



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Writ Petition No. 16149 of 2020
and
WMP.Nos.20136 and 20137 of 2020

S. Ganesan

.. Petitioner

Versus

1. Tamil Nadu Housing Board
rep. by its Managing Director
Nandanam, Chennai - 600 035
2. The Executive Engineer & Administrative Officer
K.K. Nagar Division
Tamil Nadu Housing Board
Housing Board Complex
Anna Nagar, Chennai - 600 040
3. The Executive Engineer
Sites and Service Division
K.K. Nagar Division
Tamil Nadu Housing Board
Housing Board Complex
Anna Nagar, Chennai - 600 040
4. The Secretary & Personnel Officer
Tamil Nadu Housing Board
Nandanam, Chennai - 600 035
5. The Superintendent
K.K. Nagar Division
Tamil Nadu Housing Board
Housing Board Complex
Anna Nagar, Chennai - 600 040

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the fourth respondent in Ka.Di.Th.En.Othukedu.I (5)/ 10737/2018 dated 19.10.2020 and consequential order in Kaditha En.K.K. Na. B7/11364/86 dated 14.10.2020 passed by the second respondent and to quash the same and to direct the first respondent to register the sale deed for Plot No. PC-16, MMDA Colony, Arumbakkam, Chennai - 600 106, in favour of the petitioner.



For Petitioner : Mr. R. Syed Mustafa

For Respondents : Mr. R. Bharath Kumar

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ORDER

The prayer made in this writ petition is to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the fourth respondent in Ka.Di.Tha.En.Othukedu.I (5)/ 10737/2018 dated 19.10.2020 and the order passed by the second respondent in Kaditha En.K.K. Na. B7/11364/86 dated 14.10.2020, to quash the same and consequently direct the first respondent to execute and register a sale deed in respect of Plot No. PC-16, MMDA Colony, Arumbakkam, Chennai - 600 106, in favour of the petitioner.

2.The facts of the case as averred in the writ petition, in a nut shell, are as follows:

2.1 The petitioner was a successful bidder in the auction conducted in the year 1986 by the third respondent and was allotted a commercial plot bearing No.PC16 measuring 4056 square feet at Arumbakkam, Chennai for Rs.4,78,921.95. He was issued with a provisional order of allotment dated 23.12.1986 and was directed to pay 25% of cost of the plot amounting to Rs.1,19,731/- towards initial deposit. Due to financial constraints, the petitioner was unable to pay the said amount, despite opportunities, which compelled the second respondent to cancel the allotment vide order dated 01.06.1987.

2.2 Without assailing the order of cancellation, the petitioner made applications on 27.01.1988 and 05.09.1989 seeking extension of time to pay the initial deposit. Considering the said request, the second respondent by communication dated 22.11.1993, permitted him to pay the initial deposit along with interest at the rate of 12% and revocation fee of Rs.5,000/-, which was partly paid by the petitioner belatedly, on 04.02.1994. On such partial payment, notwithstanding the outstanding amount of Rs.1,01,772/- towards interest on initial deposit, the second respondent passed an order dated 04.02.1994 revoking the order of cancellation of allotment.

2.3 After the revocation order was passed, on 28.02.1994, the petitioner remitted Rs.30,000/- towards part of interest and sought permission to pay the remaining amount in instalments. Based on the same, the second respondent passed an order on 28.02.1994, permitting the petitioner to pay the balance cost of the plot within a period of five years on a monthly instalment of Rs.8260/- along with interest at 12% and the first instalment commenced on March 1994. Subsequently, on 22.03.1994, the petitioner had taken possession of the plot. On 01.06.1994, he deposited the balance interest on the initial deposit of Rs.71,772/- and thereby paid interest on the initial



deposit amounting to Rs.1,01,772/-. Thereafter, the petitioner was paying the monthly instalments and he also constructed a house in the area allotted to him.

2.4 In the mean while, vide letter dated 12.12.1997, the petitioner was directed to settle the arrears of monthly instalments for the subject plot. Following the same, another communication dated 27.02.1998 was issued calling upon the petitioner to pay a sum of Rs.77,300/- towards the balance cost with interest and penal charges on or before 31.03.1998.

2.5 After payment of the monthly instalments from 01.06.1994 to 31.03.1998 amounting to Rs.7,63,403/-, the petitioner, by letter dated 07.11.2001, requested the respondent authorities to execute a sale deed in his favour in respect of the subject plot. Instead of executing a sale deed, the second respondent sent a letter dated 16.12.2002 indicating the petitioner that the interest for the arrears was not capitalised along with the plot cost, a revised working sheet was prepared and the petitioner was directed to pay a sum of Rs.15,26,023/- as on December, 2002.

