

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.172 of 2018
and
CMP.Nos.1021 & 1022 of 2018

P.Thenmozhi

... Appellant

-Vs-

1. The Tamil Nadu Housing Board,
rep. by Chairman,
No.493, Anna Salai, Nandanam,
Chennai-600 035.
 2. The Executive Engineer-cum-Administrative Officer,
Administrative Officer,
Anna Nagar Division,
Tamil Nadu Housing Board,
Anna Nagar, Chennai-600 041.
- ... Respondents

Writ Appeal filed under Clause 15 of Letters of Patent Appeal, against the order dated 27.02.2014 passed in W.P.No.27412 of 2012 Petition presented under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in Letter No.Aa.Na.Ko. II 3/2334/11 dated 20.9.2012 and quash the same in so far as it fixes the price of the Plot No.1/599 MIG at Manali Phase I measuring an extent of 1 Ground and 1593 sq.ft. at the current market rate and consequently direct the respondents to fix the price of the said plot as on the date of original allotment of the plot in favour of the petitioner viz., 17.10.2001 or in the alternative allot any other residential/commercial plot at a price calculated as of the original date of allotment.

For Appellant : Mr.S.Kasikumar

JUDGMENT

[Judgment of the Court delivered by C.T.SELVAM, J.]

This writ appeal challenges the order dated 27.02.2014 passed by learned single Judge in WP No.27412 of 2012, seeking

quash of second respondent's Letter No.Aa.Na.Ko. II 3/2334/11 dated 20.9.2012 in so far as it fixes the price of the Plot No.1/599 MIG at Manali Phase I measuring an extent of 1 Ground and 1593 sq.ft. at the current market rate and a consequential direction to respondents to fix the price of the said plot as on the date of original allotment of the plot in favour of the petitioner viz., 17.10.2001 or in the alternative allot any other residential/ commercial plot at a price calculated as of the original date of allotment.

2. It is useful to extract paragraphs 39, 42 and 51 of the order under challenge.

"39.Analysis:

It is true that the Petitioner is not at fault for the delay in regard to her case being considered for allotment of an alternative plot. Certainly, for the predicament the Petitioner is in, the Respondents are primarily responsible. But, the fact of the matter is that the Petitioner in her communications dated 18.03.2004 and 25.03.2004 addressed to the 2nd Respondent had only repeatedly stated that the money paid by her was to be returned to her after realising the hardships suffered by her. Therefore, it is candidly clear that she was only interested to obtain the money with interest from the Tamil Nadu Housing Board and also that, she was aware of the problems involved in regard to the Plot No.981. Unfortunately, these crucial facts were not brought to the notice of this Court at the time of passing of the order in W.P.No.37010 of 2007 dated 06.06.2011. It cannot be gainsaid these facts have come to light before this Court only through File/Record produced by the Tamil Nadu Housing Board and the same being perused by this Court meticulously.

42. It is quite evident from the letter No.ANA.II.3/2334/2011 dated 11.12.2012 of the 2nd Respondent addressed to the Legal Adviser of the Tamil Nadu Housing Board wherein, it is mentioned as follows:-

"A copy of the reference cited is herewith enclosed, in this regard it is informed that the Housing Board has already filed the counter and clearly stated that the cost of Plot No.1/599 MIG at Manali Phase - I scheme fixed as per the allotment made now. As such the Ruling rate, Guideline value and Market rate are considered and after careful consideration the rate was fixed by the Pricing Committee of

the Board. The Cost of the Plot No.1/599 MIG Manali has been approved by the Board in its Resolution No.9.08 Dated 30.08.12 after observing the rules and regulations of the Tamil Nadu Housing Board. The value of the plot has been fixed as Rs.52,95,000/- (3993 Sq.ft x Rs/1326/- Sq.ft) as recommended by the Price fixing Committee.

Hence the Housing Board could not be sell the plot at price at the rate of the year of 2001 as requested by the Petitioner for the cost of plot Rs.14,86,096/- in his affidavit etc.,"

51. In the decision of the Hon'ble Supreme Court in R.S.Maddanappa (deceased) after him by his legal representatives, V. Chandramma and another, AIR 1965 Supreme Court 1812 (V 52 C 309) and at special page 1813, it is held as follows:-

"The law of estoppel by representation is confined to the provisions of S.115 and apart from the provisions of this section there is nothing like what is called 'equitable estoppel' evolved by the English Judges. The provisions of S.115 are in a sense a rule of evidence. They are founded upon the well known doctrine laid in (1887) Ad and El 469. The object of estoppel is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. Consequently where one person makes a misrepresentation to the other about a fact he would not be shut out by the rule of estoppel if that other person knew the true state of facts and must consequently not have been misled by the misrepresentation.

