

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2018

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P. No. 5461 of 2009
and
M.P.No.1 of 2009

1. Mrs.M. Neela
 2. Mrs. M.Vani
 3. Mr. M.Kishore Kumar
- ...Petitioners

.Vs.

- 1.The Tamil Nadu housing Board,
Represented by Chairman cum
Managing Director, Nandanam,
Chennai.
 2. Manager Marketing & Service,
Mogappair Division,
Tamil Nadu Housing Board,
Thirumangalam, Chennai -101.
 3. The Superintendent Mogappair
Division, Tamil Nadu Housing Board,
Chennai 600 101.
 4. The Executive Engineer,
Mogappair Division,
Tamil Nadu Housing Board,
Chennai - 600 101.
 5. Tamil Service and community
Service Organization,
C/o Tamil Nadu Housing Board,
Thirumangalam, Chennai - 101.
(R5 impleaded as per order dated 19/02/2010
made in M.P.No.2 of 2009)
- ...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to allot the plot No: 1046 H.I.G. Type at Mogappair Eri scheme of Tamil Nadu Housing Board in the name of the 2nd

petitioner as one of the legal heirs of late M.V.Mohan and allow the 2nd petitioner to pay the remaining installments.

For Petitioner	: Mr.Devadasan and Sagar
For Respondents	: Mr.V.Anandhamurthy

ORDER

The petitioners have prayed for issuance of writ of Certiorarified Mandamus directing the respondents, to allot the plot no. 1046 H.I.G, type at Mogappair Eri Scheme of Tamil Nadu Housing Board, in the name of the second petitioner, who is one of the legal heirs of late M.V.Mohan and allow her to pay the remaining instalments and also restrain the respondents from allotting plot no: 1046 H.I.G at Mogappair Eri Scheme of Tamil Nadu Housing Board to any other third parties.

2. The second petitioner would submit that she being wife of Mr.Kumerasan, is the daughter of M.V.Mohan, who had applied for allotment of Housing Board plot No:1046, H.I.G at Mogappair Eri Scheme on 26.04.2002 in application No.3108. The first petitioner herein is the wife of deceased M.V.Mohan and the third petitioner is the son of late M.V.Mohan, and they would contend that the said M.V.Mohan had applied for allotment of plot no: 1046 H.I.G house at Mogappair Eri Scheme of Tamil Nadu Housing Board and he died on 23.07.2007, within three months of applying for the allotment leaving behind the petitioners herein as his legal heirs.

3.While so on 20.11.2007, the petitioners received a letter from the 2nd respondent dated 15.11.2007, informing them that the said deceased father was allotted with plot No: 1046 H.I.G at Mogappair Eri Scheme at hire purchase basis in the category of general public. It is also stated that the total cost of the said plot was mentioned as Rs.43,20,400/- and the initial deposit of Rs.17,28,160/- should be paid within 21 days from the date of receipt of the said letter. This petitioner along with the certificates, viz., death certificate, and legal heir certificate, pension pay order, Ration card and identity card issued by the Election commission of India regarding their father, approached the third respondent and the third respondent verified the records and made an endorsement in the letter and the chalan for payment of Rs.17,28,160/-.Accordingly, the petitioner's have remitted a sum of Rs.17,28,160/- on 06.02.2007 within the time stipulated and receipt was also issued on 06.12.2007, acknowledging the said payment made by the petitioners herein.

4.The petitioners also would contend that the first petitioner herein being the wife of the deceased M.V.Mohan, is one of the co-allottee of the said plot along with her husband M.V.Mohan. On 20.12.2007, the petitioners have submitted the affidavit and indemnity bonds in the prescribed formats stating that they have no objection for transferring the allotment in the name of M.Vani, the person who sworn the affidavit of the writ petition and she should be paying the instalments. When, the second petitioner visited the office of the third respondent and making enquiries, it was orally informed that the papers were sent to the Board and awaiting for orders. Since, there was no response from the 1st respondent, the second petitioner sent a letter dated 29.01.2009 through her counsel asking the Tamil Nadu Housing Board to change the name of the allottee and to specify the instalments to be paid. The petitioners came to know that the respondents are attempting to allot the said plot to some other third party, with whom they are interested. Since, they are not having any other alternative remedy, they approached this Hon'ble Court by way of filing this writ petition under Article 226 of the Constitution of India.

