

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.07.2018	Delivered on 07 .08.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.980, 981, 1110 and 1111 of 2013

W.A.Nos.980 and 981 of 2013

- 1 THE SECRETARY TO GOVERNMENT
GOVERNMENT OF TAMILNADU REVENUE DEPARTMENT
FORT ST.GEORGE CHENNAI 9
- 2 THE COMMISSIONER
LAND REFORMS CHEPAUK CHENNAI 5
- 3 THE COMMISSIONER
LAND ADMN. LAND REFORMS CHEPAUK CHENNAI 5
- 4 THE DISTRICT COLLECTOR
CHENNAI DISTRICT
- 5 THE THASILDHAR
MAMBALAM GUINDY TK
K.K. NAGAR CHENNAI 78

... appellants 1-5/
Respondents 1-5 in WPs

Vs

- 1 M.BASKAR
- 2 S.MENAKA
- 3 V.MOHAN
- 4 R.VASANTHI
- 5 M.MAGESWARI
- 6 R.KAVERI
- 7 M.DEVARAJ
- 8 SAMUNDEESWARI
- 9 Y.MYTHILY
- 10 S.NIRMALA
- 11 S.VIJAY
- 12 B.KANNAN
- 13 M.RAJA
- 14 J.CHANDRU
- 15 B.MADANKUMAR

16 S.NANDAKUMAR
17 D.SUBASH
18 M. KARVANNAN
19 S.SHANTHI
20 R. ANAND
21 N.VENI
22 T.VETTRI
23 N.JAYAKUMAR
24 V.POOMAGAL
25 P.DIVYA
26 R.SIVAKUMAR
27 R.MOORTHY
28 N.ELANGOVAN
29 K.MUNIAMMAL
30 V.PREMA
31 K.SARATHY
32 N.SAGUNTHULA
33 M.RAJASEKAR
34 C.CLARA
35 S.AISHWARYA
36 THENMOZHI
37 G.KARUNANITHI
38 S.MAHALAKSHMI
39 SUSAI RAJ

... Respondents 1-39/
Petitioners in WPs

40 BHARATH RATHNA DR. AMBEDKAR
HOUSING WELFARE ASSN REP BY ITS PRESIDENT
PRABU REG. NO.559/93 NO.11 SAMBANDAM
GARDEN 100 FEET THARAMANI LINK ROAD
VELACHERY CHENNAI 42

41 THE DIRECTOR TNP & ANI
GEO SPECIAL DATA CENTRE SURVEY OF INDIA
THIRU VI KA INDUSTRIAL ESTATE GUINDY
CHENNAI-600 032.

... Respondents 40-41/
Respondents 6 & 7

W.A.Nos.1110 and 1111 of 2013

1 M.BASKAR
2 S.MENAKA
3 V.MOHAN
4 R.VASANTHI
5 M.MAGESWARI
6 R.KAVERI
7 M.DEVARAJ
8 SAMUNDEESWARI
9 Y.MYTHILY
10 S.NIRMALA

WEB COPY

11 S.VIJAY
12 B.KANNAN
13 M.RAJA
14 J.CHANDRU
15 B.MADANKUMAR
16 S.NANDAKUMAR
17 D.SUBASH
18 M. KARVANNAN
19 S.SHANTHI
20 R. ANAND
21 N.VENI
22 T.VETTRI
23 N.JAYAKUMAR
24 V. POOMAGAL
25 P.DIVYA
26 R.SIVAKUMAR
27 R.MOORTHY
28 N. ELANGOVAN
29 K. MUNIAMMAL
30 V. PREMA
31 K. SARATHY
32 N. SAGUNTHULA
33 M. RAJASEKAR
34 C. CLARA
35 S. AISHWARYA
36 THENMOZHI
37 G.KARUNANITHI
38 S.MAHALAKSHMI
39 SUSAI RAJ

...

Appellants/Petitioners in WP.1-39

versus

1 THE SECRETARY TO GOVERNMENT
GOVERNMENT OF TAMILNADU REVENUE DEPARTMENT
FORT ST.GEORGE CHENNAI 9

2 THE COMMISSIONER
LAND REFORMS CHEPAUK CHENNAI 5

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4 THE DISTRICT COLLECTOR
CHENNAI DISTRICT

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7 THE DIRECTOR, TNP & ANI
GEO SPECIAL DATA CENTRE SURVEY OF INDIA
THIRU VI KA INDUSTRIAL ESTATE GUINDY
CHENNAI-600 032.

...Respondents/
Respondents in WP

Writ Appeals filed against the order passed by this Court dated 31.7.2012 in W.P.Nos.5000 and 6585 of 2011.

