

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.A.No.1085 of 2014 and
M.P.1 of 2014

1. Tamil Nadu Housing Board
rep. by its Chairman/Managing Director,
Nandanam, Anna Salai,
Chennai-600 035.
2. The Executive Engineer and Administrative Officer,
Anna Nagar Division,
Tamil Nadu Housing Board,
Chennai-600 101. ... Appellants/Respondents

-vs-

R.Suresh ... Respondent/Writ Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 20.09.2013 passed in W.P.No.25155/2013 by a learned Single Judge of this Court.

Prayer in W.P.No.25155 of 2013:

To call for the records pertaining to the letter bearing No. ANAI-3/00225/89 dated 27.1.2011 on the file of the 2nd respondent and quash the same and consequently direct the respondents to receive the due payable to the respondents and allot the plot HIG 2/7 Manali Phase I.

For Appellants : Dr.R.Gowri

For Respondent : Mr.V.Karunakaran

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

This Writ Appeal has been preferred against the order dated 20.09.2013 passed in W.P.No.25155/2013 by a learned Single Judge of this Court, thereby quashing the impugned Cancellation of

allotment order dated 27.01.2011 issued against the respondent herein by the Executive Engineer, Sites and Services Division-II, Tamil Nadu Housing Board, Anna Nagar, Madras-600 040.

2. The brief facts of the case are as follows:

(a) The respondent herein was given allotment of HIG Plot in Manali Phase-1 by the Tamil Nadu Housing Board during the year 1989. Subsequently, the said allotment was cancelled by the appellant Housing Board for non-payment of initial deposit. Thereafter, since the provisional order was not issued to the respondent so as to enable him to pay the initial deposit, he made a representation and considering the same, the said order of cancellation was revoked. The respondent thereafter remitted the amount as per the terms and conditions of the allotment.

(b) While the matters stood thus, the Government issued an order in G.O.Ms.No.215, Housing and Metropolitan Development (NIA4-1) Department, dated 28.9.2012 waiving interest, in case the amount is paid within the cut-off date. The respondent made a representation to the Housing Board to permit him to remit the defaulted amount along with interest. However, he was informed that his allotment has already been cancelled by order dated 27.01.2011. Aggrieved by the same, the respondent has filed W.P.No.25155/2013 before this Court and by order dated 20.09.2013, the same was allowed by a learned Single Judge of this Court by quashing the impugned Cancellation of Allotment Order with liberty to the respondent herein to make a representation for availing the benefit of G.O.Ms.No.215 and also with a further direction to the appellants herein to consider the case of the respondent herein on merits and in accordance with law, if any such representation is made. Against the said order, the appellant Housing Board Department has come up before this Court with the present Writ Appeal.

3. Learned Standing Counsel appearing for the appellant Housing Board pleaded that the appellant-Tamil Nadu Housing Board after accepting the application of the respondent herein for allotment of HIG plot in Manali Phase I in the year 1989 has issued a Provisional Allotment Order for Plot House No.2/7, HIG Phase I on 11.05.1989 with a direction to him to pay Rs.10,000/- towards advance deposit on or before 10.06.1989 and the balance amount would be paid within 5 years on monthly instalments. The Provisional Allotment order dated 11.05.1989 makes the position very clear that if there is any default in respect of the non-payment of the monthly instalments, the provisional allotment order is liable to be cancelled without any further notice. Since the respondent has committed default in payment of monthly instalments, the provisional allotment order dated 11.5.1989 was cancelled by order dated 27.01.2011 and due to the default committed by the respondent herein, he cannot come to this Court

questioning the cancellation of the same on the ground that there was a violation of principles of natural justice and that the said order was not even served upon him.

