

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.10216 of 2008 and
M.P.No.1 of 2008

M/s.Ramesh & Co

rep. by its Partner-H.Rameshchandran,
Sandal Road,
Mettupatti, Dindigul.

... Petitioner

Vs

1. The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-9.

2. The Tamil Nadu Housing Board
rep. by its Managing Director,
Nandanam, Chennai-35.

3. The Executive Engineer-cum-Administrative
Officer, Tamil Nadu Housing Board,
Hosur Housing Unit,
Bengalur Salai, Hosur-635 109.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records of the 1st respondent relating to G.O.(1D) No.61, dated 8.1.2008 in respect of residential plot bearing No.544, Phase XVI at Hosur and quash the same and consequently, direct the respondents to allot the subject plot in favour of the petitioner.

For Petitioner : Mr.S.Gunasekaran

For Respondents: Mr.K.Ravi Kumar,
Addl. Govt. Pleader for R1

Mr.R.Bharathkumar,
Standing Counsel for R2 & R3

O R D E R

Questioning the correctness of the impugned order of cancellation passed in G.O.(1D) No.61, dated 8.1.2008 in respect of residential plot bearing No.544, Phase XVI at Hosur under the discretionary quota of the Government of Tamil Nadu, to quash the same and for consequential direction, directing the respondents to allot the subject plot in favour of the petitioner, the present Writ Petition has been filed.

2. Mr.S.Gunasekaran, learned Counsel appearing for the petitioner submitted that the petitioner, being a social worker, was allotted a residential Plot No.544, Phase XVI at Hosur under the discretionary quota of the Government of Tamil Nadu. When G.O. (2D) No.4 dated 04.01.2006 allotting the plot in favour of the petitioner was issued to make the payment within 21 days from the date of communication of allotment issued by the 3rd respondent, the petitioner also remitted the necessary registration fee and scrutiny fee and thereafter, the petitioner has also filed an application dated 07.03.2006. Finding no response, the petitioner has been sending periodical reminders to all the authorities concerned because the transactions have not been completed. Thereafter, he has filed W.P.(MD) No.8496/2007 before the Madurai Bench of this Court seeking Mandamus, directing the respondents to hand over the possession and conclude the transactions in terms of G.O.(2D) No.4, dated 04.01.2006.

3. The learned Counsel for the petitioner further submitted that to the petitioner's shock and surprise, the 1st respondent herein passed the impugned order vide G.O. (1D) No.61, dated 8.1.2008 cancelling the allotment of Plot No.544, Phase XVI at Hosur already allotted to the petitioner stating that the 2nd respondent has not fixed the cost of the plot. If the cost of the plot has not been fixed that cannot be taken as a ground for cancelling the allotment and they can always take time to fix the cost of the land. Without doing so, the 1st respondent cannot pass the impugned order hurriedly. Moreover, no notice whatsoever has been given before cancelling the allotment order. Therefore, the impugned order passed violating the principles of natural justice is liable to be cancelled, the learned Counsel for the petitioner pleaded.

4. A detailed counter affidavit has been filed by the 1st respondent.

5. Learned Additional Government Pleader appearing for the 1st respondent submitted that the allotment of Plot No.544, Phase XVI at Hosur has been made in favour of the petitioner under the Government Discretionary Quota in the category of

Social Worker in G.O. (2D) No.4, Housing and Urban Development (HB5(1)) Department, dated 04.01.2006. In the said Government Order, it has been specifically stated that the rules and regulations of the Tamil Nadu Housing Board and the orders issued by the Government in the matter of allotment shall be followed before handing over the site to the individual. In this case, the 1st respondent has cancelled the allotment order of Plot No.544 at Phase XVI, Hosur since the petitioner has failed to produce the Social Worker Certificate and other certificates as they were mandatory.

