

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.11.2017

Pronounced on : 14.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.787 of 2016 and

CMP.No.10328 of 2016

- A.C. SridharanAppellant/Petitioner
- Vs.
- 1. The State of Tamil Nadu
- Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.
- 2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
- 3.The Executive Officer/
Administrative Officer,
Tamil Nadu Housing Board,
EVN Road, Erode- 9.Respondents/Respondents

PRAYER: This Writ Appeal is filed under Clause XV of Letters Patent to set aside the order in WP.No.31159 of 2015 dated 15.03.2016. Writ petition filed under Article 226 of the constitution of India for issuance of a writ of certiorarified Mandamus calling for the entire records relating to the impugned letter of the 1st respondent in Letter No. 17924/LA.3(1)/2013-14 dated 17.06.2015 and quash the same consequently direct the respondents to allot Plot No.R-45B situated at Sampath Nagar Erode-11 to the petitioner as the price fix by taking note of guideline value as fixed by the Registration Department in the year of 2000.

For Appellant : Mr.AR.L.Sundaresan
Senior counsel for
Mrs.A.L.Gandhimathi

For Respondents : Mrs.A.Sri Jayanthi
Special Government Pleader for R1
Mr.V. Anandhamurthy ,
Senior Counsel (TNHB) for R2 & R3

JUDGMENT

P.VELMURUGAN, J.

The appeal is filed against the order dated 15.03.2016 passed by the learned Single Judge in W.P.No.31159/2015.

2. Originally, the lands were acquired by the Government for a project of the second respondent/Tamilnadu Housing Board, Nandanam, Chennai.

3. The land belonged to one Swamiappa Gounder who left behind two sons viz., Chellappa Gounder and Palanisamy Gounder. The appellant is the grandson of Swamiappa Gounder through Chellappa Gounder. The claim of the appellant is that he is entitled to a plot under ex-owner category and based on his application, the third respondent sent a communication on 30.05.2014, to findout as to whether he is willing to accept Plot No.R-45 B. The appellant has also accepted the same. But, the Government has rejected the appellant's claim stating that Palanisamy Gounder, son of Swamiappa Gounder i.e., the brother of appellant's father has already been allotted a plot under the ex-owner category.

4. The learned Single Judge, after hearing the arguments of both sides and based on the available records, dismissed the writ petition filed by the appellant. Aggrieved against the order passed by the learned Single Judge in W.P.No.31159 of 2015, the writ petitioner has preferred the present Writ Appeal.

5. Heard the rival submissions made on both sides and perused the available records.

6. The learned Senior counsel for the appellant would submit that the appellant had applied for a plot under ex-owner category and the third respondent has sent a communication on 30.05.2014 seeking for his willingness. But, subsequently without offering any valid reason, the first respondent rejected the appellant's claim. Further, he would state that the appellant is entitled to a plot under ex-owner category. Even in the earlier occasion, the appellant herein filed a Writ Petition in W.P.No.32481/2013, in which, this court has directed the first respondent to consider the representation. Aggrieved against the same, the Housing Board has filed the Writ Appeal before this court. The Writ Appeals were disposed of by making some observations. Again the appellant has filed another Writ petition. This Court has directed the respondents to consider the representation of the petitioner. Subsequently, the third respondent has sent a communication to the appellant on 30.05.2014 seeking willingness of the appellant. Though, the appellant has sent his willingness, the Government has rejected the claim of the appellant stating that one of the erstwhile ex-owner got the plot under the ex-owner category.

7. Further, he would submit that even the other persons who come under the ex-owner category also got the plots. Therefore, rejection of his claim is arbitrary and the same is liable to be set aside. He further submitted that the learned Single Judge has failed to consider all the above aspects and has simply dismissed the writ petition. Therefore, the order passed in the writ petition is liable to be set aside.

8. The Learned counsel representing for the respondents would submit that the land originally belonged to one Swamiappa Gounder. The lands were acquired by the Government for the Project of the second respondent Board at Erode. Land owner, Swamiappa Gounder left behind two sons, viz., Chellappa Gounder and Palanisamy Gounder. This appellant is the son of Chellappa Gounder and grandson of the original owner, Swamiappa Gounder. The said Chellappa Gounder relinquished his right in favour of Palanisamy Gounder. Palanisamy Gounder has already filed a writ petition before this Court and got an order in favour of him. In the earlier writ petitions, this Court considered the fact that Chellappa Gounder relinquished his right to his brother, Palanisamy Gounder. Therefore, the representation of the Palanisamy Gounder has been considered by the Government and has allotted individual plots under ex-owner category in favour of one of the legal heirs of Swamiappa Gounder. Since the father of the appellant has relinquished his share in the property, the appellant is not entitled to the allotment of a plot under the ex-owner category.

