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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.17980 of 2019

HIG Flat Owners' Welfare Association
Rep. by its President
Lt.Col.K.V.Chandrasekharan

... Petitioner

Vs.

1.The Chairman and Managing Director,
The Tamil Nadu Housing Board,
Nandanam,
Chennai 600 035.

2.The Managing Director,
Tamil Nadu Milk Marketing Federation (Aavin),
Nandanam,
Chennai 600 035.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the first respondent to remove the Aavin Retail Outlet located in the land belong to the petitioner's Association, which is run by the second respondent's dealer in the open space earmarked for all the allottees of the petitioner's Association for community purpose, in which, the respondents have no right to allot it to anybody, in view of the order passed by this Hon'ble Court in W.P.No.24611 of 1993 and W.P.No.2491 of 1998 and without prior permission or concurrence of the petitioner's Association and in pursuance of the notice - cum - representation dated 13.03.2019, within a time frame as may be fixed by this Hon'ble Court.

For Petitioner : Mr.M.Arun Kumar
for M/s.Sampath Kumar and Asso.

For Respondents : Mr.V.Ayyapparajan

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the first respondent to remove the Aavin Retail Outlet located in the land belong to the



petitioner's Association, which is run by the second respondent's dealer in the open space earmarked for all the allottees of the petitioner's Association for community purpose, in which, the respondents have no right to allot it to anybody, in view of the order passed by this Hon'ble Court in W.P.No.24611 of 1993 and W.P.No.2491 of 1998 and without prior permission or concurrence of the petitioner's Association and in pursuance of the notice - cum - representation dated 13.03.2019, within a time frame as may be fixed by this Court.

2.The case of the petitioner is that the first respondent formed a layout plan for Kotturpuram Scheme at Kottur Garden, Kotturpuram, Chennai and had put up HIG Flats which was approved by Senior Planner, CMDA and is called as Adyar Apartments. At the time of formation of the Scheme 73.70 grounds of land was earmarked for construction of 126 HIG flats, however, the said flats were constructed only in 62.04 grounds of land and the remaining 11.66 grounds of land was kept open and the Tamil Nadu Housing Board has conveyed the land measuring an extent of 1200 sq.ft., to establish a milk booth and aggrieved by the same, the petitioner made notice - cum - representation to the second respondent seeking to instruct the person who is running the Aavin Retail Outlet to remove the bunk/ shed and since there was no action, has filed this writ petition.

3.The learned counsel appearing for the petitioner would submit that already the petitioner has filed W.P.Nos.2461 of 1993 and 2491 of 1998 before this Court seeking issuance of Writ of Mandamus directing the Tamil Nadu Housing Board to cancel the allotment of Flat Nos.143 - A and 143 - B and also the area allotted to the Postal Department in Kotturpuram Housing Board Colony and to keep the open space, as open space without permitting any construction and to relocate the Post Office abutting the main road in the open space, in a restricted area without affecting or reducing the open space earmarked and this Court vide order dated 07.07.2000, allowed the said writ petitions and directed the Housing Board to cancel the allotment of Flat Nos.143 - A and 143 - B and also the space allotted to the Postal Department and to keep the open space as open space, however, the Tamil Nadu Housing Board has conveyed the land measuring an extent of 1200 sq.ft., to establish a milk booth, which is un-sustainable one.

4.The learned counsel appearing for the respondents would submit that initially, 22.59 acres of land were acquired by the Government of Tamil Nadu through Award No.3/72, dated 02.03.1972 and Award No.11/74 dated 15.06.1974 and was handed over to Tamil Nadu Housing Board to formulate Kotturpuram Scheme in the year 1973. Thereafter, the Tamil Nadu Housing Board had developed the Kotturpuram area under HUDCO Scheme in the year 1973 by way



of converting the land into residential layout and the same was approved by JDTP on 23.08.1973.

5.The learned counsel appearing for the respondents would further submit that the A.S.Plots admeasuring about 73.70 grounds in the said layout were not sold due to poor demand from public and therefore, the Housing Board decided to construct residential flats in the said A.S.Plots and accordingly got approval for construction of 126 HIG flats in 21 blocks and each block consists of 6 flats each. The approval was granted by the Madras Metropolitan Development Authority (MMDA) and the said flats were constructed only in 62.04 grounds of land and the remaining 11.66 grounds of land was kept open without any development and the ownership kept remained with the Tamil Nadu Housing Board.

