

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

L.P.A.No.5 of 2019 and C.M.P.No.21221 of 2019,
L.P.A.No.6 of 2019 and C.M.P.No. 21223 of 2019;
W.A.No.3305 of 2019 and C.M.P.Nos.21210 and 21211 of 2019 and
W.A.No.3306 of 2019 and C.M.P.Nos. 21217 of 2019 and 21219 of
2019

N.Sundarammal ... Appellant in L.P.A.No.5 of 2019 &
W.A.No.3306 of 2019

A.Ezhilarasi ... Appellant in L.P.A.No.6 of 2019 &
W.A.No.3305 of 2019
Vs.

1. Thiru. Anandrao Vishnu Patil, I.A.S.,
The Managing Director,
Tamilnadu Housing Board,
Nandanam, Chennai - 600 035

2. Thiru. Rajesh Lakhoni, I.A.S.,
The Secretary to Government,
Tamil Nadu Housing Board,
Fort St. George, Chennai - 600 009

3. Thiru. Edwin Sundar Singh
The Executive Engineer / Administrative Officer
Tamilnadu Housing Board,
Hosur Unit, Bagalur Road,
Hosur - 635 109 ... Respondents in LPA 5 & 6/2019

1 THE MANAGING DIRECTOR
TAMIL NADU HOUSING BOARD, NANDANAM,
CHENNAI-600035.

2 THE SECRETARY TO GOVERNMENT,
TAMIL NADU HOUSING BOARD, FORT ST. GEORGE,
CHENNAI-600009.

3 THE EXECUTIVE ENGINEER / ADM
INISTRATIVE OFFICER,, TAMIL NADU HOUSING
BOARD, HOSUR UNIT, BAGALUR ROAD, HOSUR-
635109. RESPONDENTS IN WA. 3305 & 3306/2019

L.P.A.No.5 of 2019 :

Letters Patent Appeal is filed under Clause 15 of the Letters Patent against the order passed in Contempt Petition No.1271 of 2019 dated 03.09.2019.

L.P.A.No.6 of 2019 :

Letters Patent Appeal is filed under Clause 15 of the Letters Patent against the common order passed in Contempt Petition No. 1270 of 2019 dated 03.09.2019.

PRAYER IN Cont.P. 1271 & 1270/2019: These Contempt Petitions are filed under Section 11 of the Contempt of Court Act, to punish the respondents for their willful disobedience of the orders passed in W.M.P.Nos.10139 & 11717 of 2013 in W.P.Nos. 12688 & 12686 of 2018; dated 30.04.2019.

W.A.No.3305 of 2019 :

Writ Appeal is filed under Clause 15 of the Letters Patent against the common order dated 17/05/2018 W.P.No.12688 of 2018 together with common order passed on 03.09.2019 in W.M.P.No.10139 of 2019 filed to modify the order dated 17.05.2018 passed by a learned Single Judge.

WP. 12688 of 2018:

calling for the public auction notice dated 22.04.2018 issued by the 3rd respondent and quash the public auction sale in respect of Plot No. 16A in Phase No. 6 of Hosur Housing Scheme at Hosur Krishnagiri Dist and thereby direct the respondents to allot the Plot No. 16A in Phase No. 6 of Hosur Housing Scheme instead of plot No. 338 in Phase No. 16 as per the order of the 3rd respondent in HR5/338/11 dated 12.05.2011

Prayer in WMP No.10139/2019 in WP No.12688/18 : To modify the Order passed in WP No.12688/2018 dated 17.05.2018.

W.A.No.3306 of 2019 :

Writ Appeal is filed under Clause 15 of the Letters Patent against the common order in W.P.No.12686 of 2018 together with common order passed on 03.09.2019 in W.M.P.No.11717 of 2019 filed to modify the order dated 17.05.2018 passed by a learned Single Judge.

WP.No. 12686 of 2018: To call for the records relating to the proceedings dated 02.04.2019 in Na.Ka.No. A3/ 244/ 2015 of the

2nd respondent and quash the same.

