

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.2637 of 2011
and
M.P. Nos. 1 & 2 of 2011

P. Jayakodi

..Petitioner

Vs.

1. The Secretary to Government
of Tamil Nadu
Housing and Urban Development
Department, Secretariat
Fort St. George
Chennai - 600 009
2. The Managing Director
Tamil Nadu Housing Board
Anna Salai, Nandanam
Chennai -600 035.
3. The Executive Engineer cum
Administrative Officer
Housing Board Division
Salem, Salem District.

4. Mr. Prabhakar

.. Respondents

PRAYER: 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 relating to the letter No.R6/3883/10 dated 19.11.2010 of the third respondent and addressed to the petitioner, quash the same and direct the respondents 1 to 3 to allot house site No.6 in Phase No.III in Namakkal Kondichettypatty to the petitioner as ordered in G.O. 2(D) No. 646 Housing and Urban Development (Housing Board 5(1) Department) dated 26.10.2010 or in the alternative directing the respondents to allot house site No.21 in the same scheme to the petitioner and pass further orders.

For Petitioner : Mr. C. Johnson

For Respondents :Mr. S. Diwakar
Spl. Government Pleader for R1
Mr.V.Yuvakumar for TNHB for R2&3

R4 - Dismissed.

O R D E R

This writ petition has been filed praying to quash the letter No.R6/3883/10 dated 19.11.2010 of the third respondent and direct the respondents 1 to 3 to allot house site No.6 in Phase No.III in Namakkal Kondichettypatty to the petitioner as ordered in G.O. 2(E) No. 646 Housing and Urban Development (Housing Board 5(1) Department) dated 26.10.2010 or in the alternative to allot house site No.21 in the same scheme to the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner was allotted a house site bearing No.6 in MIG III in Namakkal Kondichettypatty Scheme vide G.O. 2D. 646 (Housing and Urban Development HB-5 (1) Department dated 26.10.2010. It is stated that when the petitioner went to remit one third cost of the property, she was informed by the respondent office that the same has already been allotted to the 4th respondent and they refused to receive the money. Learned counsel for the petitioner submits that the 2nd respondent issued a Memo in Allotment No.3(1)/44890/2010 dated 03.11.2010 enclosing G.O. 646 dated 26.10.2010 and thereby instructed the petitioner to strictly follow the allotment conditions as prescribed by the 2nd respondent and that the petitioner also followed the same. Subsequently, on 19.11.2010 the 3rd respondent had issued letter No.R6/3883/10 stating that the house site No.6 had been allotted to the 4th respondent under the Government Quota, without referring the earlier Government order. Hence, the petitioner submitted a letter to the 2nd respondent on 20.12.2010, requesting to allot her another house No.H-21 in the same site, if the house site No.6 has been allotted to the 4th respondent. However, no action has been taken on her letter and so the petitioner has filed this writ petition seeking the aforesaid prayer.

3. Counter affidavit has been filed by the 2nd respondent and Adoption counter by the 1st respondent. Reiterating the reply stated in the counter affidavit filed by the respondents, learned counsel for the Housing Board submitted that originally the house site No.M6 in Kondichettypatty

Namakkal Phase III Scheme was allotted in favour of the 4th respondent Prabhakaran, under Government discretionary quota, as per Government Order in G.O.2D No.1460 Housing and Urban Development Department dated 12.12.2008. Since the 4th respondent failed to make the payment, a cancellation order was sent to him and the plot was surrendered to the Government. But, the said allottee requested for further time to pay the initial amount. Considering his request, Government extended time upto 30.09.2010 and the same was communicated vide Lr. No. 25462/HB5 (1)/09-1 dated 08.09.2010 along with Board's Lr.No. Allot/3(1)/55478/08 dated 24.09.2010. The 4th respondent also made the payment of Rs.2,98,400/- and hence the house site was re-allotted to the 4th respondent Prabhakaran. Therefore, the 3rd respondent office refused to receive the cost from the petitioner. Further, the petitioner was requested to approach the 1st respondent to get the allotment since the allotment has been made under the Government discretionary quota. Without approaching the 1st respondent, the petitioner has filed this writ petition.

4. Heard learned counsel for the petitioner, learned Special Government Pleader and learned counsel for the respondents 2 and 3.

5. As rightly pointed out by learned counsel for the Board, the order impugned by the petitioner is only a communication of the 3rd respondent dated 19.11.2010, informing that the house site sought for by the petitioner has already been allotted to the 4th respondent as per the orders of the Government. The 2nd respondent has allotted a house site and pursuant thereto the petitioner should have paid the cost amount for the said plot but the petitioner has not deposited any amount to the Board. In the orders issued by the Government in favour of the 4th respondent for extension of time, nothing has been mentioned about the payment made by the petitioner was refused. The relief prayed for in the writ petition is against the 4th respondent. It is seen from the docket that the writ petition has been dismissed as against the 4th respondent. The petitioner has not challenged the orders of the 1st respondent, issued in favour of the 4th respondent, extending the time for payment of the cost. Therefore, the petitioner cannot have any right to seek for setting aside the subsequent order passed by the 3rd respondent, without challenging the proceedings of the 1st respondent.

6. In view of the above, the writ petition is dismissed. Consequently, the connected M.Ps are closed. No costs.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

To

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of Tamil Nadu
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3. The Executive Engineer cum
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Salem, Salem District.

+1 CC to M/s. C. Johnson, Advocate sr 2974

+1 CC to The Govt. Pleader sr 3073

+1 CC to M/s. V. Yuvakumar, Advocate sr 2675

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GMI (CO)
sp/5/4