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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.NO.1643 OF 2018

AND

C.M.P.NO.13226 OF 2018

1. The Tamil Nadu Housing Board,
Represented by its Assistant Secretary (Allotment),
493, Anna Salai, Nandanam,
Chennai - 600 035.
2. The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
Salem Division,
Salem - 636 008. ... Appellants

-Vs-

1. A.Madeshwaran
2. The Government of Tamil Nadu,
Represented by its Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai - 9. ... Respondents

PRAYER:-

Writ Appeal filed under Clause 15 of the Letters Patent Act against the order dated 15.02.2018 made in W.P.No.2389 of 2012.

Prayer in W.P.No.2389 of 2012:-

This petition was filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus to call for the records of the second respondent vide proceedings in Letter No.Allotment 3(1)/42285/07 dated 20.12.2011 and quash the same and consequently direct the respondents herein to allot and convey the sale deed in respect of Plot No.75 situated in Survey No.2/15 of Kandampatty Village, Salem District.



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For Appellants : Dr.R.Gowri

For Respondents : Mr.T.Arunkumar

Government Advocate for R2

Mr.Sankara Ramasamy for R1

JUDGMENT

(Judgment of this Court was delivered by T.RAJA,J.)

This writ appeal has been brought by the Tamil Nadu Housing Board questioning the correctness of the impugned order dated 15.02.2018 passed in Writ Petition No.2389 of 2012 wherein the learned Single Judge, accepting the request of the writ petitioner/first respondent for allotment of plot under ex-land owners category, allowed the same.

2. Learned counsel appearing for the Housing Board/appellants submitted that the Tamil Nadu Housing Board has proposed to implement Housing Neighbourhood Scheme at Kandampatty Village for which various patta lands were acquired under Land Acquisition Act. Since the first respondent/writ petitioner's land comes under S.No.2/15 measuring to an extent of 0.53 acre, included in Award No.14/86-87 dated 23.09.1986, necessary award amount has been paid by the Tamil Nadu Housing Board. Since two fields namely S.Nos.2/10 and 2/15 measuring to the extent of 0.33 cents and 0.53 cents respectively were already taken over by the Tamil Nadu Housing Board and got approval from the Local Planning Authority, Salem for formation of Kandampatty East Neighbourhood Scheme and the above said lands were fully utilised by the Tamil Nadu Housing Board and that there is no provision in the scheme stating that ex-land owners are entitled to get allotment of land under ex-land owners category, the request of the first respondent/writ petitioner for allotment of vacant Plot No.75 under ex-land owners category was refused by the appellants and the same was put to challenge by the first respondent/ writ petitioner before the learned Single Judge.

3. The impugned order is assailed on three grounds. Firstly, there is no provision in the scheme stating that ex-land owners are entitled to get allotment of land under ex-land owners category. Secondly, a judgment had already been passed by the Division Bench of this Court in Writ Appeal No.780 of 1999 dated 29.09.2008 taking a view that in the absence of any provision of law, the request of the petitioners for allotment of house site



is illegal. Thirdly, when the land owners, at the time of initiation of the land acquisition proceedings, without even claiming any compensation, voluntarily asked for allotment of land from the same land, the case of Salem Neighbourhood Scheme allotting the same lands under ex-land owners category cannot be relied upon by the first respondent/writ petitioner. These aspects have been completely over looked by the learned Single Judge. Therefore, the impugned order is liable to go.

4. Opposing the above prayer, learned counsel for the first respondent/writ petitioner submitted that the land in question covered in S.Nos.2/10 and 2/15, measuring to the extent of 0.33 and 0.53 cents situated in Kandampatty Village, Salem District belongs to the father of the first respondent and after his death, the first respondent/writ petitioner had inherited the above property. Since the larger extent of the land in Kandampatty Village, Salem District became the subject matter of acquisition proceedings under the Land Acquisition Act 1894, a notice was issued on 30.07.1980 and a portion of the land belonging to the first respondent/writ petitioner has become a part of the acquisition proceedings. After the land was acquired by issuing 4(1) Notification, the first respondent/writ petitioner came to know that the adjacent land owners were considered for allotment of plots in the acquired land, which lands were acquired in respect of Salem Neighbourhood Scheme by the Housing Board. On conclusion of the acquisition proceedings, an award was passed and compensation was determined, but, the first respondent/writ petitioner, without receiving any compensation, has made a request for allotment of land under ex-land owners category. Therefore, he gave a representation to the second appellant stating that he was entitled to get allotment of plot No.75 in Survey No.2/15 which was measuring about 1300 sq.ft. under ex-land owners category and also gave an undertaking to pay the costs as fixed by the Board.

5. With regard to the first contention made by the learned counsel for the appellants that there is no provision in the scheme stating that ex-land owners are entitled to get allotment of land under ex-land owners category, learned counsel for the first respondent submitted that when the appellants, while acquiring the land in respect of Salem Neighbourhood Scheme, has accepted the request for allotment of alternative land under ex-land owners category, they cannot refuse similar and identical request of the writ petitioner to their whims and fancies, since the request of the first respondent/writ petitioner and the purpose of the introduction of the Salem Neighbourhood Scheme by the appellants are one and the same. Therefore, the learned Single Judge, finding fault with the double stand taken by the appellants, rightly quashing the order passed by the board, directed the appellants to consider the request of the first



respondent/writ petitioner to allot the Plot No.75 in S.No.2/15.