2.6 Again, the petitioner made a request to the second respondent to execute a sale deed, to which, he received a letter dated 17.08.2004 from the second respondent, stating that his allotment was cancelled, as he did not pay the entire amount in time. Though he has come forward to pay the demanded amount by letter dated 08.09.2005, the said request was rejected and his allotment was cancelled for the reason as stated in the earlier communication dated 17.08.2004. Feeling aggrieved, the petitioner filed WP.No.30373 of 2005, in which, an interim order was granted on 17.09.2005 to the petitioner with a condition to pay a sum of Rs.21,07,348/- to the second respondent, without prejudice to the rights of either parties. When he was about to make the said payment, the respondent authorities refused to accept the same. While so, the second respondent by communication dated 21.07.2010, directed the petitioner to withdraw the pending case, so as to pass appropriate orders. Pursuant to the same, the petitioner withdrew the said writ petition on 30.07.2010. However, no order was passed in his favour by the respondent authorities.

2.7 Finding no other option, the petitioner preferred WP.No.5531 of 2012 to challenge the cancellation orders dated 17.08.2004 and 08.09.2005 passed by the second respondent. By order dated 24.02.2020, the said writ petition was disposed of, by quashing the said order and remanding the matter for fresh consideration by the first respondent, after giving opportunity to the petitioner and pass final orders, in accordance with law, within a period of twelve weeks.

2.8 Pursuant to the aforesaid order passed by this court, by letter dated 23.05.2020, the petitioner was called upon to appear for enquiry on 02.06.2020 along with all the necessary documents pertaining to his case. Accordingly, he attended the enquiry and submitted his explanation. However, by



communication dated 14.10.2020, the second respondent informed to the petitioner that his allotment was cancelled and hence, he was directed to hand over the subject plot within a period of 15 days. Subsequently, by order dated 19.10.2020, the fourth respondent rejected the request of the petitioner seeking restoration of allotment of the subject plot. Therefore, the petitioner has filed the present writ petition with the aforesaid prayer.

3.1 Upon notice, the second respondent filed a detailed counter affidavit, inter alia stating that due to non-payment of 25% of the total cost of the plot by the petitioner, the allotment was cancelled and the EMD amount was also forfeited, which was intimated to the petitioner, by letter dated 01.06.1987; without challenging the same, the petitioner made a request to the Board to extend the time for payment of initial deposit, based on which, as a special case, he was directed to pay the initial deposit of 25% of total cost of the plot along with interest and revocation fee on or before 31.12.1993, vide letter dated 22.11.1993; and the petitioner paid 25% cost of the plot of Rs.1,19,734/- and revocation fee of Rs.5,000/- only on 04.02.1994, but did not pay the interest as demanded by the Board.

3.2 The counter affidavit further proceeds to state that though the petitioner was issued with the provisional allotment order on 23.12.1986, he paid the initial deposit after a period of seven years, that too, without interest and claimed possession of the plot. Thereafter, he was issued with the allotment order on 28.02.1994 and handed over the vacant possession on 22.03.1994, subject to conditions that he has to pay the total cost of the plot by way of monthly instalment at the rate of Rs.8260/- payable for five years with effect from March, 1994.

3.3 According to the respondent, the petitioner did not pay the instalments in regular basis and he was a chronic defaulter. The interest amount and penalty were accumulated and as on 16.12.2002, the due amount payable by the petitioner was Rs.15,26,023/- and he did not show any interest to pay the same even after many intimations and reminders from the Board. Therefore, as per the resolution dated 20.07.2004 bearing No.24/2004, the petitioner's allotment was cancelled by Sites and Services Committee of the Board and the same was communicated to the petitioner on 17.08.2004. Further, the request of the petitioner for accepting the payment at belated stage was not considered, as the subject plot no.PC16 was already cancelled for non-payment of cost of the plot, interest etc. It is also stated that the office of the second respondent never insisted the petitioner to withdraw the writ petition filed by him to quash the orders canceling the allotment; and the petitioner himself wrote letters to the second respondent, stating that he was ready to withdraw the case on his own desire.



3.4 It is further stated in the counter affidavit that pursuant to the order of this court dated 24.02.2020 in WP.No.5531 of 2012, after conducting due enquiry, the Board categorically rejected the petitioner's request on the ground that the allotment order in respect of the subject plot was already cancelled on 17.08.2004 due to non-payment of capitalisation cost of the plot and interest amount; the market value of the plot during the period was more than Rs.3,40,00,000/-; and the Board would incur heavy loss, if the petitioner's claim is accepted.

3.5 The second respondent also stated that the plot no.PC 16 is lying vacant, the petitioner did not construct any house, as claimed in the writ petition and therefore, he has approached this court with unclean hands and ulterior motives.

