

(2011) 01 MAD CK 0378

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 6085 of 2007 and M.P. (MD) No. 2 of 2007

S. Subbiah

APPELLANT

Vs

The Executive Engineer and
Administrative Officer, Tamil
Nadu Housing Board, Tirunelveli
Housing Unit

RESPONDENT

Date of Decision: Jan. 7, 2011

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: A. Immanuel, for the Appellant; A. Kannan for TNHB, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The Petitioner/allottee has filed the present writ petition seeking for a Writ of Certiorarified Mandamus to call for the records in Letter No. H3/5832/86 dated 26.03.2002 on the file of the Respondent and to quash the same and also the Petitioner has sought for issuance of a direction of this Court in directing the Respondent to issue revised proceedings as per the guidelines issued in Writ Appeal No. 2355/2001 and to execute the Sale Deed in favour of the Petitioner in respect of House No. M-394, Pothigai Nagar in Palayamkottai Neighbourhood Phase-III Scheme on payment of balance costs.

2. The learned Counsel for the Petitioner urges before this Court that the demand notice dated 26.03.2002, issued by the Respondent to the Petitioner requiring him to pay the balance amount of Rs. 46,850/- (Rupees Forty Six Thousand Eight Hundred and Fifty only) as on 30.04.2002, is a non speaking order and as a matter of fact the Petitioner is disputing the outstanding amount of Rs. 46,850/- (Rupees Forty Six Thousand Eight Hundred and Fifty only) claimed by the Respondent.

3. The learned Counsel for the Petitioner submits that the Petitioner has addressed a letter dated 28.12.2006 to the Respondent/Executive Engineer & Administrative Officer, wherein, he has mentioned that he is liable to pay a sum of Rs. 19,757/- (Rupees Nineteen Thousand Seven Hundred and Fifty Seven only) being the balance costs and has also worked out a calculation thereto. Furthermore, the Petitioner in the said letter has also expressed the intention to remit a sum of Rs. 19,757/- (Rupees Nineteen Thousand Seven Hundred and Fifty Seven only) to the Respondent/Housing Board and also requested the Respondent to execute the Sale Deed in his favour.

4. The Petitioner in his letter dated 28.12.2006, addressed to the Respondent in paragraph "3" has stated the following:

3. Allottee of House No:M-117 filed W.A. No. 2355/2001 and the Division Bench of this Honourable Court in its order dated 21.10.2003 was pleased to direct the Housing Board to execute sale deed in favour the allottee after collecting interest @ 14% on the tentative cost from the date of notification to the date of allotment together with interest thereon @ 8% from the impugned date of demand till the date of payment. Hence, you issued revised proceedings as per the guidelines issued in W.A. No. 2355/2001 and executed the sale deed in favour of similarly placed allottee of House No. M-117 on payment of balance cost as per the revised proceedings.

5. In effect, the Petitioner has made a request to the Respondent/Executive Engineer & Administrative Officer to issue the revised proceedings as per the guidelines in W.A. No. 2355/01 etc.

6. Per contra, it is the contention of the learned Counsel for the Respondent that the Petitioner has duly accepted the terms and conditions of Lease-cum-Sale Agreement (LCS) that he will remit the dues in cost if any between the tentative cost and final cost of the property and further, he has violated the terms and conditions of the said agreement.

7. A plea is also projected on the side of the Respondent that as against the order in W.A. No. 2355 of 2001, a Review Application No. 145 of 2004 has been filed and in the said Review Application, in paragraph "5" it is held as follows:

5. Though according to the learned Additional Advocate General, the amounts mentioned above are not in terms of the Agreement, in view of the fact that the Appellant before the Division Bench /Respondent herein has paid interest as per the direction and the Housing Board has also executed sale deed several years ago, we are not inclined to disturb or alter the direction mentioned therein at this juncture. However, as rightly pointed out by the learned Additional Advocate General, the said direction is confined to the said particular allottee. As a matter of the fact paragraph 19 of the order itself proceeds, "having regard to theses facts,...". In such circumstances, we are of the view that the direction issued therein is to be confined

to the parties to the said proceedings and for other cases, the interest has to be worked out/calculated as per the terms and conditions agreed to by both parties, viz., allottee and the Housing Board.

8. The principal contention advanced on behalf of the Respondent is that in Review Application No. 145 of 2004 dated 03.04.2006 in W.A. No. 2355 of 2001, it is made clear that the direction issued in W.A. No. 2355 of 2001 dated 21.10.2003, shall be confined only to the parties to the proceedings and in the other cases, interest has to be worked out as per the terms and conditions agreed to by both parties namely, the allottee and the Housing Board and as such, the Petitioner cannot avail the benefit in terms of the order passed in W.A. No. 2355 of 2001 dated 21.10.2003.

9. A perusal of the demand notice dated 26.03.2002, issued by the Respondent addressed to the Petitioner, inter alia, referred to the outstanding a sum of Rs. 46,850/- as on 30.04.2002, to be paid by the Petitioner as per new working sheet. The claim of the Respondent in its demand notice dated 26.03.2002, requiring the Petitioner to pay a sum of Rs. 46,850/- being the outstanding amount is deposited by the Petitioner. According to the Petitioner, he has to pay a sum of Rs. 19,757/- (Rupees Nineteen Thousand Seven Hundred and Fifty Seven only) only.

10. Although, the Petitioner placed reliance on the order in W.A. No. 2355 of 2001 dated 21.10.2003, the said order is only applicable to the persons who are parties to the said proceedings, which has been made clear in the Review Application order dated 03.04.2006. Therefore, this Court opines that the Petitioner is not entitled to avail the benefit of the order passed in W.A. No. 2355 of 2001 dated 03.04.2006.

11. Inasmuch as the Petitioner disputes the claim of the Respondent/Executive Engineer & Administrative Officer, TNHB, Tirunelveli Housing Unit, Tirunelveli, whereby, a sum of Rs. 46,850/- (Rupees Forty Six Thousand Eight Hundred and Fifty only) is demanded from the Petitioner as per working sheet prepared by the Respondent as on 30.04.2002 and since the said demand notice dated 26.03.2002, issued by the Respondent addressed to the Petitioner is without the new working sheet details for the balance amount of Rs. 46,850/- (Rupees Forty Six Thousand Eight Hundred and Fifty only) to be paid by the Petitioner, this Court on the basis of Equity, Fair play, Equitable relief and even as a matter of prudence, directs the Respondent/Executive Engineer & Administrative Officer, TNHB, Tirunelveli Housing Unit, Tirunelveli, to furnish a detailed calculation sheet for the claim made by its to an extent of Rs. 46,850/- (Rupees Forty Six Thousand Eight Hundred and Fifty only) as on 30.04.2002 and also for the subsequent amount to be claimed by it by working out the same and furnish a copy to the Petitioner. In this regard, the Petitioner is directed to approach the Respondent/Executive Engineer & Administrative Officer, TNHB, Tirunelveli, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the Respondent/Executive Engineer & Administrative Officer, TNHB, Tirunelveli, is directed to furnish a calculation/working sheet in regard to the amount to be paid by the Petitioner to the Respondent as claimed by the

Respondent. It is also open to the Petitioner to raise his objections, and on receipt of objections, the Respondent is to pass necessary orders in accordance with law in a dispassionate manner, untrammelled and uninfluenced by any of the observations made by this Court in this writ petition.

12. With these directions, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.