



W.P.No.39172 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.02.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.39172 of 2024

A.Raju

.. Petitioner

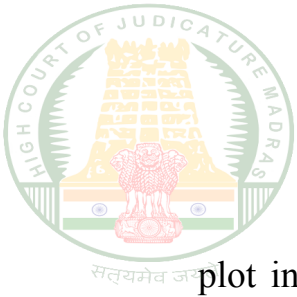
Versus

1. Tamil Nadu Housing Board,
Rep. by its Managing Director,
No.493, Anna Salai,
Nandhanam, Chennai - 35.

2. Executive Engineer-cum-
Administrative Officer,
Villupuram Housing Unit,
Tamil Nadu Housing Board,
Villupuram.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records of impugned order, dated 19.07.2023, passed by the 1st respondent in his proceedings in Order No. Allotment 2(5)/11169/2023 and quash the same and consequently, direct the respondents herein to waive and refund the interest of Rs.24,17,780/- paid towards the allotment of residential plot in Plot No.104 and Rs.24,17,780/- paid towards the allotment of Residential



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plot in Plot No.105 in Villupuram Maharajapuram Housing Scheme to the
petitioner herein.

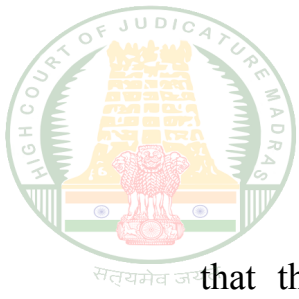
For Petitioner : Mr.P.Dinesh Kumar

For Respondents : Mr.D.Veerasekaran,
Standing Counsel

ORDER

This Writ Petition is filed for a Writ of Certiorarified Mandamus calling for the records relating to the impugned order, dated 19.07.2023 passed by the first respondent - the Managing Director, Tamil Nadu Housing Board, with reference to the order No. Allotment 2(5)/11169/2023 and to quash the same and consequently, direct the respondents to waive and refund the interest of Rs.24,17,780/- paid towards the allotment of residential plot in Plot No.104 and Rs.24,17,780/- paid towards the allotment of residential plot in Plot No.105 in Villupuram Maharajapuram Housing Scheme to the petitioner.

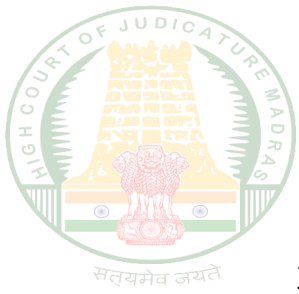
2. The brief factual background from which this Writ Petition arises is



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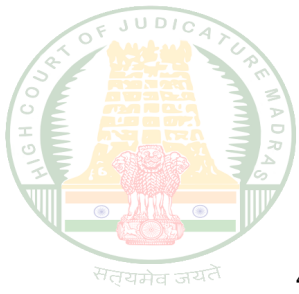
that the land belonging to the petitioner's father was acquired for the purposes of the respondent board. The total extent of the acquired land is said to be 9,737 sq. ft. The petitioner's father had received compensation and approached the jurisdictional Sub-Court to enhance that compensation. While this case was pending, a compromise was reached, in which the petitioner's father agreed to withdraw the enhancement petition in exchange for an allotment of these plots by the Housing Board. Consequently, the Housing Board allotted a plot by order dated 04.05.2007 in the name of the petitioner's mother, given that the petitioner's father had since passed away. The cost of the plot and related details were included in the communication issued in 2007. Subsequently, a communication dated 09.04.2008 provided calculations regarding the plots, and an amount of Rs.7,21,600/- was directed to be paid as the price. The installments and interest rate of 18% were also specified in that communication. However, by the time this communication was issued on 09.04.2008, the petitioner's mother



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3. Subsequently, by communication dated 22.12.2009, the petitioner was directed to produce certain documents regarding the allotment. In 2010, another communication was sent requesting additional documents. A letter dated 29.10.2010 was issued by the Housing Board reminding the petitioner to comply with the earlier correspondence. Another letter was sent on 21.12.2010, followed by yet another communication on 29.12.2010. Ultimately, the petitioner responded via communication dated 07.09.2011, submitting the necessary documents. The requested documents were then provided by the petitioner on 03.10.2011. Afterwards, the petitioner began making representations to the respondents to obtain the allotment in his name. A representation was made on 10.02.2012. In response to this representation, a communication was issued by the Assistant Secretary (Allotments) to the Executive Engineer on 28.01.2013, indicating that the file was long pending and requesting immediate action. A further reminder was issued on 13.06.2013.



