

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.613 OF 2012

S.Muthiah

...Petitioner

Vs.

1. The Chairman
The Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai,
Chennai - 600 005.
2. The Managing Director
The Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai,
Chennai - 600 005.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 1st respondent in SA.MU.KA.NO.E5/16680/2006 dated 24.11.2011 quash the same in so far as allotting an lesser extent of 550 sq.mts., to the petitioner for starting a Pre-school in Perumbakkam project and consequently direct the respondents to allot additional area for the purpose of constructing a school.

For Petitioner : Mr.L.Jaivenkatesh

For Respondents: Ms.D.Latha
Standing Counsel

O R D E R

The petitioner was allotted with Plot No.20 in Bharathipuram, Chennai, on 28.03.1996 for running a School. On 03.06.1996, it was cancelled without assigning any reasons, by the respondents. He filed a writ petition in W.P.No.7902 of 1996 wherein the cancellation order was set aside by an order dated 11.02.2004. Thereafter, after sub-dividing Plot No.20, 510 sq.mts. was allotted to the petitioner by an order dated

22.12.2004. The respondent / Board by communication dated 04.02.2005 determined the value of the plot at the rate of Rs.400/- per sq.mt., payable by the petitioner for the purpose of executing a Lease cum Sale Agreement. The petitioner deposited the amount on 15.02.2005 to the tune of Rs.2,04,000/- in one lumpsum. The respondent / Board confirmed the allotment by its order dated 16.02.2005. On 22.02.2005, "No Objection Certificate" was issued by the respondent / Board in favour of the petitioner for the purpose of raising loan and also to get electricity connection, water connection, sewage connection etc. On the same day, the Lease cum Sale Agreement was executed in favour of the petitioner. On 21.11.2006, the Corporation of Chennai issued Land Transfer Certificate and on 26.04.2007, the respondent / Board issued "No Objection Certificate" for the purpose of getting approval for construction of a School from the Corporation of Chennai. At that juncture, the Corporation officials constructed a compound wall which resulted in giving police complaint on 11.07.2007. Pursuant to the application under Right to Information Act, 2005, the respondent / Board has stated that the Sale Deed in respect of the land cannot be executed.

2. Therefore, the petitioner filed a writ petition in W.P.No.16615 of 2008 seeking to quash the communication dated 22.02.2008 and for a direction to register the Sale Deed in his favour. This Court after considering the matter, directed the petitioner to give a proper representation to the respondent / Board for allotting an alternative site for the school. This Court has found that there was gross misconduct on the side of the respondent / Board as well as the Corporation officials in dealing with the land considering the entire issue which resulted in financial loss to the petitioner who continues to be in possession of the land. The petitioner had incurred expenses to the tune of Rs.97,00,000/- by way of raising loan from the Bank for the purpose of putting up school building based on the certificates issued by the public authorities. Though this Court was of the opinion to impose heavy cost to the respondent Board as well as Corporation, to compensate the loss, hardship caused to the petitioner, on the lethargic conduct of both the respondents, restrained itself from doing so considering the public interest and therefore, given a direction to the petitioner to make a representation within ten days for allotment of an alternative plot at the same cost for the purpose of starting a school.

3. Since the respondents have failed to comply with the order of this Court, the petitioner has filed a Contempt Petition and during the pendency of the Contempt Petition, by order dated 24.11.2011, 550 sq.mts of land was allotted at Perumbakkam to start a school.

4. According to the parties, the total land earmarked for the school at Perumbakkam is 1720 sq.mts., in S.No.537.

5. While admitting the writ petition, this Court granted an order of interim injunction in M.P.No.1 of 2012 in W.P.No.613 of 2012 on 11.01.2012, restraining the respondents from in anyway allotting, assigning, altering, alienating the place earmarked for school in their Perumbakkam Project pending disposal of the above writ petition. The interim order granted by this Court on 11.01.2012 was extended by periodically and made absolute on 20.02.2017. As of today, the land is available for allotment to the petitioner for construction of a school.

6. Now that, the respondent / Board following the directions of this Court in the previous round of litigation, allotted a land equivalent to the value of the money deposited by the petitioner to the tune of Rs.2,04,000/-.

7. It is relevant to note that this Court has considered the deposit made by the petitioner as early as on 15.02.2005. It is also relevant to note that the original allotment was made on 28.03.1996. The value of the land at that point of time was very less. Had the petitioner invested the money in some other land, he could have secured a larger extent of land, more particularly, in areas like Perumbakkam at that point of time.

