

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.23838 of 2012
and
M.P.Nos.1 and 2 of 2012

P.Malaleena

..Petitioner

/vs/

The Executive Engineer and Administrative Officer
Tamil Nadu Housing Board,
Salem Housing Unit,
Ayyanthirumaaligai,
Salem 636 008.

..Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings dated 31.07.2012 in letter No.R4/1644/10 issued by the respondent and quash the same, consequently direct the respondent to execute the sale deed in favour of the petitioner in respect of the Plot No.C-7 of Alagapuram Scheme after receipt of final cost at the rate of Rs.4650/- per sq.ft.

For Petitioner .. M/s Chitra Sampath,
Senior Counsel
for Mr. R.Nalliyappan

For Respondent ..Mr.V.Anandhamurthy

ORDER

The petitioner has been allotted the housing plot No.C-7 at Alagapuram Scheme, Salem to an extent of 2959 sq.ft. under the discretionary quota by order dated 08.11.2010 under the "Social Worker" category . On such allotment, the petitioner voluntarily paid a sum of Rs.10 lakhs on 25.11.2010 by means of demand draft. Thereafter, the petitioner has paid another sum of Rs.40,00,000/- by means of demand draft. By a letter dated 03.02.2011, the respondent informed the petitioner that auction was held for commercial plot in the very same area. Based on the highest offer in the above auction, approved by the Board, the cost of the Plot No.C7 allotted to the petitioner at Alagapuram NHS has been fixed by the Pricing Committee. Accordingly, the petitioner was asked to pay the upset price of Rs.1,06,72,000/- as tentative cost. It has been further

indicated that the differential amount will have to be paid at the time of execution of sale deed. The petitioner, accordingly, paid the said amount on the basis of the letter dated 03.02.2011, which is extracted for better appreciation:

"Your attention is invited to the reference cited wherein the commercial plot No.C7 at Alagapuram NHS has been allotted to you. Since the final cost was pending approval by the Board, the cost of the plot was not informed to you. Now, the Board has fixed the cost for the above scheme vide the reference 5th cited.

Accordingly the upset price for the commercial plots in the above scheme area was fixed and auction are being held. Based on the highest offer in the above area approved by the Board, the cost of the plot No.C7 at Alagapuram NHS allotted to you has to be fixed by the Pricing Committee.

Meanwhile, you may pay the upset price of Rs.1,06,72,000.00 for the plot No.C7 at Alagapuram NHS having an extent of 2668 sq.ft., and wait till the fixation of cost by the Pricing Committee to be communicated to you. Only after such fixation of cost, action will be taken to hand over and to issue the sale Deed to the plot.

Further, the difference in land cost along with interest charges, if any, found latter for this plot shall have to paid by you and after making such payment only, the sale deed will be issued."

2. By the impugned order dated 31.07.2012, the petitioner was asked to pay a further sum of Rs.1,57,13,000/- by deducting the amount already paid by her, out of a sum of Rs.2,07,13,000/- by fixing the value of the land per square feet at Rs.7,000/-. Challenging the same, the present writ petition has been filed.

3. When the matter was taken up for hearing, this Court directed the learned standing counsel appearing for the respondent to produce the materials based on which the valuation has been fixed. Accordingly, the typed set of papers have been filed. It is seen from the said documents that the valuation has been fixed, by taking the highest value among the amount fetched during the last auction sale, guideline value and ruling rate.

4. The learned Senior Counsel appearing for the petitioner submitted that the respondent has acted contrary to their own letter dated 03.02.2011. The object of allotting plots under the discretionary quota is to help the allottee to get an allotment of plot on their own. In the present case, the petitioner was allotted a piece of plot under the category "Social Worker". The amount fixed in the impugned order is much higher than the one fixed in the auction sale and the respondent has failed to comply with their own letter dated 03.02.2011. The learned Senior Counsel for the petitioner, referring to the sale deed dated 16.11. 2011 executed by the respondent in favour of the purchaser in respect of Plot No.C-2, would contend that the sale price was fixed at Rs.5149 /- per square feet, but the same yardstick has not been followed in the case of the petitioner. In any event, there is no basis for fixing the value of the plot at Rs.7,000/- per square feet which is contrary to the guideline/market value as also the rate to be fixed in respect of allotment of plots under discretionary quota. The learned Senior counsel also would contend that the price fixed in the impugned order is contrary to the order of allotment dated 08.11.2010, hence, the order impugned is liable to be set aside.

