

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM

THE HON'BLE MR. JUSTICE **M.S. RAMESH**

W.P.No.29583 of 2012

M.P.No. 1 of 2012

S.Chellaiah

...Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by the Secretary to Government,
Housing and Urban Development Department,
Chennai – 600 009.
2. The Chairman,
Tamil Nadu Housing Board,
No.331, Anna Salai, Nandanam,
Chennai – 600 034.
3. The Executive Engineer,
Administrative Officer,
Tamil Nadu Housing Board,
Anna Nagar Western Extension,
Chennai – 600 101.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to receive the balance sale consideration for the property in plot AP.No.R-48J at Anna Nagar Western Extension, Chennai-101, and convey the title in his favour based on the order passed in W.A.No.1555 of 1994.

For Petitioner : Mr.S.Vijayan

For Respondents : Mrs.M.E.Rani Selvam,
Additional Government Pleader for R1
Mr.V.Anandamurthy
Standing Counsel for R2 & R3.

ORDER

The property bearing plot AP.No.R-48J at Anna Nagar Western Extension, Chennai – 101 was allotted to the petitioner on 19.12.1988. Pursuant to that allotment the petitioner had paid a sum of Rs. 14,050/- (Rupees fourteen thousand fifty only) towards the 1/3rd cost of the plot as demanded by the respondents on 05.12.1998. Subsequently, the petitioner had constructed a temporary structure in the said property and continued to be in possession of the same.

2. The third respondent by letter dated 28.11.1989 informed the petitioner that the allotment of the plot in his favour stood cancelled and that the plot was resumed. Pursuant to that, the third respondent had issued show cause notice, dated 04.05.1990, calling upon the petitioner to submit his explanation as to why the allotment should not be cancelled. In spite of the explanation given by the petitioner to the show cause notice no further orders were passed on the same.

3. In the mean time, the second respondent, after approval from the first respondent, converted certain lands which were reserved for the public purpose as shops and residential plots and allotted the same to the various individuals. With respect to such conversion of unused plots as shops and residential plots, the allotment in favour of individuals was found fault by the Government. Hence the first respondent issued G.O.Ms.No.1048, dated 31.10.1989, whereby they had cancelled the allotment made to various individuals. Subsequently, on the basis of G.O.Ms.No.1048, the respondents 2 and 3 cancelled about 139 allotments. Challenging the cancellation, the aggrieved individuals filed writ petitions in W.P.Nos.2430 of 1992 etc., as well as challenging the G.O.Ms.No.1048 dated 31.10.1989. This Court had disposed of the batch of writ petitions on 19.09.1991. The appeals preferred by the respondents 1 and 3 as against these writ petitioner in W.A.No. 1555 of 1994 etc., were also dismissed by the division Bench of this Court on 31.01.1995. The division Bench in its order had observed as follows :-

"I make it clear that the quashing of Government order in G.O.Ms.No.1048, Housing and Urban Development Department, dated 31.10.1989 is to the effect of setting aside the consequential order of cancellation of allotments

by the Housing Board, in all these cases. All the writ petitions will stand allowed. The respondent Housing Board is directed to abide by the terms and conditions in the agreement entered into between the Housing Board and each of the allottees with regard to the allotment orders made by them earlier. The petitioners are directed to approach the board and pay the installments, if already refunded. However, there will be no order as to costs."

4. On the basis of the above direction the first respondent issued G.O.Ms.No.615, dated 11.07.1995 and restricted the benefits only to the petitioners who approached this Court by filing separate writ petitions in W.P.No.2403 of 1992 batch etc. Since the petitioner was similarly placed as that of the individuals, who had filed the aforesaid writ petition, he gave a representation requesting for revocation of cancellation of allotment made in his favour and requested the respondents to receive the balance of sale consideration. Since his representation was not considered, the petitioner filed writ petition in W.P.No. 436 of 2003, where in he had sought for quashing the G.O.Ms.No.1048, dated 31.10.1989 and for consequential order to convey the said plot in his favour. By an order

dated 21.03.2003, made in the W.P.No. 436 of 2003, this Court had directed the first respondent to consider the petitioner's representation, with reference to the earlier order of this Court. Consequently, the first respondent by his letter dated 29.07.2004, rejected the petitioner's request. Challenging the same the petitioner had filed writ petition in W.P.No.27480 of 2004 before this Court, which was disposed on 28.09.2004 with a positive direction to the respondents to consider the petitioner's grievances. In spite of the same the respondents had not acted upon the petitioner's representation. Hence the present writ petition has been filed.

5. Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the respondents would submit that the Government had rejected the petitioner's request on 29.07.2004, stating that the petitioner had not challenged the cancellation order passed in G.O.Ms.No.1048, dated 31.10.1989 and after long gap of eight years the petitioner has filed the writ petition to direct the respondents to receive the balance consideration of the said property and therefore sought for rejection of the writ petition.

6. Heard both the counsels.

7. Earlier, identically placed person in the Anna Nagar Western Extension lay out, who had not challenged the G.O.Ms.No.1048, dated 31.10.1989, had filed writ petition in W.P.No.17036 of 1997 before this Court and being unsuccessful in the same, filed a writ appeal in W.A.No. 1679 of 1997, which came to be allowed on 24.03.2007 with a direction to the Tamil Nadu Housing Board to execute a sale deed in his favour. The order reads as follows :-

"7. During the proceedings before the Division Bench, the order of the Housing Board as well as the Government were extracted. With reference to Anna Nagar West Extension, the plot allotted to the appellant, viz., 287-B, also finds a place. The Bench gave the following directions, which are found in paragraph 7 of the said judgment:

Para 7: We made it clear that this judgment will not affect the authority of the Housing Board to take such action as is necessary in individual cases wherein the conditions of allotment have not been complied with. Liberty in this regard is reserved to the Housing Board. We also make it clear that such of those allottees who are not able to pay the

amount towards the allotments as per the terms of the allotment orders –whether in part or in full, shall pay the entire amount due as on this day on or before the end of March, 1995. On payment of the amount, the Housing Board shall complete the formalities and convey the title, of course, subject to the right of the Housing Board to take such actions as are necessary, in the event any of the conditions of allotment is violated. Such of the allottees who have not yet complied with the conditions and such of those who could not comply with the conditions having regard to the cancellation of the allotment orders, will be entitled to have the period from the date of cancellation till this date (i.e. pendency of the writ petition and writ appeals) excluding for complying with the conditions.”

8. In normal circumstances, the respondents should have granted similar relief to the appellant. But, on the contrary, they granted relief only to the persons who are covered by the second order of the learned single Judge dated 19.09.1991.

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14. We have gone through the order of the earlier Division Bench and we find that the

directions granted in the said Division Bench applies to the case of all concerned and, especially in paragraph 7, the Division Bench has given very limited scope for the Tamil Nadu Housing Board to act only in cases where either the amounts were not paid properly or allottees had not complied with the conditions of allotment and cancellation was permitted. Even the Division Bench in the aforesaid case was conscious about the pendency of the case and had also stated that pendency of the writ petition and writ appeal should be excluded in respect of complying with the conditions by the allottees. We cannot forget the fact that the Division Bench had held that cancellation of allotment made by the Housing Board at the behest of the Government is arbitrary and there are no actual grounds to cancel and also the further fact that as the appellant had constructed the house and has been living there and also paying tax, no useful purpose would be served in denying the relief to the appellant.

15. Under the circumstances, it is a fit case where the appellant should be granted the relief. Accordingly the writ appeals shall stand allowed. Respondents 2 and 3 are directed to

inform the appellant the exact amount to be paid towards the allotment of the plot within a period of two weeks from the date of receipt of a copy of this order. We also direct the respondents 2 and 3 to execute the sale deed in favour of the appellant within a period of four weeks thereafter. However, there will be no order as to costs. Consequently, C.M.P.No.18915 of 1997 will stand closed."

8. The above order is self-explanatory. The fact in the above order squarely applies to the fact of the petitioner's case. Under such circumstances, I am of the view that the petitioner is also entitled for similar relief. Accordingly, the writ petition is allowed. Respondents 2 and 3 are directed to inform the petitioner about the balance of sale consideration payable for the allotment of the plot within a period of two weeks from the date of receipt of a copy of this Order. On receipt of the same the respondents 2 and 3 are directed to execute the sale deed in favour of the petitioner with a period of four weeks, thereafter. No costs.

10.11.2016

Index :Yes/No
rts

M.S. RAMESH, J.

rts

To

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State of Tamil Nadu,
Housing and Urban Development Department,
Chennai – 600 009.
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Tamil Nadu Housing Board,
No.331, Anna Salai, Nandanam,
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