

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.26729 of 2009

Mrs.R.Vijayalakshmi

..Petitioner

-VS-

1. The Executive Engineer cum Administrative Officer
Kalaigiar Karunanidhi Zone
Tamil Nadu Housing Board
Ashok Nagar Commercial Complex
Chennai 600 083

2. The Assistant Secretary
Allotment Section
Tamil Nadu Housing Board
No.493, Anna Salai
Nandhanam
Chennai 600 035

..Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the record in publication of the respondents in auction notice published in the "Daily Thanthi" dated 15.11.2009 in Chennai edition in respect of the Plot No.5A1, Service Division III, Maduravoyal Self Sustained Housing Board Scheme, Kalaigiar Karunanidhi Nagar Zone, Tamil Nadu Housing Board, Ashok Nagar Commercial Complex, Chennai-83 and quash the same and consequently direct the respondents to allot the plot to the petitioner on receipt of the balance installment.

For Petitioner :: Mr.B.Nedunchezhiyan

For Respondents :: Mr.R.Bharath Kumar
Standing Counsel

ORDER

Mrs.R.Vijayalakshmi has been the allottee of the Plot No.5A/1 having an extent of 100.8 M2 (1085 sq.ft) from the Tamil Nadu Housing Board. After the Tamil Nadu Housing Board has formulated a Housing Scheme No.89, Maduravoyal through an

advertisement published on 19.1.91 calling for sealed offers regarding the commercial plots of the said scheme, the petitioner participated by sending a sealed offer application No.10336 on 20.2.91. The learned counsel for the petitioner submitted that the petitioner's sealed offer application was accepted by the Tamil Nadu Housing Board and they have informed the petitioner in letter No.10336/91 dated 28.2.91 that the total cost of the allotted commercial Plot No.5A/1 to an extent of 100.8 M2 (1085 sq.ft.) was fixed at Rs.1,21,265/- and thereupon the petitioner was called upon to pay the said amount. Accordingly, the petitioner also paid a sum of Rs.12,128/- and also Rs.18,192/- and the balance cost of the said plot was to be paid in 60 monthly installments at the rate of Rs.2,035/- and the installment was to commence from April, 1991. Subsequently, the other formalities for execution of lease cum sale agreement were also completed. Later on the plot was also handed over and the petitioner had also paid Rs.85,265/- out of Rs.1,21,265/-. Since the petitioner was unable to locate the exact place of the commercial plot, because the commercial plot may be in the middle of the scheme and surrounded by residential area, explaining the whole situation, the petitioner requested the respondents to take back the plot and refund the amount paid by her. In this regard, the petitioner made frequent visits to the Tamil Nadu Housing Board. However, all her efforts went in vain. Although the petitioner was ready to pay the balance amount to the respondents, the respondents did not come forward to give the land. Even though the petitioner asked for refund of the money, again the respondents did not come forward to repay the money. Even today, the entire money paid by the petitioner by way of installments is with the respondents.

2. In the meanwhile, the respondents also came back with an advertisement in "The Hindu" newspaper dated 14.7.2009 notifying that those who have plots/flats/houses allocated by the Tamil Nadu Housing Board can restore allotments cancelled due to non-payment of monthly instalment dues by giving a consent letter to clear all dues along with any other fine amount and the said advertisement also further stated that those allottee of flats/houses/plots could approach the Executive Engineer and Administrative Officer concerned on or before August 15, 2009 and submit their consent letter and if the letter is not given before August 15, then the cancellation order already issued would once again be confirmed and the plots would be sold by the Board through a public auction. Pursuant to the same, the petitioner also applied for restoration of land on 14.8.2009. On receipt of the said letter, the respondents replied on 5.10.2009 that since the amount was not paid, the allotment was already cancelled. But the respondents have ignored their own instructions published in the newspaper on 14.7.2009. When the Tamil Nadu Housing Board has issued the advertisement specifically directing the allottees of plots/flats/houses to

approach the Executive Engineer and Administrative Officer concerned on or before August 15, 2009 to clear all the dues along with any other fine amount to repossess the plot, it is not open to the respondents to take a different stand. In any event, the petitioner has paid a sum of Rs.85,265/- by way of installments leaving only the balance amount. Therefore, when the petitioner is entitled to avail the offer given by the Tamil Nadu Housing Board in the newspaper on 14.7.2009 for restoration of allotment cancelled due to non-payment of dues, the respondents should be directed to act on the offer given by them on 14.7.2009, as the petitioner is prepared to pay the entire balance dues within a week.

