

**(2003) 11 MAD CK 0091**

**In the Madras High Court**

**Case No : Writ Petition No. 3046 of 1999**

Dr. Deepak

APPELLANT

Vs

Tamil Nadu State Housing Board

RESPONDENT

**Date of Decision : 06-11-2003**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2003) 11 MAD CK 0091**

**Hon'ble Judges : P.K. Misra, J**

**Bench : Single Bench**

**Advocate : K. Chandramouli, for S. Viswanathan, for the Appellant; D. Veerasekaran, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

P.K. Misra, J.—The Government, by its proceedings dated 18.01.1997 in G.O.Ms. No. 196, Housing and Urban Development Department, directed allotment of Plot No. 619 to the petitioner in Indira Nagar, Chennai and accordingly, the Executive Engineer and Administrative Officer of Besant Nagar Division issued provisional allotment order on 18.05.1987 fixing the value of the plot at Rs. 2,59,785/-. Finally, an order of allotment was issued on 20.11.1987. The petitioner was directed to pay 1/4th of the cost of the plot amounting to Rs. 64,947/- and the balance amount was payable in monthly instalment of Rs. 4,618/- over a period of five years. He had paid the said amount of initial deposit as well as certain monthly instalments. However, suddenly, without any notice, the allotment was cancelled on 29.11.1989 and a cheque for Rs. 2,24,751.60 towards the amount paid by the petitioner along with interest was refunded. The said amount was received under pretest by the petitioner. Subsequently, he filed W.P. No. 14650 of 1993 for quashing the order of cancellation and for directing the respondent to register and execute the sale deed of his building with terms and conditions of the order of allotment dated 20.11.1987. The other three cases were decided in favour of the applicants in such cases and ultimately, the matter was taken up

before the Division Bench. The Division Bench in the case of The Secretary to Government, Housing and Urban Development Department, Madras and others etc. Vs. Ammani and etc. etc., , while confirming the decision of the learned Single Judge and dismissing the writ appeals, observed as follows:-

" We make it clear that this judgment will not affect the authority of the Housing Board to take such action as is necessary in individual cases wherein the conditions of allotment have not been complied with. Liberty in this regard is reserved to the Housing Board. We also make it clear that such of those allottees who are not able to pay the amount towards the allotments as per the terms of the allotment orders - whether in part or in full, shall pay the entire amount due as on this day on or before the end of March 1995. On payment of the amount, the Housing Board shall complete the formalities, and convey the title, of course, subject to the right of the Housing Board to take such actions as are necessary, in the event any of the conditions of allotment is violated. Such of the allottees who have not yet complied with the conditions and such of those who could not comply with the conditions having regard to the cancellation of the allotment orders, will be entitled to have the period from the date of cancellation till this date (i.e. Pendency of the writ petitions and writ appeals), excluded for complying with the conditions".

2. The writ petition filed by the petitioner was disposed of on 15.07.1997 taking note of the fact that similar matters have been disposed of by the Division Bench. The learned Single Judge has passed the following order:-

" So, following the above judgment, there will be a direction to the Housing Board to abide by the terms and conditions entered into between the Housing Board and the petitioner with regard to the allotment order made by them earlier. The petitioner is directed to approach the Board within eight weeks from this date and pay the instalments, if already refunded".

3. Thereafter, the petitioner approached the respondent within the specified period, offering to pay the entire amount of Rs. 2,59,785/-. The respondent, instead of accepting the amount, issued a letter dated 11.08.1997, directing the petitioner to pay a sum of Rs. 8,17,312/-. As per the working sheet enclosed, the cost of the plot was fixed at Rs. 2,59,785/- and the balance of amount represented interest and penal interest. The petitioner, being apprehensive that non payment of the amount would be in violation of the order passed by the Court and the petitioner may lose his right, paid the said amount under protest and immediately made a representation to the said Housing Board for refund of the excess amount collected. However, since no reply was received, the petitioner has been forced to file the present writ petition seeking for a writ of certiorarified Mandamus for quashing the order dated 11.08.1997 so far as it relates to levy of interest and penal interest and for a direction to refund the excess amount.

4. A counter affidavit has been filed on behalf of the respondent, wherein it is

indicated that the allotment had been cancelled on the basis of the Government Order issued by the Government in 1989 and the sum of Rs. 1,97,138/- with 8% interest totalling to Rs. 2,20,751/- was refunded to the petitioner by cheque dated 30.11.1989. It has been further indicated that as per the directions in W.P. No. 14650 of 1993, the Housing Board has to abide by the terms and conditions entered into between the Housing Board and the petitioner and the plot has been re-allotted and working sheet has been prepared. The petitioner has paid a sum of Rs. 6,00,000/- on 02.09.1997 and Rs. 2,17,312/- on 02.10.1997. He had also filed a representation for waiver of interest, but this representation was rightly rejected.

5. After hearing the learned counsels for both the parties and after going through the materials on record, I do not find any justification in the action of the respondent in charging penal interest. Moreover, the writ petition of the petitioner was disposed of keeping in view the order passed by the Division Bench in similar matters. The learned counsel for the respondent was also called upon to furnish particulars as to whether the Board had collected penal interest from other allottees, whose cases had been decided by the Division Bench in the case of The Secretary to Government, Housing and Urban Development Department, Madras and others etc. Vs. Ammani and etc. etc., . The learned counsel for respondent, in spite of several adjournments, has failed to produce any details in this aspect. On the other hand, the learned counsel for the petitioner has produced a copy of the order passed by the Government in one case, wherein the Government directed for waiver of interest.

6. Considering the facts and circumstances of the case the matter relating to the calculation of interest and penal interest is required to be considered afresh and the Board is directed to reconsider the matter taking into account the observations made by the Division Bench in the paragraphs already quoted.

7. The writ petition is accordingly allowed and the Housing Board is directed to consider the matter and after proper calculation, refund the excess amount. This should be done within a period of four months from the date of communication of the order. No costs.