5.From the allotment letter and the counter affidavit filed by the respondents, wherein it is stated that the petitioner's father death on 23.07.2007 was not brought to the knowledge of the respondents, hence the provisional allotment letter was issued in the name of Thiru. M.V.Mohan in respect of plot No.1046. Since the provisional allotment order was issued in favour of the deceased person, the petitioners also paid the initial deposit of Rs.17,28,160/- without concurrence from the concerned officials i.e Superintendent/Assistant Revenue Officer.

6.It is also stated by the respondent that on 28.01.2008 along with the affidavit of other legal heirs, the second petitioner produced certain documents, viz., death certificate etc. From the above it is seen that the second petitioner has not furnished the certificates on 06.12.2007 and her averment is false. As the averment is false, the third respondent has not verified any certificates and did not made any endorsement for the payment of Rs.17,28,160/-.

7. Further, they would allege that the said Mohan expired on 23.07.2007 even before issuance of the provisional allotment order dated 15.11.2007. On receipt of the provisional allotment order, the petitioners ought to have informed the fact about the death of the allottee. Instead, the petitioner has paid the initial deposit so as to suppress the fact of the death of the deceased allottee. The action of the petitioners intentionally suppressing the death of their father and paid Rs.17,28,160/- on 06.12.2007 in the name of the deceased father is not valid. Only on 28.01.2008, the petitioner has produced certain

documents such as the death certificate, affidavit of other petitioners in Rs.20/- stamp paper, which was obtained on 03.01.2008 and 12.01.2008 and submitted on 28.01.2008. The department came to know about the fact of the death of the original allottee, only on receipt of the representation dated 28.01.2008, wherein the second petitioner sought for transfer of the allotment in favour of her daughter of the deceased applicant. Since there was suppression of fact, the said allotment order becomes invalid. Therefore, the request of the petitioner cannot be complied with.

8.It is also submitted that since the petitioners paid initial deposit in the name of the deceased allottee the Government was addressed to take appropriate action to bring the allotment to some other person and the Government has issued the G.O.No.(2D)No. 380, Housing and Urban Development Department, dated 08.04.2008 to allot the plot No.1046 H-I-G at Mogappair Eri Scheme to the Tamil Service and Community Service Organisation(Tamil SAOC), under the hire purchase scheme. Based on the above said Government order the provisional allotment order dated 17.04.2008 for the plot No.1046 H-I-G at Mogappair Eri Scheme was issued to the Tamil Service and Community Service Organisation (Tamil SAOC) and they have also paid the initial deposit. The respondent also would contend that the amount paid by the petitioners on production of the refund vouchers duly signed by the legal heirs of M.V.Mohan will be refunded to the petitioners.

9.It could be seen from the records that the death certificate was issued on 20.08.2007 and the allotment order was issued by the department on 15.11.2007, which was received by the petitioners later. The legal heir certificate was issued by the authorities only on 29.11.2007. Without receiving the legal heirship Certificate dated 29.11.2007 the petitioners have paid the amount on 06.12.2007, as they have to pay the amount on or before 06.12.2007. The petitioner would submit at that time, the petitioners have not chosen to inform the authorities inadvertently and there was no intention of suppression and since the father died they were under the impression that based on the condition No:12, which states that for the persons who are married, the allotment will be given only in the joint name of husband and wife their mother/wife of the deceased/first petitioner herein is entitled to get the allotment. On perusal of the conditions imposed for registration, it would be seen that if a person is married either of the spouse will be entitled for the said allotment and even the persons who are not married can apply for inclusion of either of the spouse name after their marriage by producing relevant documents and there was no such condition stated that if either of the spouse died and if the said information was not brought to the knowledge of