3.6 Thus, according to the respondents, despite many opportunities provided, the petitioner did not pay the dues payable to the Board, within the period stipulated / extended and hence, the allotment was cancelled, which cannot be questioned by the petitioner.

4.1 Additional counter affidavit has also been filed on the side of the respondents, wherein, it is inter alia stated that the second respondent has no power or authority to revoke the cancellation of allotment beyond the period of one month from the date of cancellation, as per the proceedings issued in circular memo No.R/10460A/82 dated 24.05.1983 and the Executive Engineer & Administrative Officer is empowered to revoke the cancellation order only on certain circumstances. Whereas, in this case, at the request of the petitioner, the second respondent without any authority, revoked the order of cancellation on 04.02.1994 i.e., after a period of eight years, that too, without effecting the actual payments, which is wholly illegal and without jurisdiction.

4.2 The additional counter affidavit further proceeds to state that the cost of the plot fixed in the year 1986, was not at all capitalised and by a confirmation of allotment order dated 28.02.1994, the 2nd respondent without any authority, permitted the petitioner to pay the balance cost in instalments of 60 months and the cost of the plot originally fixed, remained the same even after 8 years. That apart, the petitioner was given lot of benefits illegally, which would cause huge revenue loss to the Board. Thus, the petitioner is unjustly enriching at the cost of mistake committed by the official, which cannot be encouraged in the interest of justice.

4.3 It is also stated by the respondents that the Revocation Committee consisting of various officials, has taken into consideration all the relevant materials, more particularly, the actual market value and passed the orders impugned herein, thereby rejecting the claim of the petitioner for revocation of cancellation of allotment and hence, the same



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warrant no interference at the hands of this court. It is further stated that as per the order passed by the Revocation Committee, the subject commercial plot will be brought for sale in public auction and the petitioner can very well participate, if he desires so and gets the plot in accordance with law.

5. Denying the averments made in the counter affidavit as well as the additional counter affidavit, the petitioner filed a detailed rejoinder, in which, while reiterating the contents of the affidavit filed in the writ petition, it is stated that the circular/memo dated 24.05.1983 was relied on the side of the respondent authorities for the first time to substantiate their stand, but overlooking the fact of the settled consideration as early as in 1998 and unjust demand between the years 2000 and 2004 having been accepted by the petitioner.

6.1 Mr. Syed Mustafa, learned counsel for the petitioner would contend that though the order of allotment was cancelled by the second respondent on 01.06.1987 due to non-payment of initial deposit of Rs.1,19,731/-, by letter dated 22.11.1993, the petitioner was permitted to pay the same together with interest along with revocation fee, which was paid by him on 04.02.1994 and the order of cancellation of allotment was revoked on the same day. Subsequently, on payment of Rs.30,000/- towards interest on initial deposit by the petitioner, the third respondent by proceedings dated 28.02.1994, confirmed the allotment, subject to certain conditions. Accordingly, the possession of the plot was given to the petitioner on 22.03.1994. Thereafter, the petitioner paid the plot cost along with demanded interest, in the year 1998. In that event, the respondent authorities ought to have registered the sale deed in favour of the petitioner in respect of the plot, whereas they cancelled the allotment and directed the petitioner to hand over the vacant plot, on the ground that the petitioner did not pay the dues in time and the cost of plot has become manifold, by orders impugned herein, which are arbitrary, illegal and contrary to law.

6.2 The learned counsel for the petitioner would further contend that of-course, the petitioner did not pay the initial deposit within the time stipulated / extended, but he paid the same as well as the monthly instalments to the tune of Rs.7,63,403/- from 01.06.1994 to 31.03.1998. Further, he attempted to make payment of the amount demanded by the Board, as directed by this court in WMP No. 33521 of 2005 in WP No. 30373 of 2005, but the second respondent refused to accept the same and by communication dated 21.07.2010 directed the petitioner to withdraw the said writ petition. The said fact would certainly go to show that there was no default on the part of the petitioner in complying with the conditions imposed by the respondent authorities, in respect of the subject plot. Without considering the same, the respondent authorities passed the orders impugned herein, observing that the petitioner did not pay the amount in time, which forced them to cancel the allotment granted to him.



6.3 The learned counsel for the petitioner would also submit that even the orders of cancellation of allotment dated 17.08.2004 and 08.09.2005 were already set aside and the respondent authorities were directed to consider the claim of the petitioner afresh, by order of this court dated 24.02.2020 in WP No.5531 of 2012. However, the respondent authorities passed the orders impugned herein, rejecting the claim of the petitioner, by taking note of the prevailing market value of the subject plot. Though the petitioner was ready and willing to pay the enhanced amount for the subject plot, the respondent authorities refused to accept the same and to revoke the cancellation order.

