

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.A.Nos.2109 and 2110 of 2011

W.A.No.2109 of 2011

S.Saravanan ..Appellant/Petitioner

vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing & Urban Development Department,
Fort St.George, Chennai-9.

2.Tamil Nadu Housing Board,
Rep. by its Managing Director,
Anna Salai, Nandanam, Chennai-35.

3.The Executive Engineer,
cum Administrative Officer,
Vellore Housing Division,
Tamil Nadu Housing Board,
Sathuvachery, Vellore-9.

4.The Manager,
Sales and Services,
Vellore Housing Division,
TNHB, Sathuvachery,
Vellore-9.

5.Ganesh Saravanan ..Respondents/Respondents

W.A.No.2110 of 2011

S.Saravanan ..Appellant/3rd Respondent

vs.

1.Ganesh Saravanan,

2.State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing & Urban Development Department,
Fort St.George, Chennai-9.

3.The Executive Engineer,
cum Administrative Officer,
Vellore Housing Division,
Tamil Nadu Housing Board,
Sathuvachery, Vellore-9.

..Respondents/Petitioner &
Respondents 1 & 2

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 22.08.2011 made in W.P.No.224 of 2009.

WP.No.224 of 2009:

This Petition under Article 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 4th respondent in Letter No.A.1/481/01, dated 24.10.2008 and consequential impugned orders of the first respondent in G.O. (2D).NO.1396, dated 17/11/2008, housing and urban Development Department and the Memo.No. Allotment 3(4)/51410/08, dt.2/12/2008 issued by the second respondent and quash the same and consequently direct respondents 1 to 4 to allot the house property bearing Flat No.C.14, Poonga Nagar, Phase III, Sathuvachery, Vellore Housing Division, Vellore-632 009 in favour of the petitioner after receiving the correct balance sale consideration.

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 22.08.2011 made in W.P.No.15207 of 2009

WP.NO.15207 of 2009:

This Petition under Article 226 of the Constitution of India , for a issue of Writ of Mandamus to direct the respondents 1 and 2 to execute the Sale deed in favour of the petitioner in respect of Plot No.C-14 in T.N.H.B. Phase-III Sathuvachari Vellore-9 and deliver possession of the said plot to the petitioner.

For Appellants	:	Ms.A.Vinu Pradha
in both W.As.	:	For M/s.S.Ramesh Kumar
For Respondents	:	Mr.A.N.Thambidurai
		Special Govt. Pleader
		for R1 in W.A.No.2109 of 2011
		for R2 in W.A.No.2110 of 2011
		Mr.V.Anandhamoorthy
		for R2 to R4 in W.A.No.2109
		of 2011
		for R3 in W.A.No.2110 of 2011
		Mr.S.T.Varadarajulu
		for R5 in W.A.No.2109 of 2011
		for R1 in W.A.No.2110 of 2011

C O M M O N J U D G M E N T

(Judgment of the Court was made by M.SATHYANARAYANAN, J.)

The appellant filed W.P.No.224 of 2009 praying for issuance of a Writ of Certiorarified Mandamus to quash the order of the fourth respondent dated 24.10.2008 and the consequential order of the first respondent in G.O.(2D). No.1396, Housing and Urban Development Department dated 17.11.2008 and consequently directing the respondents 1 to 4 to allot the housing property bearing Flat No.C-14, Poonga Nagar, Phase-III, Sathuvachery, Vellore Housing Division, Vellore-632 009, in his favour after collecting the correct balance sale consideration. The subsequent allottee of the said flat, namely Mr.Ganesh Saravanan filed W.P.No.15207 of 2009 praying for issuance of a Writ of Mandamus directing the respondents 1 and 2 to execute the Sale Deed in his favour in respect of said flat and after contest, vide common order dated 22.08.2011, W.P.No.224 of 2009 filed by the appellant herein was dismissed and W.P.No.15207 of 2009 filed by Mr.Ganesh Saravanan came to be allowed. Challenging the legality of the said common order, these Writ Appeals are filed.

2. Facts leading to the filing of these Writ Appeals are narrated in detail and in extenso in the impugned common order and therefore, it is unnecessary to restate the facts once again.

3. It is the stand of the officials respondents/Tamil Nadu Housing Board (TNHB) that the appellant herein was initially allotted Flat No.C14 at Vellore Neighbourhood Scheme, Phase-III under Government Discretionary Quota in G.O. (2D) No.675, Housing and Urban Development Department dated 29.02.2000 and it was followed by regular allotment order and possession was also handed over to him and he had also executed a Lease-cum-Sale Agreement with the TNHB. However, the appellant had committed default in payment of monthly instalments and therefore, the order of allotment came to be cancelled, vide G.O.(2D)No.1395, Housing and Urban Development Department dated 17.11.2008 and the flat was re-allotted to one Mr.Ganesh Saravanan/private respondent herein, vide G.O.(2D) No.1396, Housing and Urban Development Department dated 17.11.2008. The said Ganesh Saravanan, after re-allotment, had paid the initial amount and executed a Lease-cum-Sale Agreement and also paid the entire cost of the flat on 30.03.2009 by obtaining bank loan. At that stage, the appellant herein filed W.P.No.224 of 2009 and obtained interim orders and therefore, the amount paid by Mr.Ganesh Saravanan was refunded to him and he refused to receive the same and

filed W.P.No.15207 of 2009, praying for issuance of a Writ of Mandamus to execute the Sale Deed in his favour in respect of the flat allotted. The officials respondents also took a stand that the appellant had defaulted in payment of instalments and though notices were served demanding payment, he has failed to remit the dues and therefore, the allotment order was cancelled and re-allotment was ordered to Mr.Ganesan Saravanan.