6.The learned counsel appearing for the respondents would further submit the Tamil Nadu Housing Board got Sub-Division approval from Madras Metropolitan Development Authority (MMDA) vide letter dated 06.02.1988 in respect of the remaining 11.66 grounds of land and as per the approval, the land was subdivided as Plot Nos.143 - A and 143 - B and was earmarked for some other public purpose as Milk Unit, Well Pumping Station and Postal Department and the petitioner Association were allotted and sold flats which were constructed on 62.04 grounds only.

7.The learned counsel appearing for the respondents would further submit the petitioner filed a complaint in O.P.No.257 of 1994 before the State Consumer Redressal Commission, Chennai and complained that the Tamil Nadu Housing Board had fixed land value for their respective flats after taking into calculation of 72.50 grounds instead of the constructed area of 62.04 grounds. The State Consumer Redressal Commission had directed the Tamil Nadu Housing Board to work out the cost of each flat on the basis of the land allotted to an extent of 62.04 grounds only and not 72.50 grounds at the rate of Rs.30,000/- per ground and refund of excess amount to the allottees and to pay the cost of Rs.6,000/- to the petitioner Association including the fees paid to the Commissioner.

8.The learned counsel appearing for the respondents would further submit the Tamil Nadu Housing Board worked out the cost of each flat on the basis that the land allotted is only 62.04 grounds and ordered refund of excess amount of Rs.2,500/- per flat towards differential land cost along with Rs.6,000/- towards cost to the petitioner Association including the fees paid to the Commissioner.

9.The learned counsel appearing for the respondents would further submit the Sub Division approval in respect of 11.66



grounds granted by Madras Metropolitan Development Authority is still intact and ownership is still with the Tamil Nadu Housing Board and the Tamil Nadu Housing Board has conveyed the land measuring an extent of 1200 sq.ft., to establish a milk booth and hence the petitioner Association has not right to complain the same.

10. Heard the arguments advanced on either side and perused the materials available on record.

11. The facts in the present case is not in dispute. Admittedly, initially, 22.59 acres of land were acquired by the Government of Tamil Nadu through Award No.3/72, dated 02.03.1972 and Award No.11/74 dated 15.06.1974 and was handed over to Tamil Nadu Housing Board to formulate Kotturpuram Scheme in the year 1973. Thereafter, the Tamil Nadu Housing Board had developed the Kotturpuram area under HUDCO Scheme in the year 1973 by way of converting the land into residential layout and the same was approved by JDTP on 23.08.1973.

12. The A.S.Plots admeasuring about 73.70 grounds in the said layout were not sold due to poor demand from public and therefore, the Housing Board decided to construct residential flats in the said A.S.Plots and accordingly got approval for construction of 126 HIG flats in 21 blocks and each block consists of 6 flats each. The approval was granted by the Madras Metropolitan Development Authority (MMDA) and the said flats were constructed only in 62.04 grounds of land and the remaining 11.66 grounds of land was kept open without any development and the ownership of the same remained with the Tamil Nadu Housing Board.

13. The Tamil Nadu Housing Board got Sub-Division approval from Madras Metropolitan Development Authority (MMDA) vide letter dated 06.02.1988 in respect of the remaining 11.66 grounds of land and as per the approval, the land was subdivided as Plot Nos.143 - A and 143 - B and was earmarked for some other public purpose as Milk Unit, Well Pumping Station and Postal Department and the petitioner Association were allotted and sold flats which were constructed on 62.04 grounds.

14. However, the petitioner Association filed W.P.Nos.2461 of 1993 and 2491 of 1998 before this Court seeking issuance of Writ of Mandamus directing the Tamil Nadu Housing Board to cancel the allotment of Flat Nos.143 - A and 143 - B and also the space allotted to the Postal Department in Kotturpuram Housing Board Colony and to keep the open space, as open space without permitting any construction and to relocate the Post Office abutting the main road in the open space, in a restricted area without affecting or reducing the open area earmarked and



this Court vide order dated 07.07.2000, allowed the said writ petitions and directed the Housing Board to cancel the allotment of Flat Nos.143 - A and 143 - B and also the area allotted to the Postal Department and to keep the open space as open space.

