

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.6383 of 2018

and

WMP No.7914 of 2018

M/s.Sivashankar & Co.

A Registered Partnership Firm,

Rep. by its Managing Partner-

Mr.N.Sivashankar,

Having Office at No.12/78,

Ganapathy Nagar,

Thally Road,

Hosur 635 109,

Krishnagiri District.

...Petitioner

Vs.

1.Tamil Nadu Housing Board,

Rep. by its Managing Director,

No.33, Anna Salai,

Nandanam,

Chennai.

2.The Chief Engineer,

Tamil Nadu Housing Board,

No.33, Anna Salai,

Nandanam,

Chennai 600 035.

3.The Manager,

Marketing and Services,

Tamil Nadu Housing Board-Salem Housing Unit,

Iyayanthiru Maaligai,

Salem 636 008.

4.The Executive Engineer-cum-Administrative Officer,

Tamil Nadu Housing Board,

Tamil Nadu Housing Board-Salem Housing Unit,

Iyayanthiru Maaligai,

Salem 636 008.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus to call for the records relating to Letter No.R4/1644/2010 dated 27.12.2017 issued by the fourth respondent in respect of Commercial Plot No.C-5, Kandhampatti West, Tamil Nadu Housing Board, Salem, quash the same and consequently, direct the respondents 2 to 4 to execute the Sale Deed and register the same in favour of the petitioner within the time to be stipulated by this Court.

For Petitioner : Mr.R.Bharathkumar

For Respondents: Mr.V.Anandamurthy
Standing Counsel

O R D E R

The petitioner is aggrieved against the proceedings of the fourth respondent dated 27.12.2017, wherein and whereby, the petitioner's allotment was cancelled, since the registered partnership amendment deed was not produced by the petitioner before the auction conducted for sale of the subject matter plot C5.

2.The case of the petitioner, in short, is as follows:

The petitioner is a registered partnership firm through Registration dated 08.04.2011. The Tamilnadu Housing Board, through Advertisement dated 20.07.2012, called for offers cum open auction for sale of commercial plots, etc., The petitioner firm submitted their application for purchase of commercial plot, measuring an extent of 9710 sq.ft. on outright sale basis. The petitioner paid the requisite application money/EMD. In an open auction conducted, the third respondent accepted the highest offer of Rs.2,46,00,000/- made by the petitioner and declared them as successful bidder. The petitioner remitted Rs.37,00,000/- towards 15% of bid amount on 22.08.2012. By a letter dated 12.10.2012, the third respondent directed the petitioner to pay the balance amount of 35% of the bid amount on or before 02.11.2012 and 50% of the bid amount on or before 23.11.2012. Accordingly, the petitioner has remitted the said sum on 30.11.2012 respectively. Since the petitioner has remitted the entire sale consideration, the land was measured and it was noticed that an excess land of sq.ft. over and above the original allotted area is available. Hence, the third respondent instructed the petitioner to pay extra cost of Rs.27,09,000/- towards such excess land. Accordingly, the petitioner has remitted the extra amount. Though the respondents through the Head Surveyor of the Housing Board, handed over the

subject matter plot to the petitioner on 13.11.2017 along with sketch, has however not executed the sale deed. Thereafter, the petitioner requested the respondents to execute the sale deed in their favour. On 13.11.2017, the third respondent called upon the petitioner through the proceedings dated 13.11.2017 to submit the registration certificate of the petitioner's Partnership firm and Partnership Amendment Deed prior to the date of auction sale for perusal and thereafter to get the sale deed and again by communication dated 08.12.2017 he sought for the Certificate of Petitioner's firm and Partnership Amendment Deed within 7 days. Thereafter, the present impugned order was passed, canceling the allotment stating that the documents sought for have not been submitted by the petitioner. Hence, the present writ petition is filed.

