

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2019

CORAM:

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.18043 of 2010

N.Kabila

.... Petitioner

Vs

1. Executive Engineer and Administrative Officer (Incharge)
Salem Housing Board Division
Salem - 8

2. P.Uma Respondents

Prayer: Writ Petitions has been filed Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records in respect of the allotment proceedings of the 1st respondent herein dated 11.03.2009 in letter No.R.3/1092/09 and quash the same consequently direct the 1st respondent herein to re-allot the plot No.LII.291 in the name of the petitioner herein.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.R.Bharath Kumar for R1
No Appearance for R2

O R D E R

The petitioner was allotted Plot No.LII-291 to an extent of 90 square meter, in the cost of Rs.38,251/-. The petitioner paid a sum of Rs.9,585/- The petitioner states that he paid an amount of Rs. 50,000/- from 1994 to 2005. Subsequently, there was default on his part. The petitioner sought time to repay the amount. The respondent directed the petitioner to pay a sum of Rs.1,23,339/- towards the balance amount payable by him, which was not paid by the petitioner.

2. The petitioner states that the plot was then allotted to the 2nd respondent herein, who has paid the amount and sale deed has been executed in favour of the 2nd respondent. The petitioner states that there is no provision for cancellation of allotment in the allotment order and hence, the plot could not have been cancelled and re-allotted to the 2nd respondent. The contention of the writ petitioner cannot be accepted. The petitioner has

defaulted in payment of installments. It cannot be said that the Housing Board is completely remedy less and cannot cancel the allotment. It cannot be argued that the Housing Board has to can only recover the amount from the sale of the plot, for recovery of amount. In any event the plot allotment in favour of the petitioner has been cancelled and sale deed has been executed in favour of 2nd respondent. Confronted with the situation, the petitioner only prays for refund of the amount paid by him.

3. A perusal of the allotment letter would show that, there is no provision for forfeiture of amount paid by the allottee. In any event, the plot has been sold to the 2nd respondent and it cannot be said that the Housing Board has been put to any loss. Keeping in view the circumstances, it is appropriate to direct the respondents refund the amount already collected from the petitioner.

4. There is no provision in the allotment letter for refunding the amount with interest and in absence of any provision, it is not appropriate for this Court to award interest on the amount paid by the petitioner. The respondents are therefore directed to refund the amount back to the petitioner, collected from him by way of advance money and monthly installments paid by the petitioner.

5. The amount be repaid to the petitioner within a period of six weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is disposed of. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Pkn

Sub Assistant Registrar

To

Executive Engineer and Administrative Officer (Incharge)
Salem Housing Board Division
Salem - 8

+1 cc to M/s.R.Bharath Kumar, Advocate, S.R.No.51607

+1 cc to M/s.C.Vasudevan, Advocate, S.R.No.51626

WP.No.18043 of 2010

CNR (CO)
SSM(18/07/2019) .