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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.1134 of 2012  
and M.P.Nos.1 & 2 of 2012  
and M.P.Nos.1 & 2 of 2013

Ranasingh

...Petitioner

vs.

1.The Secretary,  
Housing and Urban Development Department,  
Fort St.George, Secretariat Building,  
Chennai.

2.The Managing Director,  
Tamil Nadu Housing Board,  
No.493, Annasalai,  
Nandanam, Chennai.

3.The Chairman,  
The Tamil Nadu Slum Clearance Board,  
No.5, Kamarajar Salai,  
Chennai - 5.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of a writ of Certiorarified mandamus, call for the records relating to the proceedings of the 1<sup>st</sup> respondent in Letter No.7873/L.A.4(1)/11-5 dated 02.01.2012 and quash the same consequentially allot the plot bearing No.150 situated at New C.I.T.Nagar Chennai - 35 to the petitioner.

For Petitioner : Mr.K.Karthik Jagannath

For Respondents : Mr.K.Ravikumar for R1  
Additional Government Pleader  
Mr.R.Bharath Kumar for R2  
TNHB  
Ms.D.Latha for R3  
Slum Clearance Board

ORDER

This writ petition has been filed challenging the order dated 02.01.2012 passed by the first respondent in Letter No.7873/L.A.4(1)/11-5 and consequently allot the plot bearing No.150 situated at New C.I.T.Nagar Chennai - 35 to the petitioner.



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2.It is the case of the petitioner that the Tamil Nadu Slum Clearance Board, the third respondent herein by its allotment order dated 31.08.1995, allotted plot No.150 situated at New C.I.T.Nagar Chennai - 35 to the petitioner on lease cum sale basis.

3.It is his case that he is a bonafide allottee. According to him, the petitioner paid the entire payment to the Tamil Nadu Slum Clearance Board (TNSCB) in accordance with the lease cum sale agreement. However, it is his case that despite the payment made by the petitioner, the TNSCB did not execute the sale deed in his favour. According to him, the Tamil Nadu Housing Board (TNHB) claimed that the plot allotted to the petitioner by TNSCB belongs to them absolutely. According to him, since the TNHB made a claim for the plot allotted to the petitioner by TNSCB, the petitioner filed a writ petition in W.P.No.3179 of 2011 before this Court. This Court, directed the TNHB to pass appropriate orders on the application dated 24.12.2010 submitted by the petitioner for allotment of the plot No.150 and till such time, the TNHB was directed not to disturb the possession of the petitioner. It is the case of the petitioner that pursuant to the order passed in W.P.No.3179 of 2011, without giving any opportunity to the petitioner, the Tamil Nadu Housing Board rejected the application dated 24.12.2010 submitted by the petitioner for allotment of plot No.150 by its order dated 31.03.2011. It is also the case of the petitioner that he has been paying all the necessary taxes in respect of plot No.150. According to him, even if the original allotment made by TNSCB is found to be a mistake, he should not be penalized for no fault of his.

4.According to the petitioner, TNHB is trying to evict the petitioner without following the due process of law. According to him, he gave a representation to TNHB not to evict him from plot No.150 without following the due process of law. However, according to him, to his shock, he received an order dated 02.01.2012 from TNHB rejecting his claim for allotment of plot No.150. In such circumstances, the writ petition has been filed challenging the order dated 02.01.2012 issued by TNHB rejecting the application of the petitioner for allotment of plot No.150.

5.A counter affidavit has also filed by the second respondent stating that the subject plot allegedly allotted to the petitioner, namely plot No.150, situated at New C.I.T.Nagar Chennai - 35 absolutely belongs to TNHB. According to them, a layout in which the plot No.150 situated is meant for the construction of a community hall. According to them, the Chairman of TNSCB vide its proceedings No.E6/23202/95 dated 31.08.1995 has wrongly allotted plot No.150 to the petitioner despite the fact that the said plot belongs absolutely to TNHB. Infact, TNHB also requested



TNSCB to withdraw the allotment made by TNSCB in favour of the petitioner by mistake.

6. According to them, a show cause notice was also issued to the petitioner vide Lr.No.Na.Ka.No.9009/E6/1995 dated 26.03.1997, calling upon him to explain within seven days of receipt of the show cause notice as to why the allotment made to him should not be cancelled. According to them, instead of giving explanation to the show cause notice, the petitioner filed a suit O.S.No.4095 of 1997, challenging the show cause notice and the same was also dismissed for default.

7. They have stated in the counter affidavit that pursuant to a direction given by this Court in W.P.No.3179 of 2011 filed by the petitioner, they have complied with the direction by considering the representation by passing final orders on 31.03.2011, rejecting the representation of the petitioner for allotment of plot No.150. Aggrieved by the said order, the petitioner preferred an appeal before the first respondent and the same was also dismissed under the impugned order dated 02.01.2012.

8. It is their case that the sufficient opportunity was given by the second respondent as well as the first respondent to the petitioner in the proceedings before the second respondent as well as the appellate proceedings before the first respondent.

9. Heard, Mr.K.Karthik Jagannath, learned counsel for the petitioner, Mr.K.Ravikumar, learned counsel for the first respondent, Mr.R.Bharath Kumar, learned counsel for the second respondent and Ms.D.Latha, learned counsel for the third respondent.