6. The learned Additional Government Pleader appearing for the 1st respondent further submitted that as per G.O.(1D) No.61, Housing and Urban Development (HB5(1)) Department, dated 08.01.2008, since the Managing Director, Tamil Nadu Housing Board has not fixed the cost of the plot, he has not issued the consequential orders to the allottee. Hence, the Managing Director, Tamil Nadu Housing Board has recommended that in view of non-fixation of cost to the plot even though it was allotted under Government Discretionary Quota, the said allotment order has to be cancelled.

7. The learned Additional Government Pleader appearing for the 1st respondent also submitted that mere payment of the registration fee as well as the scrutiny fee cannot be construed that the site should be allotted to the petitioner, since such fee is only to register the name of the individual who applied for the allotment of site. Though the petitioner has forwarded a Demand Draft dated 30.04.2012 for a sum of Rs.1,00,000/- for the Plot No.544 apart from registration fee and scrutiny fee, since the petitioner was not an allottee, the same was kept in abeyance due to the filing of the present Writ Petition and the same may be refunded after disposal of the present Writ Petition. Moreover, reiterating the stand taken by the 1st respondent in the counter affidavit, the learned Additional Government Pleader submitted that mere issuance of order by the Government allotting the site under their discretionary quota shall not vest with the petitioner any right to compel the Tamil Nadu Housing Board to handover the possession of the said plot. Therefore, the petitioner cannot maintain the writ petition. Hence, the same is liable to be dismissed.

8. At the outset, this Court finds no merit in the contention made by the learned Additional Government Pleader appearing for the 1st respondent because it is an admitted case of both sides that the petitioner, who is a Social Worker, was allotted a residential Plot No.544, Phase XVI at Hosur under Housing Scheme by issuing G.O.(2D) No.4 dated 04.01.2006 in exercise of the Discretionary Quota of the Government of Tamil Nadu and the petitioner was also directed to make necessary registration fee and scrutiny fee and after issuance of the said

Government Order, the petitioner has also filed an application dated 07.03.2006. Thereafter, since there was no response, the petitioner also filed W.P.(MD) No.8496/2007 before the Madurai Bench of this Court seeking Mandamus to hand over the possession and conclude the transactions in terms of G.O.(2D) No.4, dated 04.01.2006. But the 1st respondent has passed the impugned order dated 08.01.2008 cancelling the allotment of Plot No.544, Phase XVI at Hosur made in favour of the petitioner.

9. The narration of above facts clearly shows that the petitioner was already recognized as a Social Worker and became eligible to get allotment under Discretionary Quota of the Government and subsequently, he was also issued with an allotment order. When it is so, it is not open to the 1st respondent to cancel the same without giving any reasons. In an identical situation in W.P.No.27610/2004 by order dated 28.07.2006, this Court has held as follows:

''3. A counter has been filed on behalf of respondents 2 and 3. However, respondent No.4, the beneficiary under the impugned order, has not entered appearance. In such counter, it has been stated that the initial allotment has been made on the basis of the 'discretionary quota' of the Government and therefore there is no necessity to issue a notice to the petitioner before the cancellation. During the course of hearing, the learned counsel for respondents 2 and 3 admitted that respondent No.4 has not paid any amount and the plot is lying vacant.

4. The submission made by respondents 2 and 3 that before cancellation of the Allotment order, no opportunity was required to be given cannot be accepted. Since the allotment had been made in favour of the petitioner, before taking any steps to cancel such allotment, it was necessary for the respondents to follow the principles of natural justice and such allotment could not have been arbitrarily cancelled without any reason. A similar question came up for consideration in a Division Bench in W.P.No.10702 of 2001, disposed on 20.04.2006. In such decision it was observed that cancellation without giving opportunity is illegal.

5. Following the ratio of the said decision, the present impugned order is liable to be quashed. The writ petition is accordingly allowed. All the formalities should be completed by the respondents within eight weeks from the date of receipt of a copy of this order. The petitioner is required to take necessary steps for payment of the instalments as per the direction of the Housing Board.''