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4. The petitioner made a representation on 02.08.2013. Again, permission from the board was sought for allotting the plots in the petitioner's name through a communication dated 17.09.2013. A reminder was subsequently issued by the Assistant Secretary on 20.12.2013. Finally, on 09.06.2014, permission was granted, and the name change was approved by the order dated 02.07.2014. Following this, the Assistant Secretary was informed via communication dated 07.07.2014. In light of this, only on 02.07.2014, the petitioner was informed by the Executive Engineer that the allotment was changed in his name and that he was required to make the applications in his name. It is also mentioned in the said communication that he will be informed as to the amounts that have to be paid by him. Accordingly, he was informed by the communication, dated 03.08.2015 to pay the sum of Rs.18,16,942/-. The amount was not immediately paid. A further communication was also issued on 15.05.2017 directing the petitioner to pay a sum of Rs.20,78,487/-. Even thereafter, the petitioner did not immediately comply with the requests.

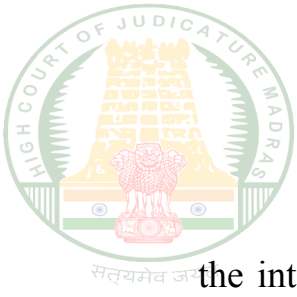


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5. The petitioner approached this Court through W.P.No.21972 of 2017. He contends that due to the withdrawal of the L.A.O.P, he was under the bona fide impression that the plots were free of cost; therefore, he challenged the communication. The respondent board opposed the Writ Petition, categorically stating that it was never the understanding of the parties that the plots would be free of costs, emphasizing that they would be priced at market value. They further contend that if the payment is not made on time, it must be made with interest.

6. The Writ Petition was disposed of by the judgment dated 13.04.2003. This Court, speaking through the Hon'ble Mr.Justice S.M.Subramaniam, found the petitioner liable to pay the cost of the plots and the installments as fixed by the Tamil Nadu Housing Board. However, it was held that the petitioner could move the respondent board, which is directed to consider the writ petitioner's request for a waiver of a portion of



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the interest or any other relief in accordance with the rules, as the original allotment was made under the ex-land owner's category. Paragraph Nos.12, 13 and 14 of the said judgment are extracted below for reference:

"12. In any angle, the petitioner is not entitled for the relief, since he has not paid the initial plot cost and the installments fixed by the Tamil Nadu Housing Board. The question of allotting plots on free of cost does not arise since there is no such order or otherwise passed at the time of the allotment or at the time of acquiring the land belonging to the father of the writ petitioner. This being the factum, the petitioner is at liberty to pay the entire plot cost within a period of six weeks from the date of receipt of a copy of this order, failing which, the Tamil Nadu Housing Board shall cancel the allotment without granting further time or otherwise.

13. The respondent Tamil Nadu Housing Board is directed to consider the case of the writ petitioner for granting of waiver of portion of interest or otherwise, as the case may be, in accordance with the Rules, since the original allotment was made under the ex~landowners category.

14. With these directions, the writ petition stands dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petition is also closed."

7. Therefore, the petitioner submitted a representation on 10.06.2023.

At the same time, as indicated, the petitioner also paid the full amount,

including both interest and penal interest, and a sale deed was executed in



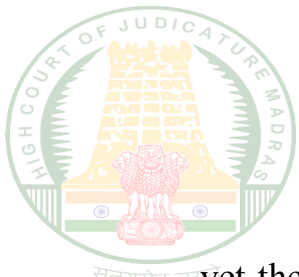
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favour of the petitioner on 23.08.2023. Subsequently, the current Writ Petition was filed to challenge the impugned order, which denied the petitioner's request for a waiver of interest by the Housing Board.

8. Heard *Mr.P.Dinesh Kumar*, learned Counsel for the petitioner and *Mr.D.Veerasekaran*, learned Standing Counsel for the respondents.

9. *Mr.P.Dinesh Kumar*, learned Counsel, would submit that in this case, the Housing Board charged both interest and penal interest. When this Court, in the earlier Writ Petition, directed consideration of the waiver of interest, there was no justification for the respondent authorities to deny the same. The petitioner was willing to take the allotment from 2009, yet, he was given the allotment only in 2015 and was informed of the amount only in that year; thus, charging both interest and penal interest up to the date is entirely uncalled for. Later, when the petitioner challenged this, and this Court directed consideration of the petitioner's request for waiver of interest,



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yet the impugned order was denied it illegally. The petitioner did not wish to prolong the issue of ownership of the plots; therefore, without prejudice to his rights while claiming a waiver of interest, he proceeded to make the payment and got the sale deed executed. This Writ Petition is filed for the refund of the interest amount collected from the petitioner.

10. Per *contra*, *Mr.D.Veerasekaran*, learned Standing Counsel for the respondent Housing Board, submits that both the interest and the penal interest are charged as per the regulations framed by the Housing Board and are statutory in nature. The scheme itself specifies the rate of interest. After considering the upfront payment concerning the remaining principal, by calculating the interest payable as per the E.M.I. and the years over which the amount is distributed, the total amount is determined. By virtue of the Housing Board's resolution under item No. 7 in the year 2003, it is evident that such interest charged pertains only to the principal amount. Even if the allottee defaults in the payment of E.M.I., the penal interest is charged only



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on the outstanding principal amount. Accordingly, the calculation in this case is also made. There was no express provision to waive the interest or the penal interest. The Court merely directed the respondents to consider the matter. The learned Standing Counsel further submits that in any event, since the petitioner has paid the entire amount with the said amount having been accepted and the sale deed is also executed, now the claim cannot be countenanced.