4. Ms.A.Vinu Pradha, learned counsel appearing for the appellant would submit that it is not correct to state that the notices alleging default in payment have been served on the appellant and due procedure have not been followed before cancelling the allotment order and would further add that the appellant had already paid Rs.1,91,419/- toward the said allotment and the said amount at least be ordered to be refunded and would further plead that if any vacant flat is available, it may be allotted in favour of the appellant on sympathetic consideration.

5. Mr.V.Anandamoorthy, learned Standing Counsel appearing for the Tamil Nadu Housing Board (TNHB) has invited the attention of this Court to the Circular in Allotment 2(2)/28046/93 dated 02.07.1999 and would submit that a meager fine was imposed on the appellant and a decision has been taken to charge interest @ 19% for the default period and accordingly the interest amount due and payable by the appellant is calculated at Rs.2,29,665/- and after adjusting the amount of Rs.1,91,419/- already paid by him from the total due of Rs.5,57,940/-, the appellant is still due and payable to a sum of Rs.3,36,521/-. The learned Standing Counsel appearing for the TNHB, on the merits of the case, would submit that despite very many notices sent to the appellant, he failed to respond and therefore, the order of allotment was cancelled and it was re-allotted in favour of one Mr.Ganesh Saravanan and he has paid the entire sale consideration as early as on 30.03.2009 and on account of the interim order passed in W.P.No.224 of 2009, the amount paid by him was refunded, but he failed to receive the same and he has filed W.P.No.15207 of 2009 for execution of the Sale Deed in his favour and it was also allowed and at this distant point of time, the claim made by the appellant for refund of the amount paid or in the alternative to give fresh allotment is unsustainable and therefore, prays for dismissal of these Writ Appeals.

6. Mr.S.T.Varadarajulu, learned counsel appearing for the private respondent would contend that the TNHB, in strict compliance of the relevant norms and regulations, had cancelled the allotment given in favour of the appellant and re-allotted the same to Mr.Ganesh Saravanan and in pursuant to the dismissal of the writ petition filed by the appellant in W.P.No.224 of 2009 and allowing of the writ petition in W.P.No.15207 of 2009, the Sale Deed was executed in favour of Mr.Ganesh Saravanan and he is in possession and enjoyment of

the same for quite long years and at this distant point of time, his possession need not be disturbed and prays for dismissal of these Writ Appeals.

7. This Court has considered the rival submissions and also perused the entire materials placed before it.

8. It is not in serious dispute that the appellant did not pay the instalments in time. Though it is the primordial submission of the learned counsel appearing for the appellant that the notices informing about the alleged default with a direction remit the same on time did not reach the appellant, the fact remains that it was served through affixture. The Tamil Nadu Housing Board, due to non-responsive attitude on the part of the appellant, cancelled the allotment order and re-allotted the same in favour of the private respondent/Mr.Ganesh Saravanan and he has also paid the entire sale consideration and on account of the interim orders passed by this Court in W.P.No.224 of 2009, the amount was sought to be refunded and it was refused to be received and thereafter, the private respondent had filed W.P.No.15207 of 2009 praying for appropriate direction to execute the sale deed and vide common order dated 22.08.2011, the writ petition filed by the appellant was dismissed and the writ petition filed by the private respondent came to be allowed and accordingly, the Sale Deed was executed in favour of Mr.Ganesh Saravanan and he is in continuous possession and enjoyment of the flat in question for nearly 6 years.

9. In the considered opinion of the Court, due process of law has been followed before cancelling the allotment order and subsequent order of re-allotment in favour of Mr.Ganesh Saravanan/private respondent and therefore, it cannot be faulted with. Insofar as the alternative plea made by the learned counsel appearing for the appellant that Rs.1,91,419/- already paid by the appellant may be directed to be refunded or in the alternative, he may be allotted a new flat, this Court is of the view that the said plea cannot be considered in the light of the above cited Circular in No.Allotment 2(2)/28046/93 dated 02.07.1999.

10. It is also brought to the knowledge of this Court by the learned Standing Counsel appearing for the TNHB that the policy of allotment under Government Discretionary Quota has been completely scrapped from 2011 onwards and the petitioner is to get allotment through regular process and in the light of the said stand, the alternative plea made by the appellant for allotment of new flat, also cannot be considered.

11. This Court, on an independent application of mind, to the entire materials placed before it, is of the view that there is no error apparent or infirmity in the reasons assigned in the impugned common order dismissing the writ

petition in W.P.No.224 of 2009 and allowing of the writ petition in W.P.No.15207 of 2009.

12. In the result, these Writ Appeals are dismissed, confirming the order dated 22.08.2011 made in W.P.Nos.224 of 2009 and 15207 of 2009. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

jvm

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Housing & Urban Development Department,
Fort St.George, Chennai-9.
- 2.The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam, Chennai-35.
- 3.The Executive Engineer,
cum Administrative Officer,
Vellore Housing Division,
Tamil Nadu Housing Board,
Sathuvachery, Vellore-9.

+2cc to Mr.V.Anandha Moorthy, Advocate sr.69035

+1cc to Mr.S.T.Varadharajan, Advocate sr.69089

W.A.Nos.2109 and 2110 of 2011

nr1(co)
ss(13/10/2017)

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