

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.19090 of 2010
and
M.P.No.1 of 2010

M.H.Zakkir Hussain .. Petitioner
Versus

1. Tamil Nadu Housing Board
493, Anna Salai
Nandhanam
Chennai - 600 035
represented by its
Secretary and Personnel Officer
 2. Executive Engineer and Administrative Officer
Mogappair Division
Tamil Nadu Housing Board
Thirumangalam Shopping Complex
Anna Nagar West
Chennai - 600 101.
 3. Assistant Revenue Officer
Competent Authority
Mogappair Division
Tamil Nadu Housing Board
Thirumangalam
Chennai - 600 101.
- सत्यमेव जयते. Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the 2nd respondent's Letter No. MRA.6/1053/2004 dated 09.12.2008 (signed on 14.12.2009 and received on 22.12.2009 only) quash the same and direct the respondents to refix the price of Plot No.21 MIG Type at Nolambur, Phase II Scheme by taking into consideration the price fixed by the respondents for Plot No.MIG 120 at Nolambur Phase II Scheme in December 2002.

For Petitioner : Mr.K.Rajasekaran
For Respondents : Mr.Bharathkumar

ORDER

The petitioner has prayed for a Writ of Certiorarified Mandamus to quash the second respondent's letter No.MRA.6/1053/2004 dated 09.12.2008 (signed on 14.12.2009 and received on 22.12.2009 only) and further direct the respondents to refix the price of Plot No.21, MIG type at Nolambur, Phase-II Scheme by taking into consideration the price fixed by the respondents for Plot No.MIG 120 at Nolambur Phase-II Scheme in December 2002.

2. The case of the petitioner is that in November 2002, the first respondent, the Tamil Nadu Housing Board herein had conducted a Sale Mela of Housing Plots at Nolambur Area, Phase-II on 22.11.2002 and 02.12.2002, in which on the spot allotment was proposed to be made by the first respondent. The petitioner had participated in the said Sale Mela on 29.11.2002 and the respondent exhibited the sketch of plots, which were available for sale and all the available plots were given numbers. The petitioner chose a plot of his liking, namely, the Plot No.MIG 120 measuring an extent of 1750 sq.ft and paid a sum of Rs.5,200/- for application and the receipt was also issued on 29.11.2002 for Plot No.MIG 120. The petitioner further submits that he has submitted the filled in application to the second respondent on 10.12.2002 along with a sum of Rs.2,23,000/- which is 25% of the total cost of the plot. The respondent had fixed the total cost of the plot at Rs.8,92,000/- and the petitioner has paid 25% on 10.12.2002 along with the application and the respondent had issued a receipt dated 10.12.2002 and the amount paid was for Plot No.MIG 120. The allotment order would be sent from the Head Office of the respondent and the petitioner has to pay 75% of the total cost later. The petitioner sent a representation dated 27.03.2003, as no intimation has been received from the respondent and no step was taken by the respondent to allot his plot. The very said plot MIG 120 had been allotted to one Vasanthi. The illegal allotment given in favour of Vasanthi was questioned. The respondent had not divulged any further information. Hence, the petitioner had filed a Writ Petition in W.P.No.27080 of 2004 for a Writ of Mandamus directing the respondents to issue an order of allotment for MIG 120 plot, after cancelling the allotment made in favour of Vasanthi. An interim order was granted injuncting the respondents from collecting monthly instalments from anyone else other than the petitioner in respect of Plot No.MIG 120 at Nolambur Phase-II and also from handing over physical possession of the said plot to anyone other than the petitioner pending W.P.No.27080 of 2004.

3. The respondents had filed a counter affidavit in W.P.No.27080 of 2004 and they have admitted that the petitioner has applied for MIG Plot 120 and an amount of Rs.2,23,000/- has

been paid being 25% of the total cost of the said plot. During the Sale Mela, the Government Discretionary Quota Plots were also booked due to oversight, but the Government subsequently did not approve the allotments. Therefore, it was stated that the amount paid by him would be refunded without any deduction. The plot No. MIG 120 was reserved under Government Discretionary Quota and the same was allotted to Smt.Vasanthi, reserved for Government Discretionary Quota. However, if the petitioner is ready and agreeable, vacant plots which are available in Ambattur Phase-III and Mogappair West Scheme could be allotted to petitioner and the petitioner had made a request to the respondents on 16.04.2005 to allot him a plot at Nolambur Phase-II as an alternative site, if plot No.120 is not available.

