

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.04.2019

Pronounced on : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.33022 of 2002

Nihar Fathima

... Petitioner

Vs.

1.The Tamil Nadu Housing Board
rep. by its Managing Director,
Nandanam,
Annasalai, Chennai-600 035.

2.The The Tamil Nadu Housing Board,
rep. by its Executive Engineer &
Executive Officer,
II Avenue, Anna Nagar,
Chennai-600 040.

3.The Tamil Nadu Housing Board
rep. by its Allottee Service Manager,
Anna Nagar Division,
Anna Nagar, Madras-600 040.

4.G.V.Anandan

5.Dhanraj S/o.Deivairakkam
R4 impleaded as per order dated 06.03.2003
in WPMP.No.820 of 2003
R5 impleaded suo moto as per order dated
30.06.2009 by SNJ in W.P.No.33022 of 2002

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the second respondent made in P.10/242A/84 dated 30.07.2002 and to quash the same and directing the respondents to allot Plot No.242 measuring 880 sq. feet of Kambar Kudiyruppu, Anna Nagar, Madras-40, to the petitioner.

For Petitioner : Mr.S.Sathish Rajan

For Respondent : Mr.R.Bharath Kumar

Nos.1 to 3

Standing counsel for TNHB

For Respondent-4: No Appearance

ORDER

Heard Mr.S.Sathish Rajan, learned counsel for the petitioner and Mr.R.Bharath Kumar, learned Standing counsel for the Tamil Nadu Housing Board (TNHB) appearing on behalf of the respondents 1 to 3.

2. The brief facts of the case are as follows:

a) A residential property pertaining to Plot No.AP.242 measuring an extent of 880 sq. feet, situated at 31st street, Kambar Kudiyiruppu, Anna Nagar West, Madras-40 (hereinafter referred to as "subject plot") was allotted by the Tamil Nadu Housing Board (hereinafter referred to as "the Board") to one Mr.D.Dhanraj, S/o. Deivairakkam on 30.09.1972.

b) By a Registered Deed of Power of Attorney dated 15.09.1995, one Mr.G.V.Anandan was appointed as the Power Agent of Mr.D.Dhanraj, S/o.Devaraj to deal with the subject plot. According to the Board, the allottee and D.Dhanraj, S/o.Devaraj are two different persons.

c) The petitioner had entered into an Agreement of Sale on the subject plot with D.Dhanraj, S/o.Devaraj, represented by his power of attorney holder namely, G.V.Anandan. During the course of purchase, the Board had issued letters regarding the allotment of the subject plot to the power agent of the petitioner, as well as handed over the physical possession of the subject plot in favour of the said power agent through a letter of handing over of possession. Subsequently, when it was realised that the original allottee namely, D.Dhanraj, S/o.Deivairakkam and the petitioner namely, D.Dhanraj, S/o.Devaraj were two different persons, the Board, by the impugned order dated 30.07.2002, had cancelled the letters touching upon the allotment, as well as the handing over of the physical possession of the subject plot. The said order dated 30.07.2002 is under challenge in the present Writ Petition.

3. The learned counsel for the petitioner does not dispute that the subject plot was allotted to D.Dhanraj, S/o.Deivairakkam and not to D.Dhanraj, S/o.Devaraj, but would contend that the petitioner was a bona-fide purchaser. The learned counsel had placed reliance on the principles of Equity Jurisdiction and submitted that the petitioner had put up construction in the subject plot on the basis of 'No Objection Certificate' issued in the name of the power agent, as well as the original payment receipts of the sale consideration made towards the allotment and therefore the transaction was a bona-fide purchase. In view of this 'No Objection Certificate' and the payment receipts issued, as well as handing over of physical

possession of the subject plot by the Board, the respondents 1 to 3 should be estopped from recalling their earlier actions and thereby deprive the bona-fide purchase of her property.

