



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.487 of 2011

and

M.P(MD)Nos.1 of 2011 and 1 of 2012

C.Kavitha : Appellant/Petitioner
Vs.

1.The Tamil Nadu Housing Board,
represented by its Managing Director,
Nandanam, Chennai.

2.The Executive Engineer-cum-Administrative Officer,
Madurai Housing Unit,
Tamil Nadu Housing Board,
Madurai - 625 016. : Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent,
praying to set aside the order dated 23.03.2011 in W.P(MD).No.1784
of 2011 on the file of this Court.

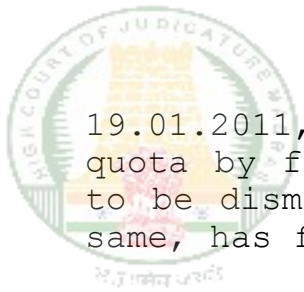
Prayer in WP(MD). 1784/ 2011 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Certiorarified Mandamus, calling for the records relating to the
impugned notification bearing No.வெ.ஆ.எண்.23/செ.ம.தொ.2011/மதுரை
dated 19/01/2011 published in the Dinathanthi issue dated 20/01/2011
published by the second respondent and quash the same in so far as
the petitioner is concerned and consequently direct the respondents
to take consequential steps pursuant to the G.O.(2D).No. 194,
Housing and Urban Development department (Vee.Vaa.5) dated
27/04/2010 issued by the Government .

For Appellant : Mr.R.Maheshwaran
For Respondents : Mr.Nagaraja
Standing Counsel for TNHB

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]
The writ petitioner is the appellant and she made a challenge
to the public auction notification of the second respondent dated



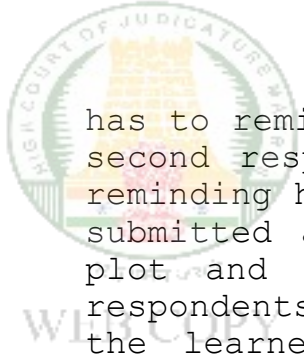
19.01.2011, insofar as the plot allotted to her under discretionary quota by filing W.P.(MD)No.1784 of 2011 and after contest, it came to be dismissed on 22.03.2011 and challenging the liability of the same, has filed this writ appeal.

2.The appellant / writ petitioner is having the educational qualification of S.S.L.C., and claims that she belong to lower income group and with the meagre earning, she used to do social activities along with Rotary Club, Dindigul. The appellant / writ petitioner would further state that she used to participate in the blood donation camp organized by Rotary Club and also donate notebooks to needy students every year and she has been granted discretionary allotment of Plot No.63, in R.M.Colony, under Dindigul Rani Mangammal Planning scheme vide G.O., (2D) No.194 (Housing and Urban Development Department), of the first respondent dated 27.04.2010. Thereafter, the second respondent sent a communication dated 15.06.2010 in Letter No.M.H.8/4176/10, informing her that the cost of the plot was Rs.5,77,647/- and she has to pay the advance amount of Rs.1,73,294/- and also to remit monthly instalment of Rs.4660/- and the rate of interest as 10.5% p.a. and the period of payment as 13 years.

3.The appellant / writ petitioner did not comply with the said order and sent a representation dated 05.01.2011, to the second respondent, stating that she is ready to pay the cost of the plot and therefore, made a request to handover the possession of the plot after getting the cost from her. However, no response was forthcoming and to her shock and surprise, the second respondent has issued the impugned paper publication dated 19.01.2011, bringing the plot allotted to the appellant / writ petitioner also for sale under public auction and challenging the legality of the same, has filed a writ petition which came to be dismissed on 22.03.2011 and hence, this writ appeal.

4.The learned Counsel appearing for the appellant / writ petitioner would submit that as per G.O., (2D) No.194 (Housing and Urban Development Department), of the first respondent dated 27.04.2010, the petitioner was advised to remit the advance amount within 21 days from the date of the proceedings, in the absence of any default clause as to the automatic cancellation due to non-payment and further that the petitioner has also expressed her willingness to repay the entire cost with reasonable interest. The second respondent ought to have considered her request but instead has brought the said plot also under auction and the learned Judge without considering the material facts and circumstances had erroneously dismissed the writ petition and prays for interference.

5.Per contra, the learned Standing Counsel appearing for the respondents / Tamil Nadu Housing Board would submit that admittedly, the petitioner has been allotted the said plot and since it is under the nature of benevolence, she has to comply with the terms of the said order and that as per G.O., (2D) No.194, dated 27.04.2010, she



has to remit the advance amount within 21 days, and further that the second respondent has also sent a communication dated 15.06.2010, reminding her about the said payment and only on 05.01.2011, she has submitted a representation praying to hand over possession of the plot and on account of the delay and lapse on her part, the respondents have rightly brought the said plot also for auction and the learned Judge by assigning proper and tenable reasons, has rightly dismissed the writ petition.

