

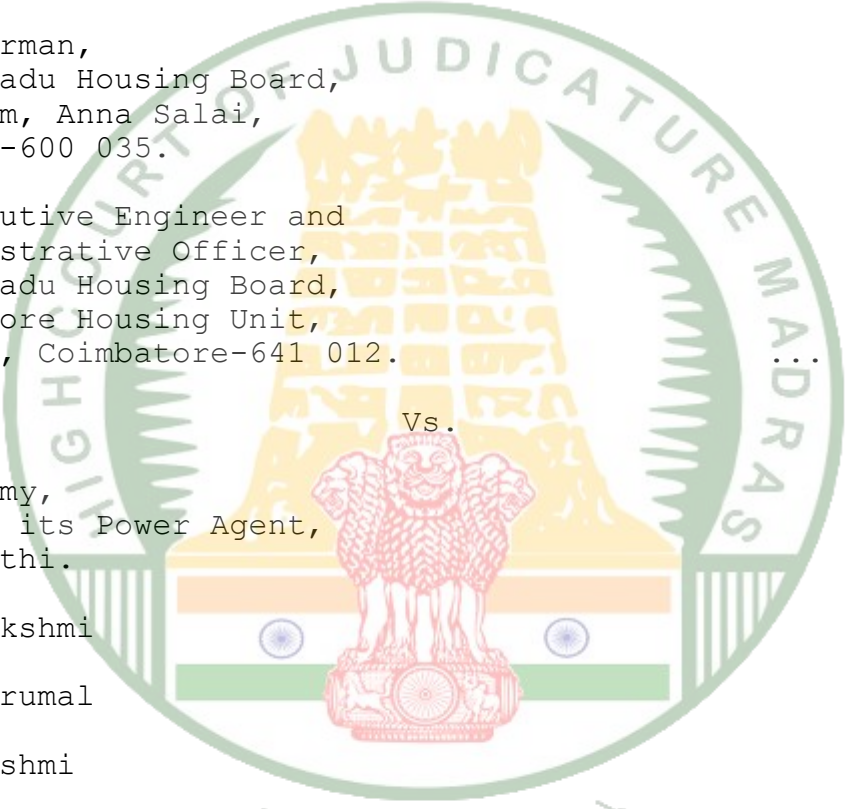
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.634 of 2018
and C.M.P.No.6210 of 2018

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- 1.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Anna Salai,
Chennai-600 035.
- 2.The executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Housing Unit,
Tatabad, Coimbatore-641 012. ... Appellants
- Vs.
- 1.P.Munusamy,
Rep. by its Power Agent,
M.Pappathi.
- 2.R.Jayalakshmi
- 3.Veera Perumal
- 4.Visa Lakshmi
- 5.P.Indirani ... Respondents
- सत्यमेव जयते

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 31.10.2013 passed by this Court in Writ Petition No.6462 of 2007.

Writ Petition filed Under Article 226 of the Constitution of India praying to issue a writ of to calling for the records pertaining to the impugned notice issued by the 2nd respondent herein in its letter no.Ka.Na.A 10/3658/90 dated 22.1.2007 and consequently to quash the same and further direct the 2nd respondent to accept the payment and to execute sale deed to the petitioner.

For Appellants : Mr.V.Anandhamurthy
For RR1 to 4 : No appearance
For R5 : Mr.C.Veeraraghavan

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

This intra court appeal is directed against the order dated 31 October 2013 in W.P.No.6462 of 2007 whereby and whereunder the learned Single Judge allowed the writ petition filed by the Power Agent of the original allottee, the first respondent herein and by quashing the order dated 22 January 2007, a Mandamus was issued to the appellants to accept the balance amount from the original allottee. The order is under challenge at the instance of the Tamil Nadu Housing Board primarily on the ground that after cancelling the allotment in favour of the first respondent on account of arrears in payment, it was specifically allotted to the second respondent by order dated 10 January 2007.