Prayer in W.P.Nos.5000 of 2011:-

Petition under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records from the 1st respondent relating to the impugned G.O.Ms.No.48 Revenue (ULC)(1)(2) Dept. dated 30.01.2008 and all consequential orders relating to the aforesaid impugned G.O. quash the same and further direct the respondents to execute the Sale Deed in the name of the member allottees namely the petitioners by fixing a reasonable rate for the cost of land allotted.

Prayer in W.P.Nos.6585 of 2011:-

Petition under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records from the 1st Respondent relating to the impugned G.O.Ms.No.250 Revenue (ULC)(1)(2) Dept. dated 28/07/2009 and the consequential order passed by the 1st Respondent in G.O.(D) No.169 Revenue (ULC I(2)) Department dt. 16/04/2010 quash the same and further forbear the 7th Respondent his men servants and agents from in any way interfering with the peaceful possession of the petitioners land and house at Plot Nos. 1 to 39 at Survey No.316/6J situated at Velachery Village Guindy-Mambalam Taluk Chennai

Appearance :-

Mr.V.Anandamoorthy, Addl. Government Pleader ... counsel for appellant in WA Nos.980 and 981/2013 and counsel for respondents 1 to 5 in WA Nos.1110 and 1111 of 2013.

Mr.V.Selvaraj, Senior counsel, for M/s.D.Prabhu Mukunth Arunkumar ... counsel for respondents 1 to 26, 28 to 30, 32 to 36, 38 and 39 in W.A.No.980 of 2013 counsel for Appellant 27, 29, 31 & 37 in WA.No.1110 & 1111 of 2013.

Mr.N.Rajan ... counsel for 7th respondent in W.A.Nos.1110 & 1111/2013

Mr.R.Balachandran ... Counsel for 40th respondent in W.A.Nos.980 and 981 of 2013; counsel for 6th respondent in W.A.Nos.1110 and 1111/2013

Mr.Venkataswamy Babu ... counsel for 41st respondent in W.A.Nos.980 and 981 of 2013

No appearance for respondents 27, 31 and 37 in W.A.Nos.980 and 981 of 2013 and for Appellants 1 to 26, 28, 30, 32 to 36, 38 and 39 in W.A.Nos.1110 and 1111 of 2013.

COMMON JUDGMENT

K.K.SASIDHARAN, J.
Introductory:-

The Government of Tamil Nadu assigned land to an extent of 6690 sq.mtr. out of the total extent of 18550 in S.F.No.316/6J, Velachery Village, in favour of a society by name "Bharat Ratna Dr.Ambedkar Housing and Social Welfare Society" as per Government Order in G.O.Ms.No.918 Revenue (Na.Ni.) U1(2) Department dated 19 November 1998, with a clear stipulation that the society must allot plots to an extent of about 800 sq.ft. to each one of its 90 members. The society even before fixing the land value by the Government and issuing an order to enter upon permission, executed 13 sale deeds in favour of the writ petitioners. Similarly, the president of the society assigned 4 plots to third parties by sale deed dated 1 June 2001. The Government on the basis of a complaint given by a person that the lands to be allotted to the 90 members of the society were allotted in an unlawful manner to a company by name Land Marvel Limited, cancelled the allotment, as per order in G.O.Ms.No.918 Revenue Department dated 19 November 1998. The Government Order in G.O.Ms.No.48 Revenue (ULC) (1)(2) Department dated 30 January 2008, cancelling the allotment made as per order in G.O.Ms.No.918 Revenue Department dated 19 November 1998 was challenged by the allottees in W.P.No.5000/2011. The land was subsequently allotted to Geo Spatial Data Centre of the Survey of India, by collecting the guideline rate. The order allotting the land to the Geo Spatial Data Centre of the Survey of India as per order in G.O.Ms.No.250 Revenue dated 28.7.2009 and the order dated 16.4.2010 in G.O.(D)No.169 Revenue granting permission to enter upon the land and handing over possession were challenged in W.P.No.6585 of 2011. The learned Single Judge found that the allotments were made in favour of the writ petitioners in an illegal manner. However, taking into account the fact that notices were not served on them and an opportunity

of hearing was not given before cancellation, the learned Judge directed the Government to allot suitable alternative sites of equivalent size to the writ petitioners within four months of receipt of a copy of the order, without interfering with the subsequent allotment made in favour of the Central Government Department. Feeling aggrieved, the State has come up with the intra court appeals in W.A.Nos.980 and 981 of 2013. The writ petitioners have filed writ appeals in W.A.Nos.1110 and 1111 of 2013 to retain possession of the land allotted to them.

