

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.31242 of 2018

and

WMP No.36430 of 2018

M/s.S.M. & Co.

A Registered Partnership Firm,

Rep. by its Managing Partner-

Mr.K.Mani,

Plot No.32, Sapthagiri Nagar,

Bagalur Road,

Krishnagiri District.

...Petitioner

Vs.

1.Tamil Nadu Housing Board,

Rep. by its Managing Director,

No.33, Anna Salai,

Nandanam,

Chennai.

2. The Manager,

Marketing and Services,

Tamil Nadu HOusing Board-Salem Housing Unit,

Salem 636 008.

3.The Executive Engineer-cum-Administrative Officer,

Tamil Nadu Housing Board,

Tamil Nadu Housing Board-Salem Housing Unit,

Iyyanthiru Maaligai, सत्यमेव जयते

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 pertaining to the proceedings issued in Letter No.R4/1644/2010 dated 20.09.2018 by the third respondent, quash the same and consequently, direct the respondents 2 and 3 to execute the sale deed and register the same in favour of the petitioner in respect of Commercial Plot No.C4, Kandhampatti West, Salem on the basis of the Order of confirmation issued by the third respondent vide Letter No.R4/1644/2010 dated 12.10.2012 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 third respondent dated 20.09.2018, wherein and whereby, the petitioner was informed that sale deed cannot be executed since the partnership amendment deed produced by the petitioner was registered subsequent to the auction conducted for sale of the subject matter plot C4.

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

The petitioner is a partnership firm constituted with effect from 30.10.2009. 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 6270 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.1,37,00,000/- made by the petitioner and declared them as successful bidder. The petitioner remitted Rs.20,55,000/- towards 15% of bid amount on 22.08.2012. An allotment order dated 05.10.2012 was issued in the name of the petitioner by the third respondent. 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 31.10.2012 and 23.11.2012 respectively. Since the petitioner has remitted the entire sale consideration, the land was measured and it was noticed that an excess land of 320 sq.ft. over and above the original allotted area is available. Hence, the third respondent, through proceedings dated 11.07.2017, instructed the petitioner to pay extra cost of Rs.9,96,000/- towards such excess land. Accordingly, the petitioner has remitted the extra amount also on 10.08.2017. Thereafter, the petitioner through the letter dated 04.05.2016, requested the third respondent to execute the sale deed followed by another representation dated 19.04.2017 to the first respondent as well. Though the third respondent through the Head Surveyor of the Housing Board, handed over the subject matter plot to the petitioner on 27.09.2017 also by issuing possession certificate, has however not executed the sale deed. The petitioner filed W.P.No.6783 of 2018 seeking for mandamus to execute and register the sale deed in favour of the petitioner. The said writ petition was disposed of on 23.03.2018, directing the respondent

to consider and pass orders. Thereafter, the present impugned order was passed, that too, when the petitioner has filed a contempt petition in Cont.P.No.2124 of 2018 for not obeying the order passed in W.P.No.6783 of 2018.

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

The Tamilnadu Housing Board allotted a commercial plot C4 measuring an extent of 6720 sq.ft. at Kandampatty West Scheme, Salem to the petitioner, for a sale consideration of Rs.1,37,00,000/. The petitioner paid application money and 15% bid amount. The petitioner was thus requested to pay the balance cost of the bid amount to the plot viz., 35% on or before 02.11.2012 and 50% on or before 23.11.2012. The petitioner has paid the balance cost within the time limit as informed by the Board. The petitioner has also paid the amount cost towards the excess land. The petitioner has given a false information that S.M. & Co. is a registered partnership firm and participated in the auction. The petitioner has not furnished the certificate of registered Partnership Deed prior to the auction conducted by the Board. Due to non receipt of the registered Partnership Deed and Amendment Deed and when the third respondent found that the petitioner's firm is only registered on 15.10.2012, subsequent to the auction conducted on 22.08.2012, the request of the petitioner to issue the sale deed was not considered. Only when the petitioner produces Certificate of Registered Partnership Amendment Deed before the date of auction, their request for executing the sale deed will be considered.

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 refusing to execute the sale deed, even though the petitioner has paid the entire sale consideration within time. He further submitted that the reason stated for not executing and registering sale deed 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 partnership firm of the petitioner was registered only after the auction was conducted and therefore, the petitioner is not entitled to seek for execution and registration of the sale deed.

6. Heard both sides.

7. It is seen that the petitioner has become a successful bidder in respect of plot No.C4, Kandampatty West Scheme, 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.C4. It is also not in dispute that the petitioner was handed over possession of the said C4 plot on 27.09.2017, by issuing a possession certificate 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 the Partnership Amendment Deed came into existence on 15.10.2012 and registered on 22.07.2016, which is admittedly after the date of auction viz., 22.08.2012. Therefore, the third respondent refused to execute and register the sale deed, unless the petitioner produces the registered partnership deed before the date of auction.

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 entitles 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 third respondent in issuing the impugned communication, which appears to have been made only for the purpose of escaping from the clutches of the contempt proceedings initiated by the petitioner in Contempt Petition No.2124 of 2018 for not complying with the order passed in W.P.No.6783 of 2018 dated 23.03.2018, wherein this Court directed the TNHB to consider the claim of the petitioner and take appropriate steps without loss of further time within a period of eight weeks.

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.C4 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

//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 Manager,
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Tamil Nadu Housing Board-Salem Housing Unit,
Iyyanthiru Maaligai,
Salem 636 008.

+1cc to Mr.R.Bharathkumar, Advocate SR.No.18358

+1cc to Mr.V.Anandamurthy, Advocate SR.No.17995

सत्यमेव जयते

W.P.No.31242 of 2018

GMV (14/03/2019)

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