

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.8552 of 2013

and

M.P.No.1 of 2013

S.Nirmaladevi ... Petitioner

Vs.

1.The Chairman,
Tamilnadu Housing Board,
No.331, Anna Salai,
Nandanam, Chennai-600 033.

2.The Executive Engineer
and Administrative Officer,
Tamilnadu Housing Board,
Housing Unit, Erode,
III-Floor, Office-cum-Shopping Complex,
Surampattai Four Road,
Erode-638 009. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the proceedings in Ka.No.R9/4623-A/91, dated 30.01.2013 on the file of the 2nd respondent, and to quash the same as illegal, incompetent and without jurisdiction and to further direct the respondents to allot housing plot in Sampath Nagar Scheme, Erode by fixing the price of the plot in accordance with the direction of the Division Bench of this Court in W.A.Nos.1317 to 1320 of 2000, dated 12.06.2007.

For Petitioner : Mr.P.Ravishankar Rao

For respondents : Mr.V.Anandhamurthy

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings in Ka.No.R9/4623-A/91, dated 30.01.2013 on the file of the 2nd respondent, and to quash the same as illegal, incompetent and without jurisdiction and further, to direct the respondents to allot housing plot in Sampath Nagar Scheme, Erode by fixing the price of the plot in

accordance with the direction of the Division Bench of this Court in W.A.Nos.1317 to 1320 of 2000, dated 12.06.2007.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows:-

2.1.The petitioner is the legal heir of one late Palanisamy, who owned large extend of land in Erode. The Tamil Nadu Housing Board has acquired a vast land in Erode Town for construction of Dwelling Houses. In the said Scheme, the land of the petitioner's father had also been acquired by the Housing Board. The respondents/Housing Board had also assured the land owners that suitable alternate plots would be allotted to them on a priority basis for residential or commercial purposes. The acquired land is now known as Sampath Nagar in Erode. Since the plots were not allotted as assured by the respondents, a few land owners approached this Court and obtained orders for allotment on a priority basis.

2-2.The persons similarly placed, like the petitioner's father, who did not get any benefit from the order, moved this Court to consider their request for allotment. However, the respondents informed that the land owners' request for allotment of residential plots could not be made, as there were no residential plots available and that the available commercial plots could not be allotted privately, as the same has to be allotted only in an open auction. The petitioner's father and others filed W.P.Nos.20566 of 1992, 16413 of 1993, 19151 & 19951 of 1992 and in the said writ petitions, a learned Single Judge of this Court by orders dated 25.04.2000, 19.06.2000 and 30.06.2000, quashed the order of the respondents and directed the respondents to allot residential or commercial plot in Sampath Nagar Phase I/II Scheme. The respondents-Housing Board had challenged the said order passed by the learned Single Judge, by filing writ appeals in W.A.Nos.1317 to 1320 of 2000. The Division Bench of this Court by order dated 12.06.2007 dismissed the said writ appeals. Further, while dismissing the writ appeals, the Division Bench of this Court directed the respondents herein-Housing Board to allot the commercial plot in Sampath Nagar to each of the petitioners therein, within a period of 30 days from the date of receipt of the order. In para 3 of the order dated 12.06.2007 in the said Writ Appeal, the Division Bench has held as follows:-

"As far as the payment of price for the plot to be allotted is concerned, since even at the earliest stage when the acquisition proceedings were commenced, the land owners were informed that they must pay the prevailing price and since much water has flown under the bridge from then

onwards and the fact that the learned single judge allowed the writ petitions on 25.04.2000, 19.06.2000 and 30.06.2000, we are of the considered opinion that the ends of justice would be met if the Housing Board is directed to fix the price at which the Housing Board had allotted commercial plots to other people in Sampath Nagar Phase I or Phase II Scheme, as the case may be during the period from January 2000 to June 2000.".

2-3.As against the order of the Division Bench, the respondents herein/Housing Board preferred a Special Leave Petition in SLP (c).No.23922, 23940, 23941 and 23945 of 2007 and the same were dismissed on 21.02.2012 by the Hon'ble Supreme Court, confirming the order of the Division Bench of this Court in W.A.No.1317 to 1320 of 2000.