The facts:-

2. The Government of Tamil Nadu pursuant to the request made by Bharat Ratna Dr.Ambedkar Housing and Social Welfare Society Ltd., (hereinafter referred to as "the Society") assigned an extent of 6690 sq.ft. of land in S.F.No.316/6J, Velachery Village to the Society. The allotment was with a condition to allot plots to an extent of 800 sq.ft. to each of its 90 members. Since the land value was not fixed and enter upon permission was not given, the Society filed a Writ Petition in W.P.No.25031/2005. The Writ Petition was disposed of by order dated 4 August 2005, directing the Government to consider the representation and dispose of the same on merits.

3. While the Government was in the process of considering the representation for fixing the land value and to permit the society to take possession of the land, Thiru.Pon Sivakumar, a local person, made a complaint that even before the Government fixing the land value and giving permission to enter upon the land, the society alienated major portion of the land to a company by name Land Marvel Ltd. The Government examined the complaint and ultimately issued an order in G.O.Ms.No.48 dated 30 January 2008, cancelling the allotment. However, notice was not given to the allottees before passing such an order.

4. The Thasildar, Mambalam Guindy Taluk, initiated action for eviction of the allottees, who were in occupation of the land. It appears that there were civil suits filed by the allottees before the City Civil Court. The allottees filed a Writ Petition in W.P.No.5000/2011, challenging the order in G.O.Ms.No.48 Revenue (ULC) (1)(2) dated 30 January 2008, cancelling the assignment granted to the society.

5. The Government after cancellation of the allotment made to the society, passed an order in G.O.Ms.No.250 Revenue (ULC I (2)) Department dated 28 July 2009, allotting the said land to a Central Government Department for setting up the regional office of Geo Spatial Data Centre of Survey of India at Chennai. The assignment was with a condition to collect the guideline value along with 12% compound interest. The Government after

assignment of the land to the Central Government Department, passed an order in G.O.Ms.No.169 Revenue Department dated 16 April 2010 permitting Geo Spatial Data Centre to enter the land and take over possession. The allottees immediately filed another Writ Petition in W.P.No.6585 of 2011, challenging the allotment in favour of the Geo Spatial Data Centre and order permitting assignee to take possession of the land.

6. The learned Single Judge scanned the entire materials on record and found that even before fixing the land value and granting permission to enter upon the land, for the purpose of taking possession, the society assigned the land to the writ petitioners. It was also found that the president himself assigned four plots in favour of one Prem Kumar as per registered Doc.No.2197 of 2001. The learned Single Judge opined that the order cancelling the allotment was made without issuing notice to the society or the allottees. However, even after making such an observation, the learned Single Judge took the view that the writ petitioners are not entitled to a discretionary remedy by quashing the order, cancelling the allotment. The said observation was made taking into account the fact that the writ petitioners were all dispossessed and the Central Government Department was put in possession. The learned Single Judge therefore passed an order directing the Government to allot alternate sites of equivalent size to the writ petitioners.

7. We have heard the learned counsel for the appellants in the respective appeals and the learned counsel for the respondents.

The issue:-

8. The core question is as to whether when further action was not taken to fix the land value and grant permission to enter upon the land on the basis of the assignment, the society was correct in assigning the land to the writ petitioners.

Analysis:-

9. The Government Order in G.O.Ms.No.918, Revenue Department dated 19 November 1998, contain the details of assignment. The Government after assigning the land to the society, called upon the Commissioner of Land Administration to send a proposal for fixing the land value and for granting permission to enter upon the land. Therefore, it is clear that the order in G.O.Ms.No.918 was issued only for assignment, which was a pre-requisite for granting permission to enter upon the land and fixing the land value. The assignment would be completed only after paying the land value by the society after fixing the value by the Government. The question of giving permission to enter the land would arise only after making the payment. Therefore, no right

would accrue to the society on account of the Government Order in G.O.Ms.No.918 Revenue Department dated 19 November 1998 and more particularly to sell the plots to its members or outsiders. The society was well aware that there was no action taken by the Government to fix the land value and that was the reason for filing the Writ Petition in W.P.No.25031 of 2005. However, it is a matter of record that even before fixing the land value by the Government and giving possession, the society sold plots to both members and non members. The details furnished by the writ petitioners would indicate that the allotments were made and documents were registered in favour of the allottees in 2003 itself. However, the Writ Petition was filed only in 2005, for fixing the land value. The president himself was instrumental in executing a sale deed dated 1 June 2001 in favour of one Prem Kumar and it was registered as Doc.No.2197/2001. These transactions were all illegal in nature in view of the fact that the Government have neither fixed the land value nor granted permission to the society to enter upon the land and take possession to make allotments.