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15. For better appreciation, the relevant portion of the order of this Court dated 07.07.2000 made in W.P.Nos.2461 of 1993 and 2491 of 1998 are extracted hereunder:

"19. In Pt. Chet Ram Vashist v. Municipal Corporation of Delhi, their Lordships have held that, after sanctioning a plan and approved lay-out no condition be imposed asking the allottees to transfer the open space reserved in favour of the Corporation free of costs. Their Lordships have further held that, such condition would amount to transfer of ownership of the site to the Corporation free of cost which is not permissible in law. According to them when any site is reserved for such public purpose, Corporation only gets a right as custodian to manage the same but it cannot acquire any right, title or interest thereof.

20. In Sengunthar Trust v. Bangalore Development Authority, 1993 (1) SCC 672 : (1993 AIR SCW 566) their Lordships have observed that at page 566. of AIR SCW :

"An area reserved for specific purpose could not be transferred to a Trust as the benefit which could have been derived by the public by the plot reserved for civic amenity could not be transferred for a different use than for which it was reserved."

21. In Bangalore Medical Trust v. B. S. Muddappa, their Lordships have held that,

"A Development Scheme, therefore, sanctioned and published in the gazette could not be altered by the Government."

They further held that

"..... the orders of the Government to convert the site reserved for public park to civic amenity and to allot it for private nursing home for Bangalore Medical Trust and the resolution of the Bangalore Development Authority in compliance of it were null. void and without jurisdiction."

It is clear that the conversion of public park into private nursing home cannot be permitted.

22. It is also contended that, since the very same Association has approached the Consumer Court and rejected their claim. the same is binding on the petitioners. Admittedly, at the time when complaint



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was laid before the Consumer Forum, the writ petition is also pending before this Court. In such circumstances, as rightly observed by this Court in The Divisional Manager, Advances Section II. Circle Office, Canara Bank v. Angellne Devadoss, 1998 (1) Mad LW 586, the very approach before the Forum when the matter was pending before this Court can only be subject to the ultimate order to be passed by this Court, hence the said contention is liable to be rejected.

26. The judgment of the Division Bench in R. K. Nagar layout which is another Housing Board Scheme where the part of open space was allotted to Aavin Milk vending booth was not approved by them. Even with regard to conversion and approval by M.M.D.A.. I am of the view that the Development Authority should apply the mind in developing the area with park, playground and open lung space to protect the environment. In the earlier part of my order I have observed that though M.M.D.A., is a party in 'both the writ petitions and they failed to clarify the above position by filing counter-affidavit. While planning an urban area, not only the residential, institutional, industrial, commercial aspects have to be seen, but also provisions have to be made in respect of zoological gardens, green belts, natural reserves, sanctuaries, highways, parkways, water ways, drainage, sewage disposal etc. The Development Authority has also to reserve land for community facilities. The State had a duty to protect the environment. In our case both the State Government and the Housing Board had failed to do so. What prevented the Government and Housing Board in converting the open space as residential plots and allotting the same for Postal Department was not made clear nor were their any materials before the Court to come to a conclusion. The allottees are legally entitled to use the open space and they are fully justified in approaching this Court for necessary relief.

27. Under these circumstances, a writ is issued to the Housing Board to cancel the allotment of plot Nos. 143-A and 143-B and also space allotted to the Postal Department in Kotturpuram Housing Board Colony and keep the open space shown in the layout of 1978 and approved by M.M.D.A. as open space without permitting any construction thereon. Accordingly, W.P. 2461 of 1993 filed by the HIG Flat Owners' Welfare Association, Kotturpuram is allowed as prayed for. In



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view of allowing of the said writ petition, no separate order is required in WP. 2491 of 1998 filed by one of the residents of Adayar Apartments, Kotturpuram, hence WP. 2491 of 1998 is closed. No costs in both the writ petitions. Consequently, connected WMPs., are also closed."

16. In view of the above, a writ is issued to the first respondent to remove the Aavin Retail Outlet located adjacent to the petitioner's dwelling unit, which is run by the second respondent's dealer in the open space as per the JDTP approval dated 23.08.1973.

17. This writ petition is accordingly allowed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
The Tamil Nadu Housing Board,
Nandanam,
Chennai 600 035.

2. The Managing Director,
Tamil Nadu Milk Marketing Federation (Aavin),
Nandanam,
Chennai 600 035.

+2cc to M/s. Sampath Kumar, Advocate, S.R.No.57748

W.P.No.17980 of 2019

PMK (CO)
SB (07/12/2021)