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W.P.No.22720 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

W.P.No.22720 of 2010

N.Muthuraman

2.Rajeshwari
3.M.Chockalingam
4.M.Venkatesan
5.P.Santhi
6.M.Baskar

(P2 to P5 are substituted as LR's of deceased sole
petitioner as per order dt.21.01.2020 made in
W.M.P.No.1176/2020 in WP.22720/2010 by AQJ)

... Petitioners

Vs.

1.The Chairman
Tamil Nadu Housing Board
Nandanam
Chennai – 35

2.The Executive Engineer &
Administrative Officer
Tamil Nadu Housing Board
Besant Nagar Division
Adyar
Chennai – 29

3.M.Subbaiah

... Respondents



W.P.No.22720 of 2010

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 2nd respondent under Lr.No.Allotment 3/38247A/78 dated 18.08.2010 and 09.09.2010 and quash the same and forbear the respondents 1 and 2 from executing or registering the sale deed in respect of the property bearing Plot No.17-B, Thiruvanmiyur, Kamaraj Nagar, Chennai to and in favour of the 3rd respondent herein or anybody claiming through or under him and consequently to direct the respondents 1 and 2 to execute and register the sale deed in favour of the petitioners herein in respect of the property bearing Plot No.17-B, Thiruvanmiyur, Kamaraj Nagar, Chennai.

(Prayer amended vide order dt.26.10.2022 made in W.M.P.18584/2022 in W.P.22720/2010 by NSKJ)

For Petitioners : Mr.AR.L.Sundaresan, Senior Counsel
for M.Kamalanathan

For Respondents : Mr.D.Veerasekaran for R1 & R2

ORDER

This Writ Petition is filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 2nd respondent under Lr. No. Allotment 3/38247A/78 dated 18.08.2010 and 09.09.2010 and quash the same and forbear the respondents 1 and 2 from executing or



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registering the sale deed in respect of the property bearing Plot No.17-B, Thiruvanmiyur, Kamaraj Nagar, Chennai to and in favour of the 3rd respondent herein or anybody claiming through or under him and consequently to direct the respondents 1 and 2 to execute and register the sale deed in favour of the petitioners herein in respect of the property bearing Plot No.17-B, Thiruvanmiyur, Kamaraj Nagar, Chennai.

2.The case of the petitioner is that the property bearing Plot No.17-B, Thiruvanmiyur, Kamarajar Nagar was originally allotted in favour of one K.Mookaiah Thevar in the year 1987. After the allotment, the said Mookaiah Thevar along with his two sons viz. (1) M.Subbaiah, the 3rd respondent herein and (2) M.Selvam had executed a registered sale deed of the above plot to the petitioner on 23.04.1988, bearing document No.1885 of 1988 in the office of District Registrar, Madras South. Thereafter, the writ petitioner was in possession and enjoyment of the above property by putting up construction on obtaining necessary permission from the competent authorities. The property is also assessed to the property tax by the Corporation of Chennai. When that being so,



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the 3rd respondent filed a writ petition in W.P.No.18213 of 2006 for a Mandamus, directing the 2nd respondent herein to issue a sale deed in respect of Plot No.17-B, Thiruvanmiyur, Kamaraj Nagar, the same was dismissed by this Court, directing the 3rd respondent herein to approach the appropriate Court to have the remedy. However, no Suits whatsoever is filed so far. As the entire sale consideration has been paid, the respondent Board is bound to execute a sale deed in favour of the petitioner. Despite notice sent in this regard in the year 2006 to respondents 1 and 2, the impugned order came to be passed only in the year 2010. Hence the writ petition.

3.The counter filed by the 2nd respondent stated that the Plot No.17-B, Thiruvanmiyur Scheme was originally allotted to one K.Mookaiah Devar vide Besant Nagar Division Letter No.A2/38247-A/1987 dated 26.08.1987 under Government Discretionary Quota vide G.O.Ms.No.1101, Dated 28.07.1987. It is their contention that as per TNHB Rules, only the allottee or his or her legal heirs are entitled for the sale deed. Therefore, the claim of the petitioner that, the plot was sold in



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his favour is meaningless. The original allottee himself does not have any right to sell the plot, till the property is registered in his name. Therefore submitted that as per TNHB Rules, the sale deed would be executed only in favour of the legal heirs of the original allottee.