4. The learned counsel for the petitioner would also submit that one K.Nirmala filed impleading petition in the above said Writ Petition stating that Plot No.MIG 120 was initially allotted to Vasanthi and as there was no response from the said Vasanthi, Plot No.MIG 120 was allotted to her subsequently by G.O.(2D) No.226 dated 07.07.2004. She has claimed that after paying the initial deposit, she has also paid the monthly instalments and sought for impleading herself in the said Writ Petition. The impleading petition was taken up in 2007. The respondents offered that two other MIG plots in Nolambur Phase-II is available and any one of those plots can be allotted to him instead of MIG 120. Hence, this Hon'ble Court on 19.12.2007 disposed of the Writ Petition W.P.No.27080 of 2004 by directing the respondents to allot any one of the available MIG plots in Nolambur Phase-II in favour of the petitioner. The respondents allotted, based on the above order, Plot No.21 MIG type at Nolambur Phase-II Scheme to the petitioner. But the petitioner was shocked to receive a letter dated 19.08.2008 from the second respondent (signed on 21.08.2008) fixing the cost of Plot No.MIG 21 at Rs.16,23,200/- and asking him to pay the initial deposit of Rs.5,68,200/- being the 35% of the cost within 21 days from the date of receipt of the letter. The petitioner sent a representation dated 21.01.2009 to the second respondent that the cost of the plot in the year 2002 is only a sum of Rs.8,92,000/- and on 10.12.2002 itself he has paid a sum of Rs.2,23,000/- towards 25% of the initial deposit and the Housing Board alone has committed mistake by not issuing him the order of allotment after receiving the said amount and they are now claiming more money for an alternative plot. The petitioner submitted that new price is burden to him and for no mistake of him, he has to pay more money. Hence, the petitioner had sent another representation dated 21.01.2009 to rectify the mistake committed by the Board and to make all arrangements to issue him a regular allotment order for Plot No.21 MIG type for the old price of Rs.8,92,000/-. No reply was received by him, but a letter dated 09.12.2008 (signed on 04.12.2009) was received from

the second respondent fixing the cost of MIG plot at Rs.45,34,400/- and asking him to pay the initial deposit of Rs.15,07,240/- being the 35% of the cost to be paid within 21 days, otherwise interest will be added at the rate of 16.50% till the date of payment. The petitioner was also directed to pay a sum of Rs.27,99,160/- in one lumpsum or 60 equal monthly instalments of Rs.69,410/- per month commencing from January 2010. Aggrieved by the letter, the petitioner has filed this Writ Petition challenging the same.

5. A counter was filed by the respondents that originally the petitioner applied for plot No.MIG 120, which comes under Government Discretionary Quota and the Government has not approved the allotment order of the petitioner, hence the Government directed the Tamil Nadu Housing Board to refund the amount paid by the applicants, who have applied for Government Discretionary Quota plots without any deductions. Since the Hon'ble High Court has passed an order directing the Tamil Nadu Housing Board to allot any of the two plots, which is available in Nolambur Phase-II Scheme, the respondents had taken up measures to get orders of the Board to issue allotment order for the approval of the cost fixation of the plot. Subsequently, as per the Board memo No.A13/32838/2007 dated 14.08.2008, provisional allotment order dated 19.08.2008 was issued to the petitioner and his counsel intimating the tentative cost of the plot would be Rs.16,23,200/- and directing the petitioner to pay a sum of Rs.3,40,200/- after deducting the amount of Rs.2,28,000/- which was already paid by him during Sale Mela in 2002. The said allotment order was returned by the postal authorities with an endorsement "the party had left". But the petitioner got the provisional order through his counsel and submitted a change of address through his letter dated 10.09.2008 and also requested to grant him time of 20 days to remit the initial deposit amount, but till date the petitioner has not paid any amount. Meanwhile, the Board has refixed the cost of the plots as Rs.2,600/- per sq.ft. by resolution No.6.11 dated 30.10.2009. Accordingly, the allotment order was issued based on the resolution on 09.12.2009 fixing a cost of Rs.45,34,400/- for plot No.21 MIG type at Nolambur, which bears an extent of 1,744 sq.ft. The petitioner had been requested to deposit 35% of the cost of the plot, after deducting Rs.2,28,000/- which was already paid by him, within 21 days from the date of receipt of the allotment order and the remaining amount of Rs.27,99,160/- in one lumpsum or sixty equal monthly instalments of Rs.69,410/- starting from January 2010. Against similar order, Writ Petition has been filed, wherein the recommendations of the Pricing Committee has been taken into account, which consists of several officers and it was held that the final cost fixed by the Tamil Nadu Housing Board is final. He would further submit that only based on the Court order, this