4. Arguing further, learned Counsel for the appellant pleaded that when the appellant has sent the warning notice to the respondent on 06.10.1989 informing the non-payment of monthly instalments that has enabled the Tamil Nadu Housing Board to cancel the Provisional Allotment Order in respect of Plot House No.2/7, HIG Phase I dated 11.05.1989. It goes without saying that there is no violation of principles of natural justice as alleged by the allottee-respondent herein. Therefore, the learned Single Judge ought not to have accepted that plea for allowing the Writ Petition, thereby quashing the cancellation of the Provisional Allotment order dated 11.5.1989. The learned Counsel for the appellants also pleaded that the learned Single Judge ought to have considered the public notice issued by the Tamil Nadu Housing Board on 15.05.2012 in all leading Daily Newspapers stating that the allottees whose allotments were cancelled on the ground of default of monthly instalments may approach the Tamil Nadu Housing Board for restoration of the cancelled allotment. Moreover, the learned Single Judge ought to have considered that the Tamil Nadu Housing Board has rejected the request of the respondent dated 08.03.2013 stating that the benefit of G.O.(Ms.) No.215 dated 28.09.2012 could not be extended to him since the allotment has already been cancelled.

5. Concluding her arguments, the learned Counsel for the appellants pleaded that since the respondent has admittedly not paid the initial deposit amount within the stipulated period, the appellant Tamil Nadu Housing Board is right in cancelling the Provisional Allotment Order by passing the Cancellation Order dated 27.01.2011. Moreover, when the allotment has been renewed on payment of initial deposit on 11.12.1990 and thereafter, a regular allotment order was also issued to the allottee, even as per the Regular Allotment Order, the allottee has to enter an Lease-cum-Sale Agreement with the appellant Tamil Nadu Housing Board for subsequent payment of monthly instalments. But in the present case, the respondent herein till date has not entered into that LCS agreement with the appellant Housing Board. This aspect was not rightly considered by the learned Single Judge of this Court while allowing the Writ Petition. Therefore, the impugned order of the learned Single Judge is liable to be interfered with by this Court.

6. Learned Counsel for the respondent/allottee pleaded that when the Tamil Nadu Housing Board has notified for allotment of HIG Plot in Manali Phase-1 on instalment basis under the Development House Plot Scheme, the writ petitioner-

respondent herein has applied for the same in the year 1989 and his application was selected. Accordingly, a Provisional Allotment Order in Allotment No.MNI/SSII/00225/89 dated 11.5.1989 was issued with a direction to pay the initial deposit of Rs.10,000/- on or before 10.06.1989. But for the reason best known to the Executive Engineer, the 2nd appellant herein either mistakenly or wantonly has not given any communication to that effect to the writ petitioner-respondent herein, as a result the allottee the respondent herein was unable to pay the initial deposit and get the allotment of the plot in his favour which ultimately led to the cancellation of the provisional allotment order. However, even the cancellation order also has not been issued to the respondent herein. Subsequently, when the respondent herein approached the 2nd appellant along with a representation stating that in view of non-serving of the allotment order, he was unable to pay the initial payment for the allotment of the plot along with a requisition to revoke the cancellation order, accepting the same, the 2nd appellant directed the respondent to pay a sum of Rs.1,000/- towards revocation fee vide letter No.SS II MNI/388/89 dated 21.9.1990. Accordingly, the respondent has also remitted the said sum of Rs.1,000/- and thereupon he has also given a representation on 08.9.1990 requesting the 2nd appellant to intimate the further payments to be made by him. Pursuant to the above remittance of revocation fee along with letter dated 8.11.1990, the 2nd appellant has revoked the cancellation letter No.SSII/NNI/00225/89 vide Letter No.SS II/MNI/388/89 dated 13.09.1990 with a direction to pay a sum of Rs.11,900/- towards the payment of 1/10 cost including the interest period 5/89 to 11/90 on or before 30.11.1990. Accepting the same, the respondent had also paid Rs.11,900/- on 3.12.1990 to the 2nd appellant. Thereafter, the respondent was allotted the said Plot bearing No.2/7 Type HIG vide Letter bearing No.SSI/MND/225/89 dated12.1990.

7. Learned Counsel for the respondent further pleaded that when the appellants have fixed the cost of the plot allotted to the respondent at Rs.1,04,000/- and after making deduction of the advance payment, the respondent was also informed that he has to pay Rs.94,000/- in monthly instalments at Rs.2078/- for a period of 5 years, starting from December, 1990 to May, 1994, he has paid the monthly instalments totalling Rs.87,726/- for the period of December, 1990 to May, 1994 i.e. for the 42 monthly instalments out of 60 monthly instalments and thereafter only, due to some financial set back in his family, he could not pay the remaining instalments. Further, the Government of Tamil Nadu, on receipt of various representations from the defaulters to consider their request to regularize their allotment had issued G.O.Ms.No.215, Housing and Metropolitan Department (NIA4-1) Department, dated 28.9.2012.

