

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2015

Date of Reserving the Order	Date of Pronouncing the Order
03.03.2015	10.03.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.21855 of 2013

R.Govindasamy

... Petitioner

Vs

1.Government of Tamil Nadu,
Rep., by its Secretary,
Housing and Urban Development Department,
Chennai - 9.

2.The Chairman,
Tamil Nadu Housing Board,
Nandhanam,
Chennai.

3.Ammavasai

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to direct the first respondent to act on the petitioner's representation dated 09.05.2013 and direct the second respondent to cancel the sale deed dated 20.06.2008 and sell the property namely Plot No.508C in T.S.No.146 Part and 147 part, Sathuvachari Village, Vellore Neighbourhood Scheme, Phase III, through Public auction.

For petitioner ... Mr.R.Subramanian
For Respondents .. Mr.V.Jayaprakash Narayanan
Spl.G.P., for R1

Mr.V.Ananthamoorthy for R2

Mr.R.Natrajan for R3

O R D E R

The petitioner has filed this Writ Petition for a direction to the first respondent, the Secretary to Government of Tamil Nadu, Housing and Urban Development Department to consider his representation, dated 09.05.2013 and cancel the sale deed dated 20.06.2008, executed by the second respondent, Tamil Nadu Housing Board in favour of the third respondent in respect of Plot No.508C, Sathuvachari Village, Vellore Neighbourhood Scheme, Phase III, and to sell the property through public auction.

2. The petitioner would state that the said plot was allotted to one Lakshmi under Government discretionary quota vide G.O.Ms.No.1373, dated 17.10.1988 and that the third respondent had encroached the said property and Lakshmi approached the Housing Board to remove the encroachment. It is submitted that the third respondent filed a Writ Petition before this Court in W.P.No.1642 of 1992, questioning the eviction proceedings and subsequently, Writ Petition was withdrawn on 18.08.1997. It is submitted that the third respondent filed a Suit in O.S.No.28 of 1992, before the District Munsif Court, Vellore for decree of permanent injunction, which was dismissed and the appeal filed in A.S.No.62 of 1997, was also dismissed. It is submitted that subsequently, the allotment in favour of Lakshmi, was cancelled by order dated 09.10.2000, which was challenged in W.P.No.17863 of 2000. The said Writ Petition was disposed of, directing Lakshmi to file statutory appeal before the Government. When the appeal was pending, the plot was allotted to the third respondent by G.O.(2D).No.122, dated 04.06.2003. It is further submitted that the appeal filed by the Lakshmi was dismissed by the Government on 22.01.2004. The petitioner would state that the third respondent has obtained an allotment under Government discretionary quota representing that he is a Social Worker, but he is not a Social Worker, but an encroacher. With these facts, the petitioner submitted a representation and since the same has not been considered, the petitioner has filed this Writ Petition in 2013, to cancel the sale deed executed in favour of the third respondent in 2008. To explain the delay in approaching this Court, the petitioner would state that he is the resident of Pillandipattu village in Vellore District and he could not collect all materials and one of his relatives V.Meenakshi, obtained information under the Right to Information Act (RTI Act) and he collected the materials and thereafter, he approached the authorities and thereafter invoked the jurisdiction of this Court.

3. The learned counsel appearing for the petitioner elaborately referred to the factual details and the documents filed in the typed

set of papers and submitted that the allotment in favour of the third respondent is wholly unsustainable and the second respondent, having declared him as an encroacher received an application on 08.04.2013 to accommodate him, allotted the plot under the Government discretionary quota. Further, it is submitted that the petitioner is not a Social Worker and appears to have obtained a certificate from the Lions Club of Vellore. Further, it is submitted that the facts relating to the cancellation of allotment in favour of Lakshmi has absolutely no relevance to the instant case and the petitioner's representation should be directed to be considered and the plot should be brought for public auction, so as to enable the Board to get the market price and also enable the Writ Petitioner and others to participate in the public auction.

4. The learned counsel for the third respondent, by relying upon the counter affidavit filed by the third respondent, submitted that the present Writ Petition is nothing, but an abuse of process of law and the petitioner has deliberately suppressed material facts. The petitioner has filed this Writ Petition, at the instance of V.Lakshmi and her husband Mr.Venkatesan, who have colluded with him and sponsored this litigation, having lost all their cases instituted against the third respondent before this Court in W.P.No.3099 of 2004, dated 29.02.2008, W.A.No.455 of 2008, dated 10.04.2008 and Review Application No.151 of 2008 in W.A.No.455 of 2008, dated 27.08.2009. Further, it is contended that all the contentions raised by the petitioner were considered by this Court in W.P.No.3099 of 2004, and the said Writ Petition was filed by V.Lakshmi and the same was dismissed and confirmed by the Hon'ble Division Bench and the Review Application before the Hon'ble Division Bench was also dismissed. Therefore, it is submitted that this Writ Petition is not maintainable. Further, it is submitted that the Writ Petition is an out come of malafide intentions, since the petitioner has selectively stated the facts relating to litigation between V.Lakshmi and the third respondent prior to cancellation of the plot and purposely suppressed and withheld relevant material facts, directly touching the claim of the third respondent and this is in order to mislead this Hon'ble Court. Further, it is submitted that the fact that the sale deed was executed in favour of third respondent, was taken note of by the Hon'ble Division Bench in Review Application No.151 of 2008. Further the plot in question was virtually a hillock with big rocks and the third respondent has contributed own physical labour and had removed the rocks for the purpose of making it a habitable site. Further, it is submitted that the third respondent has paid entire sale consideration to the Tamil Nadu Housing Board and sale deed has been executed. Further, it is submitted that, to clear family debts and to meet personal needs, the third respondent sold portions of the plot No.508/C to various persons during 2008, 2009 and 2012 and the third respondent has executed a sale deed in favour of those purchasers. In this regard, a copy of the encumbrance

certificate has also been produced. The learned counsel referred to the orders passed by this Court in the Writ Petition, Writ Appeal and the Review Application, which were filed by V.Lakshmi against the third respondent and submitted that the petitioner has no locus standi to question the sale in favour of the third respondent and the petitioner is guilty of suppression of material facts.

