

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.10103 of 2011

and

M.P.No.1 of 2014

M/s. Raagaa Government Officers,
Apartment Association,
rep. by its Secretary,
Raagaa Government Officers Apartments,
6th Avenue, Ashok Nagar,
Chennai 600 083

.... Petitioner

Vs.

1. State of Tamil Nadu,
rep by its Principal Secretary &
Secretary to Government,
Revenue Department,
Fort St. George, Chennai 9
2. Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai 600 005.
3. Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
4. The collector of Chennai,
Singaravelar Maligai,
1st Line Begach Road,
Chennai.
5. The Executive Engineer &
Administrative Officer,
Tamil Nadu Housing Board,
K.K.Nagar Division,
Chennai 600 083.

6. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai 28.

.. Respondents

(R-6 suomotu impleaded as per
order dated 09.04.2018)

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent comprised in G.O.Ms.No.669 Revenue (Na.Ne.U.1(2) Department dated 14.12.2010, quash the same as arbitrary, illegal and unconstitutional and consequently direct the respondents to fix the single market value for the land which was actually used for construction of the flats allotted to the members of the petitioner association on the basis of G.O.Ms.No.1017 dated 26.06.1989 by Revenue Department.

For Petitioner : Mr.M. Sriram
For respondents : Mr.Narmada Sampath, AAG,
Assisted by Mr.I.Satish, AGP

O R D E R

This writ petition has been filed challenging the order passed by the first respondent/Housing Board for fixing the cost of the plot allotted to the members of the petitioner at the rate of Rs.4,25,000/- per ground.

2. According to the petitioner, originally an extent of 4711 sq.mts of lands in Survey Nos.60/2, 60/4 and 24/2 of Kodambakkam Village, was allotted to the TamilNadu Housing Board for construction of flats and for allotment to Government Officers, including All India Service Officers on collection of " single market value", in and by its order in G.O.Ms.No.1017 dated 26.06.1989. As per the condition of the allotment, the Tamil Nadu Housing Board shall pay the single market value of the land, and the District Collector was directed to hand over possession to the TamilNadu Housing Board on remittance of single market value as land value. Thereafter, TamilNadu Housing Board developed 60 apartments in the above land and allotted to the members of the petitioner Association on lease cum sale basis in the year 1983, fixing the tentative selling price from Rs.361400 to 465500/- depending upon the size of the house, payable on the monthly instalments, and the monthly instalment also fixed accordingly. For fixing the final cost of the land allotted to the Housing Board, the Housing Board requested the District collector, Chennai, to make a suitable representation to the Commissioner of Land Administration(CLA)

regarding the Market value of the property to fix the final cost. Based on that the Commissioner of Land Administration sent a recommendation to the Government fixing the guideline value at the rate of Rs.4,25,000/- per ground. After considering the recommendation made by the Commissioner of Land Administration, Government directed the Commissioner of Land Administration to fix the market value as on 1989, along with 12% interest.

3. In the meantime, the Tahsildar, Mambalam-Guindy Taluk also sent a recommendation to the District Collect, to fix the market value at Rs.1,20,000/- based on the market value prevailing on the date of allotment. Considering the above request, the District Collector, Chennai, by a proceeding dated 21.02.2006, sent a representation to the Commissioner of Land Administration to fix the market value at the rate of Rs.1,44,000/- considering the market value and improvements to be made in the land. After considering the Collector's recommendation, the Commissioner of Land Administration, sent a recommendation to the Government by a proceeding dated 15.03.2006, fixing the market value at the rate of Rs.4,25,000/- per ground along with compound interest.

4. Considering the dispute in fixing the market value, the Government, by a letter dated 18.11.2007, directed the Housing Board to place the matter before the High Level Committee headed by a retired Hon'ble Judge of this Court, to fix the market value and send the recommendation. Based on that, the High Level Committee after considering all the available materials, found that fixing the market value at the rate of Rs.1,50,000/- is reasonable and recommended to the Government to fix the market value at the rate of Rs.1,50,000/- also with interest at the rate of 12% for the same from 17.09.2019, on the date on which, the possession was given to the Housing Board. The High Level Committee recommendation was also sent to the Government by the Housing Board. Thereafter, the Government passed the impugned order fixing the market value at the rate of Rs.4,25,000/- along with interest at the rate of 12% from the year 1989 on the date the land was allotted to the Housing Board. Now, challenging the same, the present writ petition has been filed.