11. I have considered the rival submissions made on either side and perused the material records of the case.

12. It can be observed that the total land acquired from the petitioner is 9,737 Sq.ft. When the Housing Board developed this land, the petitioner's father agreed to an allotment of 4,650 Sq.ft through two plots, thereby entering into a compromise by relinquishing his claim for increased compensation. Consequently, the petitioner's assertion that they all believed



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it was free of cost cannot be accepted. The Housing Board consistently maintains that allotment will only be based on the costs determined by them, as clearly stated in their earliest communications from the year 2008. However, when the Housing Board reached a compromise with the petitioner's father to allocate the land, some administrative delay occurred, and the earliest communication regarding this matter was sent on 04.05.2007 in the name of the petitioner's mother. The learned Standing Counsel argues that the death of the petitioner's father was not promptly reported to the Housing Board, which can be accepted.

13. Similarly, it can also be accepted that when the allotment order was issued in 2008, the petitioner did not expressly inform the Housing Board of *Pounammal's* death. When the Housing Board communicated the allotment order on 09.04.2008 and requested payment, the petitioner chose to respond only in 2009, specifically with his communication dated 20.10.2009, in which he requested the allotment be made in his name. Since



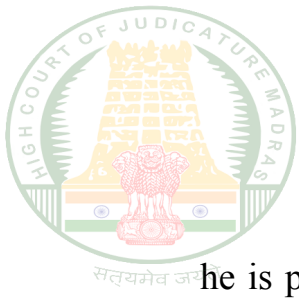
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2009, there have been correspondences regarding the submission of certain documents, and ultimately, the petitioner submitted the documents only on 03.10.2011. After that, the Housing Board kept the matter pending.

14. As a matter of fact, the Assistant Secretary has sent repeated reminders and communications to the Executive Engineer as well as the Board, stating that the file has been pending for a long time and that the matter was only addressed in 2013. Finally, the name transfer order was issued on 02.07.2014, and the balance payable was communicated in a letter dated 03.08.2015. In view of this, I believe that when the earlier Writ Petition is disposed of by this Court on the aforementioned terms, both parties will be bound by the order. This order must be implemented in both letter and spirit.

15. The essence of the order is that the petitioner cannot receive any benefit solely because he is the landowner; he must pay the costs, and when



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he is paying them through E.M.I., he must also pay the interest. However, the Court considered only the possibility of waiving the interest. In this regard, I have outlined the entire series of events as mentioned above. It is evident that from the beginning, the Housing Board has been very clear that the cost of the plot must be paid along with the interest. Therefore, it is up to the petitioner to have seized the earliest opportunity and deposited the entire sum.

16. Initially, the default rested solely with the petitioner. However, when the petitioner accepted it and submitted all the documents as of 2011, via his communication dated 03.10.2011, the final allotment was made only on 02.07.2014, and the first communication requesting the petitioner to pay the interest and principal was made on 03.08.2015. Therefore, at least the penal interest from 03.10.2011 to 03.08.2015 should not be insisted upon from the petitioner. The only argument presented by the learned Standing Counsel for the respondent Housing Board is that since the petitioner



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accepted the said sum and paid the entire amount, and the sale deed was executed, this Court should not interfere with the claim. I have given my careful consideration to this argument.

17. In this regard, the date of the order, i.e., 13.04.2023, in the earlier Writ Petition, must be considered. When this Court directed that the Housing Board would consider waiving the interest, the petitioner only made a request in this regard, and without unnecessarily delaying the process, proceeded to complete the transaction. This demonstrates the petitioner's proper conduct; the fact that the petitioner did not prolong the transaction while waiting for the respondent board's final orders does not by itself warrant the conclusion that the petitioner had forgone the claim for the interest waiver or that he should be estopped from making such a claim. The request was made prior to the execution of the sale deed, and to prevent further delays, the petitioner complied accordingly.



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18. The Writ Petition is disposed on the following terms:-

(i) The petitioner is liable to pay the cost of the plots and the interest as requested by the respondents;

(ii) Regarding the component of penal interest, it shall be reconsidered by the respondent board. Their impugned order dated 19.07.2023, which states that there is no provision for waiving interest, stands set aside. The respondents are to reassess the penal interest by omitting for the period from 03.10.2011 to 03.08.2015, calculate the amount, and refund the sum due to the petitioner;

(iii) The exercise shall be conducted by the respondents within 12 weeks from the date of receipt or production of a web copy of this order, without waiting for a certified copy of this order;

(iv) There shall be no order as to costs.

13.02.2025

Neutral Citation : yes
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To
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1. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandhanam, Chennai - 35.
2. The Executive Engineer-cum-
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Tamil Nadu Housing Board,
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D.BHARATHA CHAKRAVARTHY, J.

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