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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 23370 of 2013

and

M.P. Nos.1 & 2 of 2013

1. M. Hamsa

2. B. Manavalan

.. Petitioners

Versus

1. The State of Tamil Nadu

Rep. by its Secretary to Government
Housing and Urban Development Department
Fort St. George
Chennai - 600 009

2. The Tamil Nadu Housing Board

Rep. by its Managing Director
Nandanam, Chennai - 600 035

3. The Tamil Nadu Housing Board

Rep. by its Assistant Secretary (Allotment)
Nandanam, Chennai - 600 035

3. The Executive Engineer cum Administrative Officer

Tamil Nadu Housing Board
K.K. Nagar Division, Chennai - 600 083

4. The Chennai Metropolitan Development Agency

Rep. by its Member Secretary
No.1, Gandhi Irwin Road
Egmore, Chennai - 600 008.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned resolution No.9.05 of the Board Meeting held on 20.07.2012 on the file of the second respondent and the consequential Letter No.Allotment (Integrated)/52887/2008 dated 14.08.2012 on the file of the third respondent, quash the same and consequently direct the respondents 1 to 4 to allot alternative Plot No.10/C2 of Mogappair Scheme Mogappair Division Chennai to the petitioners.



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For Petitioner : Mr. R. Karthikeyan

For Respondents : Mr. R. Bharath Kumar
Government Counsel (For R1-R4)

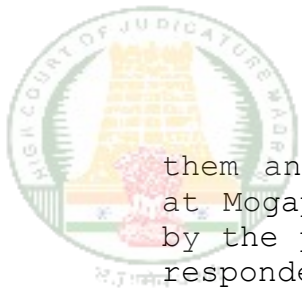
Mr.R.S. Ganesh (R5)

O R D E R

The petitioners have filed this writ petition challenging the resolution No.9.05 passed in the Board Meeting of the second respondent held on 20.07.2012 and the consequential Letter dated 14.08.2012 of the third respondent, to quash the same and also direct the respondents 1 to 4 to allot alternative Plot No.10/C2 of Mogappair Scheme, Mogappair Division, Chennai to the petitioners.

2. The case in brief is as follows:

The fourth respondent published an advertisement in the newspaper inviting applications for tender cum open auction to sell certain plots. The petitioners participated in such auction on 13.11.2008 and were declared as successful bidders for purchase of a Commercial Plot No. R-A1 situated in Govindan Salai, Ashok Nagar Scheme measuring an extent of 3616 square feet for a price of Rs.1,30,00,000/-. On 26.12.2008, the fourth respondent issued an allotment order after receipt of the sale price. On 23.02.2009, a sale deed was executed in favour of the petitioners in respect of the aforesaid property. After such purchase, for the purpose of developing the plot, the petitioners submitted an application for according building planning permission with Chennai Metropolitan Development Authority (in short CMDA) on 24.07.2009. However, the fifth respondent rejected such application on 03.08.2009 on the ground that Govindan Road abutting the northern side of the commercial plot allotted to the petitioners was 24 meters (80 feet as per the development map) and this road was earmarked for widening the existing 50 feet road to a 80 feet road in the second master plan prepared by the Planning Authority. According to the petitioners, if the plan to widen the road is given effect to, the petitioners may lose nearly 1800 square feet of the plot and in such event, they cannot put up any construction in the remaining lands with rear and side set backs. Even though the petitioners have paid huge sum of Rs.1,30,00,000/- and purchased the plot, they could not put up any construction over there by reason of the lethargic attitude on the part of the respondents in not disclosing the proposal of the CMDA for widening the road. In the above stated circumstances, the petitioners submitted representations to the respondents 1 to 3 to provide

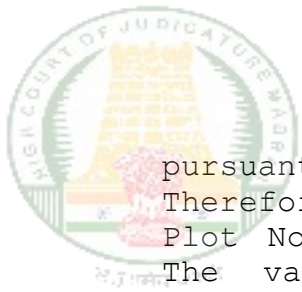


them an alternative land which was available at Plot No. 10/C2 at Mogappair Scheme in Mogappair Division. Such a request made by the petitioners was placed in the Board meeting of the second respondent on 20.07.2012 and by Resolution No.9.05 the claim of the petitioners for allotment of alternative site was rejected without any valid reason and the same was also informed to the petitioners by a communication dated 14.08.2012 of the third respondent. Aggrieved over the same, the petitioners have filed the present writ petition for the aforesaid relief.

3. The learned counsel for the petitioners submitted that by the communication impugned herein, the legitimate expectation of the petitioners to enjoy the plot purchased by them, has been shattered. He further submitted that there is no reason assigned by the second respondent for not allotting the alternative site in Plot No.10/C2 in Mogappair Scheme as identified by the petitioners and the resolution passed in the meeting held on 20.07.2012 is silent as to why the claim of the petitioners was rejected. According to the learned counsel, there are other unsold plots belonging to the second respondent Board and in the event of offering an alternative plot to compensate the petitioners proportionate to the loss suffered by them, no prejudice will be caused to them. It is also submitted that during the pendency of the writ petition, several plots belonging to the second respondent fell vacant and sold to prospective buyers, however, the second respondent did not take steps to allot any plot to the petitioners.

