

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17..09..2019

Orders Pronounced on: 21..10..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.14003 of 2005

Towers Club

[Regn. No.131/1989],

Rep. by its Secretary,
W-Block, 3rd Main Road,
Anna Nagar,
Chennai 600 040.

.... Petitioner

-Versus-

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai 600 009.

2.The Chairman,
Tamil Nadu Housing Board,
Nandanam,
Chennai 600 035.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned communication bearing Lr.No.40532/HB5(1)/96-14 dated 04.02.2005 on the file of the 1st respondent and to quash the same and for a consequential direction to the respondents to allot the remaining land situated at Plot No.C-49, W-Block, 3rd Main Road, Anna Nagar, Chennai 600 040 to the petitioner club.

For Petitioner

: Mr.G.Masilamani, Senior
Counsel for
Mr.K.Surendranath

For Respondent(s)

: Mr.I.Sathish, Addl. Govt.
Pleader for R1
Mr.R.Bharathkumar for R2

ORDER

This writ petition has been filed challenging the order of the 1st respondent under Lr.No.40532/HB5(1)/96-14 dated 04.02.2005 rejecting the request of the petitioner for allotment of 10 grounds of land comprised in Plot No.C-49, Anna Nagar, Chennai 600 040 and situated adjoining to the petitioner Club.

2. The facts leading the filing of the present writ petition in brief are as follows:- The petitioner is a club registered under the Tamil Nadu Societies Registration Act in the name and style of "Towers Club" and having more than 1300 members from all sections of the society. It is situated in Commercial / Recreation Zone in Block-C, Plot No.49, adjacent to the famous 'Anna Nagar Tower'. Originally, the petitioner club was allotted 4 Grounds and 1263 Square Feet of land by the 1st respondent under G.O.Ms.No.506, Housing and Urban Development Department, dated 20.07.1994. In the said land, the petitioner club had put up a multi-storeyed building for various recreation and physical activities. Though the petitioner club had requested the respondents to allot the entire 10 grounds of vacant land comprised in Plot No.C-45, Anna Nagar, Chennai for the club, the Government had allotted only 4 grounds and 1263 square feet of land. The above said land was not sufficient to make provisions for the other sports activities and children's park. Therefore, in the year 1996, the petitioner club had requested the respondents to allot the remaining land on hire purchase scheme at current residential rates of the Tamil Nadu Housing Board (in short, "the Board"). The petitioner club had also sent several representations to the respondents and other authorities in this regard.

3. While so, the 2nd respondent by letter dated 22.11.1996 informed the petitioner club that the 2nd respondent had formulated a scheme for the construction of the HIG Flats on the land requisitioned by the petitioner club and therefore, it was not possible to accede to the request of the petitioner for allotment of further land. Aggrieved by the said communication, earlier, the petitioner club had filed a writ petition in W.P.No.5198 of 1998 and this court by order dated 07.04.1998 directed the 1st respondent to consider the request of the petitioner club and their representations dated 21.01.1997 and 28.08.1996 and pass suitable orders within two months from the date of receipt of a copy of the order or from the date of production of a copy of the order. This court further directed the respondents to maintain status quo until disposal of the representations of the petitioner club by the 1st respondent. Thereafter, the petitioner club sent several representations to the 1st respondent seeking allotment of further land. While so,

on 04.02.2005, the 1st respondents had once again rejected the request of the petitioner club for allotment of further land on the ground the 2nd respondent Board has proposed to sub divide the land in question into housing sites in order to realize revenue to the Board. Apart from that, it is also stated that there is an interim order passed by this court restraining the Board from allotting the plot until disposal of the pending proceedings. It is this order which is now under challenge in this writ petition.

4. The 1st respondent filed a counter affidavit stating that the petitioner club was originally allotted with an extent of 4 grounds and 1263 square feet of land. While so, the petitioner club had made a further request for allotment of the remaining land on hire purchase scheme at current residential rates of the Board. But, the Board had sent a communication to the petitioner club informing that the Board had formulated a scheme for the construction of HIG plots in the land in question. The above said order was put under challenge by the petitioner before this court in W.P.No.5198 of 1998 and this court by order dated 07.04.1998 directed the 1st respondent to consider the request of the petitioner club within two months from the date of the receipt of the copy of the order. There was also a direction to the respondent Board to maintain status quo until disposal of the representations of the petitioner club. In the mean while, a contempt proceedings came to be initiated by one D.Thanaraj in Contempt Application No.282 of 2002 in W.P.No.15299 of 20191 in which this court by order dated 26.04.2002 directed the respondents not to allot the plots to anybody until further orders. Thereafter, the respondent board has sent a communication to the 1st respondent informing that the respondent board had proposed to sub divide the land in question into residential plots in order to realize revenue to the board. The Government, after having carefully examined the proposal, informed the petitioner club that the request of the petitioner club could not be complied with. Now, layout has been approved by the CMDA and planning permission has also been granted to the board. If the land in question is divided into plots and sold through public auction, the respondent board, which is a public body, would get more revenue to their account and if the petitioner club wants to buy the same, they can very well participate in the public auction and purchase the land in question.

