Nadu Housing Board (TNHB)

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W.P.Nos.1018 and 1020 of 2025

48, Dr.Muthulakshmi Salai,
Adyar, Chennai 600 020.

.. Respondents

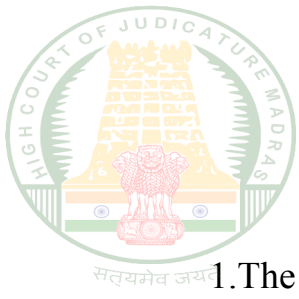
Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to execute the sale deed in respect of Flat No.MIG-II-08/42 at the 7th floor, Sholinganallur Phase-II in favour of the petitioner and refund the excess amount of paid by the petitioner to the second respondent towards the cost of the Flat No.MIG-II-08/42 at the 7th floor, Sholinganallur Phase II together with interest.

W.P.No.1020 of 2025

Mr.Ramesh Shanmugam,
S.o late Shanmugam,
Old No.2, New No.3,
2nd Avenue, Shastri Nagar,
Chennai 600 020.

.. Petitioner

/versus/



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1.The Managing Director,
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48, Dr.Muthulakshmi Salai,
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Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to execute the sale deed in respect of Flat No.MIG-II-10/54 at the 9th floor, Sholinganallur Phase-II in favour of the petitioner and refund the excess amount paid by the petitioner to the second respondent towards the cost of the Flat No.MIG-II-10/54 at the 9th floor, Sholinganallur Phase II together with interest.



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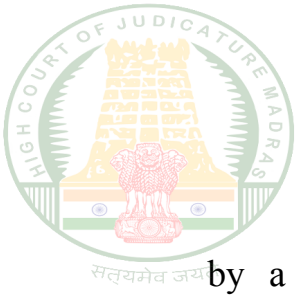
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For Petitioner :Mr.Shivakumar(both cases)
For Respondents :Mr.D.Veerasekaran,
Standing Counsel (TNHB)
for R1 and R2 (both cases)

COMMON ORDER

These two writ petitions are connected and, as such, are taken up and disposed of by a common order.

2. To refer to the facts in one case, specifically the case of S. Mahalakshmi in W.P. No. 1018 of 2025, the petitioner applied for the allotment of Middle Income Group Flat No. MIG II from the respondents, the Housing Board, through application No. 100141, dated 11.09.2014. At the time of the application, the petitioner opted for a hire purchase scheme. It is specifically stated in the application itself that if the flat is allotted, the individual will abide by the Rules of the Housing Board and execute a lease-cum-sale agreement. Following this application, the petitioner was informed



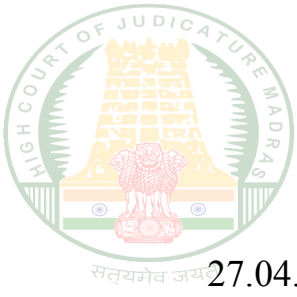
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by a communication dated 22.01.2010 that she was selected for the
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allotment of MIG Flat No. MIG-II-8/42 on the 7th floor at Sholinganallur
Phase-II under the hire purchase mode as per the lottery held on 07.01.2016.

An allotment order was subsequently issued regarding the flat, which
explicitly states that it is under the hire purchase mode. The tentative cost of
the flat was set at Rs. 40,64,000/-. Furthermore, it was communicated that
25% of the flat cost, amounting to Rs. 10,16,000/-, must be paid within 30
days, and the remainder shall be paid in installments after executing the
lease-cum-sale agreement. The petitioner paid the initial deposit of Rs.
10,16,000/-, but she did not fulfill her further obligations of executing the
lease-cum-sale agreement and commencing the payment of the 120 monthly
installments spread over 10 years at an interest rate of 10.50% per annum.

3. Accordingly, further communication was issued to the petitioner on



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27.04.2018, stating that the monthly instalment would be Rs. 41,340/- and

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must be paid on or before the 10th of each month starting from April 2018. It was also stipulated that failure to pay the said amount would incur penal interest at a rate of 18.00%. In this circumstance, the petitioner approached the respondents and directly paid a sum of Rs. 9,66,000/- on 08.11.2017 and another sum of Rs. 30,48,000/- on 07.05.2018. Subsequently, communication was also issued indicating that, subject to confirmation, the full cost had been paid and possession would be handed over on 30.05.2018. Thereafter, possession was handed over to the petitioner, who is now in enjoyment of the property.

4. Subsequently, the Flat Owners Association addressed the issue of determining the correct cost for each flat, which became the subject of the writ petition in W.P.No.21813 of 2023. By an order dated 25.07.2023, the writ petition was disposed of with a direction to establish a committee to

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determine the price and to hear any objections from the parties involved.

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Consequently, in proceedings dated 26.10.2023, the prices were finalized.

According to the order issued by the first respondent, the price of the MIG-II flat is set at Rs.39,14,000/-. The price of the MIG-II flat under the hire purchase scheme is Rs.45,10,000. When the petitioners later requested the execution of the sale deed, calculating the balance for those under the hire purchase scheme and accounting for the amounts already paid, an additional sum of Rs.6,70,387/- and Rs.6,28,777/- (for the respective petitioners) was demanded, which included subsequent interest. Aggrieved by this, the petitioners are approaching this Court with these writ petitions.

5. The housing board resisted the writ petitions by filing a counter affidavit. The allotment order specifically mentions that the petitioners have opted for the hire purchase scheme. Therefore, the balance sale consideration, as per the hire purchase scheme, with applicable interest is

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only demanded. Unless the petitioners pay the said amount, the sale deed cannot be executed.