4. Adding further, the learned counsel for the petitioners invited the attention of this Court to a representation dated 28.09.2020 submitted by the petitioners to the second respondent in which reference was made to the alternative sites in (i) Plot No.R-35 in Code Nos. KK040 measuring 7654 square feet forming part of Kakkalur scheme (ii) Plot No.R-200 in Code No.KK053 measuring 8030 square feet in Kakkalur scheme and (iii) Plot No. R82/1 measuring 4000 square feet in Kakkalur scheme. The learned counsel also submitted that in respect of Plot Nos. R-35 and R-200, WP Nos. 1406 and 1407 of 2009 were filed by one V. Bakthavatchalam and G.S. Dinesh, who agreed to withdraw the said writ petitions filed by them and in such event, one of the plots mentioned therein, can be allotted to the petitioners as an alternative site. Thus, the learned counsel prayed for appropriate direction to the respondents.

5. Opposing the relief sought for in the writ petition, the learned counsel appearing for the respondent authorities submitted that at the time of selling the plot No.R-A1 to the petitioners, the second respondent Board was not aware of the proposed widening of the 50 feet road into a 80 feet road



pursuant to the second Master Plan framed by the CMDA. Therefore, it cannot be said that the second respondent sold the Plot No.R-A1 to the petitioners with a mala fide intention. The various representations sent by the petitioners were considered by the second respondent in the meeting held on 20.07.2012 and rejected as not feasible for consideration. However, he drew the attention of this court to paragraph 5 of the counter affidavit dated 31.08.2015 filed by the second respondent, it was stated as follows:-

"5. The contents in para No.7 of the affidavit in support of the writ petition are denied. It is respectfully submitted that the answering respondent is not trying to escape from their responsibility. Hence, the Board is also furnishing the vacant list of commercial plots to the petitioners having same extent or little more to the extent which was purchased by the petitioners in the open auction. If the petitioners are willing to choose any of the vacant plot from the aforesaid list, the answering respondent is ready to execute the sale deed in favour of the petitioners."

6. Heard the learned counsel for the petitioners as well as the respondents and perused the materials placed before this court.

7. When this writ petition was taken up for hearing on 18.08.2020, this Court passed the below mentioned order:-

"2. The petitioners were earlier allotted a site in K.K. Nagar, which is a commercial plot with specific boundaries and description as per the sale deed dated 23.02.2009. Thereafter, as per the second Master Plan, it is stated that for the street alignment, a portion of the petitioner's land is required, which would almost take away 50% of the land purchased by the petitioners. The Tamil Nadu Housing Board also rejected their request for an alternative site without assigning any reasons. The CMDA is also not able to say as to whether the taking over the lands from the petitioners is done by following the procedures contemplated under Section 38 of the Town and Country Planning Act, 1971.

3. In the above situation, it would be better to direct the petitioners to approach the officials of both the Tamil Nadu Housing Board as well as CMDA



and salvage as to what is the land that can be retrieved and compensation can be claimed.

4. For the above purpose, the petitioners, Housing Board and CMDA are directed to have a meeting and arrive at an amicable solution. The above said exercise has to be completed on or before 04.09.2020."

8. It is not known as to whether a meeting has been convened as directed by this Court in the order dated 18.08.2020. The fact remains that the second respondent Board, in the counter dated 31.08.2015, in para No.5, expressed their willingness to compensate the petitioners and execute a sale deed in their favour, if the petitioners are willing to choose any of the vacant plot to be offered by the respondent Board. Therefore, it is evident that the respondents Board has not disputed the claim of the petitioners to allot an alternative site. In such circumstances, this Court deems it fit and appropriate to direct the respondent authorities to redo the process, in line with the earlier order passed by this court on 18.08.2020, wherein, the petitioners were directed to approach the officials of both the Tamil Nadu Housing Board and the CMDA, have a meeting and arrive at an amicable solution.

9. Accordingly, this writ petition stands disposed of, directing the respondent authorities to comply with the order already passed by this court on 18.08.2020, having a meeting among the petitioners, respondent Board and CMDA, upon approaching the petitioners, for arriving at an amicable settlement. Such an exercise shall be completed as expeditiously as possible, preferably, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

dhk/rsh



To

1. The Secretary to Government
The State of Tamil Nadu
Housing and Urban Development Department
Fort St. George
Chennai - 600 009
2. The Managing Director
The Tamil Nadu Housing Board
Nandanam, Chennai - 600 035
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5. The Member Secretary
The Chennai Metropolitan Development Agency
No.1, Gandhi Irwin Road
Egmore, Chennai - 600 008.

+1CC to Mr.R.Bharathkumar, Advocate, Sr.No.42871
+1CC to Mr.Government Pleader, Sr.No.43420

WP No.23370 of 2013

CA (CO)
K.RK. (12.10.2021)