

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SUNDAR

REVIEW APPLICATION No. 99 of 2018

in

W.P.No.1050 of 2010

K.S. Aslam

..Review Petitioner /Petitioner

Vs.

1. The Secretary to Government,
Housing and Urban Development
Department,
Secretariat, Chennai - 600 009.

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

3. The District Collector,
Chennai.

..Respondents/Respondents

Prayer: Review Application to set aside the order passed in
W.P. No. 1050 of 2010 dated 07.07.2017.

Petition filed under Article 226 of the Constitution of India it is therefore prayed that this Hon'ble Court may be pleased to issue a Writ of Certiorarified Mandamus or any other appropriate Writ or order or Direction in the nature of a Writ Calling for the records of the 1st respondent in (G.O.(D) No.218 Housing and Urban Development (SC2(1)) Department dt.19.11.2009 and quash the same and direct the respondents to reconsider the entire matter afresh in the light of G.O.Ms. No.854 Revenue dt.30.12.2006 and G.O.Ms.No.498 Revenue (LD1)(2) Department dt.5.9.2007 and allot the land for an extent of land 3536 sq. ft. in Survey No.766 bearing Door No.431-A 9th Street Sharma Nagar Vyasarpadi Chennai-39 with its Prayer Hall-(Nagoor Zanda Flag with God Stone) and also Naga Sakthi Puthu Kovil etc to the petitioner and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

For Review Petitioner:: Mr.V. Raghupathi

For Respondents :: Mr.R. Govindaswamy,
 Special Govt. Pleader
 for R1 & R3
 Mr.V.Anandamoorthy
 Standing Counsel for R2

O R D E R

Aforesaid writ petition i.e, W.P. No. 1050 of 2010 came to be disposed of by me in and by order dated 07.07.2017.

2. The crux of gravamen of the writ petition has been set out in paragraph Nos. 4 to 9 of my order dated 07.07.2017. As I intend extracting the entire order infra elsewhere in this order in this review petition, I am not extracting the said paragraphs separately. Same may be usefully referred to for appreciation of facts.

3. There is no dispute or disagreement before me that writ petition was disposed of after taking into account contentions of both sides though counsel for petitioner did not appear before this Court on 07.07.2017. In other words, it is not an order ignoring petitioner's contentions.

4. Be that as it may, the instant review petition has been filed and in the hearing of the instant review petition, Mr.V. Raghupathi, learned counsel very fairly submits that all the contentions of writ petitioner have been considered but, one aspect of the matter, i.e, the factum of a communication dated 04.07.2016 from the Managing Director, 'Tamil Nadu Housing Board' ('TNHB' for brevity) to the Secretary, Housing and Urban Development Department bearing Letter No.xJ/ I (4)/20507/2013 could not be brought to the notice of this Court while disposing of the writ petition.

5. Learned counsel submits that dismissal of the writ petition is now impeding the petitioner's request to assign an adjacent piece of land admeasuring 3526 sq.ft or thereabouts. In other words, it is review petitioner's say that this is the only ground on which the review petition is predicated.

6. Three grounds on which a review would arise namely, (i) error apparent on the face of record (ii) facts that could not be brought to the notice of the Court at the time of disposal owing to reasons beyond the control of the party concerned and/or (iii) any other valid reason do not exist in full force in the instant case, however, with an intention to give an

opportunity to the writ petitioner, notice was ordered to respondents and respondents were directed to get instructions on the request of writ petitioner to assign an adjacent piece of land admeasuring 3526 sq.ft or thereabouts.

7. There have been several adjournments between 02.07.2018 and today. To be noted, as far as respondents are concerned, there are three respondents. While respondents 1 and 3 are Secretary to Government, Housing and Urban Development Department and Collector of Chennai (represented by Mr.R. Govindasamy, Special Government Pleader), respondent No.2 is TNHB.