6.4 The learned counsel for the petitioner would further contend that the circular dated 24.05.1983 referred to in the additional counter affidavit to state that the second respondent has no power or authority to revoke the cancellation of allotment beyond the period of one month from the date of cancellation, is an after thought and the same was not referred to in the earlier writ proceedings initiated by the petitioner. Thus, according to the learned counsel, once an order of cancellation was revoked, it is no longer open to the respondent authorities to contend that the same was passed without any authority of law. In this context, he placed reliance on the decision of the supreme court in Motilal Padampat Sugar Mills Co. (P) Ltd v. State of UP [SCC para 8, p.425 : SCC (Tax) p.160] wherein, it was held that "the true principle of promissory estoppel, therefore, seems to be that where one party has by his words of conduct made to the other a clear and unequivocal promise, which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not". He also relied on the decision of this Court in P.Arunodhayam and another vs. Secretary to Government, Revenue Department, Government of Tamil Nadu, Chennai and others [2008 (3) CTC 563], in which, it was held that "administrative delay on the part of the Housing Board as well as the first respondent cannot be put against the petitioners to fix current market rate. The petitioners' rights were crystalised on date when they gave their land free of cost to Housing Board in September, 2001".

6.5 Above all, the learned counsel for the petitioner submitted that the petitioner is in possession of the plot in question for more than two decades from 22.03.1994 and hence, the writ petition may be allowed by setting aside the orders impugned herein and by directing the respondent authorities to execute a sale deed in favour of the petitioner.



7.1 On the contrary, Mr. Bharath Kumar, learned standing counsel for the respondents vehemently opposed the relief sought in this writ petition by contending that there was enormous delay on the part of the petitioner in remitting the amount payable towards the cost of the plot. He was granted extension of time on four occasions namely 16.04.1987, 22.11.1993, 28.02.1994 and 19.12.1994 by the second respondent. Despite the same, he deliberately failed to pay the cost of the plot with interest. Thus, he became a chronic defaulter. It is also submitted that since the petitioner has committed wilful default in payment of cost of the plot, the second respondent cancelled the allotment made in his favour twice, i.e., one on 01.06.1987 with forfeiture of earnest money deposit and another on 17.08.2004. Therefore, the petitioner is not entitled for any indulgence from this court.

7.2 The learned counsel further submitted that though the petitioner failed to pay the cost of the plot within the time granted, the then Executive Engineer & Administrative Officer, by order dated 04.02.1994, without prior approval of the first respondent and in violation of circular / memo dated 24.05.1983, revoked the cancellation of allotment order dated 01.06.1987, after a lapse of eight years. Further, without taking note of the fact that the market value of the subject commercial plot originally fixed in the year 1986 was increased manifold at the time of revocation of the cancellation order, the second respondent arbitrarily exercised his power and revoked the cancellation order, thereby causing huge revenue loss to the Board. Therefore, disciplinary proceedings was initiated against him for having committed serious illegalities in the matter of revocation of the order of cancellation of allotment, instead of bringing the property for sale in public auction to realise the dues payable to the Board.

7.3 The learned counsel for the respondents also contended that considering the wilful default committed by the petitioner in payment of cost and also taking note of the prevailing market value of the commercial plot, the revocation committee decided to reject the claim of the petitioner and confirm the cancellation of allotment and also bring the commercial plot for sale in public auction. If the petitioner is willing to participate in such auction sale, it is open to him to do so along with other bidders. Therefore, learned counsel prayed for dismissal of this writ petition, so as to safeguard the interest of the respondent Board from incurring huge loss, which cannot be compensated.

7.4 According to the learned counsel, the subject plot is situated in a bustling locality and the present market value of the plot is more than Rs.10 crores. In fact, the petitioner was put in possession of the property by the then Executive Engineer without receiving the cost of the plot and his possession can only be regarded as unlawful, which was subsequently revoked by the higher officials. He has been



squatting on a commercial property without even obtaining a sale deed in his favour. In such circumstances, he is estopped from claiming any right, title or interest over the subject plot.

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7.5 To substantiate his contentions, the learned counsel for the respondents relied on the decisions of the Supreme Court in *Sharma Transport represented by D.P. Sharma vs. Government of Andhra Pradesh and others* [(2002) 2 Supreme Court Cases 188]; and *Bangalore Development Authority v. Vijaya Leasing Limited and others* [(2013) 14 Supreme Court Cases 737]. Therefore, learned counsel prayed for dismissal of this writ petition.

8. This court considered the submissions made by the learned counsel for both sides and also perused the documents, including the original files produced on the side of the respondent authorities.