5. Per contra, the learned counsel appearing for the respondent submitted that in as much as power is available to the respondent to fix the sale price for the plot allotted by them, it cannot be questioned by the petitioner. The impugned order has been passed based on the decision made by the Pricing Committee which was communicated to the petitioner. The petitioner, without questioning the rationale of the said decision, is estopped from challenging the impugned order. Therefore, according to the learned standing counsel for the respondent, the impugned order does not call for any interference by this Court.

6. This Court finds force in the submissions made by the learned counsel appearing for the petitioner that being an allottee of the plot under the discretionary quota, the petitioner cannot be put in a worse situation than the person, who purchased the plot through auction sale for commercial purpose. The petitioner never had a chance to make a comparative assessment of the price fixed by the respondent with the price fixed to the purchaser of the plots in the auction. Normally, for commercial plots, the price will be higher as against the discretionary quota.

7. The learned Senior counsel for the petitioner fairly submitted that the petitioner is willing to go by the letter dated 03.02.2011 and ready to pay the sale consideration by taking into consideration of Rs.5149/- per square feet, which has been fixed, as the highest sale price for the commercial plot.

8. This Court is of the considered view that the fixation of price for the plot of the petitioner as shown in the impugned order cannot be sustained. The allotment is an offer and it has been accepted by the petitioner by paying initial advance amount,

voluntarily. What is required to be done thereafter is to fix the final cost existing at that time. For that purpose, a subsequent valuation be it a auction sale price, guideline value or ruling rate can never be taken into consideration. Not even the rationale indicated in the letter dated 03.02.2011 has been followed.

9. Though the petitioner has sought for fixation of Rs.4650/- for square feet, as fixed in respect of Plot No.C-6, the price fixed for Plot No. C-6 and C-7 cannot be compared taking into account the locational advantages for each of the plot. Moreover, the amount of Rs.7,000/- per sq,ft fixed for the plot of the Petitioner is excluding other incidental charges which the petitioner is liable to pay.

10. Be that as it may, the petitioner is willing to go by the letter dated 03.02.2011. By doing so, the petitioner is liable to pay a sum of Rs.5149/- per square feet as against Rs.7000/- per square feet fixed by the respondent. Even otherwise, the fixation of Rs.7000/-per sq.ft. has got no rationale. Unilaterally, the respondent cannot fix the value at Rs.7000/- per square feet by taking into consideration the highest value fetched for the commercial plots, especially, when it is not the same price likely to be fixed even in the open auction. On this ground alone, the impugned order cannot be sustained. Hence, the writ petition stands allowed to the extent as indicated above by setting aside the impugned order. Consequently, the respondent is directed to fix the value of Plot No.C-7 allotted to the petitioner at Rs.5149/- per square feet in Alagapuram Scheme, Salem. The respondent is directed to intimate the amount payable by the petitioner within a period of four weeks from the date of receipt of a copy of this order. The petitioner shall make the payment within a period of eight weeks thereafter. After such compliance, the respondent shall complete the formalities required and to execute the sale deed in favour of the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

The Executive Engineer and Administrative Officer
Tamil Nadu Housing Board,
Salem Housing Unit,Ayyanthirumaaligai,
Salem 636 008.

+1 cc to Mr.R.Nalliyappan, ADvocate, sr.46003

+1 cc to Mr.V.Anandha Murthy, Advocate, sr.46145

W.P.No.23838 of 2012

rj co, kra 15/07