6. Heard Mr. Shivakumar, learned counsel appearing for the petitioner.

He submits that while it is true the application was made under the hire purchase scheme, the petitioners never availed themselves of the hire purchase benefit. In fact, one petitioner obtained a bank loan after getting an NOC from the Housing Board itself, which means their purchase should be classified under the self-financing scheme. The other petitioner also paid the full sale consideration upfront and there was no hire purchase involved in either case. Therefore, the respondent Housing Board cannot rely solely on the application and the allotment order.

7. Per contra, D. Veerasekaran, learned Standing Counsel appearing for the Housing Board, would submit that the price will be calculated based

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only on the scheme under which the petitioner is allotted. The application

and the allotment letter categorically state that it is a hire purchase scheme.

When the petitioner is allotted the flat under this scheme, the fact that the petitioners chose to pay the entire amount in lump sum amounts or through a bank loan is not a concern of the Housing Board. When the flat is allotted under the Hire Purchase Scheme, the appropriate price tariff applicable to the hire purchase scheme alone will apply. Accordingly, the demand is rightly made.

8. I have considered the rival submissions made on either side and perused the case's materials records.

9. At the outset, it is evident that a dispute existed between the parties regarding the determination of the cost of the flat, which was the subject matter of W.P.No.21813 of 2023, and a direction was issued to the first

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respondent to determine the cost. Following this direction, an order dated 26.10.2023 was issued, and the first respondent set the price, which both parties agree is applicable. According to the order dated 26.10.2023, the cost of the MIG-II flat under the self-financing scheme is Rs.39,14,000/-, while the hire purchase scheme for the MIG-II flat amounts to Rs.45,10,000/-

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10. The logic behind setting a higher tariff for the hire purchase scheme is that applicants in the hire purchase agreement gain possession of the flat even before they pay the full amount. They pay only 25% upfront, and the balance is paid in equal monthly installments. A sale-cum- lease agreement is executed, and they are granted possession. They pay the consideration only subsequently.

11. Regarding the instant cases, it is true that the petitioners' applications and the allotment orders clearly state that it is on a hire-
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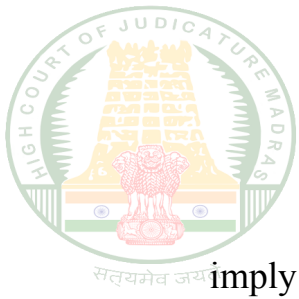
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purchase basis. However, it can be observed that the total cost was initially set at Rs.40,64,000/- for the hire purchase scheme, and communication was sent to the petitioners on 27.04.2018. In response, the petitioners did not proceed with the hire-purchase scheme by taking possession of the property and executing the lease-cum-sale agreement. Instead, the petitioners opted to pay the full amount. The first petitioner (W.P.No.1020 of 2025) paid the money himself, while the second petitioner (W.P.No.1018 of 2025) obtained a bank loan after receiving NOC from the housing board. They completed the payment in May 2018. The respondent board also accepted the money and handed over the property only after the payment of the entire amount as fixed by them as due on the said date.

12. Therefore, the subsequent conduct of both the allottees and the housing board makes the transaction one under a self-financing scheme rather than a hire purchase scheme. While the allotment order appears to

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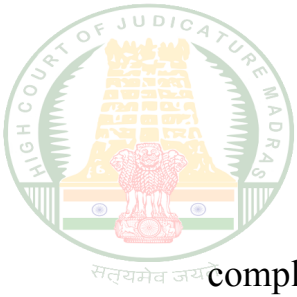


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imply a hire purchase scheme, contracting parties can alter their terms through their conduct. In this case, the actions of the Housing Board—accepting the full sale consideration without insisting on a lease-cum-sale agreement and allowing possession only after confirming complete payment-indicate that the transaction should be regarded as a self-financing scheme, not a hire purchase scheme. Thus, I cannot accept the argument of the learned Standing Counsel representing the Housing Board, which stated that the Housing Board will adhere strictly to the allotment letter. Given that, through their subsequent actions, both the Housing Board and the petitioners have treated the transaction as a self-financing transaction, the applicable tariffs should be based on this classification. If the tariff is applied solely on a self-financing basis, no additional dues are expected from the petitioners. Conversely, the petitioners assert that some excess has already been paid. While that may be the case, under the self-financing scheme, considering the time frame of approximately 8 to 9 months taken by the petitioners to

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complete the transaction, the Housing Board would also be entitled to claim interest for that period. Therefore, the petitioners cannot demand a refund of amounts already paid, which should be considered as settled in full.

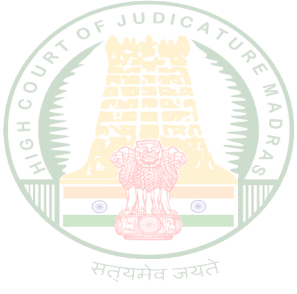
13. Therefore, considering it as a self-financing scheme, I hold that no further amount needs to be paid by the petitioners, and these Writ Petitions are disposed of on the following terms:

- (i) The respondents are directed to execute the sale deeds in favour of the petitioners regarding their respective flats, without requiring any additional payment, within eight weeks from the date of receipt of the web copy of the order, without awaiting the certified copy of the order.
- (ii) No costs.

12.03.2025

Neutral citation: no
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D.BHARATHA CHAKRAVARTHY,J.

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