9. Admittedly, this writ petition is the third round of litigation of the petitioner, in which, he prayed for quashing the orders rejecting his claim of restoration of allotment and directing him to hand over the subject plot. Before advertng to the pleadings and submissions raised by the parties, this court is inclined to narrate the sequence of events involved in the present case, as evident from the original files circulated on the side of the respondents, which read as follows:

23.09.1986 - The Board conducted a public auction for sale of commercial plot no.PC16, measuring about 4056 sq.ft, situated at Arumbakkam, in which, the petitioner was declared as successful bidder and the total cost of the plot was at Rs.4,78,921.95. The petitioner deposited Rs.2000/- towards EMD.

23.12.1986 - A provisional order of allotment was issued to the petitioner with a request to pay 25% of the cost of the plot i.e., Rs.1,91,731/- as initial deposit within 15 days.

07.01.1987 - 15 days time expired. The petitioner did not pay the amount.

16.04.1987 - Extension was given to the petitioner to pay the initial deposit on or before 01.05.1987 with a condition leading to cancellation of allotment and forfeiture of EMD. Even thereafter, the petitioner did not pay the amount.

01.06.1987 - Since the petitioner did not pay the initial deposit within the extended time, the second respondent cancelled the allotment order and forfeited the EMD paid by him.



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- 27.01.1988 - Expressing his inability, the petitioner sought for extension of time for paying the initial deposit.
- 05.09.1989 - Without challenging the cancellation of allotment order & 22.11.1998 dated 01.06.1987, the petitioner again sought for extension of time.
- 22.11.1993 - 2nd extension was granted - the second respondent permitted the petitioner to pay initial deposit + interest at 12% per annum from 23.12.1986 to 31.12.1993 (85 months) + revocation fee on or before 31.12.1993. But the petitioner failed to remit the same.
- 04.02.1994 - After expiry of the time granted i.e., on 31.12.1993, the petitioner remitted 25% of the cost and the revocation fee and sought for revocation of cancellation. However, he did not pay the interest as demanded in the letter dated 22.11.1993.
- 04.02.1994 - The second respondent revoked the order of cancellation.
- 28.02.1994 - The petitioner remitted Rs.30,000/- towards part payment of interest and sought permission to pay the balance interest along with monthly EMIs, within a period of six months.
- 28.04.1994 - 3rd extension was granted - Without any authority, the second respondent after a lapse of more than 8 years, confirmed the allotment in favour of the petitioner and granted him time to pay the balance cost within a period of 60 months by way of EMI at Rs.8260/- each.
- 19.12.1994 - 4th extension was granted - the second respondent called upon the petitioner to pay the arrears of monthly instalments as on 30.11.1994 on or before 31.12.1994, failing which action will be taken to cancel the allotment as per the rule in force.
- 27.02.1998 - 5th extension was granted - The second respondent called upon the petitioner to pay the balance cost with interest and penal interest on or before 31.03.1998.
- 07.11.2001 - The petitioner sought for execution of the sale deed.
- 16.12.2002 - The second respondent withdrew the earlier letter dated 27.02.1998 and directed the petitioner to pay the revised amount as on December 2002.



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- 30.07.2004 - The petitioner's case was placed before the 24th sites and services (S&S) Committee Meeting and it was resolved by Board Resolution No.24/04 to cancel the allotment and the plot should be disposed of under sealed offer-cum-open auction to realise the revenue to the Board and disciplinary action should be taken against the staff, who exceeded their powers.
- 17.08.2004 - 2nd cancellation - the second respondent cancelled the allotment for non-payment of cost.
- 23.08.2004 - The petitioner sought permission to pay the defaulted amount on or before 30.09.2004.
- 08.11.2004 - The 2nd respondent sent a communication to the petitioner seeking an undertaking to pay the balance cost on or before 20.11.2004.
- 10.12.2004 - The 2nd respondent instructed the petitioner to submit an undertaking to pay the entire amount as on 12/2004 on or before 20.12.2004, which the petitioner failed to furnish.
- 13.04.2005 - The 5th respondent requested the 2nd respondent to get the guideline value, market value and latest sealed offer rate for fixation of value and to place the same before the 26th S&S Committee Meeting.
- 14.06.2005 - The 2nd respondent sent a communication to the fifth respondent mentioning the market value of the plot as Rs.65,98,200/- as on 2005.
- 05.09.2005 - The 5th respondent sought for clarification from the 2nd respondent regarding action taken report as per the resolution No.24/04.
- 08.09.2005 - The 2nd respondent informed the petitioner about the cancellation of plot.
- 15.09.2005 - 1st writ petition viz., WP.No.30373 of 2005 was filed challenging the cancellation orders dated 17.08.2004 and 08.09.2005, in which, a conditional order was passed without prejudice to the rights of either parties.
- 30.07.2010 - WP.No.30373 of 2005 was dismissed as withdrawn.
- 20.02.2012 - After a lapse of 8 years, the petitioner filed the second writ petition in WP.No.5531 of 2012 challenging the resolution no.24/2004 dated 30.07.2004 and cancellation orders dated 17.08.2004 and 08.09.2005.



