

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.1357 of 2011
and
M.P.Nos.1 and 2 of 2011

S.L.Srinivasan

..Petitioner

Vs

- 1.State of Tamil Nadu
Rep. By Secretary to Government
Housing and Urban Development Department,
Secretariat, Chennai-600 009
- 2.Chairman and Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai-600 035
- 3.Executive Engineer and Administrative Officer
Tamil Nadu Housing Board,
Vellore Housing Unit,
Vellor

..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the order passed in G.O.(2D) No.496 dated 02.09.2010 on the file of the first respondent herein and to quash the same and direct the first respondent herein to restore the allotment order issued in favour of the petitioner in G.O.2(d).No.169 (Housing and Urban Development) dated 01.09.2005.

For Petitioner : Mr.R.Natarajan

For Respondents : Mr.A.Zakir Hussain,
Govt.Advocate for R1

Mr.V.Anandhamoorthy,
Standing counsel
For TNHB (R2 and R3)

ORDER

The Prayer in the Writ Petition is to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed in G.O.(2D) No.496 dated 02.09.2010 on the file of the first respondent herein and to quash the same and direct the first respondent herein to restore the allotment order issued in favour of the petitioner in G.O.2(d).No.169 (Housing and Urban Development) dated 01.09.2005.

2. The Petitioner approached the Tamil Nadu Government requesting to allot a Plot at Sathuvachery, Vellore, under the discretionary quota, by considering his representation. Accepting the said request, the Tamil Nadu Government passed G.O.(2D).No.169 (Housing and Urban Development) dated 01.09.2005 reserving Plot No.383 A under the Government discretionary quota and further directed the Petitioner to pay the requisite amount within 21 days of the receipt of the said order. Subsequently, by G.O.(2D)No.115 [Housing and Urban Development Department] dated 19.09.2006, the 1st respondent, pointed out that the allotment made earlier was cancelled. It is further pointed out that the earlier G.O.D.No.169 dated 01.09.2005 was passed by allotting the said land in favour of the Petitioner, without fixing the cost/price for the aforesaid plot/land and that G.O.(2D).No.169 dated 01.09.2005 is contrary to the guidelines issued by the Government.

3. Assailing the cancellation order passed by the 1st respondent, the Petitioner filed W.P.No.49769 of 2006 before this court, seeking to quash the cancellation order and to direct the respondents to handover the vacant portion of Plot No.383-A of Sathuvachery, Vellore. This court, by order dated 21.07.2009, while quashing the impugned order, reserved liberty to the 1st respondent to pass orders afresh giving reasons for such cancellation. Thereafter, the 1st respondent, vide Letter No.8386/HB5(1)/09-5, dated 25.08.2010, passed the impugned order, holding that Government Discretionary Quota is the discretion being exercised by the Government on specific cases and these discretions cannot be made mandatory in respect of any particular individual. According to the Petitioner, the said order dated 25.08.2010 is passed without providing an opportunity to the Petitioner. However the Housing and Urban Development Department, by yet another G.O.(2D).No.496 dated 02.09.2010, confirmed the order of cancellation, stating that in supercession of the orders issued in Government Letter dated 25.08.2010 allotting Plot No.383-A of Vellore Sathuvachari Phase-1 made to the petitioner is cancelled.

4. Thus, Pursuant to the order dated 25.08.2010, the Government passed G.O.2D No.496 dated 02.09.2010, wherein, the first respondent passed the impugned order by stating the reason that the applicant/Writ Petitioner owned a house at Door No.23/66, First Street, Vijayaraghavapuram, within the boundary of Sathuvachari Municipality. Therefore, he is not eligible for allotment of flat or plot by the Government.

5. Assailing the said impugned order dated 02.09.2010, the Petitioner has filed the present writ petition before this court, by raising the ground that the 1st respondent has not afforded any opportunity to the Writ Petitioner before passing the impugned order. Therefore, on this ground alone, the impugned order is liable to be quashed. Further the learned counsel for the Petitioner would submit that G.O.(2D).NO.169, Housing and Urban Development Department dated 01.09.2005 is issued on the basis of Petitioner's application. Therefore, the subsequent G.O.(2D).No.496 dated 02.09.2010 i.e., the impugned order cancelling the allotment by citing the reason that the Petitioner does not come under the eligibility norms prescribed in G.O.Ms.No.2063 (Housing) dated 09.11.1979 and therefore, the allotment of Plot No.383-A of Vellore Sathuvachery, was cancelled, is not sustainable. It is further submitted that the eligibility norms and conditions for fixing the eligibility for allotment of plots would not be applicable to allotment under the discretionary quota granted by the Government. Therefore, the said impugned order is liable to be quashed.

6. The learned Standing counsel for the Housing Board would submit that on considering the Petitioner's application, the Government has allotted Plot No.383-A of Vellore Sathuvachery, under the category of "Social Worker" by proceedings in G.O.(2D) No.169, Housing and Urban Development Department, dated 01.09.2005. On verification, the 1st respondent came to notice that the Petitioner already owned a plot bearing Door No.23/66 at First Street, Vijayaraghavapuram, within the boundary of Sathuvachari Municipality Limit. According to the respondent, the said fact of owning a plot in the same area was suppressed by the Writ Petitioner and obtained Plot under the discretionary quota. Therefore, the Petitioner is not eligible under the discretionary quota. He further stated that the impugned order dated 02.09.2010 is passed by following the norms prescribed in G.O.Ms.No.2063 (Housing) dated 09.11.1979, and the said order needs no interference by this court and the Writ Petition is to be dismissed.