9. The main contention raised by the learned counsel for the appellant before this court is that the third respondent issued an order dated 30.05.2014 in favour of the appellant indicating that they are going to allot a Plot No.R-45 B, Sampath Nagar, Erode. The appellant has also sent his consent letter for the allotment and he has also expressed his willingness to pay the costs for the said plot. The first respondent cancelled the allotment on the ground that the appellant is not eligible for allotment of plot under the category of lands losers/ex-owner category. Since the appellant's paternal uncle one Palanisamy was allotted Plot No.R.57, the order containing the proposal for allotment was cancelled. The learned Single Judge dismissed the Writ Petition on the sole ground that already his paternal uncle has been allotted one plot under the same category. It is the contention of the appellant that the land of his grand father, has been acquired earlier, and as such being the legal heirs of his father, the appellant is entitled for allotment of land under ex-owner category.

10. A perusal of the records would go to show that the lands were acquired by the Government for a project of the Tamilnadu Housing Board at Erode from one Swamiappa Gounder. The Swamiappa Gounder has got two sons namely Chellappa Gounder and Palanisamy Gounder. The appellant is the son of the Chellappa Gounder and grandson of Swamiappa Gounder.

11. The appellant claims that he is entitled to a plot under ex-owner category and he made an application for the same. Based on his application, the third respondent sent a communication on 30.05.2014 and subsequently, the same was cancelled on the ground that the plot under ex-owner category was allotted to one Palanisamy Gounder, the son of Swamiappa Gounder.

12. The learned Single Judge has stated that the appellant has already filed a Writ Petition in W.P.No.32481 of 2013 before this court seeking to consider his representation dated 12.08.2013 and pass final orders in the light of the order of the Division Bench of this court dated 12.06.2007 in W.A.Nos.1317 to 1320 of 2000 based on his request that the brother of the Palanisamy Gounder i.e., father of the appellant has relinquished his share in the property and therefore, Palanisamy Gounder is entitled to the compensation as well as the plot under ex-owner category. Though the appellant attempted to state that the compromise between his father and uncle Palanisamy Gounder was that his uncle Palanisamy is entitled to get the compensation for the acquired lands and his father Chellappa Gounder would get a plot under ex-owner category, the learned Single Judge has found that there was no proof for such compromise/undertaking. In fact the appellant has not raised this ground before this court in the earlier writ petitions. Thus, the learned Single Judge has rightly rejected the claim of the appellant. The ground raised by the appellant is only an after thought and no proof has been produced before the court at the earlier point of time.

13. It is not in dispute that at the time of acquisition, the land was in the name of Swamiappa Gounder who got two sons viz., Chellappa Gounder and Palanisamy Gounder. According to the respondents, they have allotted one plot to the legal heirs of Swamiappa Gounder. Therefore, they cannot allot another plot under the same ex-owner category. Therefore, the appellant is not eligible for allotment of plot under the same category being the other legal heir of Swamiappa Gounder. Therefore, considering the above said facts and the policy of the Government/Housing Board, the learned Single Judge has rightly dismissed the writ petition.

14. In view of the above circumstances, we do not find any valid reason to interfere with the order passed by the learned Single Judge.

15. The learned Senior counsel for the appellant made an attempt to canvas the point that the Government has allotted some additional plots to the other ex-owners. Therefore, the appellant seeks to allot plot No.45 B to him. But the appellant has not filed any proof to that effect, to show that the other ex-owners have been allotted additional plots under the ex-owner category.

16. Learned counsel for the respondents/State on instruction submitted that no additional plot was allotted to the other ex-owner under the same category. Those plots have been allotted to the other land owners under the general category on payment of market value and not under the special category of ex-owner.

17. Since one of the legal heirs has already got allotment under the category, this appellant, in the capacity of another legal heir of Swamiappa Gounder, is not entitled to any allotment of plot under the ex-owner category. Therefore, we find no reason to interfere with the order passed by the learned Single Judge. The order passed by the learned Single Judge does not warrant interference.

18. In the result, Writ Appeal is dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gv/tar

To

- 1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.
-
- 2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
- 3. The Executive Officer/Administrative Officer,
Tamil Nadu Housing Board, EVN Road, Erode- 9.

+ 1 cc to M/s. AL.Ganthimathi, Advocate SR.89744

+ 1 cc to Mr. V. Anandhamoorthy, Advocate SR.89266

W.A.No. 787 of 2016
& CMP.No.10328 of 2016

AK (CO)
EU (17/01/2018)



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