6. Replying to the second contention that there was a judgment of the Division Bench of this Court holding that in the absence of any provision of law, the request of the petitioners for allotment of house site is illegal, learned counsel for the first respondent/writ petitioner submitted that the above judgment cannot be made applicable because there was a submission made by the learned Standing Counsel for the appellants Board stating that there was no provision of law and the Division Bench has not properly appreciated all the facts as to the entitlement of the allotment of plots under ex-land owners category in the above Writ Appeal No.780 of 1999 vide order dated 29.09.2008.

7. Explaining further, learned counsel for the first respondent submitted that when the similarly placed persons as that of the writ petitioner, after suffering the land acquisition proceedings in the case of Salem Neighbourhood Scheme, have approached the very same appellants board seeking alternative land therein, their requests have been considered. Therefore, having accepted a similar and identical request of land owners, after they suffered the land acquisition proceedings initiated by the appellants board in the Salem Neighbourhood Scheme, the appellants cannot say that they cannot extend the same benefit to the poor writ petitioner.

8. Learned Government Advocate appearing for the second respondent fairly submitted that no doubt, there is no provision for allotment of land in favour of the land owners under ex-land owners category. Since this Court, taking sufficient jurisdiction, has given a direction to the appellants to consider the genuine request of the writ petitioner for allotment of land under ex-land owners category, the same cannot be found fault with.

9. We also find merits on the submission made by the learned counsel for the first respondent for the following reasons:

Firstly, when the land measuring to the extent of 0.33 and 0.53 cents in S.Nos.2/10 and 2/15 respectively situated in Kandampatty Village, Salem District belonged to the writ petitioner's family, the same were acquired by the appellants, after notice was issued on 30.07.1980, a request was made by the writ petitioner for allotment of plots in the acquired land citing a reason that when the land belonged to the writ petitioner is lying closer to the land acquired by the appellants board in respect of the Salem Neighbourhood Scheme and similar requests of the land owners as that of the writ petitioner for allotment of alternative land under ex-land



owners category are being considered, the appellants cannot make discrimination between the two land users living in the same village. After coming to know that he was entitled to allotment of plots in the acquired land under ex-land owners category similar to the Salem Neighbourhood Scheme, the writ petitioner gave a representation to the Executive Engineer/Administrative Officer, Tamil Nadu Housing Board, the third respondent in the writ petition requesting for allotment of plot No.75 in S.No.2/15 having an extent of 1300 sq.ft. with an undertaking to pay the costs of the land as fixed by the appellants board and the Special Tahsildar, Salem by proceedings dated 23.09.2009 made a recommendation recommending the allotment in favour of the writ petitioner under ex-land owners category. Pursuant to the said recommendation and the request made by the writ petitioner, the Tamil Nadu Housing Board called for report from the Executive Engineer/Administrative Officer for the allotment of plots. However, the Executive Engineer/Administrative Officer, Salem by letter dated 28.01.2010 had also submitted all the details as required, enclosing the documents in respect of the land acquired from the writ petitioner. Only thereafter, the writ petitioner was informed that due steps have been initiated for allotment of Plot No.75, after obtaining approval from the Board, which shows that recommendation made by the Special Tahsildar, Salem was duly accepted by the Executive Engineer/Administrative Officer, Salem. Since the appellants board in the Salem Neighbourhood Scheme, accepting a similar request, issued order granting alternative land under ex-land owners category, the learned Single Judge, carried away by the above reasons, has allowed the writ petition, setting aside the impugned order passed by the appellants herein and directed the appellants to consider the request of the writ petitioner for allotment of plot on the basis of his representation.

10. Secondly, a perusal of the judgment passed by the Division Bench of this Court in Writ Appeal No.780 of 1999 shows that on the basis of the submission made by the learned Standing Counsel for the Housing Board to the effect that there is no provision of law enabling the Housing Board to allot a plot to ex-owner of the land, the above writ appeal was allowed that cannot be presumed as a precedent made by this Court.

11. When the lands were acquired by the State Government either for the Housing Board or for any other requisitioning body or wherever any genuine request is made, such genuine request is being considered for allotment of alternative land under ex-land owners category and it has become usual practice now. Therefore, when the land loser is making a request seeking only a reasonable extent of land to eke out his livelihood or to continue his residence, nothing wrong in accepting the said request for granting alternative plot under ex-land owners



category. Therefore, accepting the finding and conclusion reached by the learned Single Judge and finding no justification whatsoever on the submission made by the appellants, this Court is inclined to dismiss the appeal. Accordingly, this writ appeal stands dismissed. Consequently, C.M.P.No.13226 of 2018 is closed. No costs.

12. It is for the appellants to work out their remedy in the manner known to law.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

vga

To

1. The Assistant Secretary (Allotment),
The Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai - 600 035.
2. The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
Salem Division,
Salem - 636 008.

+lcc to Mr.Sankara Ramasamy, Advocate, S.R.No.41935

+lcc to the Government Pleader, S.R.No.42068

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PBS/21/09/2021