



REV.APLC(MD)No.146 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE K.MURALI SHANKAR**

REV.APLC(MD)No.146 of 2021

in

W.A(MD)No.1599 of 2021

and

CMP(MD)No.10099 of 2021

Parimala Devi

... Petitioner

vs.

1. State of Tamil Nadu,
Rep by its Principal Secretary to the Government,
Housing and Urban Development,
Fort St. George,
Chennai-600 009.

2. Tamil Nadu Housing Board,
Rep by its Managing Director,
Nandanam,
Chennai-600 035.

3. The Executive Engineer & Administrative Officer,
Madurai Housing Unit,
Tamil Nadu Housing Unit,
Madurai-625 016.

... Respondents

PRAYER : Review Application filed under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code, to review the judgment made in W.A(MD)No.1599 of 2021 dated 19.08.2021.



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For Petitioner : Mr.Anand Gopalan for Ms.Ashwini Devi
For R1 : Mr.Ramesh Arumugam
Government Advocate(Crl.Side)
For R2 & R3 : Mr.Veera Kathiravan
Additional Advocate General assisted by
Mr.A.Kannan, Standing Counsel

ORDER

(Order of the Court was made by R.SUBRAMANIAN, J.)

This review is at the instance of the petitioner in W.P(MD)No.6422 of 2021. The said writ petition was filed challenging the order of the Housing Board dated 23.10.2020 rejecting the request of the petitioner for allotment of the land which was originally allotted to her bearing Plot No.H2/62, Rani Mangammal Colony at Dindigul Phase I Scheme under the discretionary quota of the Government. The petitioner along with several other persons, was allotted land under the discretionary quota which was then available in the year 2004. Subsequently, the Government by orders dated 14.08.2006, cancelled all the allotments made under the discretionary quota. These cancellations were subject matter of challenge in W.P(MD)Nos.10155 to 10162, 9561 to 9564, 8821, 9085 and 9086 of 2006 which were disposed of by this Court on 02.06.2007. In and by the said order, the



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cancellations were set aside, thereby restoring the original allotment orders. It is not in dispute that thereafter all the persons except the petitioner who are petitioners before the Writ Court in W.P(MD)Nos. 10155 to 10162, 9561 to 9564, 8821, 9085 and 9086 of 2006 were favoured with allotment and sale deeds were also executed to them upon their approaching this Court in the year 2015. The petitioner sent several communications requiring allotment and also expressing her willingness to pay them consideration. One such representation which was rejected on 23.10.2020. The said rejection was subject matter of challenge in W.P(MD)No.6422 of 2021. The said writ petition came to be dismissed by the Writ Court on the ground that there was enormous delay and that there is a ban on allotment on discretionary quota. Aggrieved, the petitioner challenged before the Division Bench in W.A(MD)No.1599 of 2021. The Division Bench agreed with the conclusions of the Writ Court and dismissed the writ appeal. Hence this review.

2. We have heard Mr.Anand Gopalan, learned counsel for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General appearing for the Housing Board.



3. Mr.Anand Gopalan, learned counsel for the petitioner would submit that both the Writ Court as well as the appellate Bench have proceeded on the footing that the petitioner is seeking a fresh allotment which is factually incorrect. The orders of allotment made in the year 2004 were cancelled in the year 2006. The said cancellations were subject matter of challenge in W.P(MD)No.9085 of 2006 etc batch. The Hon'ble Mr.Justice **V.RAMASUBRAMANIAN** had allowed the writ petition and quashed the cancellations. Therefore, the original allotments stood revived. What was left was only payment of consideration and execution of sale deed. Therefore, the subsequent ban imposed cannot be a ground to reject the contention of the petitioner.

4. Contending contra, Mr.Veera Kathiravan, learned Additional Advocate General would submit that cancellations were set aside as early as on 02.06.2007 and the petitioner made a representation only in the year 2019. He would also add that there is no error apparent on the face of the record in order to enable the petitioner to invoke the review jurisdiction. According to Mr.Veera Kathiravan, this is re-agitation of whole issue.