the respondents, the allotment will be cancelled. The petitioners being the only legal heirs of the said deceased person, are entitled for the filing this petition. The said Housing scheme itself is only for residential purpose and the same should not be allotted to any other purpose or to a different entity(i.e) to some other organization. It is also seen that the first petitioner herein is a Co-allotee of the said plot and is entitled for allotment of the same. But, the respondents have not chosen to allot the same to the petitioners, but they allotted the same to some other organisation, which is against the scheme itself. Therefore, contention of the respondents that the wife and other legal heirs are not entitled for the allotment on the ground of suppression, is not accepted by this Court. Hence, this Court is of the opinion that the allotment not given to the petitioners is highly condemnable and the action of the respondents in allotting the said plot to some other third party is also condemnable. The order of allotment issued in favour of 5th respondent is set aside and the Tamil Nadu Housing Board is directed to give the allotment in favour of the wife/first petitioner herein, since she is entitled for the same.

10. With the above observations, this writ petition is disposed off and consequently connected miscellaneous petitions is closed. No costs.

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

To.

1. The Chairman Cum Managing Director,
The Tamil Nadu housing Board,
Nandanam, Chennai.
2. Manager Marketing & Service,
Mogappair Division,
Tamil Nadu Housing Board,
Thirumangalam, Chennai -101.
3. The Superintendent Mogappair
Division, Tamil Nadu Housing Board,
Chennai 600 101.

4. The Executive Engineer,
Mogappair Division,
Tamil Nadu Housing Board,
Chennai - 600 101.

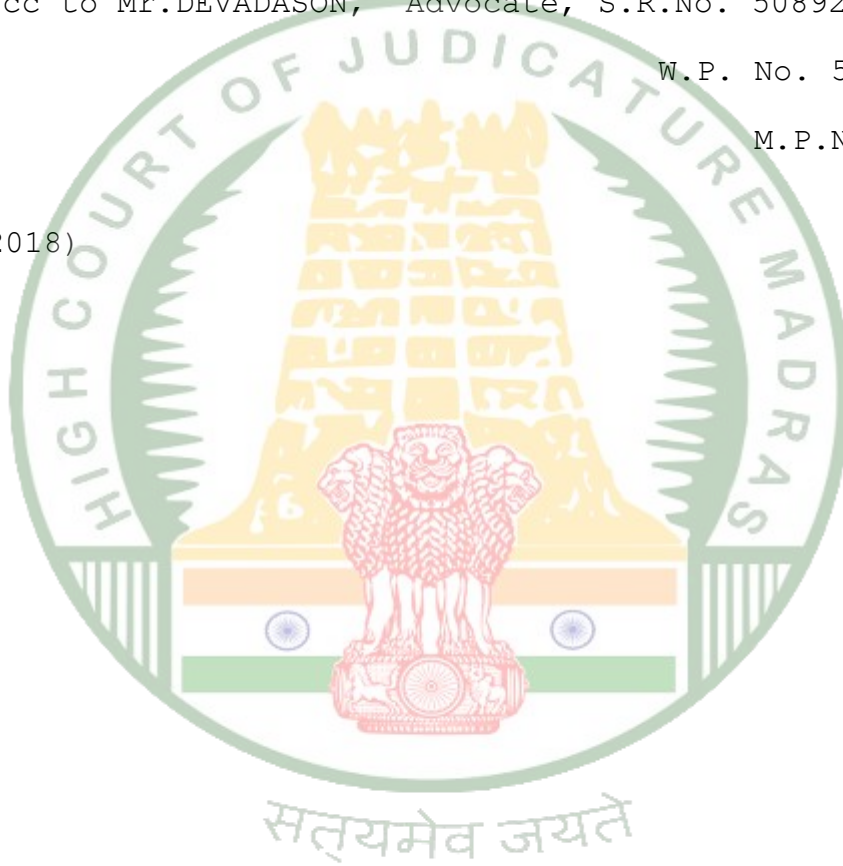
5. Tamil Nadu Service and community
Service Organization,
C/O.Tamil Nadu Housing Boar,
Thirumangalam, Chennai - 101.

+1cc to Mr.V.ANANDHAMURTHY, Advocate, S.R.No.51089

+2cc to Mr.DEVADASON, Advocate, S.R.No. 50892

W.P. No. 5461 of 2008
and
M.P.No.1 of 2009

SS(CO)
TR(11/08/2018)



WEB COPY