3. A counter affidavit has been filed by the respondents in the year 2019 after paying costs. Mr.R.Bharath Kumar, learned standing counsel for the respondents stated that when the petitioner was allotted a commercial plot No.5A/1 of Maduravoyal Scheme by the Tamil Nadu Housing Board to an extent of 1085 sq.ft., through public auction on 28.2.91, she was informed to pay the initial sum of RS.30,320/- on or before 28.3.91 and the balance amount was equally divided into monthly installments of Rs.2,035/- and it was to be paid from April, 1991 onwards. Thereafter, the possession of the aforesaid plot was also handed over to the petitioner on 13.5.91, since the petitioner paid the initial deposit amount and the first monthly installment. Thereafter, lease cum sale agreement was also executed. When the petitioner did not pay any amount to the respondent-Board subsequently, the allotment was cancelled on 3.9.92 vide letter No.T1/10336/1991. Therefore, the petitioner made a representation on 21.9.92 stating that she could not pay the installments as she was not in station and was ready to pay the balance amount within 30 days. Based on her request, she was informed to pay the balance amount of Rs.26,455/- in addition to the September month installment along with the revocation fee of Rs.5,000/- immediately for considering the revocation of the cancellation order in respect of the aforementioned plot. But the petitioner did not come forward to pay the balance amount. Hence, she was informed to handover the plot to the Board within seven days from the date of receipt of the letter dated 23.11.92, since the allotment of the plot was already cancelled. Again the petitioner made a representation on 12.12.92 to revoke the cancellation of the commercial plot No.5A/1, Maduravoyal scheme allotted to her. Since the petitioner was given repeated opportunities on various dates viz., 5.1.93, 20.2.93, 3.8.93, 28.11.94 and 23.12.94 to pay the balance amount with revocation fee, again the petitioner was informed to pay the balance amount of Rs.1,40,038/- calculated as on April, 2000 along with the revocation fee of Rs.5,000/- to consider her request, otherwise the commercial plot would be brought to sale through auction. Again the petitioner maintained silence without any response till 2007. After sometime, the petitioner gave another

representation on 23.8.2007 to revoke the cancellation and re-allot the commercial plot to her. Therefore, the petitioner having utilised several opportunities and failed to pay the balance amount is not entitled to repossess the plot in question.

4. The counter affidavit filed by the respondents on 28.2.2019, to say the least, is misleading with suppression of several vital facts. Firstly, as on the date of filing of the counter affidavit on 28.2.2019, it is the admitted case of both sides that the petitioner had paid a sum of Rs.85,265/- out of Rs.1,21,265/-, as this has been mentioned by the petitioner in her affidavit filed in support of the writ petition. While so, it is not known why the Executive Engineer and Administrative Officer, K.K.Nagar Division, Tamil Nadu Housing Board should suppress the said vital aspect, may be for the purpose of prejudicing the mind of the Court. Secondly, when the Tamil Nadu Housing Board has admittedly issued an advertisement on 14.7.2009 in a leading newspaper "The Hindu" making it clear that all those allotments cancelled due to non-payment of monthly instalment dues can be restored, if they are coming forward to clear the dues along with the fine amount, the counter affidavit has not mentioned how the petitioner is not entitled to get the benefit of the offer. Thirdly, when the respondents are enjoying the huge money of Rs.85,265/- paid by the petitioner, there is no justification on the part of the respondents to deny the benefit of the offer made on 14.7.2009 to the petitioner.

5. The learned standing counsel for the respondents, however, stated that it is open to the petitioner to approach the Revocation Committee of the Tamil Nadu Housing Board to redress her grievance. The said submission cannot be accepted. Since the case of the petitioner is peculiar and special in nature, there is no need for the petitioner to approach the said committee after a delay of 26 years.

6. Again the learned standing counsel for the respondents stated that the scheme is not applicable to the petitioner, which is also not correct. The reason is that the advertisement issued by the respondents on 14.7.2009 does not mention that the scheme would not apply to the commercial plots. Even the counter affidavit also does not say that the scheme is not applicable to the petitioner.

7. For the foregoing reasons, the writ petition stands allowed with a direction to the petitioner to pay the balance amount to the respondents within a period of one week from the date of receipt of a copy of this order. On receipt of the balance amount of dues, the respondents are directed to reallot the plot No.5A/1 of Maduravoyal scheme having an extent of 1085 sq.ft., to the petitioner immediately thereafter. Since the

respondents have paid the costs on the earlier occasion, this Court refrains from imposing any further costs on them. Consequently, M.P.Nos.1, 2 of 2008 and 1 of 2010 are closed. No costs.

Sd/-
Assistant Registrar (CS VIII)

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Sub Assistant Registrar

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To

1. The Executive Engineer cum Administrative Officer
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Tamil Nadu Housing Board
Ashok Nagar Commercial Complex
Chennai 600 083
2. The Assistant Secretary
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Chennai 600 035.

+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.29286
+1cc to Mr.R.Bharathikumar, Advocate, S.R.No.30031

W.P.No.26729 of 2009

AD (CO)

RRS (07/05/2019)

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