



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P (MD) No.12130 of 2017

R.Parthiban

.. Petitioner

Vs.

1.The Registrar of Cooperative Societies (Housing),
Tamilnadu Housing Board Building,
(2nd floor Annexure),
Annasalai,
Nandanam,
Chennai - 600 035.

2.The Deputy Registrar (Housing),
Tiruchirapalli Region,
Tiruchirapalli.

3.The Secretary/Special Officer,
Srirangam Co-op Building Society No.R.839,
82-A, Ammamandapam Salai,
Srirangam,
Tiruchirapalli - 620 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to treat the petitioner equally in execution of sale deed in favour of the petitioner as done for the 22 members of the 3rd respondent society and to execute conveyance deed in favour of the petitioner in respect of plot No.3 allotted to the petitioner formulated under the scheme Kamaraj Nagar Lay-out.

For Petitioner : Mr.A.Selvendran

Mr.S.R.A.Ramachandhiran

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

The petitioner has applied for allotment of housing plot with the third respondent in the year 1993. Plot No.3 was tentatively allotted to the petitioner, subject to approval by the higher authorities. Originally, at the request of 27 members of the third respondent Society and on their payment of advance amount of Rs.45,000/-, each purchased an extent of 5 acres 6 cents of land in the year 1977. Out of these 27 members, four members have withdrawn their request and received back their advance amount and they were



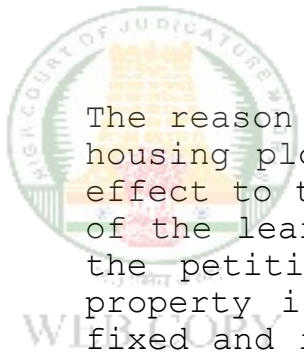
not willing to purchase house sites allotted to them. Since the petitioner was an ex-serviceman and waiting for allotment, his application dated 20.07.1993 was considered and Plot No.3 was allotted to him on 22.10.1996 on payment of Rs.6,000/- as advance. Later, a demand was made by the third respondent to pay his share as development charges to the tune of Rs.2,17,000/-, which was also paid by him. However, sale deed was executed only in favour of 22 members, who were the original allottees and in respect of the petitioner, it was withheld in view of the audit objection made in the year 2014. Aggrieved over the same, the petitioner has approached this Court for execution of sale deed by the third respondent in his favour.

2.The third respondent in his counter affidavit admitted the payment of total consideration to the tune of Rs.2,17,000/- by the petitioner on 24.07.1993. Further, it is stated in the counter affidavit that since allotment was not approved by the higher authorities and in view of G.O.No.224, Housing and Urban Development (HDS) Department, dated 27.11.2009, the respondents have not executed sale deed in favour of the petitioner.

3.The learned Special Government Pleader appearing for the respondents would vehemently contend that in the year 1975, 27 members have paid advance amount of Rs.45,000/- each and on the said advance amount, an extent of 5 acre and 6 cents of land was purchased in the year 1977. In so far as the original allottees who have paid advance amount of Rs.45,000/- each for the purpose of purchase of land is concerned, the respondents have executed 22 sale deeds, whereas, the petitioner was not one among the original allottees and a conditional allotment was made subject to the approval of the higher authorities and allotment was not made on the basis of seniority and it is contrary to G.O.No.224, Housing and Urban Development (HDS) Department, dated 27.11.2009. In so far as the unsold plots are concerned, the Society was directed not to sell the same without fixing its value by the Committee formed as per G.O.No.224, dated 27.11.2009 and after fixing the price, sale deed will be executed.

4.I have considered the rival submissions made by both parties.

5.Admittedly, the petitioner has applied for allotment of plots in the year 1993 and in fact, he was allotted one of the vacant plots. It is not also in dispute that the land was purchased on the advance amount paid by 27 members at the rate of Rs.45,000/- each. Four of them have backed out and in their place, the petitioner has stepped in and paid the money. In such event, it cannot be stated that the society is at loss and that the society has paid money and purchased the land. At any cost, the land was purchased from the money paid by the members. It is important to note that the petitioner has paid money on 24.07.1993. The total consideration being paid in July 1993, it is not just and reasonable to refuse execution of the sale deed in favour of the petitioner.



The reason being G.O.No.224 dated 27.11.2009, will apply only to the housing plots which were not sold and it cannot take retrospective effect to the plots sold in the year 1993. Therefore, the contention of the learned Special Government Pleader that the plot allotted to the petitioner can be sold only after fixation of value of the property is not tenable. On the date of allotment, the value was fixed and it was collected from 22 members and sale deeds were also executed in their favour. The respondents cannot take a different view in so far as the petitioner alone is concerned. Further, even assuming that the allotment was conditional, the higher authorities should have passed orders within the reasonable time. For the allotment made in the year 1993, audit objection has been made in the year 2014, ie., after a period of 21 years. Such delay cannot be entertained and the petitioner cannot be compelled to pay penalty for the delay caused by the respondents. Since allotment was made in the year 1993 and total consideration has already been paid in the year 1993, duty is cast upon the respondents to execute sale deed on par with the other 22 members. On the basis of audit objection, which was raised after a period of 21 years, the legitimate expectation of the petitioner cannot be taken away.

6.In view of the matter, a direction is issued to the respondents 1 and 2 to approve the proposal of the third respondent for executing sale deed in favour of the petitioner forthwith. The third respondent is directed to execute sale deed in favour of the petitioner, within a period of two weeks from the date of receipt of approval.

7.The writ petition is allowed accordingly. No costs.

Post the matter on 17.12.2019 "for reporting compliance."

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Registrar of Cooperative Societies (Housing),
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(2nd floor Annexure),
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2.The Deputy Registrar (Housing),
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Tiruchirapalli.

3.The Secretary/Special Officer,
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82-A, Ammamandapam Salai,
Srirangam,
Tiruchirapalli - 620 006. 1 Police Station,
Kanyakumari District.

Copy to: The Section Officer, Writ Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc Mr. A.SELVENDRAN ,Advocate, SR.No.99689

W.P (MD) No.12130 of 2017
19.11.2019

KK/SAR/27.11.2019/4P-6C/