

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.25087 of 2008
& MP.No.1 of 2008

Mrs.Indu Batwa

.. Petitioner

Vs

1. The Secretary to Government,
Government of Tamilnadu,
Housing and Urban Development,
Fort St. George,
Chennai-600 009.

2.The Managing director,
Tamil Nadu Housing Board,
439, Anna Salai,
Chennai-600 035

3.The Executive Engineer
and Administrative Officer,
Hosur Housing Unit,
Hosur.

4.R.Manjula

... Respondents

(R4 impleaded vide order dated
05.03.2019 made in WMP.No.6964 of 2019
in W.P.No.25087 of 2008)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent pertaining to the impugned order of the second respondent Board as passed by the Secretary and Personal Officer in Letter No.Allot.3(3)/9684/05 dated 31.03.2008 and quash the same and direct the respondents to issue the appropriate allotment order and lease cum sale agreement to the petitioner for the Plot No.13-A, Hosur Neighbourhood Scheme, Phase-VI, measuring 575.25 sq.m. in pursuance of G.O.2D No.28 dated 15.02.2005 of Housing and Urban Development 5(1) Department forthwith.

For Petitioner : Mr.N.Chandra Raj
For Respondents: Mr.K.Ravikumar, AGP for R1
: Mr.R.Bharath Kumar, Standing Counsel
for R2 & 3
: Mr.R.Shanmughasundaran, Sr.C for
Mr.R.Chellamuthu for R4

ORDER

This writ petition has been filed questioning the correctness of the impugned order dated 31.03.2008 vide Letter No.Allot.3(3)/9684/05 to quash the same with a consequential direction to the respondents to issue an appropriate allotment order and lease cum sale agreement to the petitioner for the Plot No.13-A, Hosur Neighbourhood Scheme, Phase-VI, measuring an extent of 575.25 sq.m. in pursuance of G.O.2D No.28, dated 15.02.2005 of Housing and Urban Development 5(1) Department forthwith.

2. The learned counsel for the petitioner would submit that the petitioner is a social worker residing at Hosur. Therefore, she applied for allotment under the Government's Discretionary quota seeking a shop site in Hosur Housing Board reserved for Social Workers on 01.02.2004. Accepting the case of the petitioner, that she was eligible for such allotment under Social workers category, the first respondent made an allotment order in her name under Government's Discretionary quota allotting the Plot No.13-A, Hosur Neighbourhood Scheme, Phase-VI, measuring an extent of 575.25 sq.m., in pursuant to G.O.2D No.28 of Housing and Urban Development 5(1) Department dated 15.02.2005. Since the said plot is a commercial plot, the allotment order has been made to the petitioner subject to the condition that the petitioner should use it as a commercial plot alone. Subsequent to the issuance of aforesaid Government Order, the petitioner had approached the second and the third respondents herein for issuance of appropriate allotment order allotting the said plot and for the sale deed. But, the second and the third respondents did not issue the allotment order as directed by the first respondent in the aforesaid Government Order dated 15.02.2005. Finally, the petitioner filed a writ petition in WP.No.4652 of 2006 & W.P.M.P.No.5027 of 2006 dated 16.02.2006 before this Court and this Court at the time of entertaining the writ petition, passed an order of interim injunction on 20.02.2006, and the matter was finally disposed of on 22.11.2007, with a direction to the second and third respondents to consider the representation of the petitioner in pursuant to G.O.(2D) 28, Housing & Urban Development(HB5(1)) dated 15.02.2005 for the allotment of Plot No.13-A, Hosur Neighbourhood Scheme, Phase-VI. In pursuant to the order passed by this Court, the Government considered the recommendation of

the Housing Board, and cancelled the allotment order vide G.O. (4D) 1 Housing & Urban Development (HB5(1)) dated 08.01.2008. But, the same has not been communicated to the petitioner. Further, it is informed by the Secretary of the second respondent Housing Board vide letter dated 31.03.2008, that the Government's 15% discretionary quota was abolished and hence rejected the request of the petitioner to allot a shop site bearing Plot No.13-A, Hosur Neighbourhood Scheme, Phase-VI in her favour.

3. The learned counsel for the petitioner would further submit that the order of cancellation namely G.O.(4D) 1 Housing & Urban Development (HB5(1)) dated 08.01.2008 was not even issued to the petitioner on the ground that the cancellation order sent by the registered post with acknowledgment due was returned to the sender with postal remarks that the 'sender left' the place. Therefore, when it is an admitted case that the order of cancellation dated 08.01.2008 has not been served upon the petitioner, the direction passed by this Court dated 22.11.2007 in WP.No.4652 of 2006 directing the second and third respondents to consider the petitioner's representation in pursuant to the G.O.2D No.28 of Housing and Urban Development 5 (1) Department dated 15.02.2005 should be complied with.

4. A detailed counter affidavit has been filed by the third and the fourth respondents. The learned Standing counsel appearing for the second and third respondents would submit that the present writ petition has been filed only against the consequential communication dated 31.03.2008, without challenging the original allotment order, cancelling the allotment of Plot No.13-A, Hosur Neighbourhood Scheme, Phase-VI, which is legally not maintainable. Secondly, the petitioner's husband had already been allotted with three commercial plots viz., C1, C2 & C3 in Phase -VI of Hosur Neighbourhood Scheme vide Government Discretionary Quota. Subsequently, all these plots were executed by the registered sale deeds vide Document Nos.2401, 2402 & 2403 of 2009 dated 06.04.2009 and acknowledged. Thirdly, the Government had also come forward with a policy i.e., the Government discretionary quota was abolished by the Government and subsequent to G.O.Ms.No.6 dated 07.01.2011 and as on date there is no such scheme at all. Therefore, without even questioning the subsequent G.O.Ms.No.6 dated 07.01.2011, the petitioner cannot question the impugned order dated 31.03.2008.

5. I also find full force on the submission made by the learned Standing Counsel appearing for the respondents 2 & 3. When the petitioner's husband was already allotted with three commercial plots C1, C2 & C3 in Phase -VI of Hosur Neighbourhood Scheme vide Government Discretionary Quota and the

same were also executed by way of registered sale deeds vide Document Nos.2401, 2402 & 2403 of 2009 dated 06.04.2009, the petitioner cannot claim for further allotment and come forward with the present writ petition for allotment of one more plot. Secondly, the Government also vide G.O.(4D) 1 Housing & Urban Development (HB5(1)) dated 08.01.2008, cancelled the plot in question and also the Government discretionary quota was abolished by the Government subsequent to G.O.Ms.No.6 dated 07.01.2011, as rightly submitted by the learned standing counsel for the respondents, without questioning G.O.Ms.No.6 dated 07.01.2011, this Court is not inclined to entertain this writ petition as the same is not legally maintainable.

6. For the aforesaid reasons, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Government of Tamilnadu,
Housing and Urban Development,
Fort St. George, Chennai-600 009.

2.The Managing director,
Tamil Nadu Housing Board,
439, Anna Salai, Chennai-600 035

3.The Executive Engineer
and Administrative Officer,
Hosur Housing Unit, Hosur.

+4 cc to Mr.R.Chellamuthu, Advocate, Sr.No. 27850,27861

+1 cc to Mr.R.Bharath Kumar, Advocate, Sr.No. 28475

+1 cc to The Government Pleader, Sr.No. 29131

W.P.No.25087 of 2008

CSL/15.07.2019