8. Learned counsel for TNHB brought to the notice of this Court a communication dated 04.01.2019 (post review petition) bearing Letter No.xJ/I (4)/28272/2012 . A perusal of the letter reveals that it is a letter from TNHB to the State i.e, Housing and Urban Development Department and vide this letter, TNHB has clearly stated that request of petitioner for allotment of aforesaid adjacent piece of land has been negatived by the Government. This is articulated in paragraph No.1 of the said letter and the relevant portion reads as follows:

"...மேலும் மனுதாரர் தனக்கு ஒதுக்கீடு செய்யப்பட்ட மனைகளுக்கு அருகில், காலியாக உள்ள 3525 சதுர அடி மனையை ஒதுக்கீடு செய்து தருமாறு அளித்த கோரிக்கையை, அரசு கவனமுடன் பரிசீலித்து, தனது அரசாணை எண். 218, வீட்டுவசதி மற்றும் நகர்ப்புற வளர்ச்சித் (SC2-1) துறை, நாள் 19.11.2009ன் மூலம் நிராகரித்து உத்தரவிட்டுள்ளது."

Learned State counsel submits that the Government has not taken any further or different decision as of today.

9. In the light of the stated position of State as articulated in the letter of TNHB and in the light of State Counsel's submission, that too after several adjournments having been given, I am of the considered view that no useful purpose will be served in keeping this review petition pending.

10. To be noted,I have also held at the very outset that none of the three grounds for review exist in the instant case and that notice was ordered only with an intention to provide an opportunity to the writ petitioner.

11. As mentioned supra, I am extracting the entire order dated 07.07.2017 made in W.P. No. 1050 of 2010, which reads as follows:

"When this matter was called in the forenoon, there was no representation for the writ petitioner. However, Mr.P.Sanjay Gandhi, learned Additional Government Pleader was present on behalf of respondent

Nos.1 and 3, who are official respondents. Though respondent No.2 (Managing Director, Tamil Nadu Housing Board) was duly served and the name has been printed in the cause list, none appears for respondent No.2. Name called out and none present on behalf of Respondent No.2.

2 When the matter was called after lunch in the afternoon session, again there was no representation for the writ petitioner as well as for respondent No.2. However, Mr.P.Sanjay Gandhi, learned Additional Government Pleader is present and he is ready to argue the matter on merits.

3 I have perused the affidavit of the writ petitioner, typed set of papers and the miscellaneous petition.

4 This writ petition has been filed seeking to call for the records of the first respondent pertaining to G.O.(D) No.218, Housing and Urban Development (SC2(1)) Department dated 19.11.2009, to quash the same, to direct the respondents to reconsider the entire matter afresh in the light of G.O.Ms.No.854, Revenue dated 30.12.2006, G.O.Ms.No.498 Revenue (LD1)(2) Department dated 5.9.2007 and to allot land admeasuring an extent of 3536 square feet or thereabouts in S.No.766 bearing Door No.431-A, 9th Street, Sharma Nagar, Vyasarpadi, Chennai-600 039 with its prayer hall (Nagoor Zanda Flag with God stone) and also Naga Sakthi Puthu Kovil, etc., to the petitioner.

5 It is the case of the writ petitioner that he is working as Traffic Inspector in the Metropolitan Transport Corporation, having its office at Vyasarpadi, Chennai. The writ petitioner would also say that he was originally a Conductor in the erstwhile Pallavan Transport Corporation in 1983.

6 It is the admitted case of the writ petitioner that he encroached upon and occupied land admeasuring 1400 square feet, which is now Door No.431, 9th Street, Sharma Nagar, Chennai-600 039. It is the further admitted case of the writ petitioner that he had put up a superstructure (dwelling house therein) and was residing there. It is also the say of the writ petitioner that he belongs to economically weaker section and therefore, the Government took a sympathetic view / consideration and allotted the said occupied land to the writ petitioner on the basis of a Government order being G.O.Ms.No.128 Housing and Urban Development Department dated 24.3.1997, on payment of Rs.9600/- only. The writ petitioner would say that he paid the same. This 1,400 sq.ft. land and the

superstructure thereon (dwelling house of writ petitioner) is hereinafter referred to as 'said property' for the sake of clarity.

7 It is the admitted case of the writ petitioner that he is in possession and enjoyment of the said property continuously from 1976. Furthermore, a registered sale deed dated 29.10.2001 bearing document No.3567 of 2001 on the file of the Sub Registrar Office, Perambur - Purasaiwalkam has also been executed by the Tamil Nadu Housing Board. With regard to the above said land to an extent of 1400 square feet or thereabout, it was admittedly encroached upon and construction was put up by the writ petitioner. As stated supra, it is 'said property' now.

