

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.17832 of 2011 and
M.P.No.1 of 2011

S.P.Raju

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai 600 009.
 - 2.The Chairman-cum-Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai 600 035.
 - 3.The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Erode Housing Unit,
Surampatti Nall Road, Erode District 638 009.
 - 4.The Superintendent of Police,
Erode District,
Pannerselvam Park, Erode 638 001.
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent pertaining to his proceedings in Letter No.R-2/2054/2010 and quash the order dated 20.07.2011, and consequently direct the third respondent to hand over the sale deed pertaining to the house No.A-377 (MIG) Muthampalayam Phase-I Scheme, Erode Housing Unit to the petitioner.

For Petitioner : Mr.R.Sivakumar
For Respondents : Mr.T.M.Pappiah,
Special Government Pleader for RR 1& 4
: Mr.Anandhamoorthy for RR 2 and 3

O R D E R

Heard Mr.R.Sivakumar, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for

the first and fourth respondents and Mr. Anandhamoorthy, learned counsel appearing for the second and third respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari and Mandamus, to call for the records of the 3rd respondent pertaining to his proceedings in Letter No.R-2/2054/2010 and quash the order dated 20.07.2011, and consequently direct the third respondent to hand over the sale deed pertaining to the house No.A-377 (MIG) Muthampalayam Phase-I Scheme, Erode Housing Unit to the petitioner."

3. The case of the petitioner is as follows:-

The petitioner was working as Police Constable attached to Erode North Police Station. He joined the Police Department on 28.02.2002. Since the date of his appointment, the petitioner has been rendering blemishless record of service. The second respondent Housing Board provides for allotment of certain percentage of houses to the category of unblemished Government servants under the discretionary quota.

4. Since the petitioner had rendered blemishless record of service, he applied to the first respondent seeking for allotment of house under the said category. In response to the application, by proceedings dated 13.04.2010, the petitioner was directed to produce the necessary certificates to establish that he was entitled to be considered in the aforesaid category. Immediately, the petitioner vide his letter dated 07.05.2010, submitted to the first respondent all the necessary documents including the certificate issued by the fourth respondent who is the competent authority, declaring the petitioner that he was an unblemished Government servant.

5. Thereafter, the first respondent after scrutiny of all the documents submitted by the petitioner including the certificate issued by the fourth respondent, passed G.O.(2D) No.388, (Housing and Urban Development) Department, dated 23.07.2010, allotted the petitioner the house bearing Door No.A-377 (MIG), Muthampalayam Phase-I Scheme, Erode. After the Government Order was issued, the second and third respondents were directed to allot the said house by following the procedure. Thereupon, the second respondent by order dated 03.08.2010, had directed the third respondent for making the allotment to the petitioner.

6. In pursuance of the direction, the third respondent by his proceedings dated 08.09.2010, arrived at the tentative cost of the said house at Rs.1,93,750/- and as per the requirement, the petitioner had paid an amount of Rs.67,850/-, being 40% of the estimated costs. For the remaining amount of Rs.1,25,900/-, the petitioner was directed to pay the same by way of monthly

instalment of Rs.2,500/- at the interest rate of 18%. After being satisfied and after going through all the necessary formalities, the third respondent executed the proper sale deed in favour of the petitioner. Original sale deed is still in custody of the third respondent. On 18.09.2010, the house was also handed over to the petitioner through the proceedings of the third respondent.

7. After taking possession of the flat, the petitioner and his family members have been residing in the property. The petitioner was also paying monthly instalments as per the requirement of the Housing Board without any default. However, in order to avoid more interest to be paid on the principal amount, the petitioner had paid the entire balance amount of Rs.1,80,600/- which was outstanding on 10.06.2011, by borrowing certain amount from the private parties. The petitioner therefore had paid the entire sale consideration to the third respondent and on such payment of the entire sale consideration, the petitioner requested the third respondent to hand over the original sale deed pertaining to the said flat.

8. While so, on 13.06.2011, the petitioner was called to the Office of the fourth respondent and by proceedings dated 20.01.2011, it appears that the Unblemished Government Servant Certificate issued to the petitioner was cancelled only on the ground that the petitioner had not completed 25 years of service. Before issuing the cancellation of certificate, no notice has been issued to the petitioner nor any explanation called for. By the above said proceedings, the fourth respondent had cancelled the certificate dated 06.05.2010, issued to the petitioner. Thereupon, the petitioner submitted a representation on 17.06.2011, requesting the fourth respondent to reconsider his proceedings, since, such cancellation would result in serious civil consequences.

9. While matter stood thus, the third respondent by his order dated 20.07.2011, had cancelled the allotment of the MIG flat on the ground that the fourth respondent had cancelled the Unblemished Government Servant Certificate. Even the third respondent also had not put the petitioner on notice before such cancellation order was issued. The cancellation by the third respondent of the allotment made in favour of the petitioner dated 20.07.2011, is put to challenge in the present writ petition.

10. The learned counsel for the petitioner would at the outset submit that it was not the case of the fourth respondent that the petitioner had misrepresented and obtained Unblemished Government Servant Certificate from him. The fourth respondent was very much aware of the fact that the petitioner entered the service of the Police Department only in 2002. Therefore, such

certificate was issued by the fourth respondent without being misguided or misled by the petitioner. Therefore, it was not open to the fourth respondent to recall his order, that too, without any notice to the petitioner. This is more so, though the petitioner was allotted the flat as per the eligibility under discretionary quota of the Government, the entire sale consideration has been paid by the petitioner and the flat was also occupied by the petitioner and his family for considerable time.