3.A counter affidavit is filed by the first respondent, wherein it is stated as follows:

The Tamilnadu Housing Board allotted a commercial plot C5 measuring an extent of 9710 sq.ft. at Kandampatty West, Salem to the petitioner, for a sale consideration of Rs.2,46,00,000/-. The petitioner paid Rs.18,00,000/- towards application fee and paid Rs.37,00,000/- towards 15% bid amount. The petitioner remitted the remaining 35% of bid amount on 02.11.2012 and 50% bid amount on 30.11.2012. The petitioner paid the extra land cost on 09.10.2017 and the plot was also handed over to the petitioner on 13.11.2017. The petitioner has not produced the certificate of Partnership firm and Partnership Amendment Deed within 7 days from the show cause notice dated 08.12.2017. In the application itself, the terms and condition stated as follows:

"11.The Auction Sale Confirmation Committee of the Board reserves the rights to confirm or to reject the auction sale without assigning any reason therefor.

18. In the event of the purchaser contravening any of the conditions herein contained the Tamil Nadu Housing Board shall be entitled to cancel the sale, besides forfeiture of the amount paid by the applicant."

Hence, the petitioner should submit the original Registration Certificate of petitioner's Partnership Firm and Partnership Amendment Deed prior to the auction and the same has not been produced by the petitioner so far. Mere paying the entire sale consideration will not confirm rights to the petitioner and thus, the petitioner has violated the conditions of the auction sale.

4. Learned counsel for the petitioner, after inviting the attention of this Court to various proceedings issued from the date of auction to the date of handing over possession, submitted that there is no justification on the part of the

respondents in cancelling the allotment made to the petitioner. He further submitted that the reason stated in the impugned order cannot be sustained, since that is not one of the conditions stipulated for an applicant to participate in the auction.

5. On the other hand, the learned counsel appearing for the respondents Board, after reiterating the contentions raised in the counter affidavit, submitted that the documents sought for have not been produced by the petitioner and therefore, the petitioner is violated the terms and conditions stipulated in the application and hence, they cannot seek execution and registration of sale deed.

6. Heard both sides.

7. It is seen that the petitioner has become a successful bidder in respect of plot No.C5, Kandampatty West, Salem and that an allotment order was also issued in their favour. It is also not in dispute that the petitioner has paid the entire sale consideration within time and that they have also paid the extra cost towards the excess extent of land available over and above the extent originally shown in plot No.C5. It is also not in dispute that the petitioner was handed over possession of the said C5 plot on 13.11.2017 along with sketch by the respondent Board. Thereafter, when the petitioner has sought for executing and registering the sale deed, the present impugned communication is issued. The only reason stated in the impugned communication is that since the petitioner has not produced the documents viz., Certificate of Registered Partnership Firm and the Partnership Amendment Deed, the fourth respondent cancelled the allotment made in favour of the petitioner.

8. Perusal of the terms and conditions stipulated on a person to participate in the auction, nowhere indicates such participant in the auction should have a registered partnership firm at the time of conducting the auction. Apparently, the terms and conditions entitle any individual to take part in the auction without stipulating any further condition with regard to the specific requirement of the documents that one should possess to take part in the auction. There is no dispute to the fact that the petitioner, as a partnership firm, has participated in the auction and the allotment order was also issued in the name of the petitioner. When the entire cost of the plot has been paid and the possession is also handed over to the petitioner, absolutely there is no justification on the part of the fourth respondent in issuing the impugned communication.

9. Accordingly, I find no reasons or justifiable grounds to sustain the impugned communication. On the other hand, I find that the petitioner is entitled to succeed and get the sale deed

executed and registered without loss of further time. Thus, the writ petition is allowed and the impugned communication is set aside. Consequently, the respondents are directed to execute the sale deed in respect of the plot No.C5 and register the same within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vri

To

- 1.Tamil Nadu Housing Board,
Rep. by its Managing Director,
No.33, Anna Salai,
Nandanam,
Chennai.
- 2.The Chief Engineer,
Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam,
Chennai 600 035.
- 3.The Manager,
Marketing and Services,
Tamil Nadu Housing Board-Salem Housing Unit,
Iyayanthiru Maaligai,
Salem 636 008.
- 4.The Executive Engineer-cum-Administrative Officer,
Tamil Nadu Housing Board,
Tamil Nadu Housing Board-Salem Housing Unit,
Iyayanthiru Maaligai,
Salem 636 008.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.23236
+1cc to Mr.V.Anandhamurthy, Advocate, S.R.No.23093

W.P.No.6383 of 2018

SR(CO)

RRS (15/04/2019)