8. The relevant portion of the order passed by this Court in W.P.No.16615 of 2008 dated 24.01.2011 would be beneficial for deciding this issue, which reads as under:

"11. It is also important to note that when the Corporation is admittedly running a school in a portion of Plot No.20 in an extent of 580 sq.mts., and the remaining extent of 510 sq.mts., stated to have been allotted to the petitioner has been kept vacant and used as Corporation School playground, how it is possible for the petitioner to have another school in the area. There appears to be a gross mistake on the side of the first respondent as well as the Corporation and the entire issue has not been dealt with by both the public authorities properly, resulting in detrimental loss to the petitioner who has been made to believe that he would continue in possession in the land to construct a school. Thus, the petitioner has spent a huge amount of about Rs.97 lakhs by way of loan from a bank for the purpose of putting up a school building based on the no objection certificate issued by the

respondent Board and with fond hope of constructing a school. This conduct has to be clearly considered as a patent deception by a public authority on a citizen.

.....

14.Considering the above circumstances and applying the dictum laid down by the Supreme Court to the facts of the present case, I am of the considered view that due to subsequent developments, especially taking note of the fact that the Corporation is running a school in the place allotted to the petitioner and even in respect of subsequent allotment of vacant portion, that portion is stated to be used as playground by a Corporation school, even though the facts of the case warrant the principles of legitimate expectation and promissory estoppel to be applied against the respondents, since public interest is involved, I am of the considered view that no useful purpose would be served by directing to allot and it would be more detrimental to the public interest if a direction is given to the respondent Board to hand over the plot to the petitioner by removing the Corporation School / playground.

15.At the same time, it is not as if the petitioner who has paid the entire sale amount and who is stated to have spent further amount by obtaining huge amount of loan from a bank can be denied of any right being a citizen of this Country who has legitimately made his application for the purpose of running a school in the area. But for the public interest involved in this case, this Court would have directed the respondents to pay heavy damages to the petitioner to compensate the loss and hardship caused to him by virtue of the lethargic conduct of both the respondents."

9.The petitioner admittedly raised a loan of Rs.97,00,000/- (Rupees Ninety Seven Lakhs Only) from a Bank for the purpose of putting up school building apart from depositing the sum of Rs.2,04,000/- towards cost of the land. As observed by this Court, he could have incurred heavy loss of interest to the Bank and now that, calculating the actual deposit made by the petitioner in the year 2004, the petitioner was allotted 550 sq.mts., of land. On the other hand, they have not calculated the interest and cost of the land on the date of deposit.

10.However, considering the Government regulations, this Court directs the respondents to allot 700 sq.mts., of land to the petitioner on payment of the additional value @ Rs.34/- per sq.mts. The respondents are directed to pass an order allotting 700 sq.mts., which is the minimum requirement for getting permission for running a School as per the extant instruction of the Education Department. On such allotment order, the petitioner shall pay the balance cost towards land within a period of eight (8) weeks from the date of receipt of the order of allotment. This considered opinion of the Court is just and proper to compensate both the sides mutually in lieu of the damages and heavy expenditure incurred by the petitioner.

11.With these observations, this writ petition is disposed of. No costs.

TK

11.04.2022

For Clarification

This Petition having been posted on 20.04.2022 (Wednesday, the Twentieth Day of April, Two Thousand and Twenty Two) for clarification in pursuance to the order of this Court dated 11.04.2022 and made herein in the presence of the above Govt Advocates, this Court made the following order.

The matter is posted today under the caption "for clarification". Learned counsel appearing for both sides submit that after Kumbakonam School Fire Accident, the Government has passed an Order in G.O.(2-D)No.48 School Education (X2) Department dated 21.07.2004 accepting the recommendations of the Committee headed by Prof.Dr.S.V.Chittibabu. In order to strengthen the education system and the minimum infrastructural facility, recommendation is made to specify the minimum land area required for school. As per the recommendation, the minimum land area for a matriculation school is one acre for Township.

2. Learned counsel for the petitioner submits that there is enough lands in Perumbakkam area for being allotted to the School.

3. This Court by its Order dated 11.04.2022 directed the respondents to allot 700 sq.mts of land to the petitioner which is the minimum requirement for running a school. Since, the Government Order specifies minimum area as one acre, it is clarified that a direction is issued to the respondents to allot one acre of land for the School in accordance with G.O.(2-D)No.48 School Education (X2) Department dated 21.07.2004 within a period of four weeks from the date of receipt of a copy of this order.

Registry is directed to issue fresh copy of the order.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Chairman
The Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai,
Chennai - 600 005.
2. The Managing Director
The Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai,
Chennai - 600 005.

+1 cc to M/sD.Latha,Advocate Sr.No.25127

W.P.No.613 of 2012

RSV[co]
NSK 12/05/2022