

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.10217 of 2008 and
M.P.No.1 of 2008

S.Nachimuthu

... 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, Erode Housing Unit,
Tamil Nadu Housing Board,
Erode.
- ... 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.104, dated 8.1.2008 in respect of residential plot bearing No.1A, Dharapuram, Erode 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.104, Housing and Urban Development (HB5(1)) Department, dated 8.1.2008 in respect of

residential plot bearing No.1A, Dharapuram, Erode, allotted to the petitioner under Dharampuram Housing Scheme in Dharapuram by exercising 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.1A, Dharmapuram, Erode which comes under Dharampuram Housing Scheme by exercising the discretionary quota of the Government of Tamil Nadu. When G.O. (2D) No.335 dated 21.12.2004 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 17.7.2006. 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.No.2451/2008 before this Court seeking Mandamus, directing the respondents to hand over the possession and conclude the transactions in terms of G.O.(2D) No.335, dated 21.12.2004.

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.104, dated 8.1.2008 cancelling the allotment of Plot No.1A under Dharaauram Housing Scheme at Dharapuram 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.1A at Dharapuram Housing Scheme at Dharapuram, Erode, has been made in favour of the petitioner under the Government Discretionary Quota in the category of Social Worker in G.O. (2D) No.335, Housing and Urban Development (HB5(1)) Department, dated

21.12.2004. 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. Thereafter, the Executive Engineer and Administrative Officer, Erode Housing Unit, addressed the Tamil Nadu Housing Board to fix the cost of the site so as to take further action in the matter of issuance of allotment order to the individual concerned. Although, the layout for the scheme was already approved, the sub-division approval for the layout for the above site has not been made by the Director of Town and Country Planning, Chennai. Therefore, when the sub-division approval for the site under reference has not been approved by the competent authority and the cost for the site could not be fixed by the Tamil Nadu Housing Board, the Tamil Nadu Housing Board has addressed a letter No.AI(2)/007/05 dated 05.07.2006 to the Government for cancelling the allotment i.e. Shop Site No.1-A, Dharapuram Scheme.

6. The learned Additional Government Pleader appearing for the 1st respondent further 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. 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.

7. 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.1A at Dharapuum, Erode, under Housing Scheme by issuing G.O.(2D) No.335 dated 21.12.2004 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 17.7.2006. Thereafter, since there was no response, the petitioner also filed W.P.No.2451/2008 before this Court seeking Mandamus to hand over the possession and conclude the transactions in terms of G.O.(2D) No.335, dated 21.12.2004. But the 1st respondent has passed the impugned order dated 08.01.2008 cancelling the allotment of Plot No.1A made in favour of the

petitioner.

8. 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.'

9. 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.335 dated 21.12.2004. 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.

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

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

12. 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//

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.
2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-35.
3. The Executive Engineer-cum-Administrative
Officer, Erode Housing Unit,
Tamil Nadu Housing Board,
Erode.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No. 27271
+1cc to Mr.S.Gunasekaran, Advocate, S.R.No. 27929
+1cc to the Government Pleader, S.R.No. 27990

W.P.No.10217 of 2008

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