

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM

**THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND**

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Rev.Appl.No.228 of 2018

P.Thenmozhi ... Applicant

Vs.

1.Tamil Nadu Housing Board,
Rep. By its Chairman,
No.493, Anna Salai,
Nandanam, Chennai-600 035.

2.The Executive Engineer-cum-
Administrative Officer,
Anna Nagar Division,
Tamil Nadu Housing Board,
Anna Nagar, Chennai-600 041.

... Respondents.

Prayer: Review Application filed under Order 47 Rule 1 CPC read with
Section 114 CPC to review the judgement dated 14.02.2018 made in
W.A.No.172 of 2018.

For Review Applicant : Mr.C.Uma Shankar
for Mr.S.Kasikumar

For Respondents : Mrs.R.Gowri
Standing Counsel for TNHB

ORDER

(Order of the Court was made by **M.Sathyanarayanan, J.**)

The appellant in W.A.No.172 of 2018 is the review applicant herein and to review the judgement dated 14.02.2018 passed in the said writ appeal, the present review application is filed.

2. Facts leading to the present round of litigation have been narrated in detail and in extenso in the order dated 27.02.2014 made in W.P.No.27412 of 2012 filed by the petitioner/review applicant, which came to be disposed of with certain directions and the petitioner, aggrieved by the said order, filed a writ appeal in W.A.No.172 of 2018, which also came to be dismissed, vide judgement dated 14.02.2018 and therefore, it is unnecessary to restate the entire facts once again for the sake of brevity.

3. The petitioner, in view of the earlier allotment, was allotted MIG Plot No.1/599 at Manali Phase I Scheme, 3993 Sq.Ft. at a price of Rs.52,95,000/-, vide letter of the 2nd respondent dated 20.09.2012 and after adjusting the deposit of Rs.63,000/- she was called upon to pay a sum of Rs.52,32,000/-Challenging the same, the petitioner has filed W.P.No.27412 of 2012 and it came to be disposed of by a learned Single Judge, vide order

dated 27.02.2014, by directing the Tamil Nadu Housing Board [in short “TNHB”] to refund a sum of Rs.58,000/-, being 10% of Earnest Money Deposit, paid by the petitioner through Demand Draft dated 17.09.2001, together with interest at the rate of 12% per annum till the date of realisation and a sum of Rs.10,000/- was also ordered to be paid by way of legal expenses to the petitioner. TNHB did comply with the said order, vide letter No.ANA.I.3/2334/2013 dated 26.05.2014 and it was accepted and as already stated, challenge made to the order passed in the writ petition had also ended in dismissal, vide judgement of the Division Bench of this Court dated 14.02.2018 in W.A.No.172 of 2018.

4. Mr.C.Uma Shankar, learned counsel appearing for the review applicant would submit that but for the lapse on the part of TNJB, the review applicant was not entitled to the original allotment and for the said lapse, the review applicant/writ petitioner cannot be penalized by making a fresh allotment with exorbitant market price of Rs.52.95 Lakhs and when this review application was listed on earlier occasions, he has also pointed out that there are still unsold plots available in Madhavaram Scheme and Manali Phases I and Phase II Schemes and prays for appropriate direction,

directing the TNHB to allot any one of such unsold vacant plots at a reasonable price to the review applicant.

5. This Court has passed series of orders in this regard and in response to the same, Mrs.R.Gowri, learned Standing Counsel appearing for TNHB today produced the Status Note of TNHB, Anna Nagar Division and a perusal of the same would disclose that in Manali Phases-I and II Schemes, there are 111 plots though allotted, remain vacant and that the allottees, apart from making initial payment, did not come forward to make subsequent payments and action has already been taken and the present value of the said plots have been ascertained and TNHB has also started cancelling the said allotments from 2010 onwards and decided to go for re-auction and if the review applicant is interested, she may participate by way of bid in any one of the plots she is interested to buy it.

6. During the course of proceedings, a query was put forward by this Court as to when the said 111 plots were allotted and it was replied by the learned Standing Counsel for TNHB by submitting that the plots were allotted during the year 2003 and despite several communications sent to the

allottees, they did not respond. It is surprise to note that though it is claimed by TNHB that allotments were cancelled from 2010 onwards, no further steps appears to have been taken to go for fresh auction by doing evaluation in the form of Ruling Price / Market Price / Guideline Value and there is every possibility of encroachers taking advantage of the said vacant plots.

7. The learned Standing Counsel appearing for TNHB, on instructions from Mr.K.Ramesh Babu, Manager (Marketing & Service), Anna Nagar Division, TNHB and Mr.K.Jayaprakash, Superintendent, Anna Nagar Division, TNHB, who are present before this Court, would submit that in respect of the said 111 plots, no encroachments have been found and that immediate and necessary action will be taken to conduct fresh auction and allotment will be made depending upon the response of the bidders to the Ruling Price / Market Price / Guideline Value. The learned Standing Counsel appearing for TNHB undertakes to complete the said exercise within a period of six months from the date of receipt of a copy of this order. The said submission, on instructions, is placed on record.