8 The case of the writ petitioner now is that, adjacent to the above said Door No.431, there is vacant land admeasuring 3536 square feet and he has encroached upon that also from 1976 onwards. The writ petitioner wants the said adjacent land admeasuring 3536 square feet also to be allotted to him. The writ petitioner would say that he would be so entitled in the light of G.O.Ms.No.854 Revenue Department dated 30.12.2006.

9 So contending, the writ petitioner filed an earlier writ petition in this Court being W.P.No.23851 of 2006 and the writ petition was disposed of by this Court by an order dated 9.6.2008, wherein this Court directed the first respondent therein (who is also first respondent before me) to consider the representation of the writ petitioner dated 14.7.2006 afresh in the light of the above said G.O.Ms.No.854 dated 30.12.2006.

10 Pursuant to the above said order of this court, the first respondent took up the representation of the writ petitioner dated 14.7.2006, considered afresh and disposed of the same vide G.O(D)No.218 dated 19.11.2009, which has been called in question in this writ petition by the writ petitioner. This G.O.(D)No.218 dated 19.11.2009 is hereinafter referred to as the 'impugned order' for the sake of brevity and clarity.

11 In and by the impugned order, the first respondent has rejected the request of the writ petitioner to allot and convey the adjacent vacant land of 3536 square feet also (adjacent to plot No.431). As per the directions of this court in W.P.No.23851 of 2006 alluded to supra, the first respondent has considered the request of the writ petitioner in the light of the above said

G.O.Ms.No.854. The first respondent has held that G.O.Ms.No.854 would apply only to those who had encroached upon Government land and constructed a house, is residing there and that it will not apply to vacant land lying adjacent to an individual's property.

12 Pivotal ground on which the writ petition has been predicated by the writ petitioner is that the first respondent has not considered G.O.Ms.No.854 in its right perspective.

13 On a perusal of the affidavit and materials filed in support of the same and the submissions of learned Additional Government Pleader Mr.P.Sanjay Gandhi, I have no hesitation in holding that the first respondent has not misread G.O.Ms.No.854. In other words, the first respondent has correctly applied G.O.Ms.No.854. Besides reading of the impugned order, I have also perused G.O.Ms.No.854 dated 30.12.2006, independently. It is clear that the said G.O is a one time measure, for persons belonging to economically weaker section ('EWS' for brevity) and that it is intended for those who have encroached upon Government land and put up superstructure therein and are residing there.

14 Therefore, the first respondent was absolutely correct in holding that it will not apply to the vacant land lying adjacent to the writ petitioner's plot. One other factor on equity is also to be noticed. The writ petitioner had already encroached upon the Government land, put up superstructure and was / is residing there. It is the admitted case of the writ petitioner that the Government took a sympathetic view and allotted the said encroached land (wherein the writ petitioner has built house) on the basis of G.O.Ms.No.128 for a sum of Rs.9600/-. Thereafter, the Government has also admittedly executed the sale deed through Tami Nadu Housing Board. The writ petitioner is residing there (said property) now. Without being satisfied with this, the writ petitioner wants to annex the vacant land at Door No.431-A, 9th Street, Sharma Nagar, Vyasarpadi, Chennai-600 039, lying adjacent to the said property also.

15 In the considered opinion of this Court, the above is completely against the spirit of an executive order like G.O.Ms.No.854, which is intended to facilitate EWS section of the society. There is absolutely no illegality in the impugned order. In my considered view, not only the law, equity also is not in favour of the writ petitioner.

16 Owing to all that have been stated supra, the writ petitioner does not deserve any relief from this court.

17 The writ petition is dismissed. Though I am inclined to impose costs, in cases of this nature, I refrain from doing so with a caveat that any further attempt on the part of the writ petitioner to annex the vacant land adjacent to his house, i.e., said property (which itself was encroached and allotted by Government on sympathetic view) may entail costs at the discretion of the court hearing the same. Consequently connected miscellaneous petition is closed.

12. In the light of the narrative supra, no ground for review has been made out. The review petition is dismissed. Parties are left to bear their respective costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nv
To

1. The Secretary to Government,
Housing and Urban Development
Department,
Secretariat, Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
3. The District Collector,
Chennai.

+1cc to M/S.V.Anandhamurthy, Advocate Sr.4317
+1cc to M/S.V.Raghupathi, Advocate sr.4399

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sj[co]
srg 27/02/2019