

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 15.11.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.352 of 2017 and
CMP No.5398 of 2017

A.Sampath Raja ...Appellant/Petitioner

Vs

- 1.Government of Tamil Nadu
Represented by its Secretary to Government,
Housing and Urban Development Department,
Chennai - 600 009.
- 2.The Tamil Nadu Housing Board,
Represented by its Chairman and Managing Director,
Nandanam, Chennai - 600 035.
- 3.Executive Engineer and Administration Officer,
Anna Nagar Division,
Tamil Nadu Housing Board,xc
Thirumangalam, Chennai - 600 101....Respondents/Respondent

Prayer:- Writ Appeal filed under clause 15 of Letters Patent,
against the order made in W.P.No.8511 of 2016 dated 03.10.2016.

WP.No.8511 of 2016:Writ Petition under Article 226 of the
Constitution of India praying to issue a Writ of Certiorarified
Mandamus to Calling for the records in respect of the impugned
Letter No. A.No. A.II. 3/6120/A/ 90 dated 08.02.2016 issued by
the third respondent quash the same and direct the respondents
to allot the plot NO. 206 at Karattur Scheme Area to the
Petitioner herein by re-fixing the value of the plot

For Appellant : Mr.V.Raghavachari

For Respondents: Mr.K.Venkatramani
Additional Advocate General
Asst. by Mr.V.Anandhamurthy
Addl.Govt.Pleader

J U D G M E N T

K.K. SASIDHARAN, J.

The writ petition filed by the appellant challenging the proceedings dated 8 February, 2016 fixing the land value relating to the plot allotted to the appellant at Korattur Scheme Area was dismissed by the learned single Judge. The order is under challenge in this intra court appeal.

2. We have heard the learned counsel for the appellant. We have also heard the learned Additional Advocate General on behalf of the Tamil Nadu Housing Board.

3. The Government of Tamil Nadu vide order in G.O.Ms.No.2035 Housing and Urban Development Department, dated 31 December, 1987 allotted Plot No.206, Korattur to the appellant. Similarly, Tmt.S.Mallika was allotted Plot No.L-20 under the very same order of allotment. The Tamil Nadu Housing Board, pursuant to the order of allotment, issued a regular allotment order to Tmt.S.Mallika allotting her plot No.L-20 by fixing the rate per ground at Rs.89,000/-. The cost of one ground and 210 sq.ft. was Rs.1,16,700/-. We are informed that the allottee was put in possession of the land by the Housing Board after collecting the entire cost.

4. The allotment order issued to the appellant was cancelled by order in G.O.Ms.No.341 Housing and Urban Development Department, dated 30 March, 1990. By the said order, the Government called upon the Housing Board to consider the case individually and decide as to whether the allottee is eligible for allotment. It is the admitted case of the parties that without issuing notice to the appellant, his allotment was cancelled. The appellant therefore challenged the order dated 30 March 1990 before the writ court in W.P.No.2891 of 1991. The writ petition was allowed. The Housing Board was directed to issue notice to the appellant and pass appropriate orders on merits.

5. Since there was no response, the appellant filed another writ petition in W.P.No.2303 of 2016. The learned single Judge, by order dated 28 January, 2016 in W.P.No.2303 of 2016 directed the respondents to take a decision pertaining to the cost of the plot.

6. The Tamil Nadu Housing Board, as per proceedings dated 8 February, 2016 fixed the land cost at Rs.4,000/- per sq.ft. The appellant was directed to pay a sum of Rs.59,52,000/- towards the cost of the plot within a period of 30 days. The said proceedings was unsuccessfully challenged before the writ court in W.P.No.8511 of 2016.

7. The Government of Tamil Nadu allotted a plot bearing No.206 at Korattur Scheme Area to the appellant by order dated 31 December, 1987. Similarly, allotment was given to Tmt.S.Mallika. Even though, Plot No.L-20 was given to S.Mallika by issuing a regular allotment order, the fact remains that no such order was issued to the appellant. The initial allotment made to the appellant was later cancelled. The order was quashed by the writ court by order dated 1 December, 1998 in in W.P.No.2891 of 1991.

8. It is a matter of record that there was no reconsideration of the issue relating to the cancellation of the allotment pursuant to the order dated 1 December, 1998 in W.P.No.2891 of 1991. The respondents, without considering the core question regarding the cancellation afresh, proceeded to fix the land cost, meaning thereby, they have confirmed the original allotment order, dated 31 December, 1987 made in favour of the appellant. In view of the allotment by proceedings dated 31 December, 1987, the liability is only to pay the rate prevailing as on the said date. The regular allotment order given to Tmt.S.Mallika contained the valuation as on 26 April, 1989. The ground value was fixed at Rs.89,000/- per ground. The liability of the appellant therefore is to pay the rate taking into account the rate per ground fixed in the case of Tmt.S.Mallika.

