

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 10.01.2018

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

W.A No.1096 of 2015 and
M.P.No.1 of 2015

- 1.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
- 2.The Secretary,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
- 3.The Executive Engineer and
Administrative Officer,
Vellore Housing Unit, Phase - I,
Tamil Nadu Housing Board,
Sathuvachari, Vellore District,
Pin - 632 009.Appellants

Vs

- 1.S.Vijayalakshmi
- 2.State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St.George, Chennai - 600 009.Respondents
- 3.H.Anbazhagan

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent to set aside the order dated 27.02.2015 made in W.P.No.1233 of 2015.

Prayer in WP.No.1233 of 2015:Writ petition filed under Article 226 of the constitution of India for a writ of mandamus directing the fourth respondent herein to execute the sale deed to the petitioner for the house bearing No.2, HIG, TNHB, Phase I, Thirupathur, Vellore District forthwith.

For Appellants : Mr.V.Anandhamurthy
Additional Government Pleader

For Respondents: Mr.K.V.Sajeev Kumar for R1
Mrs.A.SriJayanthi
Spl.Govt.Pleader for R2
R3 - No appearance

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The allotment of a residential plot to the first respondent was cancelled by the Tamil Nadu Housing Board on the ground that in violation of Clause 11 of the Lease-cum-sale Agreement, the allottee assigned the plot to a third party without taking permission. The learned single Judge issued a Mandamus to the Housing Board to accept the entire sale consideration and execute the sale deed in favour of the first respondent. Feeling aggrieved by the said order, the Housing Board is before this Court.

2. The learned Additional Government Pleader for the appellants contended that the first respondent entered into a sale agreement with a third party and constructed a residential house. Subsequently, the assignee made a claim for execution of sale deed in his favour. He also filed a civil suit. The Housing Board was therefore justified in keeping the matter pending without executing sale deed in favour of the first respondent. The learned Additional Government Pleader contended that on account of the violation of the terms of Lease-cum-Sale agreement, the first respondent is not entitled to an order for execution of sale deed.

3. The learned counsel for the first respondent contended that the sale amount was paid only by the first respondent. The unreasonable claim made by a third party cannot be taken as a basis by the Housing Board to cancel the allotment. According to the learned counsel, the issue raised by the third party requires to be decided by the Civil Court and till such a decision is taken, the Housing Board cannot be heard to say that there was a violation of the order of allotment. According to the learned counsel, the learned single Judge rightly allowed the writ petition.

4. The first respondent submitted application for allotment of housing plot. The Housing Board, by memo, dated 22 December 1993 and by letter dated 25 January 1993 allotted a housing plot bearing Higher Income Group (HIG) House No.2 at Tirupathur Phase I to the first respondent. The tentative cost was fixed at Rs.2,19,000/-. The first respondent paid the initial amount of Rs.83,000/- on 14 February 1994. The Housing Board on receipt of the initial amount executed a Lease-cum-Sale agreement in favour of the first respondent on 28 February 1994. She was directed to pay the remaining amount in monthly instalments @ 2135/- over a period of 14 years. The possession of the plot was handed over to the first respondent by proceedings dated 16 July 1994. Even though the first respondent remitted the amount in accordance with the schedule, follow up action was not taken to execute the sale

deed. The Housing Board informed the first respondent that a writ petition in W.P.No.590 of 2015 was filed by one H.Anbazhagan to restrain the Housing Board from executing the sale deed in her favour. Thereafter, the first respondent filed the writ petition in W.P.No.1233 of 2015.

5. There is no dispute that a house plot was allotted by the Housing Board to the first respondent. The claim made by a third party that the house plot was assigned to him made the Housing Board to keep the matter pending. There is no judicial determination by a Civil Court that the first respondent sold the plot to Thiru.H.Anbazhagan, the petitioner in W.P.No.590 of 2015. Merely because a claim was made by a third party that there was a sale in his favour, it would not be possible for the Housing Board to cancel the allotment.

6. We are informed that a Civil Suit in O.S.No.12 of 2015 is pending before the Sub-Court, Thirupathur. The suit was filed by H.Anbazhagan. The first respondent and the Housing Board are parties to the suit. The prayer in the suit is to direct the Housing Board to execute the Sale Deed in favour of the plaintiff. The suit is still pending. The learned single Judge while allowing the writ petition filed by the first respondent made it clear that the execution of sale deed by the Housing board would be subject to the decree to be passed by the Civil Court in O.S.No.12 of 2015. The learned single Judge thereby protected the interested of the appellant, the first respondent and the plaintiff in O.S.No.12 of 2015.

7. The first respondent remitted the amount payable to the Housing Board. The Housing Board is bound to execute the sale deed in her favour. The so called civil suit pending between the first respondent and the alleged assignee would not be a ground to negative the plea made by the first respondent for execution of sale deed in her favour. We are therefore of the view that there is absolutely no merit in the contentions taken by the appellants.

8. In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Secretary,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

3.The Executive Engineer and
Administrative Officer,
Vellore Housing Unit, Phase - I,
Tamil Nadu Housing Board,
Sathuvachari, Vellore District,
Pin - 632 009.

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

+1cc to Mr.V.Ananda Murthy, Advocate Sr.No.2297

+1cc to Mr.K.V.Sajeev kumar, Advocate Sr.No.1881

NRK (CO)

sm:22.2.2018

W.A No.1096 of 2015

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