Prayer in WMP No.11717/19 in WP No.12686/18 : To Modify the Order passed in WP No.12686/2018 dated 17.05.2018 by directing the Respondents to allot and handover the Plot No.606A in Phase No.10 of Hosur Housing Board Scheme at Hosur to the Petitioner within the stipulated period of time as fixed by this Honble Court vide its earlier order and the Petitioner humbly submits that to prove her bonafide intent she is ready and willing to pay a sum of Rs.10 00 000/- (Rupees Ten Lakhs only) as further advance amount for Plot No. 606A in Phase No.10 of Hosur Housing Board Scheme at Hosur. The Petitioner further assures and promises the Honourable Court to render the balance amount to be fixed by the Respondent authority as per the terms and conditions of the respondent board without any loss to the respondent authority on demand and the petitioner prays before this Hon`BLE Court.

For Appellant : Mr.Richardson Wilson

For Respondents : Dr.R.Gowri
learned standing counsel for
Tamilnadu Housing Board

C O M M O N J U D G M E N T

[Common Judgment of the Court was delivered by T.S.SIVAGNANAM,
J.]

The Writ Appeals have been filed by the Writ Petitioners challenging the order and direction issued by the learned Single Bench in W.P.Nos.12686 and 12688 of 2018 dated 17.05.2018 and they also seek to get relief, which they sought for in the modification application filed in the Writ Petition which were rejected. The said Writ Petitions, which were filed by the appellants were disposed of by a common order along with four other connected Writ Petitions and the operative portion of the order reads as follows:-

" 3. The grievance of the petitioners is that they had approached the respondents and they had been orally allotted plots in Phase No.3. Even though they had been allotted plots, the auction is being done on 23.05.2018. While allotment was made for Phase No.16, the petitioners had paid the value of the cost of the plots. This should accrue if they are allotted plots in Phase No.3. While deciding the allottees for phase No.3, the first respondent is to consider the fact that the petitioners had already paid an amount towards plots in Phase No.16 and also agree to pay additional amounts towards the plots in Phase No.3 included as per order of this court in W.M.P.No. 31717/2018 in

W.P.No.12688/2018, dated 19.12.2018, Plot No.606A in Phase No.10 and while deciding the allottees the first respondent may also consider the petitioners for allotment of plots. This should be done simultaneously on 23.05.2018, on the very same day in which the auction has been scheduled as a special case, since the petitioners had been allotted plots in Phase No.16, in which the house construction can never be built.

With these observations, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed. The petitioners are granted liberty to approach this court, if they aggrieved over the procedure adopted during auction or if their representations are not considered.''

2. It appears that the appellants were not satisfied with the order and direction issued by the learned Single Bench, by which, the learned Single Bench directed the Housing Board to consider the case of the appellants while deciding allottees for Phase No.3 of the project developed by the Housing Board in Hosur. This observation was predicated on the fact, which was stated by the appellants before the learned Single Bench that the appellants had already paid an amount towards the Plot No.16 in Phase No.3 and Plot No. 606A in Phase No.10 respectively and also agreed that they will pay additional amount towards plots. While recording the submission, the learned Single Bench directed the Housing Board to consider the case of the appellants simultaneously, while finalising the allottees for Phase No.3. The Writ Petitions appears to have been disposed of at the admission stage. However, we find that the learned Additional Government Pleader has been shown to have represented the respondents and we are given to understand that there is a separate standing counsel for Tamil Nadu Housing Board, who was not heard.

