

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.02.2018
Date of Verdict : 15.02.2018

CORAM
THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.2389 of 2012
and M.P.No.2 of 2012

A.Madeshwaran ... Petitioner

Vs

1. The Government of Tamil Nadu,
Represented by it's Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai - 9.
 2. Tamil Nadu Housing Board,
Represented by it's Assistant Secretary (Allotment),
493, Anna Salai, Nandanam,
Chennai - 600 035.
 3. The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
Salem Division,
Salem - 636 008.
- ... Respondents

Prayer: This petition was filed under Article 226 of the constitution of India praying to issue a Writ of Certiorari Mandamus to call for the records of the second respondent vide proceedings in Letter No.Allotment 3(1)/ 42285/07 dated 20.12.2011 and quash the same and consequently direct the respondents herein to allot and convey the sale deed in respect to Plot No.75 situated in Survey No.2/15 of Kandampatty Village, Salem District.

For Petitioner : Mr.Sankar Ramasamy
For Respondents
For R1 : Mrs.K.Bhuvaneswari
Assistant Government Pleader

For R2&R3 : Mr.V.Anandamurthy

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a Writ of Certiorari Mandamus to call for the records of the second respondent vide proceedings in Letter No.Allotment 3(1)/ 42285/07 dated 20.12.2011 and quash the same and consequently direct the respondents herein to allot and convey the sale deed in respect to Plot No.75 situated in Survey No.2/15 of Kandampatty Village, Salem District.

2. The father of the petitioner was the absolute owner of the land measuring an extent of 0.33 cent in Survey No.2/10 and 0.53 cent in Survey No.2/15 in Kandampatty Village, Salem District. The petitioner, being the only son, has inherited the property after the death of his father and had been in enjoyment and possession of the same without any interference.

3. The larger extent of land in Kandampatty Village was the subject matter of acquisition proceedings under the Land Acquisition Act 1894. A notice was issued on 30.07.1980. A portion of the land belonging to the petitioner was also part of the acquisition proceedings. After the land being acquired, the petitioner came to know that the adjacent land owners were considered for allotment of plots in the acquired land, which lands were acquired in respect of Salem Neighbourhood Scheme by the second respondent Board. On conclusion of the acquisition proceedings, an award was passed and compensation was determined. However, according to the petitioner, he has not received the compensation.

4. The petitioner thereafter came to know that he was entitled to allotment of plots in the acquired land under the ex-land owners category, thereafter, he gave a representation to the third respondent requesting for allotment of plot No.75 in Survey No.2/10. The plot was measuring about 1300 sq.ft. and the petitioner has also given an undertaking to pay the cost as fixed by the second respondent Board. The request of the petitioner was also duly recommended by the Special Thasildhar, Salem by proceedings dated 23.09.2009 recommending the allotment of Plot No.75 in his favour under the ex-land owner category. In pursuance of the recommendation and the request made by the petitioner in this regard, the second respondent called for report from the third respondent for the allotment of plots. Thereafter, it appears that the third respondent, by letter dated 28.01.2010 had submitted all the details as required, enclosing the documents in respect of the land acquired from the petitioner. Thereafter, the petitioner was informed that due steps have been initiated for the allotment of plot No.75, after obtaining approval from the Board.

5. While the matter stood thus, the second respondent, by the impugned order dated 20.12.2011, has rejected the request of the petitioner stating that there was no provision for allotment of Plot under the ex-land owners category and in fact the petitioner is interested for allotment of land, he may apply along with general public by submitting an application whenever the advertisement is issued in this regard. The said rejection is put under challenge in the present writ petition.

6. The learned counsel appearing for the petitioner has submitted that the reasons set forth in the impugned communication dated 20.02.2011, cannot be countenanced both in law and on facts, for the reasons that such allotment has been granted to several ex-land owners under the ex-land owners category, by giving preference to them. For example, the learned counsel appearing for the petitioner pointed out that one S.Muthaiah and others were granted respective plots under the ex-land owners category, who are none other than the adjacent land owners of the petitioner.