Further, the person setting up an estoppel against another must show that his position was altered by reason of the representation or conduct of the latter, otherwise even the general principle of estoppel cannot be invoked by him (1860) 3 HLC 829 and (1875) 10 CP 307 and 19 Ind App 203(PC) Rel.on." 3. In fact, petitioner has been unsuccessful in an earlier round of litigation in WP No.37010 of 2010, wherein the petitioner sought relief to the following effect:

"to direct the respondents to restore the allotment of Plot No.981 MIG in Madhavaram scheme in favour of the petitioner and execute the sale deed on collection of

amount payable by the petitioner".

4. Aggrieved by dismissal order dated 06.06.2011 in WP.No.37010 of 2010, petitioner preferred an appeal in W.A.No.2015 of 2011, which came to be disposed of under orders dated 24.02.2012 with the following observations:-

"6. When the matter is taken up for consideration, learned counsel appearing for the Housing Board submits that some commercial plots are only available under Madhavaram Scheme. However, a plot at 1/599, MIG at Manali Phase-I to the extent of one ground, 1593 sq.ft is available and if the appellant so chooses, the Housing Board shall allot the said plot in favour of the appellant. Learned counsel appearing for the appellant submits that he will instruct his client to consider the offer.

7. While recording the aforesaid submission, the writ appeal stands disposed of. Consequently, the connected M.P. is closed. However, there shall be no order as to costs."

5. The observations made while disposing off WA.No.2015 of 2011 in no manner suggests that the petitioner can have allotment of a plot for the price determined in respect of Plot No.1/599 in the order dated 27.02.2014 and in a sum of Rs.58,000/-. These aspects have received consideration of learned Single Judge and quite rightly, learned Single Judge, who has held that the authorities are duty bound to collect the market price against plot No.1/599 MIG at Manali Phase-I and towards securing the interests of the petitioner, learned Single Judge has also informed that if the petitioner does not purchase the plot on offer, it will be open to her to have return of money together with interest. Not stopping there, learned single Judge has also directed the respondents to pay a sum of Rs.10,000/- towards legal expenses of the petitioner. This Court finds no reason to interfere in the order under challenge.

6. The Writ Appeal shall stand dismissed. It will be now open to the petitioner to get refund of an amount and

interest as also costs as ordered by learned Single Judge.
Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VII)

//True copy//

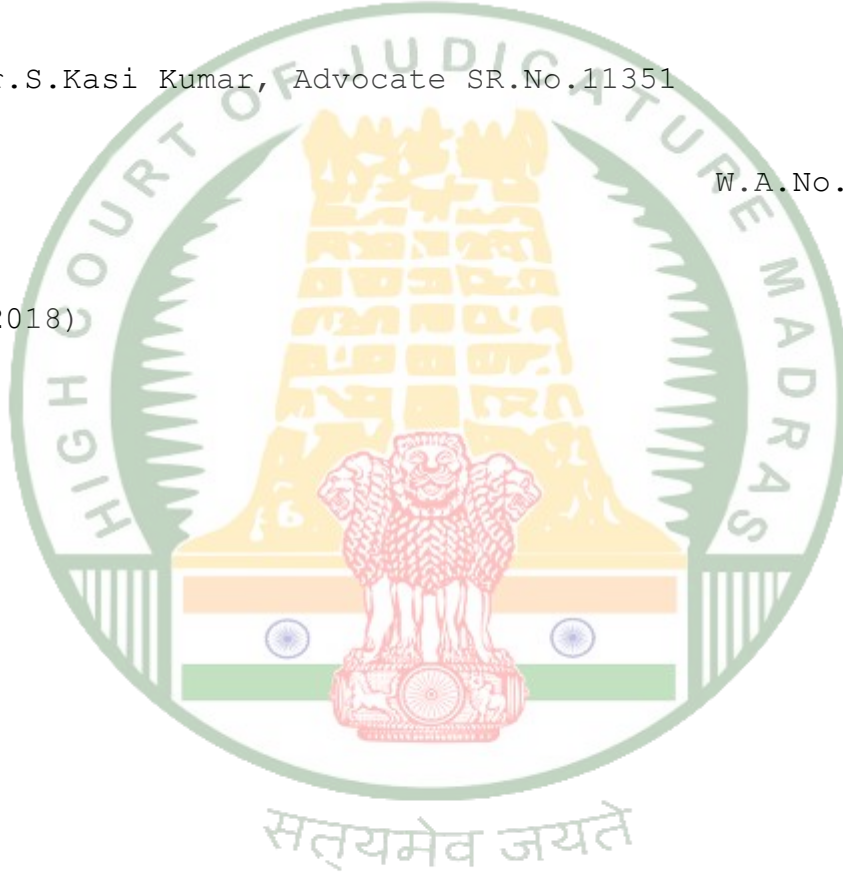
Sub Assistant Registrar

kmi

+1cc to Mr.S.Kasi Kumar, Advocate SR.No.11351

W.A.No.172 of 2018

LRS (CO)
GN(03/04/2018)



WEB COPY