

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.15568 of 2016

Kodikatha Kumaran Bharata Ratna

Kamarajar Social Service Trust,

Rep. By its Trustee M.S.Rajendran,

Having Office at Old No.18, New No.37,

4th trust corss street, Mandaveli, Chennai - 28.

(Amended as per order dated 2/6/16 by MSNJ

in WMP.No.15673/16 in WP.No.15568/16)

.. Petitioner

Vs

1.The Secretary to Government of Tamil Nadu,
Housing and urban Development,
Fort St. George, Chennai - 9.

2.The Chairman Cum Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai - 35.

3.The Secretary cum Employees Officer,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai - 35.

4.The Executive Engineer (cum) Administrative Officer,
Tamil Nadu Housing Board,
Nandanam Division,
Chennai - 35.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the order of the third respondent in Letter No.O.Thu.I5/25912/2012, dated 23.02.2016 and quash the same insofar as it directs the petitioner to pay a sum of Rs.9,000/- per sq.ft. for execution of sale deed and to direct the respondents to execute the sale deed for the lands in part of Plot No.25, West Circular Road, Mandavelipakkam, Chennai, measuring an extent of 849 sq.ft. in the name of Kodikatha Kumaran Bharata Ratna Kmarajar Social Service Trust,

by collecting Rs.1,750/- per sq.ft for establishing Perunthalaivar Kamaraja Mandram and pass such further orders.

For petitioner : Mr.S.Abubacker Sidhick
for Mr.R.G.Narendhiran

For R1 : Mr.V.Shanmuga Sundar, Spl.GP

For R2 to R4 : Mr.R.Bharathkumar, Standing Counsel

ORDER

The petitioner/Kodikatha Kumaran Bharata Ratna Kamaraja Social Service Trust, represented by its Trustee M.S.Rajendran, has filed this writ petition challenging the impugned order dated 23.02.2016 of the third respondent/Secretary-cum-Employees Officer, Tamil Nadu Housing Board, Chennai, in and by which, the request of the petitioner for allotment of the land on the guideline value of the year 2004 was rejected.

2. Learned counsel for the petitioner trust submitted that one Mr.M.S.Rajendran is the Founder General Secretary of Kamaraja Deeseeya Congress, registered with the Election Commission of India. The party was formed to follow the foot steps of great freedom fighter Bharat Ratna Perunthalaivar Kamarajar, who has taken education to all the hamlets and villages in the State of Tamil Nadu and who has maintained purity in his entire public life and has not gained anything for his private life and his simple life as a Chief Minister of Tamil Nadu gives an inspiration not only to the politicians but to the entire humanity. Therefore, the petitioner submitted an application dated 16.02.2004 to the Hon'ble Chief Minister of Tamil Nadu requesting to allot the lands of the respondents 2 and 4 for establishing a Kamarajar Mandram in Mylapore. The petitioner established a Trust on 10.09.2007 in the names of Kodikatha Kumaran and Perunthalaivar Kamarajar and the Trust Deed was registered as Document No.1870/2007 Book IV on the file of Sub-Registrar, Mylapore, and the objects of the Trust are to render service to the Society and for doing service to the Freedom Fighters. As the petitioner Trust wanted to establish Kamaraj Mandram in Mylapore, an application dated 16.02.2004 was made to allot the lands measuring an extent of 868 sq.ft. available on the West Circular Road, Mandaveli, Mylapore, and the same was forwarded to the respondents 2 and 4. But, they have not initiated any action.

3. Whiles, the petitioner Trust filed W.P.No.8879 of 2006 seeking for a direction to the respondents to allot the vacant land of 868 sq.ft. available at West Circular Road, Mandaveli, Chennai, to them. Subsequently, they have received a communication from the fourth respondent on 05.10.2012 stating

that the application of the petitioner trust will be considered only after withdrawal of W.P.No.8879 of 2006. Therefore, with a fond hope that the lands would be allotted to them, the petitioner trust withdrew the said writ petition on 18.02.2013. Thereafter, the Tamil Nadu Housing Board had sent a proposal to the first respondent on 17.04.2013 to take a policy decision on the allotment of lands to the petitioner for establishing Perunthalaivar Kamarajar Mandram. The fourth respondent, by letter dated 20.01.2016, had informed the petitioner trust that the part of Plot No.25, West Circular Road, Mandavelipakkam, Chennai, measuring an extent of 849 sq.ft. will be allotted to them for the public purpose at the rate of Rs.9,000/- per sq.ft., totalling Rs.76,41,000/-, with a further direction to intimate their willingness for the same. In response to the said proceedings, the petitioner Trust made a detailed representation dated 04.02.2016 to the Hon'ble Chief Minister against such demand made by the fourth respondent.

4. Learned counsel further argued that when the application was initially made in the year 2004, the prevailing guideline value was only Rs.1,750/- sq.ft. and therefore, for the delay of 12 years committed by the respondents, they cannot make the petitioner trust to pay the prevailing guideline value of the year 2016 for allotment of land for establishment of Perunthalaivar Kamarajar Mandram. On this score, he has prayed for allowing the writ petition.