7. The learned counsel appearing for the petitioner would also submit that during the pendency of the Writ Petition, by communication dated 10.09.2012, the petitioner was asked to give undertaking that if he would withdraw the present Writ Petition, his request would be considered. On the receipt of the communication, it appears that the Writ Petitioner submitted a declaration as required duly signed by him and attested by the Notary Public. The learned counsel would also draw the attention of this Court to the letter issued by the third respondent dated 10.09.2012, in which, it is stated that the petitioner would be duly informed by the authorities concerned, after disposal of the present Writ Petition. He would also draw the attention of this Court to the order passed by the authorities concerned to one other ex-land owner by providing special allotment of plot, as evidenced by the allotment order dated 29.02.2006, which is filed along with the additional typed set of documents. He would therefore submit that the rejection of the petitioner's request, in the teeth of the above facts, cannot stand the test of judicial scrutiny and the same is without justification.

8. Upon notice, Mr.V.Anandhamoorthy, learned counsel entered appearance on behalf of the respondents 2 & 3, and filed a detailed counter affidavit.

9. The learned counsel appearing for the second respondent/ Board would submit that there is no provision for allotment of plot under ex-owners category and in this connection, he would draw the attention of this Court to the decision of the Division Bench of this Court passed in W.A.No. 780 of 1999, wherein the

Division Bench of this Court has set aside the order of the learned Single Judge, approving the allotment of the land under the ex-owners category. This order of the Division Bench, passed solely based on the statement made by the counsel appearing for the Board. But however, it appears that the Division Bench was not properly apprised of all the facts as to entitlement of allotment of plots under the ex-land owners category as provided by the Board itself, to the several ex-land owners. In any event, the learned Division Bench did not pronounce any statement of law and the order was passed merely on the basis of the statement made by the counsel in the course of arguments.

10. The issues raised in the Writ Petition on behalf of the petitioner have not been controverted or disputed on behalf of the respondents. In fact, pending disposal of this Writ Petition, the authorities themselves, have advised the petitioner to give an undertaking and the request of the petitioner would be favourably considered on such authority. It appears that the petitioner has also given the required undertaking. The only obstacle now stand in the way of the respondents in taking decision is that the pendency of the Writ Petition.

11. Since the facts, as mentioned by the petitioner and as canvassed by the learned counsel appearing for the petitioner, have not been seriously disputed on behalf of the respondents, this Court has to necessarily accept the case of the petitioner that the petitioner is entitled to be considered for allotment of land as requested by him under the ex-land owners category. This position fortified by the fact that the Special Tashildar himself has recommended for said allotment in favour of the petitioner and other authorities including the second respondent are inclined to consider the request of the petitioner favourably but after disposal of the present Writ Petition. That being the case, this Court does not see any justification for upholding the impugned order passed by the second respondent holding there is no provision for ex-land owners for allotment of plot under ex-land owners category.

12. From all the circumstances of this case as set out above, the petitioner has made out a clear case for grant of relief. Therefore, the impugned order dated 20.12.2011, is hereby set aside and the respondents are directed to consider the request of the petitioner for allotment of plot on the basis of his representation, for seeking such allotment at par with the action taken by the authorities, in respect of the other similarly placed ex-land owners and pass a detailed order within a period of eight weeks from the date of receipt of the copy of Order. It is also made clear that if similarly placed persons who granted plot under the ex-land owners category, the respondents are also directed to mete out the same treatment to

this petitioner by passing favourable orders.

13. The Writ Petition stands allowed as above. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Secretary
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Chennai - 9.
2. The Assistant Secretary (Allotment),
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai - 600 035.
3. The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
Salem Division,
Salem - 636 008.

+1cc to Government Pleader SR.No.12187

+1cc to Mr.V.Anandhamurthy, Advocate SR.no.11887

+1cc to Mr.Sankar Ramasamy, Advocate Sr.No.11871

SSV(CO)

sm:7.3.2018

W.P.No.2389 of 2012
and M.P.No.2 of 2012

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