

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.14743 of 2010

M/s.Hallmark Industries
rep.by its Proprietor
Mukesh Gokul

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Chennai - 600 035.

2.The Executive Engineer and
Administrative Officer,
Korattur Division,
Tamil Nadu Housing Board,
Ashok Nagar, Chennai - 600 083.

Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in Letter No.Ka.Ka.No.Ko.A-1/6092/09 dated 22.09.2009 on the file of the 2nd respondent and consequential order passed in Letter No.1.6/45262/09 dated 12.11.2009 on the file of the first respondent and quash the same as illegal, arbitrary and against the principles of natural justice and direct the first respondent to reconsider the representation of the petitioner dated 11.05.2010 in accordance with law.

For Petitioner : Mr.A.Thiagarajan, SC for
Mr.S.Ramesh Kumar

For Respondents: Mr.V.Anandhamurthy

ORDER

The prayer made in this writ petition is to quash the communications/orders dated 12.11.2009 and 22.09.2009, issued by the respective respondents 1 and 2 to the petitioner and to direct the first respondent to reconsider the representation of

the petitioner dated 11.05.2010 in accordance with law.

2.It is the case of the petitioner that pursuant to the advertisement published by the second respondent for allotment of HIG twin houses in Tambaram Division, the petitioner made applications on 21.06.1993. After scrutiny of the same, the second respondent allotted four HIG twin houses bearing nos.T16, T19, T22 and T23 to the petitioner. As per the allotment orders dated 16.04.1994, the petitioner has paid the initial deposit for all the four houses and was paying the monthly installments. While so, due to financial constrains faced by them, they were unable to continue to pay the remaining installments. On 28.10.2002, the second respondent issued a reminder directing the petitioner to pay the arrears of installments. Since the petitioner has not complied with the aforesaid direction, the second respondent cancelled the allotment, vide communication dated 02.01.2003. Thereafter, the first respondent issued a notification through newspapers dated 14.07.2009 and 15.07.2009 to the public as well as a consequential communication dated 20.07.2009 to the second respondent stating that if the allottees come forward to give consent to clear all the dues to the Board in respect of the plots/flats/houses allotted to them along with fine, if any, as decided by the Revocation Committee, they should approach the concerned Executive Engineer and Administrative Officer on or before August 15 and submit their consent letter, failing which, the cancellation order already issued to them will be confirmed and the Board through public auction will sell those plots. On seeing the same, the petitioner sent separate representations dated 30.07.2009 to the second respondent, explaining the circumstances under which, they were unable to pay the arrears of installments and requesting to revoke the cancellation of allotment orders in respect of all the four houses. However, the second respondent, vide communication dated 22.09.2009 rejected the request of the petitioner. Aggrieved over the same, the petitioner made a representation dated 09.10.2009 to the first respondent, to reconsider their request for revocation of the cancellation of allotment orders. The first respondent also rejected the request of the petitioner, vide communication dated 12.11.2009. Being not satisfied with the same, the petitioner submitted another representation dated 11.05.2010 to the first respondent in this regard. Finding no response on the said representation, they have approached this Court with the present writ petition for the aforesaid relief.

3.Upon notice, the second respondent filed a detailed counter affidavit, stating inter alia that since the petitioner defaulted in payment of monthly instalments, he was issued with a show cause notice dated 24.01.2002 and a reminder on

28.10.2002; even thereafter, there was no response from the petitioner; and hence, the allotment granted to them, was cancelled, vide communication dated 02.01.2003. It is further stated therein that on 12.08.2009, the second respondent forwarded the proposal sent by the petitioner seeking revocation of cancellation of allotment in respect of twin type houses bearing Nos.T16, T19 T22 and T23 to the competent authority ie., the first respondent, who, vide memo dated 11.09.2009, communicated that the Revocation Committee rejected the said proposal and directed the second respondent to take necessary action to re-allot those houses. Thus, according to the respondents, the communications impugned herein are valid in law and the same warrant no interference by this Court.