11. The learned counsel for the petitioner would further submit that even otherwise, it is not open to the third respondent to unilaterally cancel the allotment after the entire sale consideration has been paid by the petitioner, without putting the petitioner on notice. Even otherwise, in the totality of circumstances, the cancellation of the Housing Board allotment made in favour of the petitioner on the technical ground that the Unblemished Government Servant Certificate ought to be given only for the Government servants who has completed 25 years of service. When the facts would disclose that such certificate was indeed given to the petitioner without the petitioner misrepresenting to the fourth respondent and such certificate was acted upon by the respondents 1 to 3 and the allotment was made. Therefore, the entire sale consideration had been made.

12. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit. These facts are not disputed in the counter affidavit nor the same has been disputed by the learned counsel appearing for the respondents during the course of the arguments.

13. The only ground urged before this Court resisting the claim of the petitioner is that the petitioner has not completed 25 years of service and therefore, the issuance of Unblemished Government Servant Certificate was contrary to the Government Orders and therefore, the fourth respondent had rightly withdrawn the certificate. Since the allotment was made only on the basis of the said certificate, once the certificate was cancelled, correspondingly, the third respondent took steps to cancel the allotment and such cancellation need not be interfered by this Court.

14. This Court has considered the rival submissions of the learned counsels appearing for the parties and perused the materials and pleadings placed on record. As rightly contended by the learned counsel for the petitioner that it is not the case of the respondents that the petitioner had misrepresented or misled the authority, particularly, the fourth respondent in obtaining the Unblemished Government Servant Certificate. The certificate was issued admittedly on the basis of the fact that

the petitioner had rendered unblemished service for the years he served in the Police Department since 2002. Therefore, it is not open to the fourth respondent to cancel the certificate granted by him on the basis of certain Government Order issued on the subject matter, when the fact remains that the petitioner had served the Department without any blemish.

15. Moreover, the authorities concerned have acted on the Unblemished Government Servant Certificate and granted allotment to the petitioner. On the basis of the allotment, the entire sale consideration has been made good by the petitioner even before the actual time expired. Such being the case, this Court does not see any justification how the authorities, both the third respondent as well as the fourth respondent can unilaterally take action for cancellation of the certificate as well as the cancellation of the allotment. Further, de hors the Government Order, equity demands once the petitioner was favoured with the allotment under discretionary quota of the Government and the fact as admitted that the petitioner had rendered unblemished record of service for whatever period he worked till the date of allotment, the allotment cannot be faulted at all only on hypertechnical plea that the petitioner has not completed 25 years service. Such approach by the authority is rather pedantic and discloses administrative apathy without considering the civil consequences to the petitioner confronted with such cancellation if given effect to.

16. For the above said reasons, this Court has no hesitation in allowing the writ petition, as the petitioner has made out a clear case in all fours for grant of relief. In the said circumstances, the impugned cancellation of allotment in Letter No.R-2/2054/2010, dated 20.07.2011, is hereby set aside. The third respondent is directed to hand over the original copy of the sale deed to the petitioner. This direction shall be complied with by the third respondent, within a period of eight weeks from the date of receipt of a copy of this order.

17. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary to Government,
Housing and Urban Development Department,
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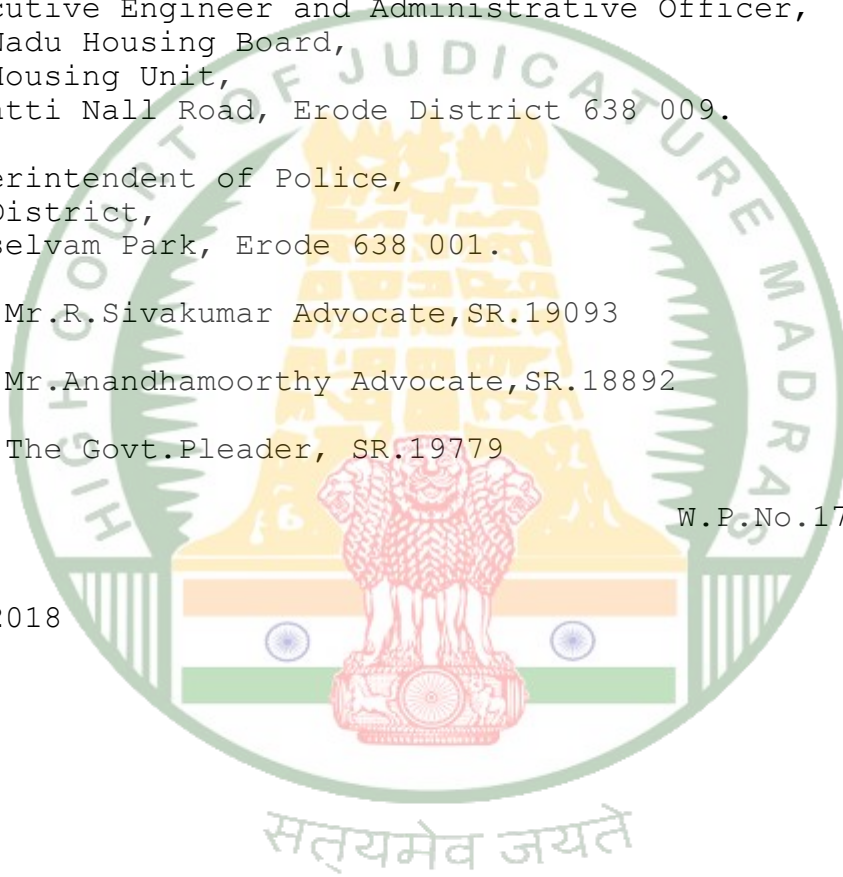
+ 1 cc to Mr.R.Sivakumar Advocate,SR.19093

+ 1 cc to Mr.Anandhamoorthy Advocate,SR.18892

+ 1 cc to The Govt.Pleader, SR.19779

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