

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.11.2018
C O R A M
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.3663 of 2012
and
M.P.No.1 of 2012

1.S.Manoharan
2. Beaulah Manoharan ... Petitioners

Vs

1. State of Tamil Nadu,
Rep. by its Secretary to
Government,
Housing and Urban
Development Department,
Fort St.George,
Chennai - 600 009.
2. The Chairman and
Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai - 600 035.
3. Executive Engineer and
Administrative Officer,
Coimbatore Housing Unit,
Tatabad, Coimbatore - 641 012.
4. Member Secretary and
Assistant Director of Town Planning,
Town Planning and Local Planning
Authority,
Tatabad, Coimbatore Corporation
Commercial Complex,
Sivanada Colony, Coimbatore- 12. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for records relating to Order of the third respondent in No.A4/689/1997 dated 13.12.2011 and the consequential order in No.A4/689/1997 dated 22.12.2011, to quash the same and consequently direct the third respondent to execute the sale deed for the plot no.1013 in MIG. 1013, Brindavan Avenue, Tamil Nadu Housing Board phase 4th block, Ganapathy Ma nagar, Coimbatore, for 1975 sq ft.

For Petitioners	... Mr.M.Habeeb Rahman
For RR 1 & 4	... Mrs.Sri Jeyanthi, Special Government Pleader
For RR 2 & 3	... Mr.V.Anandamoorhty

O R D E R

The 1st petitioner had applied to the Tamilnadu Housing Board, Coimbatore Housing Unit, the second and third respondents in the writ petition seeking a housing plot under the Ganapathy Neighborhood Schemes. The application was dated 17.11.1997.

2. A lease cum sale agreement was entered into between the petitioner and the Tamilnadu Housing Board, Coimbatore Housing Unit on 12.02.1998. This lease cum sale agreement was towards allotment of plot No. 1013 in Ganapathy Neighborhood Schemes. This plot as originally allotted was bounded on the North by 30 feet road, east by plot No.1012, south by plot No.1025 and on the west by 10 feet foot path. It measured 40 feet by 39.6, to a total extent of 1580 Sq. ft.

3. The controversy in the Writ Petition is regarding the 10 feet foot path, which was on the west of the plot allotted to the petitioner herein.

4. It had been pointed out by the learned counsel for the petitioner that the 10 feet wide foot path was annexed to the plot of the petitioner after favourable consideration of the representation made by him. Subsequently, a further allotment was made by proceedings dated 12.08.2011 in No. A11/689/1997 by the Executive Engineer and the Administrative Officer Housing Unit, Coimbatore. The said officer had stated in the proceedings that the petitioner herein had remitted the tentative cost in full on 14.07.2011 towards the plot allotted to him and he was also granted additional land, bringing the plinth area to 1975 sq.feet. The 10 feet foot path way had been allotted to the petitioner whose plot extended and now became 50 x 30.6 feet. The west boundary was became plot No. 1014. It was not the 10 feet path. Towards this additional square feet area, the petitioner had also paid the additional charges. Possession was also handed over to him. At the time when he wanted to build a compound wall, the local resident objected and he was constrained to file O.S.No.1054 of 2011 before the Sub-Court, Coimbatore. He was also granted the benefit of interim injunction in I.A.No.748 of 2011.

5. Be that as it may, at the particular point of time, when objections were raised to the construction of the compound wall, the Executive Engineer cum Administrative Officer had addressed the Commissioner of Police, Coimbatore, a letter dated 22.08.2011 informing that the petitioner herein had paid the

entire amount even for the additional land allotted and consequently, the police are under obligation to provide him protection while he is constructing the compound wall. Thereafter, the very same officer, by letter dated 22.12.2011 had cancelled the allotment of the additional area, particularly, the 10 feet path way, which was annexed to the plot of the petitioner, by letter dated 20.12.2011. This has given rise to the filing of the present Writ Petition.

6. The learned counsel appearing for the Housing Board stated that the Executive Engineer/ Administrative Officer had acted independently without consent from the Board and without resolution passed by the Board and had allotted the 10 feet path way to the petitioner herein. Unfortunately that fact stated by the learned counsel is not reflected in the counter affidavit. The learned counsel further stated that disciplinary proceedings had been initiated against the said Executive Engineer/Administrative Officer and unable to bear the burden of such disciplinary proceedings, he had actually committed suicide. It is not known why those facts were not disclosed in the counter affidavit filed by the fourth respondent before this Court.

7. The only reason given in the counter affidavit by the fourth respondent for cancellation of the additional area is that objections were raised from local residents and consequently, the allotment was cancelled. It has also not been clarified whether the petitioner was given sufficient opportunity before such cancellation. It is under these circumstances, the petitioner had approached this Court seeking an order of Writ of Certiorarified Mandamus calling for the records of the respondents and quash the same.

8. The petitioner had been allotted originally a plot, measuring 1580 sq. ft. The west boundary was a 10 feet path. A responsible Officer of the Housing Board, namely, the Executive Engineer / Administrative Officer had issued proceedings annexing the said 10 feet path to the plot of the petitioner and thereby, the petitioner's allotment came to 1980 sq.ft.. Not only was a written communication issued to the petitioner regarding the additional allotment but a plan was also annexed to the same. The said Executive Engineer had also addressed the Commissioner of Police requesting them to give protection to the petitioner when he constructed a compound wall. Having led the petitioner to such a long distance by making him believe that additional area had been lawfully allotted, it would be highly inappropriate on the part of the respondents to cancel without any notice or without calling for objections from the petitioner herein the said allotment. There is no record to show that the petitioner was afforded personal hearing or that

notice was issued to him informing him about the proposed cancellation. It is therefore clear that the order had been passed after allotment had been made in accordance with the rules. Opportunity was not granted to the petitioner herein. There is violation of principals of natural justice. In view of the same, I have not hesitation in allowing the Writ Petition.

9. Accordingly, the Writ Petition is allowed and the impugned order directing the respondents to execute the sale deed as sought for in the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

tta/vsg

To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam, Chennai - 600 035.
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Administrative Officer,
Coimbatore Housing Unit,
Tatabad, Coimbatore - 641 012.
4. The Member Secretary and
Assistant Director of Town Planning,
Town Planning and Local Planning Authority,
Tatabad, Coimbatore Corporation
Commercial Complex,
Sivanada Colony, Coimbatore- 12.

+2cc to Mr.A.Edwin Prabhakar, Advocate, S.R.No. 7664
+2cc to Mr.V.Anandamoorthy, Advocate, S.R.No. 76940
+1cc to the Government Pleader, S.R.No. 77046

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KGK (CO)
GN(30/11/2018)