4.The learned Senior Counsel appearing for the petitioner submitted that the respondents, without providing any opportunity to the petitioner, have rejected the request of the petitioner seeking revocation of cancellation of allotment in respect of four houses, that too, without assigning any reason much less valid reason. Hence, the orders so passed by the respondents are arbitrary, illegal and in violation of the principles of natural justice.

5.On the other hand, the learned Standing Counsel appearing for the respondents reiterated the averments as were made in the counter affidavit filed by the second respondent.

6.Heard both sides and perused the records.

7.It is not in dispute that originally, due to failure of the petitioner to pay the monthly installments as directed by the second respondent, the allotment granted to them in respect of four houses bearing Nos.T16, T19, T22 and T23, was cancelled, vide order dated 02.01.2003.

8.However, the first respondent, subsequently, issued a notification through newspapers on 14.07.2009 and 15.07.2009 to the public as well as a communication dated 20.07.2009 to the second respondent, the copies of which are enclosed at pages 9 to 11 of the typed set filed along with this writ petition, in and by which, it was stated that if the allottees come forward to give consent to clear all the dues to the Board in respect of the plots/flats/houses allotted to them along with fine, if any, as decided by the Revocation Committee, they should approach the concerned Executive Engineer and Administrative Officer on or before 15.08.2009 and submit their consent letter, failing which, the cancellation order already issued to them, will be confirmed and the Board through public auction will sell those plots. Pursuant to the same, the petitioner approached the

second respondent vide representations dated 30.07.2009, expressing their willingness to pay the entire dues along with fine, if any, and requesting to revoke the cancellation of allotment orders in respect of all the four houses. The said representations were received by the second respondent office on 30.07.2009, as acknowledged by them, the copies of which are enclosed at pages 12 to 19 of the typed set of papers, which would disclose that the petitioner approached the first respondent for revocation of cancellation of allotment orders, well within the outer time limit prescribed by the first respondent in their notifications. But, the said request was not considered by either of the respondents in a proper perspective and was ultimately, rejected vide the communications/orders impugned herein. Further, no reason was given for such rejection and no opportunity was provided to the petitioner before taking such decision.

9.This Court is of the view that the reasons are the heart beat of every conclusion and without the same, it becomes lifeless; and that the absence of reasons renders the order indefensible / unsustainable, particularly when the order is subject to further challenge before a higher forum [Refer: Secretary and Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity and Others, (2010) 3 SCC 732].

10.In the light of the aforesaid legal principle, the communications/orders passed by the respondents 1 and 2 rejecting the request of the petitioner seeking revocation of cancellation of allotment orders, suffer from arbitrariness, illegality and violative of the principles of natural justice and hence, the same are liable to be set aside.

11.At this juncture, the learned Senior Counsel appearing for the petitioner submitted that if the houses originally allotted to the petitioner are still available, the same may be directed to be re-allotted to the petitioner, on payment of the entire dues along with fine, if any, payable by them, for which, the learned Standing Counsel appearing for the respondents, on instructions, submitted that at present, the said houses are not in occupation and its surroundings are with bushes.

12.In view of the discussions held above, this writ petition stands allowed and the impugned communications/orders issued by the respondents 1 and 2 are set aside. The matter is remanded back to the respondents for fresh consideration, in the light of the communication dated 20.07.2009 sent by the first respondent to the second respondent and pass appropriate orders, on merits

and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

To

1. The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Chennai - 600 035.

2. The Executive Engineer and
Administrative Officer,
Korattur Division,
Tamil Nadu Housing Board,
Ashok Nagar, Chennai - 600 083.

+1 CC to Mr. S. Ramesh Kumar, Advocate sr 84062.

+1 CC to Mr. V. Anandhamurthy, Advocate sr 84234.

W.P.No.14743 of 2010

VD (CO)
SP (10/04/2019)

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