2. This appeal was filed by the Tamil Nadu Housing Board along with a petition in M.P.No.2 of 2015 to condone the delay of 374 days in filing the appeal. The first respondent received the notice in M.P.No.2 of 2015. However, he has not entered appearance. Thereafter, when the notice was sent in the appeal, it was returned with an endorsement "Door Locked". The course of conduct adopted by the first respondent clearly indicates that he was aware of the proceedings initiated by the Housing Board. Therefore, we have passed an order to the effect that notice is deemed to have been served on the first respondent. The name of the first respondent was therefore, directed to be printed in the cause list. The name is printed in the list. However, there is no appearance.

3. We have heard the learned Additional Government Pleader appearing on behalf of the appellants. None appeared on behalf of the first respondent in spite of printing his name in the cause list.

4. The Tamil Nadu Housing Board, the appellant herein allotted a housing plot under the low-income category to the first respondent as per allotment order dated 13 December 1990. The first respondent was expected to pay the tentative cost of

Rs.12,000/- in equal monthly instalments spread over a period of twenty years. The first respondent was given allotment of the LIG-I type plot in Ganapathy Block Scheme, Coimbatore.

5. The order of allotment contains a condition that in case more than two monthly instalments were not paid, the allotment would stand cancelled automatically.

6. The allottee made the first payment on 25 January 1990. The next payment due was on 10 November 1995. There was no payment made by the first respondent thereafter. The appellant was therefore, constrained to cancel the allotment by order dated 8 April 2005. Thereafter, the plot was allotted to the second respondent by order dated 05 June 2005. The possession of the plot was handed over to the subsequent allottee on 05 September 2009. There was no communication from the first respondent after the payment of the first instalment. It was only in such circumstances the Housing Board cancelled the allotment and issued a fresh allotment to the second respondent. The Power Agent of the first respondent after cancellation of the allotment and re-allotment to the second respondent approached the Tamil Nadu Housing Board with an offer to pay the arrears. The payment was not accepted by the Executive Engineer. The letter sent by the Executive Engineer dated 22 January 2001 pursuant to the communication sent by the first respondent was challenged before the Writ Court in W.P.No.6462 of 2007.

7. The learned Single Judge quashed the impugned letter and directed the Housing Board to accept the payment from the first respondent. The first respondent was directed to pay the entire amount within a period of two months from the date of receipt of a copy of the order. The first respondent was directed to pay the arrears in two instalments. The subsequent purchaser was permitted to file appropriate application before the competent forum against the Housing Board to recover the amount paid by him.

8. The allotment in question was made on 13 December 1990. It was made with a specific condition that in case more than two instalments are kept in arrears, the allotment would be cancelled automatically. It was essentially a contract between the Housing Board and the first respondent. It is not as if without understanding the terms and conditions of the allotment, the first respondent accepted the plot given by the Housing Board. It is a matter of record that only the first instalment

was paid by the first respondent. Thereafter, the instalments were not paid. In fact the instalments were not paid for a period of 15 years and only thereafter, action was taken to cancel the allotment and re-allotment of the plot to the second respondent.

9. There was no challenge to the order cancelling the allotment or the re-allotment given to the second respondent. The reply letter sent by the Housing Board to the Power Agent of the original allottee, the first respondent herein refusing to accept the arrears was the only order, which was challenged by the first respondent. The said communication is only an order consequent to the action taken by the Housing Board for cancellation of the allotment. The fact remains that the order cancelling the allotment has not been challenged by the first respondent in the manner known to law. This aspect was not taken note by the learned Single Judge. We therefore set aside the order dated 31 October 2013. The writ petition in W.P.No.6462 of 2007 is dismissed.

10. In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

abr/arr

TO

- 1.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Anna Salai,
Chennai-600 035.

- 2.The executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Housing Unit,
Tatabad, Coimbatore-641 012.

+1cc to Mr.V.ANANDHAMURTHY, Advocate, S.R.No.23795

W.A.No.634 of 2018

KGK(CO)
TR(18/04/2018)