5. The 1st respondent filed an additional counter affidavit stating that already an extent of 13.33 grounds of land were allotted to the petitioner club by the Corporation of Chennai on 04.09.1989, apart from the land allotted by the board. As of now, an extent of 17.83 grounds of land are available at the disposal of the petitioner club. Apart from this, the petitioner

club is requesting for further allotment of 10 grounds and 1280 square of land for the club. Now, the board has already obtained planning permission and building permission from the CMDA.

6. The 2nd respondent board filed their counter affidavit reiterating the counter affidavit filed by the 1st respondent. According to the respondent board, originally there was a proposal to sub divide the land into residential plots and to put up 23 HIG Flats in order to realize revenue to the respondent board. However, that proposal was withdrawn due to the orders of this court in W.P.No.5198 of 1998 dated 07.04.1989. Now, the respondent board has proposed to sub divide the land into 5 residential flats to realize revenue to the board and has also obtained necessary approval from the CMDA. If the petitioner club wants to expand their activities by annexing the adjacent land, they can very well participate in the public auction and annexe the land in question by purchasing the same in public auction.

7. The learned senior counsel appearing for the petitioner club would contend that the petitioner club was started in the year 1989 with a laudable object to develop social, cultural, educational and recreational activities. The petitioner club is the only recreational club which caters to the recreational needs of the residents of Anna Nagar which has got population of more than one lakh. The petitioner club has as of now more than 1800 members and the land space now available to the club is not sufficient to cater the needs of the members and for making provisions for other sports activities. Even though the Corporation of Chennai has leased out a major portion of the land, after the expiry of the lease period, an order of eviction has been passed and the litigation is pending before this court. In the above circumstances, the small extent of 4 grounds of and 1283 square feet of land is not sufficient for the petitioner club to promote its activities.

8. The learned senior counsel has also placed various materials to show that the petitioner club has involved in various social and philanthropic activities. He has specifically drawn the attention of this court to the services rendered by the petitioner club to the people who were affected drastically during flood and cyclone hit the City of Chennai during 2015 and 2016.

9. The learned senior counsel would further contend that though this court by order dated 07.04.1989 in W.P.No.5198 of 1998 directed the 1st respondent to consider the representations of the petitioner club and pass suitable orders, without considering the request made by the petitioner club, the 1st respondent has simply accepted the stand taken by the 2nd respondent board and rejected the request of the petitioner. The

1st respondent has not even taken into consideration, the need of further land for the petitioner club. It is further contended by the learned senior counsel that so far as the pendency of the contempt proceedings and the interim order of this court are concerned, now the contempt petition has been closed and there is no interim order against the respondents to allot the land. Therefore, the rejection of the petitioner club's claim on the ground of pendency of contempt proceedings and interim order cannot be found to be sound and sustainable in law.

10. The learned senior counsel would also add that as the respondent board had a proposal to sell the land in question by sub dividing the same into five flats, it may not be possible to the petitioner club to participate in the public auction for each plot. When the petitioner club is prepared to purchase the land on market value, the respondent board need not go for public auction. In support of his contentions, the learned senior counsel would place reliance heavily upon the judgement in *Akhil Bhartiya Uphokta Congress v. State of Madhya Pradesh*, (2011) 5 SCC 29 wherein the Hon'ble Supreme Court in paragraphs 66 and 67 has held as follows:-

"66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organizations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution. 67. This, however, does not mean that the State can never allot land to the institutions/organizations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organizations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with

the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organizations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution."

11. Per contra, the learned counsel appearing for the respondent board would contend that the petitioner has already been allotted with sufficient land and the land which is now sought to be allotted is a valuable one situated in the heart of Anna Nagar. Earlier, the respondent board had a proposal to construct HIG flats, but, the same was dropped due to the interim orders of this court. Now, the respondent board has proposed to divide the land in question into five house sites and sell the same in public auction. The respondent board has also obtained necessary planning permission from the CMDA in this regard. If the land in question is required for the petitioner club for their expansion activities, they can very well participate in the public auction and purchase the same. The 2nd respondent board had taken a policy decision to sell the land belonging to the board through public auction which cannot be questioned by the petitioner club and having considered the proposal of the respondent board, the 1st respondent has rightly rejected the request of the petitioner. There is no illegality or irregularity in the order passed by the 1st respondent. Therefore, the learned counsel for the board prays to dismiss the writ petition.

12. The learned Additional Government Pleader appearing for the 1st respondent would contend that the Government, after having carefully examined the proposal of the respondent board, has rightly rejected the request of the petitioner for allotment of further land and no illegality or irregularity can be attached to the same.

