

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.11.2018

CORAM
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
W.P.No.2585 of 2017
and
W.M.P.Nos.2538 and 2539 of 2017

M. Kannabiran,

...Petitioner

-Vs-

1.The Principal Secretary,
to Housing and Urban Development,
Fort St. George,
Chennai - 600 009.

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

3.The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
K.K. Nagar, Chennai.

4.The Executive Engineer & Administrative Officer,
Mogappair Division,
Tamil Nadi Housing Board,
Thirumangalam, Chennai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order dated 10.02.2011 in reference no. M.R.A6/1944/08 which is directly against the letter and spirit of G.O. [2D] No.3210 dated 03.04.2008 of the Government and quash the same as illegal and arbitrary and consequently direct the 2nd respondent to re-allot Plot No.312 in Nolambur Scheme and in the event of non-availability of the said Plot No.312, alternatively allot some other Plot in Nolambur Scheme.

For Petitioner : Mr. D. Veerasekaran

For Respondent-1 : Mr. A. Zahir Hussai
(Govt. Advocate.)

For Respondent 2 to 4: Mr. V. Anandha Moorthy
(Standing Counsel for TNHB)

O R D E R

This writ petition has been filed to issue of Writ of Certiorarified Mandamus calling for the records relating to the order dated 10.02.2011 in reference no. M.R.A6/1944/08 as against the letter and spirit of G.O. [2D] No.3210 dated 03.04.2008 of the Government and consequently direct the 2nd respondent to re-allot Plot No.312 in Nolambur Scheme and in the event of non-availability of the said Plot No.312, to allot some other Plot alternatively, in Nolambur Scheme.

2. The learned counsel for the petitioner would submit that the petitioner was Office Assistant, in the Supreme Court of India and he has applied an application for allotment of Housing Plot under Government Discretionary Quota vide G.O.(2D) No.136, Housing and Urban Development Department HB5(1), in the category of unblemished Government Servants Category on 08.02.2008 to the first respondent. On the basis of the aforesaid application, the petitioner was allotted a plot bearing No.2, MIG Alapakkam Housing Scheme, K.K. Nagar Division at the cost of Rs.2,24,800/- (Two Lakhs Twenty Four Thousand and Eight Hundred Only) under the Government Servants Quota in the year 2008 by the first respondent herein and the entire cost of the aforesaid plot was paid through Demand Draft on 20.03.2008 to the respondent Board. Subsequently, the petitioner has made request on his original application dated 07.02.2008 the second respondent, to allot a plot in the city of Chennai. On considering the aforesaid request, the petitioner was allotted a plot bearing No.312 in Nolambur Scheme at the cost of Rs.30,22,400/- (Rupees Thirty Lakhs Twenty Two Thousand and Four Hundred Only) by the second respondent under G.O. [2D] No.320 on 03.04.2008. Further, the plot was handed over to the petitioner since he has paid entire cost for the aforesaid plot. In this context, the the Executive Engineer, Mogappair Division, Tirumangalam, the fourth respondent herein, had sent a order dated 10.02.2011 under reference no.M.R.A6/1944/08 for cancellation of plot bearing No.312 in Nolambur Housing Scheme, based on the Board's resolution dated 30.07.1982 stating the reason that the petitioner was already allotted a plot bearing No.2 in Alapakkam Scheme under the Government Servants Quota and the amount of Rs.21,79,927/- (Rupees Twenty One lakhs and Seventy Nine Thousand Nine Hundred and Twenty Seven only) has been refunded after deducting TDS amount to the petitioner which was paid towards the cost of the aforesaid plot by the petitioner. Being aggrieved by the aforesaid cancellation order dated 10.02.2011 under reference no.M.R.A6/1944/08 issued by the the fourth respondent, the petitioner filed the present writ petition to set aside the same and praying to direct the second respondent to re-allot plot bearing No.312 in Nolambur Scheme and in the event of non-availability of the aforesaid plot, any alternate plot may be allotted in Nolambur Scheme to him.

3. Per contra, the learned counsel appearing for the Housing Board has contended that one MIG Plot No.2 was already allotted at Alapakkam Scheme under Government Discretionary Quota vide G.O.(2D) No.136, Housing and Urban Development Department dated 08.02.2008 to the petitioner, whereas, by suppressing the above fact, the petitioner has again obtained another plot No.312, MIG II, at Nolambur, Phase II Scheme under the same quota vide G.O. (2D) No.320, of Housing and Urban Development (HB 5(1)) Department, dated 03.04.2008. The petitioner has violated the terms and conditions of allotment of plot under lease cum agreement by suppressing the material fact that when the petitioner has obtained the first allotment of plot at Alapakkam Scheme, again the petitioner has obtained another plot at Nolambur Scheme from the Housing Board. On the basis of the above, the fourth respondent Board has passed the cancellation order dated 18.06.2008 in M.R.A6/1944/08 informing the petitioner to surrender the plot no.312, allotted in Nolambur Scheme. The same was accepted by the petitioner and he also requested the respondent Board to refund the cost of plot in question paid by him. Accordingly, as per Board Resolution No.42, dated 30.07.1982 of Tamil Nadu Housing Board, after deducting the interest amount, the balance amount of Rs.21,79,927/- (Rupees Twenty One lakhs and Seventy Nine Thousand Nine Hundred and Twenty Seven only) was refunded to the petitioner on 03.02.2012 by the respondent Board.