5. A detailed counter affidavit has been filed by the second respondent and this was also adopted by the first respondent. The stand of the second respondent is that when a representation of the petitioner trust addressed to the Hon'ble Chief Minister's Cell was placed before the Board of Committee for allotment of the land, the Board has resolved to allot the above piece of vacant land of 849 sq.ft. at the rate of Rs.9,000/- sq.ft. with a condition that the land should be used only for the general purpose and on acceptance for total payment of Rs.76,41,000/- in one lumpsum, the allotment would be made and this was also intimated to the petitioner vide letter dated 19.02.2016 by the Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Nandanam Division, Chennai.

6. Learned Standing counsel for the respondents 2 to 4 stated that if the petitioner trust wants the land in question for establishment of Perunthalaivar Kamarajar Mandram, first they should have given their acceptance, but, neither they have come forward to get the allotment in favour of the Trust nor ready to pay the cost of the land. As the Board is a statutory body, allotment of plot/flat/house has to be done only through lot or auction conducted by the Board. However, in the case on hand, on a sympathetic ground, the Board has taken a decision to

allot the vacant piece of land in favour of the petitioner trust on payment of a special rate of Rs.9,000/- per sq.ft. in one lumpsum. However, the petitioner trust has not given their acceptance to get the allotment, but, on the other hand, they made a request to allot the said land based on the prevailing guideline rate of the year 2004 and by making such a request, they cannot compel the respondents to allot the land causing revenue loss to the Board, he contended.

7. Learned Special Government Pleader appearing for the first respondent has adopted the above said arguments of the learned Standing counsel for the Housing Board.

8. Heard the learned counsel appearing on either side and perused the materials available before this Court.

9. Admittedly, the petitioner trust had earlier filed W.P.No.8879 of 2016 seeking for a direction to the respondents to allot the vacant land of 868 sq.ft. available at West Circular Road, Mandaveli, Chennai. Pending writ petition, the Assistant Secretary (Allotment), Tamil Nadu Housing Board, vide letter dated 18.02.2013, informed the petitioner trust that only after the withdrawal of W.P.No.8879 of 2016, the application for allotment of land would be considered. Therefore, on the fond hope that the land in question will be allotted to them, the petitioner trust withdrew the said writ petition on 18.02.2013. Thereafter, Housing Board also sent a proposal on 17.04.2013 to the first respondent to take a policy decision on the allotment of lands to the petitioner trust to establish Perunthalaivar Kamarajar Mandram. Since the petitioner trust requested for allotment of land at the rate of Rs.1,750/- sq.ft., which was the prevailing guideline value of the year 2004, the fourth respondent, vide letter dated 20.01.2016, had informed the petitioner that the part of Plot No.25, West Circular Road, Mandavelipakkam, Chennai, measuring an extent of 849 sq.ft. will be allotted to them for the public purpose at the rate of Rs.9,000/- per sq.ft., totalling Rs.76,41,000/- on the basis of new guideline value after 12 years and thereby sought for their willingness for the above said arrangement.

10. It is not in dispute that originally, the petitioner trust made an application on 16.02.2004 itself seeking allotment of the land in question for establishing Perunthalaivar Kamarajan Mandram. But, since the said request was not considered, in the year 2006 itself, petitioner trust have filed W.P.No.8879 of 2006 seeking allotment of the subject land on the basis of prevailing guideline value of the year 2004. However, as highlighted above, the Assistant Secretary (Allotment), Tamil Nadu Housing Board, Chennai, vide letter dated 18.02.2013, informed the petitioner Trust that only after withdrawal of the

said writ petition, their request for allotment would be considered. Based on their promise, the petitioner trust withdrew the writ petition on 18.02.2013. However, now, after a lapse of 12 years, fixing of guideline value prevailing of the year 2016 does not sound good. Besides, the petitioner trust ought not to have been informed to withdraw the pending writ petition to allot the land. During the pendency of the writ petition, had the respondent passed an order on the application dated 16.02.2004 of the petitioner trust, the matter could have been decided long time ago and the delay of 12 years would not have arisen. Therefore, for the delay caused from the respondent side, the petitioner trust cannot be made to bear the burden.

11. Secondly, the allotment of land was sought for to establish Perunthalaivar Kamarajan Mandram and therefore, they have to see the object of the trust and in this case, the objects of the Trust are to render service to the Society and for doing service to the Freedom Fighters. Therefore, when the application was made in the year 2004 for allotment of land in question on the basis of guideline value of the year 2004, the respondents, arbitrarily sitting on the file for about 12 years, cannot unreasonably fix the guideline value of the year 2016. Therefore, on this count, the impugned order is modified to the extent mentioned above. Consequently, the respondents are directed to consider the case of the petitioner trust for allotment of the land on the basis of the guideline value prevailing of the year 2004 with a condition in the allotment order that the land allotted in the name of the trust shall not be used for any caste, communal and religious purpose. If there is any violation of the conditions enumerated in the allotment order, the respondents are at liberty to cancel the same.

12. In fine, for the reasons stated above, the writ petition is allowed. No Costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1.Secretary to Government of Tamil Nadu,
Housing and urban Development,
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4.The Executive Engineer (cum) Administrative Officer,
Tamil Nadu Housing Board,
Nandanam Division,
Chennai - 35.

+1cc to Mr.R.Bharathkumar, Advocate SR.No.89163

+1cc to Mr.R.G.Narendhiran, Advocate SR.No.88784

+1cc to Government Pleader SR.No.89191

W.P.No.15568 of 2016

MG(CO)
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