

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.01.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1820 of 2004

K.Munisamy

..Appellant/Plaintiff

/versus/

1.The Executive Engineer,
Administrative Officer,
Vellore Housing Unit,
Vellore-9.

2.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai-35.

3.M.Rajakumari

4.The Commissioner & Secretary to
the Govt.of Tamil Nadu,
Housing & Urban Development,
Fort St.George,Chennai-9.

..Respondents/Defendants

Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 18.03.2002 made in A.S.No.28 of 2000 on the file of Additional District Court, Vellore confirming the judgment and decree dated 31.08.1999 and made in O.S.No.128 of 1983 on the file of Additional District Munsif Court, Vellore.

For Appellant :Ms.A.B.Reehana Begum for
Mr.T.R.Rajaraman

For Respondents:Mr.Jayaseelan for
Standing Counsel (TNHB) for R1 and R2
Mr.N.Manikandan, GA for R4
No appearance for R3

J U D G M E N T

Heard the learned counsel appearing for the appellant and the learned Government Advocate for the fourth respondent and the learned Standing Counsel for TNHB representing respondents 1 and 2.

2. The appellant herein was allotted a vacant site in Phase II, Sathuvachari Housing Unit, Vellore Neighbourhood Housing Scheme, Vellore and on 27.10.77 a condition Lease-cum-Sale agreement was executed. According to the terms of the agreement, the appellant/plaintiff ought to have paid 36 equal monthly installments and cleared the dues by end of the year 1980. However, the appellant had paid only 25 installments and stopped the payment of balance installments from 10.01.1980. Therefore, after serving notice to the appellant, the Housing Board has cancelled the allotment and re-allotted the plot to the third defendant/respondent herein on 01.09.1982. The third respondent herein, thereafter, paid the cost of the land and got sale deed in her favour. The appellant, aggrieved by the cancellation of the allotment made to him and re-allotment of the plot bearing No.626, Phase II, Sathuvachari, Vellore Neighbourhood Housing Scheme, Vellore to the third respondent herein, has filed a suit praying to declare his possessory title to the said plot and to declare the order passed by the first respondent dated 24.05.1981 as null and void and for consequential injunction.

3. Defendants 1 and 2 have filed their written statement resisting the suit narrating the sequence of events and pointing out the failure of the plaintiff in paying the monthly installments, as per the terms of the allotment. Pointing out the provisions of the Housing Board Act to justify the order of cancelling the allotment made to the plaintiff and re-allotting the plot to the third defendant, both the Courts below have considered the documents relied upon by the respective parties and has negated the claim of the plaintiff/appellant.

4. In the Second Appeal, the appellant has formulated the following Substantial Questions of Law:-

1. Whether the learned Additional District Judge is right in holding that the provision of Section 53-A of the Transfer of Property Act does not apply to the present case as till the plaintiff pays the last instalment the Board is continued to be its owner, when the plaintiff took possession pursuant to the agreement dated 20.08.1977 and paid almost 75% of the agreed sale consideration and rightly performed his part as per the requirements under Section 53-A of the Transfer of Property Act?

2. Is the Lower appellate Court right in holding that the third respondent is a bona fide purchaser when she had purchased the plot

with the knowledge that the same plot was allotted earlier to the plaintiff and the possession is with him?

3. Whether the lower appellate Court is right in holding that non-compliance of Section 138 of the Housing Board Act is fatal when the requirement of issuance of pre-suit notice under Section 138 is only directory as per law laid down by the Honourable Apex Court.

