

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2016

PRONOUNCED ON : 10.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No. 19831 of 2013

and

M.P.Nos.1 & 2 of 2013

C.Ravi ... Petitioner

vs.

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

2. Tamil Nadu Housing Board,
Rep. by its' Managing Director,
Annasalai, Nandanam,
Chennai - 600 035.

3. Executive Engineer & Administrative Officer,
Mogappair Division / J J Nagar Division,
Tamil Nadu Housing Board,
Thirumangalam,
Chennai - 600 101.

4. The Manager,
Marketing & Services,
Mogappair Division / J J Nagar Division,
Tamil Nadu Housing Board,
Thirumangalam,
Chennai - 600 101.

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India for the issuance of a WRIT OF CERTIORARIFIED MANDAMUS calling for the records relating to the notification of the third respondent dt. NIL, published in "The New Indian Express", Chennai Edition dt. 19.05.2013 for allotment of flats in Nolambur Village, Ambattur Taluk, Thiruvallur District, quash the same in so far as it fails to allot one flat to the petitioner @ Rs.3,000/- per sq.ft. and for a consequential direction directing the respondents to allot one flat to the petitioner in Nolambur Village, Thiruvallur District.

For Petitioner : Mr.R.Saravana Kumar
For Respondents : Mrs.M.E.Raniselvam for R1
Additional Government Pleader
Mr.V.Anandamurthy for R2 to R4
Standing Counsel for TNHB

ORDER

The brief facts of the petitioner's case are as follows:

The petitioner was allotted with flat No.1-TE in the 3rd floor in Mogappair Scheme-I measuring an extent of 842 sq.ft, by an allotment letter, dated 31.01.2007. The cost of the said flat was fixed at Rs.25,26,000/-. The petitioner had paid a sum of Rs.10,10,400/-. When the petitioner was waiting for execution of the sale deed, by a letter dated 13.08.2008, the third respondent informed him that there was a litigation pending in the Supreme Court and therefore, asked for the petitioner's option either to seek for refund or for allotment in Scheme-3 or in Scheme-4. Since the extent of the flats in the Scheme-3 and Scheme-4 are lesser in size, the petitioner refused for the offer. However, on 01.07.2009, he made a request for allotment of a flat near Park Road, behind Andaman Guest House, West Anna Nagar Extension or any residential flat nearby. However, the third respondent refused to accept the said offer. Hence, the petitioner again requested the respondents to allot a vacant site, which is located at Padi Industrial Area, C24 to C-28 and also in front of C-27 & C-28, to which the third respondent replied by a letter dated 31.08.2009 stating that they were ready to refund the amount with interest. When the petitioner came to know that the respondent Board has again offered flats on lease cum sale basis, by way of drawal of lots in Nolambur, Chennai under the HIG (higher income group) category, the petitioner requested for allotment of one flat therein. However, there was no positive reply from the respondents. When the petitioner had already paid a sum of Rs.10,10,400/- in April 2007 itself and has been all along staying in monthly rented house, he is seriously prejudiced and therefore has filed the present writ petition.

2.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the first respondent and the learned Standing Counsel appearing for the respondents 2 to 4/Tamil Nadu Housing Board.

3.The learned Standing Counsel appearing for the respondent Board submitted that in view of the various litigations pending in the originally allotted flats in

Mogappair Scheme-I, they are unable to execute the sale deed in favour of the petitioner. However, by way of a counter affidavit, the respondents have submitted that they are willing to give a flat to the petitioner in Nolambur phase-I, subject to the condition that the petitioner should accept the cost of the flat at Rs.6,700/- per square feet.

4.The learned counsel for the petitioner, however, submitted that he is willing to take the flat in Nolambur Phase-I at the rate of Rs.3,000/- per square feet only.

5.The learned counsel for the respondent Board, submitted that if the petitioner's request is accepted, it could be cited as a bad precedent and the Board will have to allow other flats with the same price, which will fetch a huge loss to the respondent Board.

6.It is not in dispute that the petitioner was allotted flat No.1-TE in Mogappair Scheme-I and he has also paid Rs.10,10,400/- in April 2007 itself. In the present case, for no fault of the petitioner, he was made to wait for almost 10 years for an alternative allotment. The various offers given by the petitioner was rejected by the respondents. It is also admitted that the respondents have already reserved a flat in Nolambur Phase-I for the petitioner. The apprehension of the respondents is that if the flat is given for a sum of Rs.3,000/- per square feet, it would be a bad precedent and the Board will also incur a huge loss. The fact that the delay in allotting an alternative flat is not because of the petitioner cannot be ignored. Likewise, the respondents have all along been holding the petitioner's initial payment of Rs.10,10,400/- also. Though the petitioner had opted for so many alternative flats, the respondents had only been rejecting the same and offering to refund the amount paid by the petitioner, which cannot be justifiable. The apprehension of the respondent Board is that the present allotment in Nolambur Phase-I would be sited as a bad precedent. If that be so, the ends of justice would be met, if the petitioner's case is considered as a special case, with an observation that this will not be a precedent to other cases.

7.In such circumstances, there shall be a direction to the second respondent to allot one flat in Nolambur Phase-I Scheme, which is already reserved in favour of the petitioner at the rate of Rs.3,000/- per sq. feet. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that the present order is being passed as a special case and in view of the extraordinary circumstances of the facts in this case, the same shall not be cited as a precedent by any other allottee.

8. Accordingly, this writ petition is allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vs

To

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

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

+1 cc to M/s.R.Saravanakumar Advocate sr 9272

+1 cc to M/s.V.AnandhaMoorthy Advocate sr 8975

W.P.No.19831 of 2013

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