10. In the present case also, as I have mentioned above, admittedly, the petitioner was accepted as a Social Worker and recognizing him as a Social Worker exercising the discretionary quota of the Government of Tamil Nadu, the 1st respondent has issued an allotment order in G.O.(2D) No.4 dated 04.01.2006. Thereafter, without issuing any notice whatsoever, the cancellation order has been passed in violation of the principles of natural justice. Therefore, the impugned order is liable to be set aside and the same is accordingly set aside. However, the respondents are given liberty to issue a notice if so advised and then to proceed further in the manner known to law. While processing the case of the petitioner, the respondents shall bear in mind that the Demand Draft dated 30.04.2012 for a sum of Rs.1,00,000/- was forwarded by the petitioner in respect of the allotment of Plot No.544, Phase XVI at Hosur.

11. At this stage, the learned Counsel appearing for the petitioner submitted that in some cases, the plots allotted after being cancelled, have been reallocated to other persons.

12. In view of the passage of time of 10 years, this Court is not inclined to set aside the reallocation orders, however, the respondents herein are directed to issue fresh allotment orders to the petitioners in such cases, on payment of necessary charges.

13. With the above observation and direction, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-9.

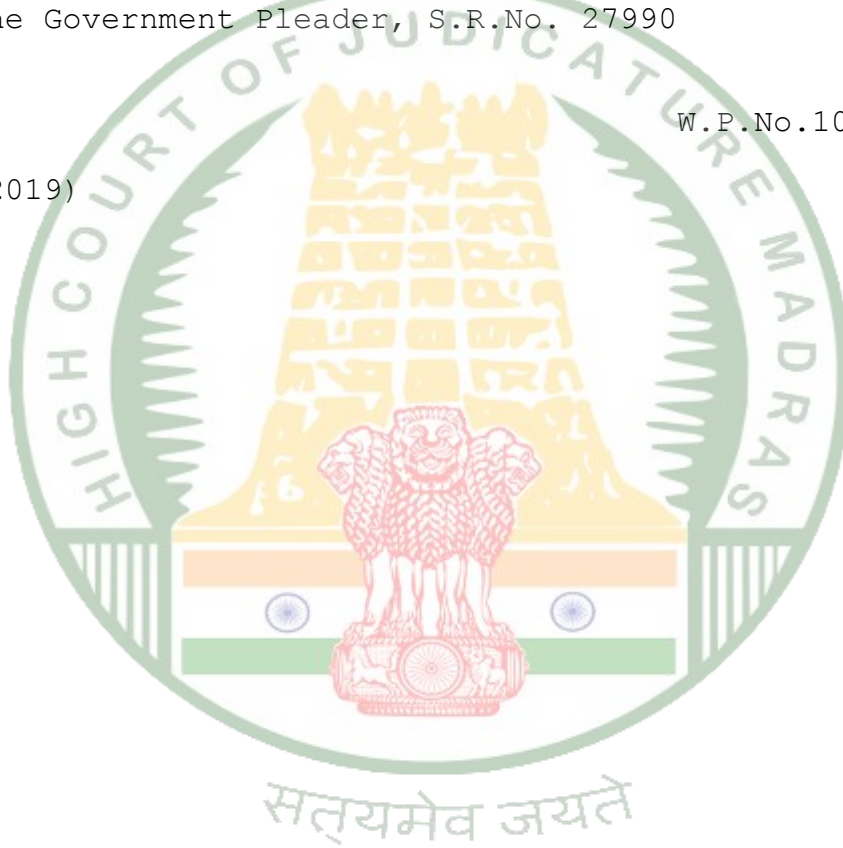
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2. The Managing Director,
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Nandanam, Chennai-35.
3. The Executive Engineer-cum-Administrative
Officer, Tamil Nadu Housing Board,
Hosur Housing Unit,
Bengalur Salai, Hosur-635 109.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No. 27270
+1cc to Mr.S.Gunasekaran, Advocate, S.R.No. 27926
+1cc to the Government Pleader, S.R.No. 27990

W.P.No.10216 of 2008

NRL (CO)
GN (02/05/2019)



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