4. The learned counsel for the respondent board further would submit that after receiving the amount in respect of the aforesaid plot, the petitioner has filed the present writ petition after a lapse of more than five years. There is no grounds to entertain the writ petition and the same is liable to be rejected on the grounds of laches.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents as well as perused the materials available on record.

6. In the earlier order dated 19.12.2017 passed by this Court, the petitioner has strongly objected the statement of the respondents that the petitioner has got second allotment of plot No.312, LIG-II type, at Nolambur Phase II Scheme by suppressing the fact that an MIG Plot No.2 at Alapakkam Scheme was already allotted to him. Having considered the aforesaid facts of the case, this Court has directed the Chief Secretary, to conduct an enquiry on the allegation that whether the petitioner has suppressed the material fact with regard to allotment of a plot at Alapakkam Scheme and obtained the second allotment of Plot No. 312, LIG-II type, at Nolambur Phase II Scheme and file a report before this Court. On the basis of the direction issued by this Court, a report has been filed by the Chief Secretary to Government before this Court wherein para nos.viii & ix read as

follows:

viii. the matter was examined in detail by the Managing Director, Tamil Nadu Housing Board, it was directed to the Executive Engineer and Administrative Officer, Mogappair Division to take following action:

a) To cancel the allotment of Plot No.312, LIG II in Nolambur Phase-II scheme and take over possession from the allottee.

b) A sum of Rs.9,04,720/- (Rupees Nine Lakhs Four Thousand Seven Hundred and Twenty Only) paid by the allottee as Initial Deposit may be forfeited and the balance amount refunded to the allottee. Accordingly, as per Board Resolution No.42, dated 30.07.1982 of Tamil Nadu Housing Board, the interest amount paid by the petitioner was deducted and the balance amount of Rs.21,79,927/- (Rupees Twenty One lakhs and Seventy Nine Thousand Nine Hundred and Twenty Seven only) was refunded by Cheque on 03.02.2012.

c) to dispose the plot as per the existing allotment rules.

ix) As per the above direction of the Managing Director, the plot allotment was cancelled by the Executive Engineer and Administrative Officer, Mogappair Division on 10.02.2011 and the same was brought into vacant list. As per the Board's Resolution No.6.02, dated 14.06.2012, the selling price for the year 2012-2013 was fixed as Rs.1,01,26,000/- for this plot. Further, this plot was allotted through drawl of lot under outright purchase basis to Tmt. R. Shanthi. The allottee has paid the entire amount on 01.10.2012. Hence, the plot was handed over to her on 18.10.2012 and the sale deed was executed to the allottee on 13.06.2013.

7. From the aforesaid report discloses that as per the Board's Resolution No.6.02, passed on 14.06.2012, the disputed plot was allotted to one Tmt. R. Shanthi and the entire cost of the plot of Rs.1,01,26,000/- (Rupees One Crore One Lakhs and Twenty Six Thousand Only) was paid by her on 01.10.2012 to the respondent Board. Subsequently, the respondent Board executed the Sale deed in favour of the aforesaid allottee on 13.06.2013.

8. The impugned order has been passed by the second respondent in the year 2011 itself. Challenging the impugned order, the petitioner has approached this Court by filing the present writ petition in the year 2017, i.e. after lapse of more than five years. Therefore, the writ petition is liable to be dismissed on the ground of laches. This apart, the writ petitioner has not challenged the subsequent allotment order

granted in favour of one Tmt. R. Shanthi in the year 2012 and the aforesaid allottee has not arrayed as a party in the writ petition. For the aforesaid reasons, the writ petitioner cannot claim re-allotment of housing plot, without challenging the allotment order granted in favour of the third party. Therefore, the writ petition deserves to be dismissed.

9. For the foregoing reasons stated above, the writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

lbm

To:

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to Housing and Urban Development,
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Mogappair Division,
Tamil Nadi Housing Board,
Thirumangalam, Chennai.

+lcc to Mr.D.Veerasekaran Advocate, S.R.No.82562
+lcc to Mr.V.Anandamurthy, Advocate, S.R.No.82443
+lcc to the Government Pleader, S.R.No.82617.

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RK(CO)

rrs 06/02/2019