13. I have considered the rival submissions carefully.

14. The petitioner club was allotted with an extent of 4 grounds and 1283 square feet of land in the year 1994. Right from the year 1994, the petitioner club has been consistently making request for allotment of land which is situated adjacent to the petitioner club in order to develop their activities. Earlier one such request of the petitioner club was rejected on 21.11.1996 on the ground that the 2nd respondent board was then

having a proposal to construct HIG flats on the land in question. In the mean while, the petitioner made representations to the Hon'ble Chief Minister, Government of Tamil Nadu, seeking for allotment of further land and the same were pending with the Government for consideration. When the order of rejection came to be challenged by way of writ petition in W.P.No.5198 of 1998, by order dated 07.04.1998, taking into consideration of the pendency of the representations, instead of quashing the order of the 2nd respondent board, this court directed the 1st respondent to consider the representations of the petitioners for allotment of further land and also directed the respondents to maintain status-quo in the mean time. The relevant portion of the order of this court dated 07.04.1998 reads as follows:-

"5. When the Housing Board has stated in the impugned order dated 21.11.1996 that site is required for the construction of H.I.G. flats by the Tamil Nadu Housing Board, naturally, the petitioner has kept quite for such a long time and made representations to the authorities to consider their claim for additional allotment of the site. When any representation is made to the respondents, they are bound to consider and dispose of the same. As public authorities, they are bound to discharge the functions by disposing of the representations. Without doing so, and keeping the representations pending, it is not open to the authorities to act contrary to the interest of the petitioner, because the petitioner will be under the impression that their request is still under consideration by the respondents. Hence, instead of quashing the order of the Tamil Nadu Housing Board dated 21.11.1996, I am of the view that the first respondent is directed to consider the request of the petitioner-club and their representations dated 1.01.1997 and 28.08.1996 and pass suitable orders within two months from the date of receipt of a copy of this order in this writ petition or from the date of production of a copy of the order. Till such time, the respondents are directed to maintain status-quo."

Thereafter, the impugned order came to be passed on 04.02.2005, nearly 7 years after the order of this court, stating that in view of the interim orders of this court directing the respondents not to allot any plot pending consideration of the representations of the petitioner club the request of the petitioner club for allotment of further land could not be considered and the 2nd respondent board has now proposed to

divide the land in question into suitable housing plots in order to realize revenue to the board. The relevant portion of the impugned order reads as follows:-

"5. The Government have carefully examined your request for allotment of remaining portion of the land adjoining to the land already allotted to the Towers Club in Plot No.C-49 of Anna Nagar. As the High Court, Madras in C.A.No.282 of 2002 has restrained the Government / Board that the land in Plot No.C-49 adjacent to the Towers Club, Anna Nagar, should not be allotted until further orders of the Court and also ordered interim injunction until further orders and that the Housing Board has proposed to sub-divide this 10 grounds and 1280 square feet of land into suitable residential plots in order to realize revenue to the board for this valuable land. I am to inform that your request for allotment of the remaining portion of land and building in Plot No.C-49 of Anna Nagar for use of the Towers Club could not be complied with by the Government."

15. In its earlier order, the 2nd respondent board had refused to entertain the request of the petitioner club for allotment of further land on the ground that there was a proposal to construct HIG Flats in the land in question. When it was put under challenge before this court by way of writ petition, this court by order dated 07.04.1998 directed the 1st respondent to consider the representations of the petitioner club within two months from the date of receipt of a copy of the order. From the perusal of the records, it could be seen that even thereafter, the petitioner club has been making request to the 1st respondent periodically seeking allotment. Now, nearly 7 years after the order passed by this court, the impugned order came to be passed without properly considering the representation of the petitioner club and without conducting any enquiry whatsoever, on the ground that there were interim orders restraining the Government / Board from allotting the plot pending consideration of the representations and that the respondent board has decided to sub divide the plot into suitable residential sites and sell the same in public auction. It is also relevant to mention here that the contempt proceedings has already been closed and there is no interim order operating against the respondents.

16. Thus, in considered view of this court, the above order has been passed in total non application of mind. When this court has specifically directed the 1st respondent to consider the representations of the petitioner club, the 1st respondent

ought to have conducted an enquiry by giving an opportunity to the petitioner. The object of the respondent board to sell the property in order to augment revenue cannot be disputed. However, when the petitioner club is prepared to purchase the land in question at current residential rate of the respondent board, the 1st respondent ought to have considered the request of the petitioner club and cannot arbitrarily reject the request of the petitioner by simply endorsing the views of the 2nd respondent board.

17. In the light of the above discussions, this court is of the considered view that the impugned order not only lacks of application of mind, but also suffers from violation of principles of natural justice. Therefore, the impugned order is liable to be set aside and 1st respondent is required to be directed to pass suitable order on the representations of the petitioner for allotment of land and pass suitable orders after conducting an enquiry by giving sufficient opportunity to the petitioner club and also to the respondent board. The above said exercise shall be completed by the respondent within a period of twelve weeks from the date of receipt of a copy of this order or production of a certified copy of this order.

In the result, this Writ Petition is allowed with the above directions. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

kmk

To

1.The Secretary, Government of Tamil Nadu, Housing and Urban Development Department, Fort St. George, Chennai 600 009.

2.The Chairman,Tamil Nadu Housing Board, Nandanam,Chennai-35.

+2cc to Mr.K.Surendranath, Advocate SR.No.87686

+1cc to Mr.R.Bharathkumar, Advocate SR.No.88151

+1cc to Government Pleader, High Court, Madras SR.No.88685

Writ Petition No.14003 of 2005

VG II(CO)
GMY(27/11/2019)