10. The learned counsel for the petitioner submits that even though the subject plot, viz., plot No.150 is meant for a community hall, it was not used for a community hall even after the lands got transferred in favour of TNHB. According to him, excepting for this plot No.150 other lands have already been allotted to various other parties as house sites. According to him, there cannot be discrimination in the allotment of plots by TNHB.

11. Pursuant to the order passed by this Court in W.P.No.3179 of 2011, TNHB considered the application dated 24.12.2010 submitted by the petitioner and rejected the same. As against the rejection, the petitioner preferred a statutory appeal before the first respondent. The first respondent has also confirmed the order of TNHB and rejected the appeal on 02.01.2012.

12. The learned standing counsel for the second respondent would submit that the subject plot which the petitioner claims is earmarked for a community hall. According to him, TNSCB



had by mistake allotted the subject plot to the petitioner even though they are not the owners of the said plot.

13.The learned standing counsel for the second respondent also drew the attention of this Court to a judgment of this Court dated 17.09.2010 passed in W.A.Nos.1513 to 1515 of 2001 and submitted that after due consideration, the Division Bench has held that in the said order that the subject land measuring 1 ground 138 sq.ft. in which plot No.150 is situated belongs absolutely to TNHB and in particular he referred to paragraph No.27 of the said judgment which reads as follows:

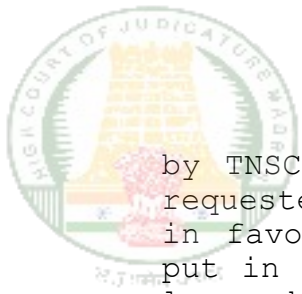
"27.From the facts and materials, we are of the considered view that the TNHB has satisfactorily established that the property belongs to TNHB and the learned single judge rightly allowed writ petition No.15115 of 1995 quashing the allotment made in favour of the appellant and the learned single Judge was right in dismissing the writ petitions filed by the Appellant W.P.No.13668 of 1995 and 15165 of 1995 and we do not find any reason warranting interference with the order of the learned single Judge."

14.According to them, even though, a mistake was committed by TNSCB by allotting plot No.150 in favour of the petitioner, he is not entitled for allotment of the same plot since the said plot has been earmarked exclusively for a community hall. According them, the first respondent as well as the second respondent have rightly rejected the application of the petitioner for rejection of plot No.150 in his favour.

15.Admittedly, a Division Bench of this Court has confirmed by its judgment dated 17.09.2010 in W.A.Nos.1513 to 1515 of 2011, that plot No.150 along with adjoining lands measuring a total extent of 1 ground 138 sq.ft at CIT Nagar, Chennai - 35 belongs absolutely to TNHB. Therefore, it can be conclusively established that the allotment made in favour of the petitioner by TNSCB is a mistake.

16.This being the case, the petitioner if at all, aggrieved by the wrong allotment, can only seek damages against TNSCB. Further, as seen from the counter affidavit filed by TNHB, they have categorically stated that plot No.150 as well as the portion of the adjoining land has been earmarked exclusively for a community hall. When it has been earmarked for a community hall, it cannot be allotted as a house site to the petitioner. Therefore, the second respondent as well as the first respondent have rightly rejected the application of the petitioner for allotment of plot No.150 in his favour. The second respondent/TNHB has

also not denied the fact that there was a wrong allotment made



by TNSCB in favour of the petitioner. Infact, they have also requested the TNSCB to withdraw the allotment made by mistake in favour of the petitioner. The petitioner has also been put in possession of plot No.150. It is also submitted by the learned counsel for TNHB that subsequent to the filing of this writ petition, TNHB has taken back possession of plot No.150 from the petitioner which is also admitted by the learned counsel for the petitioner.

17.Considering the above factors, if at all, the second respondent in future decides to alter the use of plot No.150 for any other purpose than for a community hall, the petitioner must be given opportunity to give his offer for the purchase of the said plot, as he has been deprived of allotment due to the wrong allotment made by TNSCB. The impugned order rejecting the application of the petitioner for allotment of plot No.150 by the second respondent as well as by the first respondent has been rejected on the ground that the land belongs absolutely to TNHB and the subject plot has been earmarked exclusively for a community hall.

18.This Court does not find any infirmity in the impugned order passed by the second respondent as well as the first respondent, which is the Appellate Authority. However, since it is an admitted fact that TNSCB has by mistake allotted plot No.150 in favour of the petitioner and had also put the petitioner in possession, he should be given an opportunity to purchase the plot subject to the payment of the market price agreed upon by both the parties, in case in future, TNHB decides to use the said plot for any other purpose than for a community hall.

19.With the aforesaid direction, the instant writ petition shall stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary,  
Housing and Urban Development Department,  
Fort St.George, Secretariat Building,  
Chennai.

2.The Managing Director,  
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Nandanam, Chennai.

3.The Chairman,  
The Tamil Nadu Slum Clearance Board,  
No.5, Kamarajar Salai,  
Chennai - 5.

+1cc to Mr.K.Karthik Jagannath, Advocate SR.No.104456

+1cc to Mr.R.Bharath Kumar, Advocate SR.No.104932

+1cc to Government Pleader SR.No.104547

W.P.No.1134 of 2012

RP(CO)  
GMY(02/01/2020)