10. The Government cancelled the allotment taking into account the allegations relating to allotment. It is true that notice was not issued to the society before passing the order in G.O.Ms.No.48 dated 30 January 2008, cancelling the allotment. The learned Judge found that after cancelling the allotment, the land was assigned to a Central Government Department, as per order in G.O.Ms.No.250 Revenue Dated 28 July 2009. The Government issued another order in G.O.Ms.No.169 Revenue dated 16 April 2010, permitting Geo Spatial Data Centre to enter the land and take over possession. The learned Single Judge also found that the writ petitioners were all dispossessed. The learned Single Judge therefore observed that the writ petitioners are not entitled to a discretionary remedy. In fact, the writ petitioners have not produced any document to show that after the allotment, they took possession of the land and residential houses were constructed. The Government have taken up a specific contention that it was only a token allotment and the land was never in the possession of the allottees.

11. The learned single Judge, after negating the case pleaded by the writ petitioners and making an observation that it would not be a sound exercise of judicial discretion to cancel the allotments made to the Central Government Department, by quashing the Government Order in G.O.Ms.No.48 dated 30 January 2008, directed the Government to allot suitable alternate lands of equivalent size to the allottees.

12. The Government, by allotting the land to the society by order in G.O.Ms.No.918 dated 19 November 1998, has not given any guarantee to the members of the society that the land would be

allotted to them even before fixing the land value or giving permission to enter upon the land. The allotments were made arbitrarily by the society both to members and non members. The president himself has sold four plots and it was only after making allotments, Writ Petition was filed by the President for a direction to fix the land value. Therefore, it is very clear that the assignments were made in collusion with the allottees and it was not a bona fide transaction. The question of directing the Government to allot suitable alternative sites to the writ petitioners would arise only in case the Government has handed over possession of the land to the society after collecting the land value. Since payment was not received by the Government for the land and permission was not granted to take possession, the society was not legally correct in assigning the land to the writ petitioners. No equity would accrue to the writ petitioners on account of the illegal allotment made by the society in their favour. The Government was not a party to any of the fraudulent transactions. Therefore, the allotment made by the society would not bind the Government.

13. The learned Single Judge issued the direction to allot alternate site to the writ petitioners only for the reason that notice was not given to the society before cancelling the assignment. In case the learned Single Judge was of the view that prior notice should have been given to the society, the impugned order of cancellation ought to have been cancelled and the Government should have been directed to pass fresh orders, after hearing the affected parties.

14. The order passed by the learned Single Judge for allotment of alternate sites does not contain any indication as to the place where the allotment should be made. Similarly, it is not clear as to whether the allottees must pay the present market value. The State should not be burdened with such allotments, when it is clear that the Government was not responsible for the sorry state of affairs. It is always open to the allottees to claim damages from the society on account of the illegal allotment. We are therefore of the view that the learned Single Judge was not correct in directing the Government to allot alternate sites of equivalent size to the writ petitioners, even after upholding the Government Order cancelling the assignment made to the society.

15. We therefore set aside the direction contained in the order dated 13 March 2013 in W.P.Nos.5000 and 6585 of 2011, directing the Government to allot alternate land of equivalent size to the Writ Petitioners. The Writ Petitions in W.P.Nos.5000 and 6585 of 2011 shall stand dismissed.

16. The intra court appeals in W.A.Nos.980 and 981 of 2013,

filed by the State are allowed. The intra court appeals in W.A.Nos.1110 and 1111 of 2013 are dismissed. No costs. Consequently, connected M.P.s, are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. THE SECRETARY TO GOVERNMENT
GOVERNMENT OF TAMILNADU REVENUE DEPARTMENT
FORT ST.GEORGE CHENNAI 9
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THIRU VI KA INDUSTRIAL ESTATE GUINDY
CHENNAI-600 032.
- 7 THE DIRECTOR,
GEO SPECIAL DATA CENTRE SURVEY OF INDIA
THIRU VI KA INDUSTRIAL ESTATE GUINDY
CHENNAI-600 032.

+1cc to Mr.N.Rajan , Advocate, S.R.No.54374
+1cc to Mr.N.Rajan, Advocate, S.R.No.54375
+2cc to Mr.R.Balachandran, Advocate, S.R.No.54901
+4cc to M/s.D.Prabhu Mukunth Arunkumar, Advocate, S.R.No.54679

W.A.Nos.980, 981,
1110, 1111 of 2013

SKV(CO)
CS/03/09/18