5. The respondents/Government filed a counter affidavit stating that the Tamil Nadu Housing Board, and All India Service Officers Co-operative Housing Society, applied for allotment of house sites to an extent of 4711 sq.mts in S.No.60/2, 60/4 and 24/2 of Kodambakkam Village. Considering the same, the above

said lands were allotted to the Tamil Nadu Housing Board, under Section 24 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978, r/w. Rule 23 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules 1978, for construction of flats and allot the same to the Government Officers including All India Service Officers, on collection of single market value, by G.O.(Ms) No.1017, Revenue(T3) Department, dated 26.06.1989, with specific conditions. Subsequently, the Tamil Nadu Housing Board was permitted to take possession of the land on 17.09.1990. Initially, the Collector of Chennai fixed the land cost as Rs.4,25,000/- per ground based on the guideline value as on 1993. The Government has examined the recommendations of the Commissioner of Land Administration and Director of Urban Land Ceiling and Urban Land Tax and fixed the cost of land at the rate of Rs.4,25,000/- per ground and the total land cost has been worked out to Rs.89,79,740/- and the Tamil Nadu Housing Board has to pay the above cost along with 12% compound interest from 26.06.1989 till the date of payment of the said amount.

6. It is further stated that originally, the District Collector, Chennai, recommended the market value at the rate of Rs.4,25,000/- per ground. Thereafter, in the year 1999, he changed his recommendation and fixed the land cost at the rate of Rs.93,333/- per ground, once again, in the year 2006, the Collector, recommended to fix the market value at Rs.1,44,000/- per ground and the District Collector has recommended different market values. The Commissioner of Land Administration has pointed out that, based on the sale taken place in the neighbouring survey numbers at the cost of Rs.1,50,000/- per ground, the subject land is well developed one and adjacent to West Mambalam area, if the cost is collected for lesser value, then it will cause loss of revenue and the Accountant-General will raise objection. Hence, the Commissioner of Land Administration recommended to fix the higher value at Rs.4,25,000/- per ground, as per the guide line value prevailing in the year 1990. That apart, the Additional Chief Secretary and the Director of Urban Land Tax also recommended for fixation of land cost at Rs.4,25,000/-. The Government accepting the recommendation directed the Housing Board to pay the land value at the rate of Rs.4,25,000/- per ground along with interest at the rate of 12% and there is no irregularity in the order passed by the Government.

7. The Tamil Nadu Housing Board filed a separate counter affidavit stating that, earlier District Collector fixed the single market value at the rate of Rs.93,333/- per ground along with 12% interest, and based on that Housing Board also paid a

sum of Rs.14,76,624/- to the Government. Thereafter, the Commissioner of Land Administration, has informed the Housing Board that, the land value is fixed at Rs.4,25,000/- per ground, and the matter was placed before the High Level Committee. Since the land value fixed by the Special Commissioner of Land Administration is very high and will be detrimental to the interest of the Board as well as allottees, the High Level Committee had recommended to fix the land value at Rs.1,50,000/- with simple interest at the rate of 12% . Accordingly, the same was addressed to the Government with a request to fix the market value as recommended by the High Level Committee. But, without considering the same, the Government has fixed the Market value at the rate of Rs.4,25,000/- per ground.

8. Mr.S. Ramesh, the learned counsel appearing for the petitioner would contend that, when the District Collector and the Thasildar had sent a recommendation based on the prevailing market value in the year 1989, the Commissioner of Land Administration has arbitrarily recommended to fix the value at the rate of Rs.4,25,000/- without any materials whatsoever. In view of different recommendations made by the authorities, the Government referred the issue to the High Level Committee, headed by a retired Hon'ble Judge of this Court, and the High Level Committee after considering all the materials has recommended the Government to fix the market value at the rate of Rs.1,50,000/- with interest on the date of handing over possession. But, where as, the Government without considering the recommendation made by the High Level Committee and also without giving opportunity to the petitioner, admittedly, fixed the land cost based on no material, in colourable exercise of power.

