

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.9221/2015

B.S.Rekha

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Petitioner

Versus

1.The Secretary

Government of Tamil Nadu
Housing and Urban Development
Department, Chennai 600 009.

2.The Managing Director

The Tamil Nadu Housing Board
Nandanam, Chennai 600 035.

3.The Special Tahsildar

[Land Acquisition], Housing Scheme-II
Coimbatore 641 038.

4.The Executive Engineer and Administrative
Officer, Tamil Nadu Housing Board,
Tatabad, Coimbatore.

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Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus to direct the respondents herein to release Plot No.39 to an extent of 2400 sq.ft. of land in Survey Nos.319/2 and 320 of Kalapatti Village, Coimbatore North Taluk, on the basis of the report dated 10.07.2009 filed by the Government in WP.No.16417/1998 etc., which was confirmed by the Division Bench in WA.No.422/2011 to enable the petitioner to obtain patta.

For Petitioner : Mr.Kandan Duraisami

For RR 1 and 3 : Mr.R.Vijayakumar, AGP

For RR 2 and 4 : Mr.B.Vivekavan

ORDER

Heard Mr.Kandan Duraisami, learned counsel for the petitioner ; Mr.R.Vijayakumar, learned Additional Government Pleader accepting notice for the respondents 1 and 3 and Mr.B.Vivekavan, learned counsel accepting notice for the respondents 2 and 4 and with their consent, the writ petition is disposed of at the admission stage itself.

2.The petitioner has filed this writ petition to direct the respondents herein to release Plot No.39 to an extent of 2400 sq.ft. of land in Survey Nos.319/2 and 320 of Kalapatti Village, Coimbatore North Taluk, on the basis of the report dated 10.07.2009 filed by the Government in WP.No.16417/1998 etc., which was confirmed by the Division Bench in WA.No.422/2011 to enable the petitioner to obtain patta.

3.The petitioner would state that she is the absolute owner of the said property having purchased the same on 03.07.2006. The said lands, along with the other contiguous extent of lands were subject matter of acquisition for the formation of the Tamil Nadu Housing Board Neighbourhood Scheme at Kalapatti Village, Coimbatore District. Writ petitions were filed before this Court in WP.No.16417/1998 etc., batch, by the land owners seeking to quash the acquisition proceedings and for consequential reliefs. In the said writ petitions, a statement was filed by the Government on 10.07.2009, showing the details of the lands which have been excluded from the implementation of the Housing Board scheme in Kalapatti village. This exclusion was after the Awards was passed in the Land Acquisition Proceedings. From the copy of the statement so filed, it is seen that the lands in Survey Nos.319/2 and 320, covered in Award No.4/1999, dated 05.11.1999, stood excluded from the acquisition proceedings. The writ petitions which were filed challenging the acquisition proceedings were allowed and wherever re-conveyance was sought for, orders were issued to direct the Government to re-convey the lands so acquired and so far as the other lands are concerned, there was an order of injunction restraining the Sub Registrar concerned from insisting upon the No Objection Certificate from the Housing Board. As against the common order passed by this Court in WP.No.16417/1998 etc., batch dated 30.08.2010, the Housing Board preferred writ appeals in WA.Nos.422/2011 etc. batch, and the Division Bench of this Court, by Judgment dated 14.09.2011, dismissed the writ appeals filed by the Housing Board.

4.Insofar as another batch of cases, where re-conveyance was directed to be granted, the Housing Board filed separate writ appeals in WA.Nos.252 to 255/2011 and those appeals were also dismissed, by Judgment dated 16.08.2011 [TNHB Vs. UMA MAHESWARI RAMASAMY AND OTHERS] reported in [2011] 7 MLJ 849. Against the said decision, the TNHB preferred Special Leave Petitions before the Hon'ble Apex Court in SLA [Civil] Nos.6063 to 6066/2012 which were dismissed by the Hon'ble Apex Court, vide Judgment dated 13.04.2012. With these facts, the petitioner has now approached the Tahsildar for issuance of patta. Taking note of the above legal position and the lands having already been excluded and though the petitioner may have been the subsequent purchaser, that will not be a ground to deny the relief to the petitioner. In fact, this issue was also considered by the Division Bench of this Court in UMA MAHESWARI RAMASAMY's case

[cited supra], wherein in paragraph 11 of the Judgment, it was held that there can be no difference between the land owner and the subsequent purchaser and if differential treatment is accorded to such persons who are subsequent purchasers, it would be discriminative. Therefore, the petitioner is entitled for grant of patta in the light of the above legal position.

5. Accordingly, the writ petition is disposed of by directing the petitioner to file appropriate application for grant of patta along with a copy of this order before the concerned revenue Tahsildar and on receipt of such application from the petitioner, the Revenue Tahsildar, shall take note of the above legal position and consider the application for grant of patta and grant the same if there is no other legal impediment within a period of three months from the date of receipt of such application. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Secretary
Government of Tamil Nadu
Housing and Urban Development
Department, Chennai 600 009.
2. The Managing Director
The Tamil Nadu Housing Board
Nandanam, Chennai 600 035.
3. The Special Tahsildar
[Land Acquisition], Housing Scheme-II
Coimbatore.
4. The Executive Engineer and Administrative
Officer, Tamil Nadu Housing Board,
Tatabad, Coimbatore.

+1 cc to M/s. Muthumani Doraisamy, Advocate, SR.17853

+1 cc to M/s. B. Vivekavanam, Advocate, SR.17985

+1 cc to Government Pleader, SR.18353.

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krd 10/4

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