alternative site was given to the petitioner and based on the recommendations of the Pricing Committee only the Board has approved Plot No.21, Nolambur Phase-II Scheme as Rs.2,600/- per sq.ft., hence a regular allotment order MRA6/1053/2004 dated 09.12.2009 was issued to the petitioner. They would further submit that the Pricing Committee has got the discretionary power to fix the cost of the plot and the decision of the Pricing Committee has to be based on the relevant factors and circumstances and the locality of the plot and the market value etc., for fixing the final price. Hence, there is no irregularity or discrimination committed in fixing the cost of the plot and the cost has been fixed within the provisions of rules and regulations of Tamil Nadu Housing Board and it has to be upheld.

6. Similarly placed persons have also challenged the similar issue before this Hon'ble Court and the learned single Judge has dismissed the W.P.No.27338 of 2009 filed by the similarly placed persons. Aggrieved by the orders of the learned single Judge, the same was challenged before the Hon'ble Division Bench in W.A.No.1484 of 2013 and the Hon'ble Division Bench by judgment dated 12.12.2017 has disposed of the Writ Appeal with an observation that the Housing Board has already fixed cost of plot at Rs.46,94,560/- after considering the location of the plot, extent and prevailing guideline value of the plot and the market value of the other nearby lands and therefore, the liability of the applicants, who are the respondents therein, is to pay a sum of Rs.46,94,560/- rounded off to Rs.46,00,000/-, less the amount already paid, on or before 31.03.2018 and the Tamil Nadu Housing Board should execute the sale deed within a period of two weeks thereafter.

7. In this case also, the cost fixed by the Board is well within the rules and regulations of the Tamil Nadu Housing Board and based on the area and prevailing market value of the plot. Hence, based on the above Hon'ble Division Bench judgment, this Court also follows the said judgment and directs the petitioner to pay the amount which has been fixed by the respondents/Housing Board at Rs.45,34,400/-, rounded off to Rs.45,00,000/- (Rupees Forty Five Lakhs only). The petitioner is ready and willing to pay the difference amount demanded by the Board. Hence, this Court directs the petitioner to pay a sum of Rs.45,00,000/- (Rupees Forty Five Lakhs only) after deducting the amount already deposited at the initial stage in Sale Mela, which is Rs.2,28,000/- as per the order impugned.

8. Hence, this Writ Petition is disposed of with a direction to the petitioner to deposit a sum of Rs.45,00,000/- (Rupees Forty Five Lakhs only), after deducting the amount already deposited at the initial stage in Sale Mela i.e.,

Rs.2,28,000/-, on or before 30.09.2019 without interest. In case, the amount is not paid within the cut off date, the petitioner is liable to pay interest, which is usually charged by the Housing Board. The Housing Board is directed to execute the sale deed in favour of the petitioner within a period of four weeks from the date of receipt of money deposited by the petitioner herein. Since the sale amount is fixed only at Rs.45,00,000/- (Rupees Forty Five Lakhs only), the concerned Sub-Registrar shall fix the land value taking into account the amount indicated above and without reference to the then guideline rate. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

mra

To

1. Secretary and Personnel Officer
Tamil Nadu Housing Board
493, Anna Salai
Nandhanam, Chennai - 600 035
2. Executive Engineer and Administrative Officer
Mogappair Division
Tamil Nadu Housing Board
Thirumangalam Shopping Complex
Anna Nagar West
Chennai - 600 101.
3. Assistant Revenue Officer
Competent Authority
Mogappair Division
Tamil Nadu Housing Board
Thirumangalam, Chennai - 600 101.

+1cc to Mr.K.Rajasekaran, Advocate SR.No.49645

+1cc to Mr.Bharathkumar, Advocate SR.No.49064

Writ Petition No.19090 of 2010
and
M.P.No.1 of 2010

GP (CO)
GMY (22/07/2019)