9. Per contra the learned Additional Advocate General appearing for the respondents 1 to 4, vehemently contend that the land was allotted to the Housing Board in the year 1989, and possession was given in the year 1990, the prevailing guide line value of the property was Rs.4,25,000/- in the year 1990. Considering the prevailing market value alone the Commissioner of Land Administration made a recommendation and the same has been rightly accepted by the Government and there is no irregularity in it.

10. It is further submitted that the original allotment was made fixing the tentative land cost, and as per G.O.MS NO.1017, Revenue (T3) Department, dated 26.06.1989, the Housing Board should pay the land cost as per the market value prevailing on the date of handing over possession, and the possession has been handed over in the year 1990. On the date of handing over

possession, the prevailing market value is Rs.4,25,000/- per ground and there is no reason to deviate from the same. That apart, since the recommendation made by the Collector and the Tahsildar was not based on the prevailing market value, the Government has not considered the recommendations made by them. It is also further contended that the Government after considering the entire materials and applying its mind rightly come to a conclusion that the market value of the property is Rs.4,25,000/- per ground and there is no irregularity in it. That apart, there is no need to give opportunity to the petitioner as they are only subsequent purchaser.

11. I have considered the rival submissions and perused the materials carefully.

12. In the year 1989, the land was allotted to the Housing Board with a condition that the Housing Board should pay the single market value of the land. Thereafter, the Housing Board developed 60 apartments and sold it to the members of the association in the year 1983, fixing the tentative cost from Rs.3,61,400 to Rs.4,75,500/- depending upon the size of the flats. Earlier the District Collector sent a recommendation fixing the market value at the rate of Rs.1,44,000/- per ground along with 12% of compound interest. However, that was not accepted by the Commissioner of Land Administration and fixed the market value at the rate of Rs.4,25,000/- per ground. However, the Government thought it fit to recommend the issue to a High Level Committee, to take a decision on the market value of the property. Accordingly the matter was referred to the High Level Committee consisting of a retired Hon'ble Judge of this court, the Member Secretary of the Tamil Nadu Housing Board, and three other members. The High Level Committee after elaborately considering the issue sent a recommendation to the Government to collect Rs.1,50,000/- per ground as land cost together with 12% simple interest from 17.09.1990. The above recommendation was also submitted before the Government through the Tamil Nadu Housing Board. However, while passing the impugned order, the first respondent Government without considering the recommendation of the High Level Committee simply accepted the recommendation made by the Commissioner of Land Administration and fixed the value at Rs.4,25,000/- with 12 % interest.

13. It is only the Government has referred the issue to the committee to take decision on the market value, and based on that request, the High Level Committee also sent a recommendation. When the Government has decided to send the issue to the High Level Committee to take a decision for fixing

the market value of the land, the Government is supposed to consider the report before fixing the market value, but perusal of the impugned order, it could be seen that the recommendation made by the High Level Committee is not at all considered by the first respondent. On the other hand, simply accepted the recommendation of the Commissioner of Land Administration, fixed the market value. In the above circumstances, I am of the considered view that the order has been passed in a arbitrary manner, and also in total non-application of mind, and I am inclined to set aside the impugned order passed by the first respondent.

14. Accordingly, the order passed by the first respondent is set aside, the matter is remanded back to the first respondent. The first respondent is directed to consider the matter afresh and pass suitable orders on merits and in accordance with law, after taking into consideration of the recommendation of the High Level Committee, and also giving opportunity to the Housing Board as well as to the petitioner. While fixing the market value the first respondent is also directed to fix the market value of the actual extent of the land handed over to the Housing Board, since there is dispute over the same. The above exercise shall be done within a period of twelve (12) weeks from the date of receipt of a copy of this order.

15. With the above directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary &
Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai 9

2. The Commissioner of Land Administration,
Ezhilagam, Chepauk,
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3. The Managing Director,
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4. The collector of Chennai,
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K.K.Nagar Division,
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6. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai 28.

+1 cc to M/s.M.Sriram,Advocate Sr.No. 98759

+1 cc to M/s.R.Bharathkumar,Advocate Sr.No. 99856

+1 cc to The Government Pleader Sr.No. 99973

AKM/09.12.19/8P- 10C /

W.P.No.10103 of 2011

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