4. The learned Standing counsel for the Board would submit that D.Dhanraj, S/o.Devaraj is neither the allottee nor in any way connected with the subject plot and also that he is not entitled to execute any sale agreement without obtaining the sale deed from the Board. The learned Standing counsel also submitted that the physical possession of the subject plot was obtained by the power agent by producing false documents and therefore is not binding on the Board. Since the impugned cancellation order was issued after following the principles of natural justice and based on factual verification regarding the allotment, there is no infirmity in the order.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is not in dispute that the original allotment of the subject plot was in favour of D.Dhanraj, S/o.Deivairakkam and not in favour of D.Dhanraj, S/o.Devaraj. During the pendency of the Writ Petition, D.Dhanraj, S/o.Deivairakkam was suo-moto impleaded as the fourth respondent by this Court in this Writ Petition and notice was issued to him. Though notice has been served on the said Dhanraj, S/o.Deivairakkam, none appears on his behalf, which necessitates this Court to proceed with the case in his absence.

7. Certain relevant facts to determine as to whether the transaction of Sale Agreement and the construction of the property therein were bona-fide or not are that the petitioner had entered into an Agreement of Sale on 06.11.1995 on the verification of the Original Deed of Power of Attorney dated 15.09.1995 executed by D.Dhanraj, S/o.Devaraj appointing G.V.Anandan as his power agent. The Deed of Power of Attorney carried references to the allotment order made to D.Dhanraj. The power agent has also produced the original letter of the Board dated 27.10.1995, directing handing over of physical possession of the subject plot to G.V.Anandan on behalf of D.Dhanraj. The sketch shows the extent of plot and its location. The original 'No Objection Certificate' from the Board for putting up construction upon the subject plot was also handed over. The original payment receipts made to the Board towards the costs of the subject plot was also verified by the petitioner. The Encumbrance Certificate for the relevant periods was taken into consideration and thereafter, a sale agreement was entered into between G.V.Anandan and the petitioner. Since construction of a property in the subject plot is claimed to be a pre-condition for execution of the sale deed in favour of the allottee, a

construction building licence was also obtained by the power agent from the Corporation of Madras.

8. The construction was also inspected by the officials of the Board. After construction, when the Board had delayed execution of the sale deed in favour of G.V.Anandan, he had filed a Writ Petition in W.P.No.13358 of 1997 on behalf of D.Dhanraj, seeking for a Writ of Mandamus, directing the Board to execute a sale deed in favour of D.Dhanraj represented by his power agent G.V.Anandan. After the construction, electricity supply and water connections were extended to the subject plot in the name of G.V.Anandan and the property tax for the subject plot was also assessed in his name.

9. All these facts have not been disputed by the respondents 1 to 3 in their counter affidavit filed. The only defence taken is that 'No Objection Certificate' and the other letters were obtained from the Board by producing false documents and therefore, it is not binding on them.

10. While the petitioner herein had challenged the cancellation order dated 30.07.2002, G.V.Anandan had also challenged the same order on behalf of the allottee D.Dhanraj in W.P.29604 of 2002, as well as for issuance of Writ of Mandamus, directing the Board to issue a Sale Deed in W.P.No.13358 of 1997. Though D.Dhanraj, represented by his power agent, was originally represented by his counsel, the vakalat nama has been withdrawn and no new counsel had filed any vakalat on his behalf. Today, when these Writ Petitions were called, none appeared on his behalf. Hence, final orders have been passed in W.P.No.29604 of 2002, as well as in W.P.No.13358 of 1997 through a separate order.

11. In the light of the statement of the petitioner in the present Writ Petition that they have not disputed the fact that the allotment was only in favour of Dhanraj, S/o.Deivairakkam, which fact came to be known to them only subsequently and by also taking into account that the petitioner had conducted due diligence on the title over the subject plot based on the original documents produced before them as well as the 'No Objection Certificate', letters and original payment receipts issued by the Board, this Court is of the view that the petitioner herein is a bona-fide agreement holder, who had put up the construction on the bona-fide belief that the sale deed would be executed in favour of the intending purchaser.

12. An objection was raised by the learned Standing counsel for the respondents 1 to 3 that the power agent namely, G.V.Anandan had no authority to enter into a sale agreement with the petitioner, without the prior permission of the Board, since

D.Dhanraj was not the original allottee and even otherwise, an allottee had no rights to enter into a sale agreement, without a sale deed being executed. It is no doubt true that an allottee cannot enter into an agreement in connection with the allotted property, until and unless a proper sale deed is executed, with recitals empowering the allottee to deal with the property freely from the date of the sale deed. Such a sale agreement may not be acceptable in the eyes of law. Nevertheless, I do not intend to go into the legality of such a transaction since this Court intends to consider the relief sought for by the petitioner on the principles of Equity, which is discussed hereunder.