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5. We are unable to agree with the submission of the learned Additional Advocate General. The reasons are not far to seek. As we had already pointed out, the Writ Court and the appellate Bench have proceeded on the footing that the petitioner is seeking a fresh allotment. The fact that what was done was cancellation of the allotment of the petitioner in the year 2006 and the same was quashed in the year 2007, was completely ignored and it was dealt with as a fresh case seeking allotment. This vital aspect would definitely amount to an error apparent on the face of the record which would enable us to review the order. On merits, of course, there is a delay on the part of the petitioner, but that delay cannot be a ground to reject the claim of the petitioner, since right has vested in her and the other allottees were favoured with the sale deeds in the year 2016. The petitioner had approached the Housing Board within three years from that date. Therefore, it cannot be said that this delay will have the effect of nullifying the rights of the petitioner which had accrued to her under the orders of this Court made in W.P(MD)No.9085 of 2006. We are, therefore, constrained to allow the review petition.



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6. Now that we have allowed the review petition, we will deal with the contention of the counsel in the appeal. The Writ Court has proceeded on the footing that it is a new allotment and therefore, the order of the Writ Court cannot be sustained. Once the cancellation order is set aside, the original order of allotment stood revived. Therefore, the petitioner would be entitled to the benefits of the original order of allotment. However, the petitioner will have to compensate the Board for the delay. As regards the allotment made to other persons, the Board has passed a resolution on 26.02.2016 which reads as follows:-

"9.03 தமிழ்நாடு வீட்டுவசதி வாரியம் - ஒதுக்கீடு பிரிவு - வாரியத்தின் பல்வேறு திட்டப் பகுதிகளில் அரசுப் பங்கீட்டின் கீழ் மனைகள் / வீடுகள் மற்றும் வணிக மனைகள் - அரசாணை மூலம் ஒதுக்கீடு செய்யப்பட்டது - சில காரணங்களினால் ஒதுக்கீட்டாணை வழங்க வழங்க இயலாததால் அரசாணை மூலம் இரத்து செய்யப் பட்டது - நீதிமன்ற தீர்ப்பாணை வெளியிடப்பட்டது வழக்குகள் மீண்டும் அவர்களுக்கே ஒதுக்கீடு செய்வது - கொள்கை அளவில் முடிவெடுக்க பிரேரணை வாரியக் கூட்டத்தின் ஒப்புதலுக்காக வைக்கப்படுவது - தொடர்பாக.
(கோப்பு எண் ஒதுக்கீடு பிரிவு.2(1)/27380/2010)

வாரியக்கூட்டக் குறிப்பில் கண்ட ஒன்பது நபர்களான

- 1) திரு. H. அசோக்
- 2) திரு. H. ரவிந்திரன்
- 3) திரு. M. அன்பழகன்
- 4) திரு. K. பாலசுப்பிரமணியன் அன் கோ.இ
- 5) திருமதி. சித்ரா
- 6) திருமதி. M. உஷா மோகன்
- 7) திருமதி. J. டெல்லா
- 8) திருமதி. P. தக்ஷா மற்றும்
- 9) திருமதி. A. பிரமிளா

ஆகியோருக்கு ஒதுக்கீடு செய்து அரசாணை வெளியிடப்பட்ட ஆண்டில் சந்தை விலை, நடைமுறை விலை மற்றும் வழிகாட்டி விலை இவற்றில் அதிகமாக உள்ள விலையை கணக்கில்கொண்டு இன்று வரை வட்டி முதலாக்கம் செய்து விலை நிர்ணயித்து மறு ஒதுக்கீடு செய்ய வாரியம் ஒப்புதல் அளித்தது."



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7. We find that the same methodology could be followed in the case of the petitioner also. The sale deeds that were executed in favour of the other persons, have also been produced and the amount that they were paid is reflected in the said sale deeds. The petitioner will also be required to pay the said amount as reflected in the sale deeds in favour of the other allottees along with interest at 9% on the amount shown as consideration in the sale deed from 01.05.2016 till date of payment and upon payment of the consideration, the Housing Board will execute the sale deeds within 30 days from the date of payment of the consideration. The petitioner will bear the costs of the sale also.

8. In view of the above, the Writ Appeal stands allowed. The order of the learned Single Judge in W.P(MD)No.6422 of 2021 dated 23.03.2021, is set aside. No costs. Connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) & (K.MURALI SHANKAR, J.)
16.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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R.SUBRAMANIAN, J.
and
K.MURALI SHANKAR, J.

bala

To

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State of Tamil Nadu,
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