5. Heard the submissions made by the respective counsels and perused the records.

6. The contention of the learned counsel appearing for the appellant is that, having paid more than 75% of the tentative cost for the plot allotted to him, the Housing Board ought not to have cancelled it for default of balance 25% without giving an opportunity to the plaintiff to pay the balance amount and get the settlement registered in his favour. Further, it is also contended that by virtue of the terms of the Lease-cum-Sale agreement, the possession of the plot was handed over to the plaintiff and when the part performance has been recognized, cancellation of the allotment is contra to Section 53-A of Transfer of Property Act. Further, it is pointed out by the learned counsel for the appellant that immediately after receiving the notice dated 13.08.1982 from the Housing Board, the plaintiff made a representation to re-consider the cancellation order and also stated the reasons for default in payment of the balance instalment. But without considering the said representation dated 21.08.1982, the Housing Board has allotted the suit plot to the third respondent, which exposes the mala fide intention of the respondents. The third respondent, who is the subsequent allottee, is not a bona fide purchaser. She purchased the plot, knowing fully well that the suit plot already allotted to the plaintiff and the possession vested with the plaintiff. Further, it is contended that the Courts below ought not to have negated the plea of the plaintiff on a hyper technical ground that the plaintiff has not complied the mandatory requirement of Section 138 of the Housing Board Act, which requires pre-suit notice.

7. Per contra, the learned Standing Counsel appearing for the Housing Board would submit that it is erroneous to contend that the appellant was not afforded opportunity before cancelling the allotment and to allege that re-allotting the plot to the third respondent with mala fide intention is violation of the statute. Before issuing the cancellation order, the appellant was intimated about the default in payment of the installment and was duly instructed to pay the

installment, or else, the allotment will be cancelled, as per the terms of the agreement. Since the appellant failed to response to the notices issued by the Housing Board dated 08.12.1980, 12.01.1981, 18.02.1981 and 17.03.1981, the attention of the appellant was drawn by the office requesting the appellant to pay the entire arrears on or before 10.04.1981, or else, the allotment of the plot will be cancelled and it will be included in the vacant list. So, the appellant was given an opportunity to retain the allotment by paying the entire arrears, penal interest and revocation fee of Rs.250/- on or before 10.06.1981. It was also clearly intimated to the appellant that no further petition either for waiver of revocation fee or for grant of extension of time for payment of arrears will not be entertained. The appellant, who has vacated the address, which he has provided to the Housing board while applying for the allotment of plot, had not intimated the change of address to the Housing Board. Having failed to intimate the change of address to the Housing Board and having failed to pay the installment regularly, after passing the final order of cancellation of allotment and re-allotting the plot to the third defendant by including the plot in the vacant list, the appellant has made a representation on 21.08.1982 to the Chairman of Housing Board, which was duly considered and rejected.

8. When the appellant had an another opportunity to represent the Government against the order passed by the Chairman, TNHB, he has filed a suit as if the Housing Board has violated the provisions of Transfer of Property Act and the provisions of Housing Board Act, which infact is not correct.

9. The Courts below have rightly considered the legal position and factual aspect. The default committed by the appellant has led to cancellation of the plot. So, the order of cancellation is valid. This Court finds no reason to interfere with the concurrent finding of the Courts below.

10. This Court, on considering the submissions and perusing the records, fully satisfied that the trial Court has gone into the exhibits relied on by the parties and has found that prior notice was given to the allottee/the appellant herein intimating that she will loose the allotment, if the arrears is not paid. The terms of the allotment is very clear that, till the last instalment is paid, the property is vested with the Housing Board, though possession is handed over to the appellant. Having failed to pay the instalment and even failed to intimate the change of address to the Housing Board, the appellant cannot take advantage of his own failure and blame the Housing Board that the allotment was arbitrarily cancelled.

11. Exs.A21, A22 and A23 coupled with the content of documents Exs.B16, 51, 52 clearly indicates the sequence of events, which fully substantiated the submissions made by the learned Standing Counsel representing the Housing Board.

12. In the light of the above fact, this Court finds no substance in the Substantial Questions of Law framed in this Second Appeal. Hence, this Second Appeal is dismissed. No order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Executive Engineer,
Administrative Officer,
Vellore Housing Unit,
Vellore-9.
- 2.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai-35.
- 3.The Commissioner & Secretary
to the Govt.of Tamil Nadu,
Housing & Urban Development,
Fort St.George,Chennai-9.
- 4.The Additional District Court,
Vellore.
- 5.The Additional District
Munsif Court, Vellore.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.R.Jayaseelan, Advocate, SR.No.5351/19

+1cc to the Special Govt.Pleader, Vide Sr.No.5687/19

S.A.No.1820 of 2004

Kak(21/05/2019)