

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.29017 of 2018
and W.M.P.No.33920 of 2018

Mrs.H.Fathima

.. Petitioner

/versus/

1.The Tahsildar,
Maduravoyal Taluk,
Alapakkam,
Chennai-600 116.

2.The Tamil Nadu Housing Board,
Rep.by its Managing Director,
493, Anna Salai,
Nandanam, Chennai-600 035.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent and quash the 1st respondent's impugned rejection order dated 03.09.2018 of the petitioner's online application No.2018/0105/01/140865 dated 02.08.2018 as the same is perverse, arbitrary, biased, illegal, untenable, unwarranted, smacks of malafide and colourable exercise of power and consequently directing the 1st respondent to consider the petitioner's representation dated 06.09.2018 thereby issue patta in petitioner's name in respect of the petitioner's property situated on the Northern side measuring an extent of 1800 sq.ft., consisting of Plot Nos.1 and 2 comprised in Survey No.147, Moolambigai Nagar 3rd Cross Street, Nerkundram village, formerly Ambattur Taluk, now Maduravoyal Taluk, Thiruvallur District, without insisting the petitioner to produce "No Objection Certificate" from the 2nd respondent Housing Board for processing the same in view of the common order dated 04.09.2017 passed in Writ Petition Nos.17484 to 17493 of 2017 by this Court.

For Petitioner : Mr.S.L.Sudarsanam
For Respondents : Mr.N.Inbanathan, AGP for R1
Mr.N.Baskar, St.c for R2

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

2. The petitioner has made on-line application on 02.08.2018 and written representation dated 06.09.2018 to issue patta for the land purchased from one K.Kishore Kumar vide sale deed dated 02.05.2018. The on-line application for transfer of patta was rejected by the respondent on the ground that the subject land is under acquisition proceedings for Tamil Nadu Housing Board/second respondent herein.

3. According to the petitioner, the acquisition proceedings initiated under G.O.Ms.No.124 dated 08.05.1975 culminated in publication of Section 6 declaration on 09.06.1978. However, the said acquisition proceedings was challenged by the land owners in W.P.No.8371 of 1986 and the same was quashed by this Court. After quashing of 4(1) notification dated 11.06.1975 in W.P.No.18379 of 1991, the Housing Board has not proceeded further for fresh acquisition of the land covered under G.O.Ms.No.124.

4. According to the petitioner, the land which she has purchased falls under Survey No.147, Nerkundram Village, which is the subject matter of the land acquisition proceedings initiated under G.O.Ms.No.124, which was later quashed. After quashing of acquisition proceedings, some of the land owners sought for transfer of patta which was refused by the 1st respondent office and they have filed the writ petitions before this Court seeking patta and this Court allowed those writ petitions directing the 1st respondent to consider their request for issuance of patta without insisting upon NOC from the Housing Board. Claiming that she is placed at par with those writ petitioners in W.P.Nos.17484 to 17493 of 2017, where this Court has passed common order directing the 1st respondent to consider their application for grant of patta, since the Housing Board has no right over the land after quashing of 4(1) notification dated 11.06.1975.

5. In the counter filed by the 1st respondent, it is stated that the TNHB authorities has preferred writ appeal against the order dated 01.07.1999 in W.A.Sr.Nos.84733 to 84740

and 84742 to 84743 of 2017. But the present status of the appeal petitions could not be ascertained through website. According to the counter filed by the 1st respondent, the land acquisition proceedings for acquisition was approved by the Government order passed vide G.O.Ms.No.993, 994 and 996 Housing dated 07.06.1978, and award was passed on 30.05.1986. While so, even after quashing of the acquisition proceedings by the High Court, the Housing Board has so far not withdrawn the acquisition proceedings and has preferred appeal before this Court challenging the order passed by this Court quashing the acquisition proceedings. Hence, they have every reason and justification to seek NOC from the Housing Board.

6. In an identical situation when the land owners, who have purchased the land subsequent to the quashing of the acquisition proceedings, approached this Court, this Court has directed the respondent herein to consider the representation of the petitioners to issue the patta and demarcate without insisting NOC from the Housing Board. The reason for passing that order still holds good and apply to the petitioner also. The acquisition authority/Housing Board after quashing of their acquisition proceedings by this Court as early as 1999 has not shown any interest in issuing fresh acquisition proceedings or pursuing the appeal alleged to have been filed by them in the year 2017, after nearly 18 years the order passed by this Court.

7. In such circumstances, it is meaningless to direct the land owners to get NOC from Housing Board, which has not thought fit to challenge the order of this Court passed in W.P.No.18379 of 1999 dated 01.07.1999.

8. The counter filed by the 2nd respondent/Housing Board also in line with the counter filed by the 1st respondent. The audacity of the office of the Housing Board could be easily seen from the way in which the counter filed. They are illegally preventing the lawful owners of the land from getting their property properly mutated in the revenue records. The acquisition proceedings commenced by 4(1) notification under G.O.Ms.No.124 dated 08.05.1975 has been quashed by this Court on 01.07.1999. The Housing Board has slept over for 18 years allowing the gullible public to deal with the property. Now to put constrained and harassment to the general public, Housing Board has filed the paper before the Registry and has obtained SR Number in the year 2017. Even thereafter, they have not shown any interest to get the appeal numbered for adjudication, but forcing the public, who have purchased the property and to approach this Court to get relief. In a batch of writ petitions dealt by this Court earlier, this Court has pointed out the indifference and colourful attitude of the Housing Board and has

directed the 1st respondent to consider the representation of the petitioner seeking demarcation and patta without insisting NOC from the 2nd respondent/Housing Board.

9. In the counter, the 2nd respondent term the petitioner an encroacher however, when they could not sustain under what capacity they now objecting the request of the petitioner seeking patta when their acquisition proceedings itself has been quashed as early as 1999, terming the petitioner an encroacher is baseless.

10. In the above said circumstances, this Court has no hesitation to hold, the respondents herein have without any right, had deprived the petitioner from getting patta for the land they have purchased for value after verifying records and ensuring the property is free from encumbrance.

11. Hence, this writ petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

rpl
To

1.The Tahsildar,
Maduravoyal Taluk,
Alapakkam,
Chennai-600 116.

2.The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai-600 035.

+2 ccs to Mr.S.L.Sudarsanam Advocate sr92246
+1 cc to Government Pleader sr92501

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