6.The learned Standing Counsel appearing for the respondents has also invited the attention of this Court to the order dated 20.09.2017, made in W.A.(MD)Nos.2109 and 2110 of 2011, and would submit that though, the said case pertains to the cancellation of the allotment and bringing the property in question once again for sale it has been noted that the discretionary quota has been completely scrapped from the year 2011 onwards and further, it technically amounts to reviewing the said order and on that account also prays for dismissal of this writ appeal.

7.This Court has considered the rival submissions and also perused the materials placed before it.

8.The writ appeal was listed for hearing on 06.02.2018 and on that day, the learned counsel appearing for the appellant sought time to file additional affidavit as to the kind and nature of social activities done / being done by the appellant / writ petitioner and the learned Standing Counsel appearing for the respondents was also directed to produce the relevant files. Accordingly, the appellant / writ petitioner has filed the additional affidavit dated 27.02.2018 and it is relevant to extract paragraphs 2 and 3:

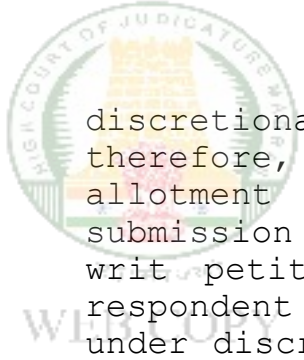
"2.I submit that my education qualification is SSLC and my husband is working as Travels Operator. We belong to lower income group and with a meagre income we are maintaining our family. Though, we are not financially sound, out of the savings, I used to do social activities along with the Rotary Club in Dindigul.

3.I submit that I used to participate in the blood donation camps organized by Rotary Club as its volunteer and also would donate blood regularly. Apart from that I also donate note books to the needy students every year."

[extracted as such]

9.The additional affidavit does not throw any light as to the nature of social service/activity, done/being done by the appellant / writ petitioner. It is to be remembered at this juncture that the petitioner was granted allotment under the

<https://hcservices.ecourts.gov.in/hcservices/>



discretionary quota on the ground that she is a social worker and therefore, this Court is of the considered view that the terms of allotment should be strictly complied with. The primordial submission made by the learned Counsel appearing for the appellant / writ petitioner is that as per G.O., (2D) No.194, of the first respondent dated 27.04.2010, she was allotted the plot in question under discretionary quota and since it does not contain any default clause that the allotment made in her favour, deem to be cancelled automatically, the auction notice issued by the second respondent insofar as the said plot, is liable to be quashed.

10.The second respondent has sent a communication in Letter No.M.H.8/4176/10, dated 15.06.2010, informing the petitioner about the details of the auction of the plot and she was called upon to remit the advance amount of Rs.1,73,294/- and admittedly, she did not remit the same and only on 15.01.2011, she submitted a representation to the second respondent indicating her willingness to pay the cost fixed by their office.

11.It is also brought to the knowledge of this Court and also as evidenced from the judgment dated 20.09.2017, in *W.A. (MD) Nos.2109 and 2110 of 2011 (S.Saravanan Vs. State of Tamil Nadu represented by the Secretary to Government, Housing and Urban Development Department, Chennai - 9 and others)* that the policy of allotment under Government Discretionary Quota has been completely scrapped from 2011 onwards and as on date all the plots of the Board are disposed of only through public auction.

12.Though, the learned Counsel appearing for the appellant / writ petitioner made an offer to pay the entire cost of the plot in one lump sum along with the interest for the belated payment, this Court is unable to come to the rescue of the appellant / writ petitioner for the reason that the allotment has been made under discretionary quota and the appellant / writ petitioner is also aware of the terms of the allotment, especially, with regard to the payment to be made and admittedly, she has not complied with the same.

13.At this juncture, the learned counsel appearing for the appellant would submit that a fresh show cause notice may be issued to the allottee stating as to why the allotment should not be cancelled for the reason that even as on date the said plot is said to be allotted in favour of somebody. However, the said submission is liable to be rejected for the reason that issuance of show cause notice is only an empty formality for the reason that the said property is also going to be brought under public auction through the impugned notice which is the subject matter of challenge in this writ petition.



14.It is once again pointed out that the appellant / writ petitioner who has availed the benevolence of discretionary quota has failed to satisfy the condition and therefore, the impugned notification auctioning the property which was allotted in favour of the appellant cannot be faulted.

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15.This Court on an independent application of mind to the entire materials, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Judge for dismissing the writ petition.

16.In the result, the writ appeal is dismissed, confirming the order dated 22.03.2011 made in W.P.(MD)No.1784 of 2011. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

+One cc to M/s.S.Nagarajan, Advocate, SR.No.51710

+Onec cc to M/s.M.S.Jeyakarthik, Advocate, SR.No.51742

MR

RL/3C/5P/KK/SAR1/23/3/2018

JUDGMENT MADE IN
W.A(MD)No.487 of 2011

27.02.2018