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24.02.2020 - The 2nd writ petition was disposed of, with a direction to pass fresh orders on merits.

02.06.2020 - The petitioner sent a representation to the Managing Director agreeing to pay the cost with interest at 12% per annum.

14.10.2020 - The respondents have passed the orders impugned herein & 19.10.2020 confirming the cancellation of allotment considering various factors like wilful default in payment of plot cost by the petitioner, escalation in cost and current market value of the commercial plot and also taking note of enormous loss to the Board.

05.11.2020 - The petitioner filed the present writ petition, as 3rd one before this court.

10.1.1 The aforesaid dates and events would clearly demonstrate that (i) in respect of the subject plot allotted to him on 23.12.1986, the petitioner did not pay 25% of the cost of Rs.1,19,731/- as initial deposit within the time stipulated by the second respondent. By communication dated 16.04.1987, he was granted extension of time to pay the said amount. Since he did not deposit the initial amount, his allotment order was cancelled on 01.06.1987. (ii) On the second occasion, the second respondent by letter dated 22.11.1993, permitted him to pay Rs.1,19,731/- towards initial deposit with interest of Rs.1,01,772/- and revocation fee of Rs.5,000/- on or before 31.12.1993. After expiry of the said time limit, the petitioner remitted the 25% of the cost and revocation fee on 04.02.1994, but he did not pay interest on initial deposit. However, the second respondent revoked the order of cancellation, on the same day i.e., on 04.02.1994. (iii) After payment of Rs.30,000/- towards part of interest on initial deposit by the petitioner, on the third occasion, i.e., 28.02.1994 the second respondent without any authority and re-fixing the cost of the plot according to the prevailing market value, confirmed the allotment and granted time to pay the balance cost within a period of 5 years in monthly instalments of Rs.8260/ each, after a lapse of eight years. (iv) Thereafter, the petitioner defaulted in payment of monthly instalments, which compelled the second respondent to send a letter dated 19.12.1994, calling upon him to pay the arrears of instalments as on 30.11.1994 on or before 31.12.1994. This is the fourth extension granted to the petitioner. (v) On the fifth occasion, the second respondent sent a communication dated 27.02.1998 to the petitioner directing him to pay Rs.77,300/- towards the balance cost with interest and penal interest, which was paid by him on 31.03.1998.

10.1.2 Thus, it is evident that the petitioner defaulted in payment of initial deposit as well as EMI amounts and upon getting extension on five occasions, he paid the cost of the subject plot fixed in the year 1986 at Rs.4,78,921.95, only in the year 1998. While so, for non-payment of initial deposit,



his allotment was cancelled on 01.06.1987 and the same was revoked by the second respondent on 04.02.1994, which is contrary to circular dated 24.05.1983.

10.2 The sequence of events as detailed above, would further depict that the case of the petitioner was placed before the Sites and Services Committee, which by resolution no.24/04, resolved to cancel the allotment and dispose of the plot under open auction to realise the revenue to the Board, besides directing disciplinary action against the erring staff, who exceeded their powers. Pursuant to the same, the allotment given to the petitioner was cancelled on 17.08.2004 for the second time. By letter dated 08.09.2005, the said cancellation was informed to the petitioner. The petitioner challenged both the orders dated 17.08.2004 and 08.09.2005, by filing WP.No.30373 of 2005, which was dismissed as withdrawn, on 30.07.2010. Even thereafter, no order was passed in favour of the petitioner and therefore, he preferred another writ petition in WP.No.5531 of 2012, which by order dated 24.02.2020, was disposed of, by remanding the matter to the respondent authorities for fresh consideration, on merits. Pursuant to the same, the orders impugned herein have been passed by the respondent authorities, rejecting the claim of the petitioner.

11. The main contention of the learned counsel for the petitioner is that the petitioner paid the entire cost of the plot in the year 1998 itself; he was ready and willing to pay the amount as demanded by the Board; and hence, the writ petition may be allowed by setting aside the orders impugned herein and by directing the respondent authorities to execute the sale deed in favour of the petitioner.

12. On the other hand, it is submitted on the side of the respondent authorities that the petitioner failed to pay the cost of the subject plot within the time granted / extended, due to which, his allotment was cancelled. Therefore, the order obtained by the petitioner, revoking the cancellation of allotment, by manipulation of records and in collusion with the official concerned, lacks legal sanctity and he is not entitled to claim any right over the subject plot.