2-4.After the order passed by the Honourable Supreme Court, the petitioner is under the expectation that the respondents / Housing Board would finally honor its two decade commitment and allot plots in accordance with the order of the Division Bench of this Court. But, to her shock and surprise, the petitioner received a letter from the 2nd respondent, dated 30.01.2013, informing that the allotment of plot No.57 could be made in her favour on condition that the petitioner should pay a sum of Rs.35,33,000/- for a total area of Rs.2390 sq.ft, amounting to approximately Rs.1,450 per sq.ft. In fact, the Division Bench of this Court in its order had categorically given direction to the respondents that the rates prevailing during the period January-June 2000 should be taken to be the price for the plot. The prices of land in Scheme I and II during that period varied from Rs.39/- to Rs.43/- per sq.ft. Moreover, the respondents have chosen not to give any reason for the arbitrary value of Rs.1,450/- per sq.ft as laid down by them in the impugned letter. Hence, the petitioner has come forward with the present writ petition.

3.But, learned counsel for the respondents would contend that the price of the plot was only fixed by considering the cost of the commercial plots for the year 2000-2001. Huge amount has been invested in the Schemes and on getting funds from various sources for interest and the amount of interest has to be collected only from the allottees. Since the cost of the scheme has already been finalized, there is no other alternative except to levy the interest on the present writ petitioner. Further, the market value of the scheme land also increased on par with other lands and especially due to the location within the developed scheme area. Therefore, the value fixed cannot be

considered high or without any calculations on the cost of the scheme. It is further stated by the learned counsel for the respondents that similar allottees namely Manokaran and Baskaran, were allotted Plot No.46 during the relevant period under ex-land owner category and they have accepted the allotment and have remitted a sum of Rs.71,87,000/- towards the cost of the above said plot of 4,854.56 sq.ft, which works out to Rs.1,478/- per sq.ft. Thus, the respondents sought for dismissal of the writ petition.

4.Heard both sides and perused the materials available on record.

5.From a perusal of the materials available on record, I find that in the judgment dated 12.06.2007 in W.A.Nos.1317 to 1320 of 2000, there is a specific direction by the Division Bench of this Court to the Housing Board to fix the price at which the Housing Board had allotted commercial plots to other people in Sampath Nagar Phase I or Phase II Scheme, as the case may be during the period from January 2000 to June 2000. The SLP filed by the respondents-Housing Board against the said order of the Division Bench was also dismissed. Thus, the order passed by the Division Bench was confirmed. Further, I find that the respondents had assured the land owners that suitable alternate plots would be allotted to them on a priority basis for residential purposes. But, subsequently, they failed to allot residential plots, that is the reason why the petitioner was forced to approach the Court. Therefore, the petitioner cannot be blamed for the delay. When there is a specific direction by the Division Bench of this Court to the Housing Board to fix the price at which the Housing Board had allotted commercial plots, during the period from January 2000 to June 2000, which direction was also confirmed by the Honourable Supreme Court, now by in total violation to the said order, the respondents cannot fix the price arbitrarily for the plot. Therefore, I am of the opinion that the writ petition deserved to be allowed as prayed for.

For the foregoing reasons, the writ petition is allowed as prayed for. The impugned order dated 30.1.2013 is quashed and the respondents are directed to allot the plot in accordance with the directions of the Division Bench of this Court in W.A.Nos.1317 to 1320 of 2000, dated 12.06.2007. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/
Sub Asst. Registrar

ssv

To

1.The Chairman,
Tamil Nadu Housing Board,
331, Mount Road,
Nandanam, Madras-35.

2.The Executive Engineer
and Administrative Officer,
Tamil Nadu Housing Board, Erode,
Housing Unit,
III-Floor, Office-cum-Shopping Complex,
Surampattia Four Road,
Erode-638009.

1 cc to Mr.N. Premkumar, Advocate, Sr. 26064

2 ccs to M/s.V. Anandhamoorthy, Advocate, Sr. 25721

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