3.The appellants filed miscellaneous petitions in W.P.No.12686 of 2018 to modify the order and direction issued in the Writ Petitions dated 17.05.2018. The modification sought for was to pass a specific order directing the Housing Board to allot Plot No.606A in Phase No.10 in Hosur Housing Scheme, Hosur, Krishnagiri District instead of Plot No.337 in Phase No.16, which was already allotted after deducting the amount already paid for Plot No.337 in Phase No.16. The Housing Board took a stand that if the appellant, namely, N.Sundarammal satisfies the eligibility conditions stipulated by the Housing Board, they will consider her case. This statement was taken on record and the Court while disposing of the Writ Miscellaneous Petition by order dated 15.03.2019, observed that the appellant / Sundarammal should satisfy the necessary eligibility conditions, as stipulated by the Housing Board, subject to that

satisfaction, the Housing Board may consider her case in the light of the earlier order passed by this Court and the operative portion of the order is extracted hereunder:-

"There is a limited prayer which is sought in this petition namely, that an earlier order passed in W.P.No.12686 of 2018 dated 17.05.2018, should be modified and specific order should be passed by directing the respondents Tamilnadu Housing Board to allot and handover Plot No.606A in Phase No.10 in Hosur Housing Scheme at Hosur, Krishnagiri District instead of Plot No.337 in Phase No.16, which was already allotted, after deducting the amount already paid for Plot No.337 in Phase No.16.

2. Heard learned counsel for the Housing Board and also learned senior counsel for the petitioner.

3. The learned counsel for the Housing Board has fairly represented that if the petitioner satisfies the eligibility condition as stipulated by the Housing Board, then the Housing Board will certainly consider her case.

4. The statement of the learned counsel for the Housing Board is correct in the sense, the petitioner should satisfy the necessary eligibility condition as stipulated by the Housing Board, subject to that satisfaction, the Housing Board may consider her case, in the light of the earlier order passed by this Court. The Housing Board is to complete the process within four weeks from 23.05.2018.

5. In view of the same, the Writ Miscellaneous petition is disposed of. No costs."

4. The appellant, namely, N.Sundarammal had filed W.M.P.No.11717 of 2019 and appellant, namely, A.Ezhilarasi had filed W.M.P.No.10139 of 2019 praying for another modification of the order and direction dated 17.05.2018 by directing the respondent / Housing Board to allot and handover Plot No.606A in Phase No. 10 of Hosur Housing Board Scheme to the appellant, viz., N.Sundarammal within its stipulated time and the said appellant submitted that to prove her bonafide, she is ready and willing to pay a sum of Rs.10,00,000/- as further advance for Plot No.606A and the appellant, viz., A.Ezhilarasi, prayed for a direction to the respondent / Housing Board to allot and handover the Plot No.13-A in Phase No.6 of Hosur Housing Scheme at Hosur, Krishnagiri District instead of Plot No.338 in Phase No.10 allotted to her by previous order after deducting the amount already paid for Plot No.338 in phase no.16 respectively. On 30.04.2019, the learned Single Bench had passed the following order on the said Miscellaneous petitions:-

"The present two miscellaneous petitions have been filed seeking modification of the order dated

17.05.2018.

2. Mr.R.Shanmuga Sundaram learned senior counsel stated that the writ petitioners are prepared to deposit any amount which they are directed to do so under the terms and conditions of the Housing Board for seeking allotment of the mentioned plots.

3. However, it is the stand of the Housing Board that the plots sought are commercial plots and the Government has no power to allot them under discretionary quota. This stand is also disputed by Mr.R.Shanmuga Sundaram, learned senior counsel by pointing out that in another housing unit at Thirupattur, Vellore District, a commercial plot had been allotted by discretionary quota.

4. Be that as it may, since on 15.03.2019, this Court had passed an order in W.P.No.6941 of 2019 directing that the Housing Board shall complete the proceedings relating to examining the eligibility conditions as stipulated with respect to the petitioner and consider their case, and pass necessary orders on or before four weeks from 23.05.2019.

5. The learned counsel for Housing Board, Mr.R.Bharath Kumar has informed the Court that the Housing Board shall not deal with the plots which are the subject matters of these writ petition. For filing a report from the Tamil Nadu Housing Board regarding the decisions taken by them on the representations of the Writ petitioners, call on 25.06.2019."