13. It is not in dispute that the petitioner was originally allotted a commercial plot no.PC16 measuring about 4056 sq.ft at Arumbakkam for sale consideration of Rs.4,78,921.95, by provisional order dated 23.12.1986. Since he defaulted in payment of the initial deposit either within the time stipulated or extended, the second respondent cancelled said allotment and forfeited the EMD on 01.06.1987. That said order was not questioned by the petitioner. Thereafter, the second respondent, without any authority, by communication dated 22.11.1993, granted time to the petitioner to pay the initial amount along with interest and revocation fee on or before 31.12.1993, with default clause that no further extension of time will be granted under any circumstances. Even then, the petitioner did not pay the amount within the time



granted and he remitted only the initial deposit and revocation fee on 04.02.1994 and failed to pay interest. Further, the petitioner, after revocation of the order of cancellation on 04.02.1994, did not regularly pay the monthly instalments of Rs.8260/- each towards balance cost of the subject plot and he remitted the accumulated instalments on his own whims and fancies. Thus, this court comes to a conclusion that the petitioner defaulted in payment of initial deposit as well as EMIs at every stage, which would disentitle him to seek any relief.

14. As held above, the petitioner is a chronic defaulter in payment of the dues to the respondent Board. Though the provisional order of allotment was issued on 23.12.1986, he did not pay the cost of the subject plot to the Board for years together. Further, the amount demanded from him was erroneously worked out by the staff attached to the Board. Therefore, the petitioner's case was placed before the 24th Sites and Services committee meeting held on 30.07.2004 and it was resolved to cancel the allotment made in favour of the petitioner under Resolution No.24/04. The resolution reads as follows:-

"The sites and services committee resolved to cancel the allotment of Plot No.PC-16, since the allottee failed to pay the capitalisation of the cost of the plot. The plot should be disposed of through sealed offer-cum -open auction to realise revenue to the Board. Disciplinary action should be taken against the staff who were failed to cancel the plot in time."

Accordingly, based on the resolution passed by the committee on 30.07.2004, the second respondent, by an order dated 17.08.2004, cancelled the allotment order issued to the petitioner purportedly for non-payment of the dues to the Board, which cannot be found fault with by this court. In view of the same, the other contention raised on the side of the petitioner that the petitioner was ready and willing to pay the demanded amount, but the respondent authorities refused to accept the same, is liable to be rejected.

15. At this juncture, the learned counsel for the petitioner submitted that this court by order dated 24.02.2020 in WP.No.5531 of 2012, set aside the order of cancellation dated 17.08.2004 passed by the second respondent and remanded the matter back to the respondent authorities for fresh consideration; and without considering the said order in a proper perspective, the respondent authorities passed the orders impugned herein, confirming the cancellation of allotment. Upon perusal of the order dated 24.02.2020, it is apparent that this court without going into the merits of the claim made by the petitioner, disposed of the said writ petition only on the ground that the same was a non-speaking order. Hence, the submission so made by the learned counsel for the petitioner, cannot be accepted by this court.



16.1 Another vital point raised on the side of the respondents for opposing the relief sought in this writ petition is that the second respondent has no power or authority to revoke the cancellation of allotment beyond the period of one month from the date of cancellation and hence, the order dated 04.02.1994 passed by the second respondent is arbitrary, illegal and in violation of the Cir.Memo No.R/10460A/82 dated 24.05.1983 issued by the Tamil Nadu Housing Board. For better appreciation, the relevant portion of the said circular is extracted below:

"... the Executive Engineers and Administrative Officers of the City Divisions and Moffusill Units are authorised to revoke cancellations made by them for non-payment of monthly instalments arrears, in case where the allottees come forward with a request within a month from the date of receipt of cancellation orders to restore the allotments in their favour. In such case, the Executive Engineers can revoke the cancellation orders and restore the allotments in favour of the original allottees after collecting the entire dues with interest together with revocation fees.

The Executive Engineers and Administrative Officers are requested to note that the powers to revoke the cancellations are delegated for restoration of allotments cancelled due to default in making payments due to the spard. Such revocation can also be made by them only when applications are duly made within a month of cancellation accompanies by payment in full of accumulated arrears inclusive of interest along with revocation fee."

Further, the second respondent, without any authority and without receiving the entire interest on initial deposit from the petitioner, confirmed the allotment order and granted permission to pay the balance cost of the plot within a period of 5 years in monthly instalments of Rs.8260/- each, after a lapse of eight years. That apart, the second respondent did not revise the original cost of the plot fixed in the year 1986 as per the prevailing market value at the time of revoking the cancellation of allotment i.e., on 04.02.1994. Due to this arbitrary exercise of power, the second respondent caused huge revenue loss to the Tamil Nadu Housing Board.