Even prior to this G.O.No.215, similar G.O.Ms.No.37 has been issued to regularise the defaults based on which the writ petition was allowed. Therefore, the present Writ Appeal shall be liable to be dismissed, it is pleaded.

8. Heard the learned Counsel on either side and we have also perused the materials available on record carefully.

9. In the year 1989, the 2nd appellant issued a Notification for allotment of house sites for the general public on instalment basis. On seeing the notification for allotment of HIG Plot in Manali Phase-1 on instalment basis under the Development House Plot Scheme, the writ petitioner-respondent herein had applied for the same in the year 1989 and after selecting him, a Provisional Allotment Order in Allotment No.MNI/SSII/00225/89 dated 11.5.1989 with a direction to pay the initial deposit of Rs.10,000/- on or before 10.06.1989 was issued. Thereafter, since there was no communication from the 2nd appellant, the allottee-the respondent herein was unable to pay the initial deposit that resulted in cancellation of the provisional allotment and as such, after earlier cancellation of his allotment, the respondent himself approached the 2nd appellant and after paying a sum of Rs.1,000/- towards revocation fee as directed by the 2nd appellant, the cancellation order was revoked vide Letter No.SS II/MNI/388/89 dated 13.09.1990 with a direction to pay a sum of Rs.11,900/- towards the payment of 1/10 cost including the interest period 5/89 to 11/90 on or before 30.11.1990 and he paid the said amount are also not in dispute. Subsequently, it appears that the respondent was allotted the said Plot bearing No.2/7 Type HIG vide Letter bearing No.SSI/MND/225/89 dated12.1990 by fixing the cost of the plot at Rs.1,04,000/- and after making deduction of the advance payment, he was also informed that he has to pay Rs.94,000/- in monthly instalments at Rs.2078/- for a period of 5 years, starting from December, 1990 to May, 1994.

10. Now the grievance of the respondent is that though he had paid the monthly instalments totalling Rs.87,726/- for the period of December, 1990 to May, 1994 i.e. for the 42 monthly instalments out of 60 monthly instalments, due to some financial crisis in his family, he was defaulted in making further payments. Hence, his allotment was cancelled by the 2nd appellant vide order dated 27.1.2011 without serving any notice to the respondent before passing the said order. Therefore, the same was challenged before this Court in W.P.No.25155/2013 and by order dated 20.09.2013, the said Writ Petition was allowed by quashing the impugned cancellation of allotment order.

11. A perusal of the impugned order in W.P.No.25155/2013 dated 20.9.2013 reveals that before passing the cancellation of

allotment order by the 2nd appellant, no notice whatsoever was issued to the respondent and not even the order of cancellation was served upon the respondent, as such, holding that the principles of natural justice has been violated, the Learned Single Judge has rightly allowed the writ petition. Subsequently, when the learned Single Judge also accepting the Memo of Calculation produced by the learned Standing Counsel for the appellants which shows that a sum of Rs.3,76,926/- was due and payable by the respondent, the respondent has also paid the said amount of Rs.3,84,455/-. Now there is no any amount to be paid by the respondent herein. Under such circumstances, when the impugned cancellation of allotment order was passed by the 2nd appellant behind the back of the respondent without giving any notice to the respondent by violating the principles of natural justice, the said order has necessarily to be set aside. Accordingly, the same was rightly quashed by the learned Single Judge. Therefore, we find no infirmity or illegality in the said order of the learned Single Judge.

12. In the result, the Writ Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman/Managing Director,
Tamil Nadu Housing Board,
Nandanam, Anna Salai,
Chennai-600 035.
2. The Executive Engineer and Administrative Officer,
Anna Nagar Division,
Tamil Nadu Housing Board,
Chennai-600 101.

+1cc to Mr.U.Karunakaran, Advocate Sr.22161

W.A.No.1085/2014

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srg 29/06/2021