5. The appellants filed Contempt Petition Nos.1270 and 1271 of 2019 alleging that the respondent / Housing Board has willfully disobeyed the order dated 30.04.2019 referred above. The Contempt Petitions were dismissed by common order dated 03.09.2019. The operative portion of the order reads as follows:-

14.The writ petitioner A.Ezhilarasi in W.P.No.12688 of 2018 had stated in her affidavit that she had been allotted Plot No.338 in Phase NO.16 on the ground that she was a social worker under the discretionary quota. Similarly the writ petitioner Sundarmmal in W.P.No.12686 of 2018 had stated that she had been allotted Plot No.337 in Phase No.16 under the quota of widow in discretionary quota. Both of the writ petitioners stated that the said two plots were unsuitable for occupation since they were surrounded by mountain, big stones and velikathan trees. They have therefore sought alternate plots. It was based on that representation that this Court had directed the respondents to examine the possibility of allotting alternate plots to the writ petitioners. However, it

has subsequently transpired that the Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Hosur Housing Unit had issued communications dated 10.07.2012 to both the writ petitioners stating that since they had failed to pay the initial deposit within the stipulated period, Plot Nos.338 and 337 which had been allotted to A.Ezhilarasi and Sundarammal respectively had been cancelled.

15. Both the petitioners A.Ezhilarasi and Sundarammal have deliberately suppressed this fact of cancellation of allotment of the plots before this Court. Subsequently, this cancellation had been further confirmed by order dated 15.03.2013 with respect to both the writ petitions. Thus as on date of the filing of the writ petitions both the writ petitioners had not brought to the notice of this Court that the plots allotted to them had actually been cancelled. This being a suppression of a material fact, I hold that the contempt petitioners are not entitled to any relief.

16. The applications seeking modification of the earlier order also do not survived. Once it is held that there has been suppression of vital material fact in the affidavits filed in support of the writ petitions, I hold the Contempt Petitioners cannot even seek modifications of any order.

17. Accordingly, the Contempt Petitions are dismissed and the modification applications are also dismissed with cost of Rs.1,00,000/- [Rupees one lakh only] each payable by A.Ezhilarasi and Sundarammal respectively to the Tamilnadu State Legal Services Authority, Chennai. A copy of this order is directed to be issued to the collector of Krishnagiri District to recover the cost amount if not paid on or before 30.09.2019 through the provisions of the Revenue Recovery Act. A copy of this order is directed to be issued to the Member Secretary, Tamilnadu Legal Services Authority to intimate the Collector, Krishnagiri District, if the costs as directed are not paid."

6. The appellants have filed L.P.A.Nos.5 and 6 of 2019 challenging that portion of the order by which the learned Single Bench had imposed cost on the appellants.

7. We have elaborately heard Mr.Richardson Wilson, learned counsel for the appellants and Dr.R.Gowri, learned standing counsel appearing for the respondent / Board.

8. So far as imposition of the cost is concerned, it is between the Court and the Contemnor, for which, we are not required to hear the respondent / Board, as to whether there was sufficient grounds for imposition of cost. It is the submission of the learned Standing Counsel for the respondent / Board that the appellants do not deserve any sympathy, they are name lenders and they have suppressed the fact of cancellation of the allotment, which were rightly noted by the learned Single Bench and though the original application was for grant of allotment of a residential plot, now, the appellants are seeking for allotment of a commercial plot worth more than Rs.7 Crores at the relevant point of time.

9. Be that as it may, though it is alleged that the appellants are name lenders, the appellants' case in the Writ Appeals, namely, in W.A.Nos.3305 and 3306 of 2019 is that order of cancellation dated 10.05.2012 was never communicated to the appellants. The Housing Board has gone on record and filed counter affidavits both in these appeals as well as before the learned Single Bench that the appellants have deliberately avoided to receive the orders. In fact, the Housing Board in their application for modification of the order, had filed a counter affidavit in W.M.P.No.11717 of 2019 in W.P.No.12686 of 2018, in which it has been stated that the order of allotment has been cancelled by order dated 10.05.2012 and after a lapse of 14 months, the petitioner, Sundarammal had remitted Rs.1,68,346/- instead of Rs.6,00,800/- towards initial deposit on 28.08.2012. Further, it is stated that by communication dated 14.09.2012, the Executive Engineer / ADO Tamilnadu Housing Board, Hosur Unit has given time to pay the balance of Rs.4,94,095/- together with revocation fee within a week. The said communication returned unserved with postal endorsement 'no such addressee'. Subsequent communication was also sent on 29.09.2012 where the appellants were informed that the allotment in their favour was cancelled due to non payment of initial deposit and failure to produce the requisite certificates.