5. The learned counsel appearing for Tamil Nadu Housing Board admitted to factual position as submitted by the learned counsel appearing for the third respondent, since those facts are borne out by records and orders passed by this Court in the Writ Petition, Writ Appeal and Review Application. The learned counsel further submitted that the Government has granted the allotment and such allotment was held to be valid by this Court and the third respondent has paid full sale consideration and sale deed was executed in favour of the third respondent and as such, there is no error in the action of the second respondent Board.

6. Heard the learned counsels appearing on either side and perused the materials placed on record.

7. The first issue to be considered is whether the petitioner has locus standi to seek for the prayer as sought for in this Writ Petition. In the affidavit filed in support of the Writ Petition, there is no averment to show as to how the petitioner is an aggrieved person. The only plea raised is that if the sale deed executed in favour of the third respondent is cancelled and the property is brought for public auction, the petitioner and others would be able to participate. Admittedly, the Writ Petition is not designed as a 'Public Interest Litigation' and no such averment is made in the affidavit filed in support of the Writ Petition nor it is contention of the learned counsel for the petitioner. Therefore, it is prima facie clear that the petitioner lacks locus-standi to file this Writ Petition.

8. Having held so, it has to be examined as to how the petitioner came to know of the facts pleaded in this Writ Petition. As pointed out earlier in the affidavit filed in support of the Writ Petition in paragraph 5, the petitioner would state that one of his relatives V.Meenakshi obtained some information from the RTI Act and he collected particulars from her. If that be the case, there is no explanation forthcoming as to how the petitioner secured information about the litigation between the Lakshmi and the third respondent. Therefore, it can be safely presumed that it is the said Lakshmi who has passed on information to the petitioner based on which, this Writ Petition has been filed. Therefore, this Court is inclined to accept the submission of the third respondent that the petitioner has been set up by V.Lakshmi and she appears to be the sponsor for this litigation. This conclusion is fortified by the fact that V.Lakshmi

miserably lost in all the litigations she initiated. If such is the case, then the petitioner has a duty to disclose all details and all the facts pertaining to prior litigation. The petitioner is guilty of non-disclosure of material facts and selectively, he has mentioned a few facts, which has to be deprecated. Therefore, this Court holds that the petitioner is guilty of suppressing material facts. Hence on the above grounds, the Writ Petition is liable to be dismissed in limine. However, since the contentions were raised by the petitioner on merits, the same are being considered. In W.P.No.18626 of 2003, Lakshmi challenged a proceedings of the Housing Board by which the allotment granted to her was cancelled and there was a challenge to the Government Order in G.O.(2D) No.122, dated 04.06.2003, where under the third respondent was allotted the plot. Taking note of the fact that the appeal was filed by the Lakshmi was pending, the appeal was directed to be disposed of after giving opportunity of hearing to her. Thereafter, the Lakshmi filed W.P.No.3099 of 2014, challenging the order dated 22.01.2004, and seeking for restoration of the allotment of the plot in her favour. The said Writ Petition was dismissed by an elaborate order dated 29.02.2008. While dismissing the said Writ Petition, this Court pointed out that the plot was allotted to the third respondent, who did not own any other property. Lakshmi filed W.A.No.455 of 2005 and the Hon'ble Division Bench dismissed the Writ Appeal and confirmed the order passed in the Writ Petition. Not stopping there, Lakshmi filed a Review Application before the Hon'ble Division Bench of this Court in R.A No.151 of 2008. The Hon'ble Division Bench dismissed the Review Application by order dated 27.10.2009 and in the said order, the Hon'ble Division Bench recorded the submissions of the Housing Board that the deed of absolute sale has been executed in favour of the third respondent herein.

9. From the above, it is clear that the attempt made by Lakshmi to secure the plot in her favour stood rejected. Likewise, Lakshmi was unsuccessful in revoking the allotment in favour of the third respondent. After the direction issued in W.P.No.18626 of 2003, the Government was directed to consider the appeal filed by Lakshmi. As per the said direction, enquiry was conducted on 06.01.2004 and 07.01.2004 and the Government dismissed the appeal preferred by Lakshmi and confirmed the order cancelling the allotment in favour of Lakshmi. When this was put to challenge in W.P.No.3099 of 2004, the said Writ Petition was dismissed and the same was confirmed by the Hon'ble Division Bench and thereafter Review Application was also dismissed. In the light of the above facts, the petitioner cannot seek to question the allotment of the third respondent.

10. For all the above reasons, the prayer sought for by the petitioner being thoroughly misconceived, the Writ Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pbn.

To

1.The Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department,
Chennai - 9.

2.The Chairman,
Tamil Nadu Housing Board,
Nandhanam,
Chennai.

1 cc to Mr. V.Ananthamoorthy,Advocate, SR.No.13627

2 cc to Mr.R.Narajan ,Advocate, SR.No.13537

W.P. No.21855 of 2013

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