4.Learned Senior Counsel appearing for the petitioner would submit that though the sale deed was registered in favour of the original allottee and also the entire sale consideration paid, which has not been disputed by the respondent Board, during the said course, the original allottee along with his two sons viz. M.Subbiah, the 3rd respondent herein and M.Selvam executed a sale deed and transferred their rights in respect of Plot No.17-B, allotted to K.Mookaiah Thevar. Since then, the petitioner was in possession and enjoyment of the property by putting up construction and the property was also assessed to property tax and other taxes by the authorities. He added that the 3rd respondent has already suffered dismissal of the order from this Court and he was also a party to the sale deed dated 23.04.1988. Therefore he is estopped from claiming any right in the above property. Hence, it is the contention that there is



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absolutely no bar under law to transfer the property present or in future.

He further submitted that admittedly in this case the entire sale consideration has been made and therefore the respondents are bound to execute the sale deed.

5. Whereas, the learned counsel appearing for the respondent / Housing Board would submit that only a lease cum sale agreement was executed in favour of the original allottee viz. K.Mookaiah Thevar and before they could execute a sale deed, he expired. Therefore, as per the TNHB Rules, the sale deed would be executed only to his legal heirs. Further, it is the contention that till the date of execution of the sale deed in favour of the original allottee, the original allottee himself did not get any title to the property. Therefore, the sale deed in favour of the petitioner dated 23.04.1988 did not confer any title to the petitioner. Hence, he opposed the writ petition.

6. Perused the entire materials. It is not in dispute that the allotment was originally made in the year 1987. Perused the records



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produced by the Tamil Nadu Housing Board. The allotment of Plot No.17-B was made to one K.Mookaiah Thevar on 26.08.1987 and the entire sale consideration has also been paid by him on 15.09.1987 and the same was not disputed by the Housing Board. Before the sale deed was executed in favour of K.Mookaiah Thevar, the said K.Mookaiah Thevar along with his two sons had executed a sale deed in favour of the petitioner on 23.04.1988. It appears that, from the date of execution of sale deed, the petitioner was in possession and enjoyment of the property. It is relevant to note that the 3rd respondent is one of the sons of the original allottee who was also a party to the sale deed has filed a petition in W.P.No.18213 of 2006, for a direction to execute a sale deed in his favour. The said writ petition was dismissed vide order of this Court dated 16.10.2006 by granting liberty to him to workout his remedy before the appropriate Court. However, he has not approached any Court so far.

7.Be that as it may. Now, the only legal submission made by the respondent Board is that it is only a lease cum sale agreement executed in favour of the original allottee. Therefore, the assignment will not be



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valid in the eye of law. It is relevant to note that the very lease cum sale agreement does not bar the assignment or sub lease. The only condition imposed in the agreement is that such assignment should not be done without any permission from the owner. Therefore, the contention that there cannot be any assignment of agreement cannot be countenanced. Though before assignment no permission been obtained, the fact remains that after execution of lease cum sale agreement, they have assigned all their rights to the petitioner on 23.04.1988. The same is also brought to the notice of the authorities on 07.02.2006. Having known the fact that the rights in the property has already been assigned and the entire sale consideration has also been received by the authorities, they have not taken any steps with regard to the assignment till 2010. These facts clearly indicate that they slept over the matter. The respondents would not have taken any action for the reasons that the entire consideration for sale of the property has already been received by them.

8. Such view of the matter, though the permission as per the condition for assignment, not obtained even after the assignment is



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notified to the authorities, the authorities have not acted upon from 2006 to 2010 which ought to be construed that there is a deemed ratification on the part of the authorities.

9.Such view of the matter, this Court is of the view that when the law does not prohibit for transferring the property in present or future when the authorities slept over the month despite knowing the fact that assignment has been made contrary to conditions in Lease Cum Sale Agreement. Therefore, now it is too late for them to contend that assignment is not valid. Though permission is required in the contract, in the given case, conduct of the parties are significant having known about the transactions from 2006, the authorities had slept so long. Therefore, this Court is of the view that the assignment has been in fact ratified by their conduct.

10.Such view of the matter, since the entire amount has already been paid, there is no outstanding due payable to the Housing Board and the 3rd respondent has also already filed a writ petition and suffered



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dismissal order from this Court and he has also not approached the Civil Court as directed by this Court from the year 2006, the right or any claim by the 3rd respondent is also lost by operation of law.

11. Such view of the matter, the petitioner is certainly entitled to a registration of sale deed. The respondents are directed to execute a sale deed in favour of the petitioner.

12. The writ petition stands allowed accordingly. No costs.

09.11.2022

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To

1. The Chairman
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