9. The respondents without understanding the scope of the order passed by the writ court in W.P.No.2891 of 1991 re-determined the cost of the plot payable by the appellant. The respondents could have taken a decision as to whether the appellant is entitled to the allotment of plot in view of the direction issued by the learned Judge. The respondents waived that right and proceeded to collect the land cost from the appellant under the premise that his allotment still holds good.

10. The appellant is correct in his contention that on account of setting aside the order cancelling the allotment, he is entitled to the plot and is liable to pay only the then guideline rate.

11. The learned counsel for the appellant submitted that the appellant is prepared to pay interest, in case, the land value is fixed taking into account the guideline rate as on 26 April, 1989. In case, the amount is fixed in the way suggested by the learned counsel for the appellant, he is liable to pay less than Rs.6 lakhs. We are not in a position to agree with the said submission.

12. The Tamil Nadu Housing Board fixed the land cost at the rate of Rs.4000/- per sq.ft. by order dated 8 February, 2016.

We are informed that even the present rate is only Rs.4000/- per sq.ft. Since the allotment made to the appellant ,by order dated 31 December, 1987 is still intact on account of the order dated 1 December, 1998 in W.P.No.2891 of 1991, the appellant should be directed to pay a reasonable amount for allotment.

13. We have perused the entire file relating to the valuation of the Plot No.206, Korattur Scheme Area allotted to the appellant and the valuation in the case of Tmt.S.Mallika. After hearing the learned counsel for the parties and on perusal of the entire records, we are of the view that interest of justice would be sub served by directing the appellant to pay Rs.2000/- per sq.ft. instead of Rs.4000/- per sq.ft, as determined by the Housing Board.

14. We direct the Tamil Nadu Housing Board to issue a fresh demand, calculating the land cost at the rate of Rs.2000/- per sq.ft. Notice of demand should be issued to the appellant within a period of eight weeks from today. The appellant shall be given eight weeks' thereafter to pay the land cost. There shall be a further direction to the respondents to execute the Sale Deed in favour of the appellant after collecting the amount at the rate indicated above.

15. The intra court appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Government of Tamil Nadu
Housing and Urban Development Department,
Chennai - 600 009.

2.The Chairman and Managing Director,
The Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

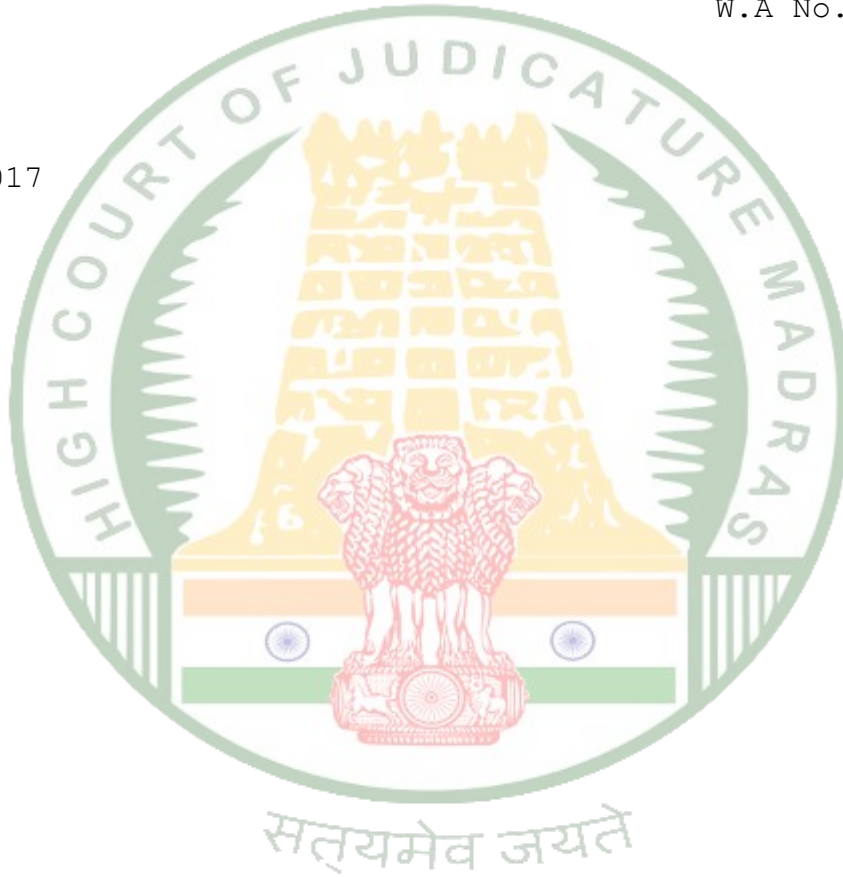
3.Executive Engineer and Administration Officer,
Anna Nagar Division,Tamil Nadu Housing Board,
Thirumangalam, Chennai - 600 101.

+1 cc to the Govt Pleader sr 81451

+1 cc to M/s.V.Anandhamurthy Advocate sr 81213

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