10. Further, the appellants were informed that the cancellation of allotment was confirmed by the Board on 22.02.2013 and the same was communicated to the appellants on 15.03.2013 and the said letter returned with the same endorsement 'no such addressee'. Further, affidavit states as to how the appellants are not entitled to seek for any indulgence outside purview of the allotment of said plot in question.

11. As noted above, the allotments in favour of the appellants have been cancelled by order dated 10.05.2012 and the same was also approved by Board. These orders remain unchallenged till date.

12. It is the argument of the learned counsel for the appellants that the orders were not communicated and received by them.

13. The learned Standing Counsel for the Housing Board would submit that deliberately the appellants refused to receive those orders. In any event, the orders were brought to the notice of the Court, when the Contempt Petitions were being heard, therefore, it would be well open to the appellants to challenge those orders, if so advised, in the manner known to law and in such an event it would be open to the respondent / Board to canvass all contentions including the aspect regarding the conduct of the appellants etc., Pending such challenge, there cannot be any fetters on the Tamilnadu Housing Board to proceed further with the auction of plots in question, which according to the learned Standing Counsel is a commercial plot and the Rules of allotment are different and distinct.

14. Though much has been said about the appellants, initially the appellants appear to have been in the good books of the Government, owing to which in the year 2010, the appellant, Sundarammal was allotted the plot under the 'discretionary quota' by the Government under 'widow category' and appellant Ezhilarasi under the category of 'social worker'. The Hon'ble First Bench of this Court and other Division Benches have heavily come down upon the Government exercising power to allot plots / flats / houses etc., on discretionary power. Those Government orders have been held to be illegal, wholly without jurisdiction, perpetuating fraud and a clear case of breach of public trust. Therefore, we are of the considered view that there is no interference called for in the order and direction issued in the Writ Petitions, more particularly, when the allotments in favour of the appellants have been cancelled and confirmed by the Board.

15. Accordingly, the Writ Appeals are dismissed. Consequently, connected Miscellaneous Petitions are closed. However, the dismissal of the Writ Appeals will not be a bar for the appellants to challenge the cancellation allotment, if they are so advised in the manner known to law. Merely because such liberty has been granted, it should not be misunderstood that we have interfered with the power of the Board to proceed with the conduct of the public auction afresh for the said plots. No costs.

16. Insofar as Latent Patent Appeals are concerned, taking into consideration the entire facts and circumstances of the case and that the appellants were initially granted allotment under the 'government discretionary quota', which quota stood abolished pursuant to the Court orders, we feel that it may not be a fit case, where exemplary cost needs to be

imposed, though much can be said about the conduct of the appellants. Therefore, while confirming the common order passed by the learned Single Bench dismissing the Contempt Petitions, we make a slight modification to the said order and delete the cost imposed on both the appellants. Accordingly, the Latent Patent Appeals are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

- 1.The Managing Director,
Tamilnadu Housing Board,
Nandanam, Chennai 600 035.
- 2.The Secretary To Government,
Tamilnadu Housing Board,
Fort.ST.George, Chennai 600 006.
- 3.The Executive Engineer,
Administrative Officer,
Tamil Nadu Housing Board,
Hosur Unit,
Bagalur Road,
Hosur 635 109.

+2cc to Mr.Richardson Wilson, Advocate, S.R.No. 37301

L.P.A.Nos.5 and 6 of 2019
W.A.Nos.3305 & 3306 of 2019

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