13. Having found that the petitioner seems to be a bona-fide intending purchaser, the question that would arise here is as to whether such a bona-fide intending purchaser will be entitled to the relief of having a sale deed executed in her name on equitable grounds?

14. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the Court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner. This proposition has been laid down in the decision of the Hon'ble Supreme Court in Ritesh Tewari Vs. State of U.P. reported in 2010 (10) SCC 677.

15. By applying the aforesaid ratio and in the light of the fact that the petitioner is a bona-fide intending purchaser, who had put up construction of a residential house way back in the year 1995 and has been paying the property tax ever since, as well as other statutory dues, I am of the view that this Court would be justified in extending the Equity Jurisdiction in favour of the petitioner.

16. However, though the Board had mistakenly issued 'No Objection Certificate' and handed over possession of the subject plot to G.V.Anandan, they had subsequently woken up and had cancelled the erroneous action through the impugned order dated 30.07.2002. In case, the impugned order of cancellation had not been challenged by the petitioner, the other option available to the Board would be to re-allot the subject plot in accordance with law to either the petitioner or other third persons. In other words, the Board would have been entitled for the escalated market value on the subject plot as on the date of the impugned order. In my view, if the Board can be compensated with this escalated price as on the date of the impugned order, by directing the petitioner to bear such costs, the ends of justice would be secured.

17. In this context, the petitioner had filed an undertaking affidavit dated 26.11.2002 before this Court, undertaking to pay the full costs of the land as per the value to be fixed by this Court. The Board had also produced the relevant valuation of the subject plot from the year 2002 to 2019. As in the year 2002, when the impugned cancellation order was passed, the value of the subject plot for 880 sq. feet was Rs.10,08,480/-. The learned Standing counsel for the Board would submit that the guideline value of the subject plot is around Rs.65 lakhs as on date and therefore would submit that, the revenue to the Board as on date would be deprived off, if the plot is otherwise not brought for allotment by open public auction. I do not intend to give such a benefit to the Board, since the entire construction of the residential property was put up by the petitioner based on the 'No Objection Certificate' issued by the Board, as well as handing over of vacant possession on their part. Had these two actions been evaded by the Board by exercising caution and proper verification, the petitioner herein would not have been put in such a precarious situation. In view of this contribution of negligence on the part of the Board and at the same time also taking into account, the interest of the Board, if the guideline value of the subject plot that prevailed in the year 2002, could be doubled, substantial justice would be extended to both the parties. As stated earlier, the guideline value of the subject plot in the year 2002 was around Rs.10 lakhs and as such, the petitioner can be directed to pay a sale costs of Rs.20 lakhs towards the subject plot.

18. For all the foregoing reasons, the impugned order of the second respondent in P.10/242A/84 dated 30.07.2002 is hereby quashed. Consequently, the second respondent herein is directed to execute a sale deed in favour of the petitioner herein for the residential Plot No.AP.242 measuring an extent of 880 sq. feet, situated at 31st street, Kamar Kudiyruppu, Anna Nagar

West, Madras-40, on condition that the petitioner pays a sum of Rs.20 lakhs to the respondents/Board. Such an exercise of executing the sale deed by the second respondent shall be made within a period of eight weeks from the date of receipt of the aforesaid sum of Rs.20 lakhs from the petitioner. In view of this direction, the earlier allotment order dated 30.09.1972, in favour of Mr.D.Dhanraj, shall stand rescinded. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Annasalai, Chennai-600 035.

2.The Executive Engineer &
Executive Officer,
Tamil Nadu Housing Board,
II Avenue, Anna Nagar,
Chennai-600 040.

3.The Allottee Service Manager,
Tamil Nadu Housing Board,
Anna Nagar Division,
Anna Nagar, Madras-600 040.

+1cc to Mr.R.Bharath Kumar, Advocate Sr.No.71369

+1cc to Mr.S.Sathish Rajan, Advocate Sr.No.70637

AKM/26.09.19 /7P-6C/

Order made in
W.P.No.33022 of 2002

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