7. On perusal of the G.O.(2D).No.169 Housing and Urban Development Department dated 01.09.2005, it is seen that the

Housing Board, has allotted Plot No.383 A, Sathuvachery, Vellore, in favour of the Petitioner. At the time of allotment, specifically, it is stated in the order that the norms and the guidelines fixed by the Housing Board has to be strictly followed by the Managing Director, Housing Board and further clause also specifically stated that the Petitioner has to pay the Pre-deposit amount within 21 days from the date of allotment. Pointing it out, the learned Standing counsel for the Housing Board submitted that the Petitioner is not eligible for allotment of the said Plot. It is also pointed out that as per the norms prescribed in G.O.Ms.No.2063 (Housing) dated 09.11.1979 for allotment of Tamil Nadu Housing Board Plots/Flats/Houses, the applicant shall not own a house/plot/flats either in his/her name or in the name of the spouse or minor children.

8. It is also specifically mentioned in the impugned order that the Petitioner owned a plot bearing Door No.23/66 at First Street, Vijayaraghavapuram, within the boundary of Sathuvachari Municipality Limit. The Petitioner has not disputed the said fact in the affidavit filed in support of the writ petition. Therefore, it is an admitted fact that the Petitioner has owned the property within the boundary of the Sathuvachery Municipality.

9. A reading of the impugned order, makes it clear that the norms prescribed by the Government and the Housing Board shall apply to the discretionary quota. Therefore, the contention of the Petitioner that the aforesaid norms will not apply to the Petitioner has no substance or force. As far as the contention of the Petitioner counsel that principles of natural justice was not followed also has no application to the facts of the present case. In this connection, it is useful to refer the decision reported in (2004) 7 SCC 112 [A.Umarani Vs. Registrar of Cooperative Societies], wherein, the Honourable Supreme Court of India, has held as follows:-

"We are also of the opinion that in a case of this nature, where the validity or otherwise of a government order is in question, the principles of natural justice will have no role to play and in any event recourse thereto would result in futility."

Likewise, this court in the decision reported in (2002) 4 CTC 385 [L.Justine Vs. Reg of Cooperative Societies], has held as follows:-

" But the theory of principles of natural justice cannot be put in a straightjacket and it is not an absolute rule that in each and every adverse order, there should be a strict adherence to the principles of natural justice.

One such exception to audi alteram partem rule is absence of any legal right to defend the impugned action and in fact, such cases are covered by the 'useless formality theory' propounded by the Supreme Court in ALIGARH MUSLIM UNIVERSITY v. MANSOOR ALI KHAN (AIR 2000 SC 2783). Even for availment of the alternative remedy, a legal right should subsist and there may be some cases like the instant one where there is no right accrued even at the time of entry into service and when the top administrative authority, i.e. the Government, has already taken a stand, it serves no purpose to drive a party to avail of the alternative remedy as there is absolutely no discretion for the subordinate officers of the Government to take any decision contra to the view taken by the Government. Further, when interpretation of the provisions of the Statute, Rules framed thereunder and the Governmental Orders are involved, it is for the High Court to embark upon enquiry to adjudicate the matter and cannot be left to the subordinate officers of the Government, who are named as the statutory authorities. Added to that, having regard to the magnitude of the problems and the bulk of cases, it serves no purpose in driving the parties to approach the statutory authorities as it is bound to bounce back again to this Court resulting in multiplicity of proceedings creating a fluid situation without concretisation of the legal principles. Having regard to these factors, we are of the considered view that the matter should be set at rest by laying down the definite and clear-cut legal principles so that the statutory authorities can be left only with the task of fact finding and then give a quietus to the situation. "

10. The learned counsel for the Petitioner relying upon the judgment reported in AIR 1996 Madras 70 [The Secretary to Government, Housing and Urban Development Department, Madras and others Vs. Ammani and others] contended that in the matters of cancellation of allotments, opportunity should be provided to make objections to the rival party.

11. A reading of the judgment reported in AIR 1996 Madras 70 makes it clear that the facts mentioned therein is totally different from the facts of the case on hand. In the above cited

case, the Housing Board has allotted plot to the applicant therein and the impugned allotment was made as per the terms of the allotment and the applicant was put in possession. In such circumstances, the exercise of Power under Section 155(1) of the Tamil Nadu State Housing Board Act cannot be exercised. Therefore, the Division Bench of this court has considered the scope of Section 155 of the Act and provided opportunity to the Petitioner to make their objections. But, in the present case, there is no prescribed format for submitting the application for allotment of land, but only on the request made by the Petitioner, allotment order was given under the discretionary quota. Therefore, the said discretionary quota was cancelled by the Government in G.O.D.Ms.No.6 Housing and Urban Development Department dated 07.01.2011. Further, it is submitted by the learned Standing counsel appearing for the Housing Board that as of now, there is no discretionary quota available for allotment of the plots. Therefore, as per the contention of the Standing counsel for the Housing Board, the petitioner has no legal right to seek opportunity to state objections under the TNHB Act.

12. Furthermore, the Writ Petitioner has submitted his representation against the order of cancellation of allotment and the same was considered by the respondents. Therefore, the submission of the Writ petitioner that no opportunity was granted for cancellation of the said Government order has no force.

13. In the light of the above discussion, this court finds no need or necessity to interfere with the impugned order and this court comes to the conclusion that the Writ Petitioner has not made out any ground to interfere with the impugned order and therefore, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

nvsri

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

3. The Executive Engineer and
Administrative Officer
Tamil Nadu Housing Board,
Vellore Housing Unit,
Vellore

+1cc To Mr.R.Natarajan, Advocate, SR.No.80995

+1cc To Mr.V.Anandhamurthy, Advocate, SR.No.81526

+1cc To The Govt.Pleader, vide SR.No.81741.

W.P.No.1357 of 2011

ss(CO)
kak(25/01/2019)



WEB COPY