



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P.(MD)No.16318 of 2019
and W.M.P. (MD) .No.12973 of 2019

K.Nithya

... Petitioner

-Vs-

The Executive Engineer cum Administrative Officer,
Tamilnadu Housing Board,
Thanjavur Housing Board Division,
Thanjavur.

... Respondent

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the respondent in R7/6386/2002, dated 21.06.2019 of the respondent herein and consequently direct the respondent to hand over the sale deed relating to the house MIG - 353 Tamil University Campus, Phase II Thanjavur.

For Petitioner : Mr.M.Karunanithi

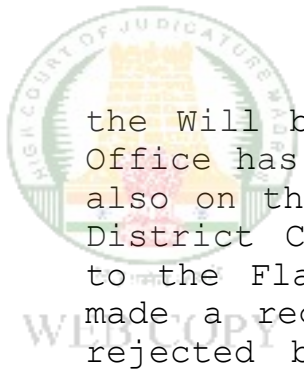
For Respondent : Mr.Rajesh Kumar, Standing Counsel

ORDER

The prayer sought for in this writ petition is for issuance of writ of Certiorarified Mandamus, calling for the records of the respondent in R7/6386/2002, dated 21.06.2019 and consequently direct the respondent to hand over the sale deed relating to the house MIG - 353, Tamil University Campus, Phase II Thanjavur.

2.Heard Mr.M.Karunanithi, learned counsel appearing for the petitioner and Mr.Rajesh Kumar, learned Standing Counsel appearing for the respondent.

3.The petitioner's husband was allotted a Housing Flat (i.e.,) MIG - 353 in Tamil University Campus, Phase - II, Thanjavur, by the respondent Housing Board, who after getting loan from the Government Department, where he was working, purchased the said flat and the entire amount payable to the respondent Housing Board has been paid by the said allottee. Thereafter, in view of his health condition, it seems that, the allottee has bequeathed a Will in favour of the petitioner, who is the wife, to inherit the said property allotted by the Housing Board and thereafter, the petitioner's husband died on 10.02.2012. Therefore, on his death,



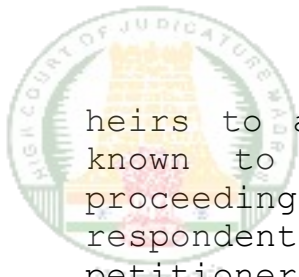
the Will bequeathed by him registered in the concerned Registrar Office has become in operation and on the strength of the same and also on the strength of the No Objection Certificate given by the District Collector for getting the sale deed/document pertaining to the Flat in question from the respondent, the petitioner had made a request to the respondent. However, the same has been rejected by the impugned proceedings dated 21.06.2019, stating that the property in question would be first given to all the legal heirs of the deceased, who is the original allottee and only thereafter, among the legal heirs, it can be partitioned. Therefore, the sale deed cannot be given in favour of the petitioner. Accordingly, it has been rejected.

4.I have heard the learned counsel appearing for the petitioner as well as the learned Standing counsel appearing for the respondent and the learned Standing counsel has reiterated the reason stated in the impugned order and would submit that, since there has been one more legal heir of the deceased apart from the petitioner, the sale deed cannot directly be given to the petitioner alone and that is the reason why, the impugned order has been given directing the petitioner to bring all the legal heirs.

5.I have considered the said submissions made on either side and have perused the materials placed before this Court.

6.Since the house was allotted to the husband of the petitioner and during his life time, he bequeathed a Will in favour of the petitioner to inherit the said property and after his death, the Will become in operation and by virtue of the said Will, which is a registered one, the petitioner would be entitled to seek the benefit of inheriting the property and for the said purpose, since she became the owner of the property by virtue of the said Will, she would have every right to seek the necessary sale deed/document from the respondent and therefore the same cannot be refused by the respondent by citing reason that apart from the petitioner, one more legal heir is also there for the original allottee, who is no more.

7.The said reason cited in the impugned order cannot be sustainable for the reason that, the deceased person may have one more legal heir apart from the petitioner. But if at all the allottee died intestate, the reasons cited by the respondent may be justified. However, the allottee has bequeathed a Will which has been registered and therefore, by virtue of the said Will, *prima facie*, the petitioner has become the owner and therefore she would be entitled to get the sale deed from the respondent. If at all, ultimately, other legal heirs have got any grievance over the very Will which is executed by the deceased, it is for that legal



heirs to agitate the issue against the petitioner in the manner known to law before an appropriate court in an appropriate proceedings. Therefore, that reason cannot deter or detain the respondent from executing the sale deed in favour of the petitioner, as the deceased who was the allottee has already paid back the entire amount payable to the respondent and in this regard, No Objection Certificate also has been given by the District Collector.

8.In that view of the matter, the impugned order cannot be sustained. Accordingly, the same is quashed and the matter is remitted back to the respondent for reconsideration of the request of the petitioner. Accordingly, needful, as indicated above, shall be done by the Housing Board within a period of six weeks from the date of receipt of a copy of this order. It is made clear that in respect of the execution of the sale deed, what ever the legal formalities required under the law, shall also be complied with by the petitioner and on such compliance, needful as indicated above can be undertaken by the respondent.

9.With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To
The Executive Engineer cum Administrative Officer,
Tamilnadu Housing Board,
Thanjavur Housing Board Division,
Thanjavur.

+1 CC to M/s.K.RAJESHKUMAR, Advocate (SR-78735[F] dated 31/07/2019)

+1 CC to M/s.M.KARUNANITHI, Advocate (SR-78829[F] dated 31/07/2019)

tm/arul

Order made in
W.P. (MD)No.16318 of 2019

Dated:
30.07.2019