8. It is a settled position of law that under the guise of arguing the Review Application, fresh arguments as to the merits of the matter cannot be allowed to be put forth for the reason that review is not an appeal in disguise. Unless there is an error apparent on the face of the record in the judgement, which is the subject matter of review, this Court is not in a position to interfere with the said judgement. The learned Single Judge, by taking note of the plight undergone by the petitioner, had ordered refund of the Earnest Money Deposit at reasonable interest as well as the legal expenses and so far, the petitioner/review applicant is under the fond hope that she will be allotted any other plot with reasonable price. It is always open to the petitioner/review applicant to receive the said sum without prejudice to the rights and contentions and participate in the fresh auction to be conducted in respect of 111 plots in Manali Phases I and Phase II Schemes .

9. In the result, this Review Application is dismissed. However, *dehors* the dismissal of the Review Application, the respondents are directed to take immediate, appropriate and necessary steps for re-auction of 111 plots, for which allotments have been made as early as in the year 2003

and subsequently cancelled by TNHB from 2010 onwards since they did not respond to the communications/opportunities given. TNHB shall complete the said exercise within a period of 6 months from the date of receipt of a copy of this order and also file a comprehensive Status Report in this regard for the reason that as far as this issue is concerned, it is in public interest. No costs.

10. After the dismissal of the Review Application, Mr.C.Uma Shankar, learned counsel appearing for the petitioner/review applicant has drawn the attention of this Court to the proceedings of the second respondent in Letter No.AA.Na.Ka.II3/2334/11 dated 20.09.2012, which was the subject matter of challenge in W.P.No.24714 of 2012 and would submit that the said allotment may be cancelled and instead, a smaller extent of land either in Manali Scheme Phase I or Phase II may be allotted and in this regard, the petitioner/review applicant may be permitted to submit a fresh representation.

11. On the said submission, this Court heard the learned Standing Counsel appearing for TNHB also.

12. The petitioner/review applicant is at liberty to submit a representation in this regard to the respondents 1 and 2 within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondents are directed to consider the same and pass appropriate orders on merits and in accordance with law within a further period of six weeks thereafter and communicate the decision taken, to the petitioner/review applicant.

[M.S.N., J.] [N.S.K., J.]
17.03.2020

Index : Yes / No

Internet : Yes / No

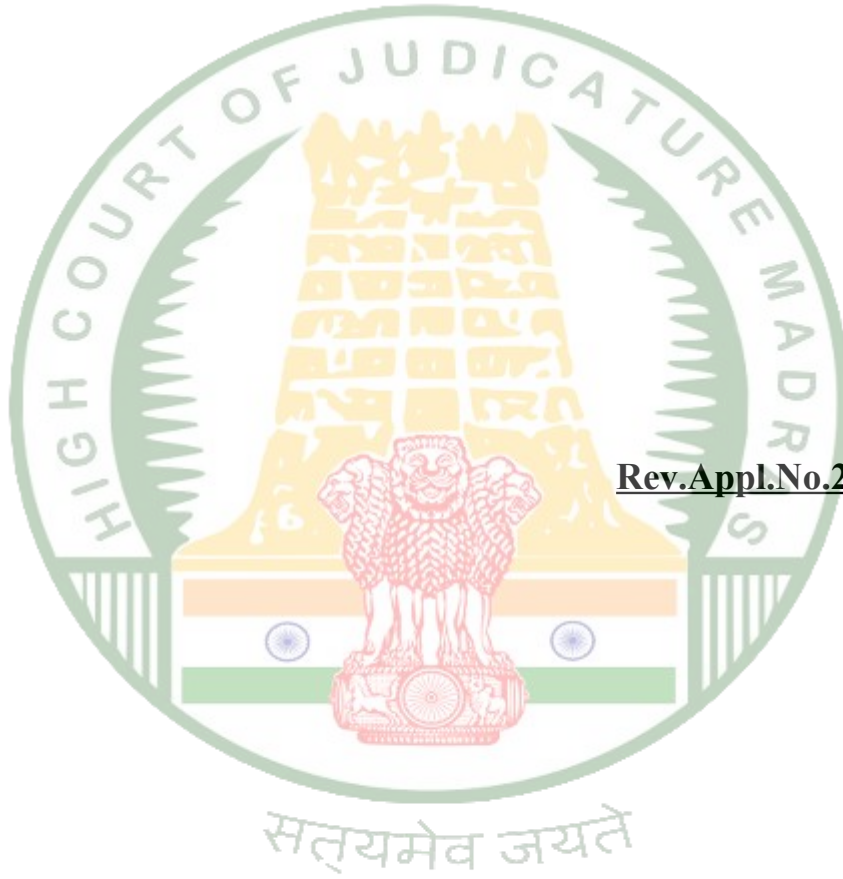
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1. The Chairman,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai-600 035.

2. The Executive Engineer-cum-
Administrative Officer,
Anna Nagar Division,
Tamil Nadu Housing Board,
Anna Nagar, Chennai-600 041.

M.SATHYANARAYANAN, J.
and
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