16.2 This court, in the light of the aforesaid circular, finds some force in the contention so made on the side of the respondent authorities. The learned standing counsel produced the original files connected to the issue at hand. On a perusal of the same, it is shocking to note that for issuance of revocation order cancelling the allotment, manipulation of records had taken place and various corrections had also been found in the exchange of communications between the petitioner and the second respondent, which are enclosed at page nos.41, 43, 45 and 47 of the original files bearing No.AR1/11364/86 Vol. I. As a matter of fact, it is pertinent to note that since



the second respondent committed serious illegalities in the matter of revocation of cancellation and also for not taking timely action to bring the property for sale in public auction to realise the current value of the plot to the Board, the 24th sites and service committee meeting resolved to take disciplinary action against the staff, who failed to cancel the plot in time, besides passing the orders impugned herein. Pursuant to the same, disciplinary proceedings was initiated against the second respondent, who without any authority, revoked the order of cancellation, in collusion with the petitioner. Therefore, this court is of the opinion that the petitioner who is a chronic defaulter, cannot take the advantage of the illegalities committed by the official and in the absence of any sale deed having been executed in his favour, he cannot assert any right, interest or title over the subject plot.

16.3 Further, in Bangalore Development Authority (supra), after referring to its earlier decision in Gujarat Steel Tubes Ltd v. Mazdoor Sabha [(1980) 2 SCC 593], it was pointed out by the supreme court as under:

"17. Therefore, while exercising the extraordinary jurisdiction under Article 226 of the constitution, the learned single Judge came across the above incongruities in the proceedings of the Hon'ble Minister which resulted in the issuance of denotification dated 5-10-1999. We fail to note as to how the ultimate order of the learned single Judge in setting aside such a patent illegality can be held to be beyond the powers vested in the constitutional court. The conclusion of this court in Gujarat Steel Tubes case that judicial daring is not daunted when glaring injustice demands even affirmative action and that authorities exercising their powers should not exceed the statutory jurisdiction and correctly administer the law laid down by the statute under which they act are all principles which are to be scrupulously followed and when a transgression of their limits is brought to the notice of the court in the course of exercise of its powers under Article 226 of the constitution, it cannot be held that interference in such an extraordinary situation to set right an illegality was unwarranted."

In the light of the aforesaid observation, the incongruity in the acts discharged by the second respondent, then Executive Engineer & Administrative Officer is glaring and hence, the proceedings so passed by him, cannot be taken note of to grant any relief to the petitioner in exercise of the jurisdiction under Article 226 of The Constitution of India.



17. As regards the plea of promissory estoppel raised on the side of the petitioner, it could be seen that the allotment order issued to the petitioner was already cancelled and the revocation order passed by the second respondent, who has no authority to do so, has no legal sanctity. Further, no sale deed was effected between the parties and the Board continuous to be the owner as on date. In such circumstances, the said doctrine has no application to the facts of the present case, as there was no promise made by the respondent Board. In this regard, it is apt to refer to the decision of the supreme court in Sharma Transport's case, mentioned supra by the learned counsel for the respondent, wherein, it was observed in para No.24 as follows:-

"It is equally settled law that the promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make. Doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or Public Authority for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The court on satisfaction would not, in those circumstances, raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against the Government or the public authority."

In view of the above, the decision relied on the side of the petitioner is of no assistance to the case of the petitioner.

18. Thus, for the discussions held above and in view of the settled law that public interest is paramount consideration, this court is of the view that the petitioner has not made out any ground much less valid ground for the relief sought herein. Hence, this writ petition deserves to be dismissed as devoid of any merit.

19. Accordingly, this writ petition is dismissed. However, the respondent authorities shall refund the amount already paid by the petitioner with simple interest, if not refunded earlier, after statutory deduction, within a period of four weeks from the date of receipt of a copy of this order. The subject plot belonging to the respondent Board shall be sold only in the public auction. It is open to the petitioner to participate in the auction to be conducted by the respondent Board. It is also made clear that such lapses shall not be



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committed by any of the officials and appropriate caution must be taken by the authorities concerned in this regard. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

//True copy//

Sub Assistant Registrar

rsh

To

1. Managing Director
Tamil Nadu Housing Board
Nandanam
Chennai - 600 035
2. The Executive Engineer & Administrative Officer
K.K. Nagar Division
Tamil Nadu Housing Board
Housing Board Complex
Anna Nagar, Chennai - 600 040
3. The Executive Engineer
Sites and Service Division
K.K. Nagar Division
Tamil Nadu Housing Board
Housing Board Complex
Anna Nagar, Chennai - 600 040
4. The Secretary & Personnel Officer
Tamil Nadu Housing Board
Nandanam, Chennai - 600 035
5. The Superintendent
K.K. Nagar Division
Tamil Nadu Housing Board
Housing Board Complex
Anna Nagar, Chennai - 600 040

+1cc to Mr.R. Syed Mustafa, Advocate SR.No.62078

WP No. 16149 of 2020

RP (CO)
GMY (25/01/2022)