



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.NOS.19902 OF 2019

AND

W.P.NO.30512 OF 2019
& W.M.P.NO.30544 OF 2019

W.P.Nos.19902 of 2019

M.G.K.Ezhumalai

.. Petitioner

Vs.

1. The Special Officer,
Madras Divisional Railway Staff,
Cooperative Building Society Ltd.,
No.12/A, 5th Cross Street,
Mahalakshmi Nagar,
Adambakkam, Chennai 600 088.
2. The President,
Madras Divisional Railway Staff,
Cooperative Building Society Ltd.,
Plot No.106, No.3, 7th Street,
Mahalakshmi Nagar,
Adambakkam, Chennai 600 088.
3. The Deputy Registrar (Housing),
Chennai 600 018.

.. Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in Na.Ka.711/2017/C, dated 10.10.2018 and quash the same and consequently, direct the 3rd respondent to fix the rate for the Plot No.89/A at First Main Road, Mahalakshmi Nagar, Adambakkam, Chennai at the rate of Rs.1,800/- per sq.ft., in accordance with the allotment order dated 07.12.2009 of the 1st respondent.



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For Petitioner : Mr.S.Karthikeyan
for Mr.K.V.Sajeevkumar

For RR1 & 3 : Mr.U.Baranidharan
Additional Government Pleader

For R2 : Mrs.Hema Sampath (Senior Counsel)
for Mrs.R.Meenal

W.P.No.30512 of 2019

Madras Divisional Railway Staff,
Cooperative Building Society Ltd.,
Rep. By its President,
Plot No.31, Door No.2, Bharathidasan Street,
Nilamangai Nagar,
Adambakkam, Chennai 600 088.

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By the Registrar Cooperative Societies (Housing)
TNHB Complex,
Second Floor - Annex,
48, Ritherdon Road,
Chennai 600 007.

2. The Deputy Registrar (Housing),
26, Ramanathan Street,
T.Nagar,
Chennai 600 017.

3. M.G.K.Elumalai

.. Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent in proceedings Na.Ka.711/2017/C, dated 10.10.2018 and quash the same and consequently, direct the respondents 1 and 2 to inform the 3rd respondent that Plot No.89-A, First Main Road, Mahalakshmi Magar, Adambakkam, Chennai 600 088 cannot be sold to him.



WEB COPY

For Petitioner : Mrs.Hema Sampath (Senior Counsel)
for Mrs.R.Meenal

For R1 & R2 : Mr.U.Baranidharan
Additional Government Pleader

For R3 : Mr.S.Karthikeyan
for Mr.K.V.Sajeevkumar

C O M M O N O R D E R

(The matter is heard through "Video-conferencing/hybrid" mode)

W.P.No.19902 of 2019 is filed calling for the records on the file of the 3rd respondent in Na.Ka.711/2017/C, dated 10.10.2018 and quash the same and consequently, direct the 3rd respondent to fix the rate for the Plot No.89/A at First Main Road, Mahalakshmi Magar, Adambakkam, Chennai at the rate of Rs.1,800/- per sq.ft., in accordance with the allotment order dated 07.12.2009 of the 1st respondent.

W.P.No.30512 of 2019 is filed calling for the records on the file of the 2nd respondent in proceedings Na.Ka.711/2017/C, dated 10.10.2018 and quash the same and consequently, direct the respondents 1 and 2 to inform the 3rd respondent that Plot No.89-A, First Main Road, Mahalakshmi Magar, Adambakkam, Chennai 600 088 cannot be sold to him.

2.According to the petitioner in W.P.No.19902 of 2019 and 3rd respondent in W.P.No.30512 of 2019, he is the member of 1st respondent Society. During the year 1968, the 1st respondent formed a layout called Mahalakshmi Nagar Layout at Adambakkam. At request of the petitioner, the 1st respondent, by resolution dated 07.12.2009, sub-divided the Plot No.89 as Plot Nos.89A and 89B and allotted Plot No.89A, measuring an extent of 3200 sq.ft to the petitioner and allotted Plot No.89B, measuring 3200 sq.ft. to one Shanmugam. On the same day, the 1st respondent informed the petitioner about the allotment and fixed entire cost of Plot at Rs.1,800/- per sq.ft. The petitioner paid Rs.5,000/- on 15.12.2009 and Rs.10,000/- on 28.01.2010. Even after receipt of said amount, the 1st respondent did not execute the sale deed. Hence, the petitioner made a representation dated 12.01.2012, requesting the 1st respondent to execute the sale deed in his favour. The 1st respondent did not execute the sale deed in favour of the petitioner. The petitioner filed W.P.No.10545 of 2014 seeking for a direction to the 1st respondent to register Plot No.89A at the rate of Rs.1,800/- per sq.ft. This Court, by the order dated 24.04.2017, dismissed the Writ Petition holding that the Writ Petition against the Co-Operative Society is not maintainable, but the petitioner was



given opportunity to approach the concerned authority seeking relief. The petitioner gave a representation dated 24.05.2017 to the respondents 1 to 3. The 1st respondent, by the letter dated 12.06.2017, directed the petitioner to approach the 3rd respondent for further course of action. The 3rd respondent, by impugned communication dated 10.10.2018, informed the petitioner that the sale deed will be executed based on the rate fixed by the Fixation Committee of the Government. Challenging the said order, the petitioner has come out with W.P.No.19902 of 2019.

3.The learned counsel appearing for the petitioner in W.P.No.19902 of 2019 contended that the 3rd respondent has no authority to pass the impugned communication. The plot was allotted by the 1st respondent and cost of plot was fixed as early as on 07.12.2009 at Rs.1,800/- per sq.ft. The 3rd respondent cannot go beyond the rate fixed by the 1st respondent, contrary to the allotment of the 1st respondent dated 07.12.2009. There is no condition imposed in the allotment order. The 3rd respondent cannot introduce a new condition which was not mentioned in the allotment letter.

4.The learned Senior Counsel appearing for the 2nd respondent in W.P.No.19902 of 2019 and petitioner in W.P.No.30512 of 2019 submitted that the Society was formed in the year 1962 for the benefit of railway employees and housing plots were allotted to the members of the Society. Certain areas were reserved for public purpose like Schools, Gardens, Children's Play, Well, etc. According to the Society, there is no Plot Nos.89A and 89B. For more than 12 years, no election was conducted for the Society and Special Officers were in-charge of the Society. The Special Officers, without calling for general body meeting, were making unilateral decision and are passing resolution which are not approved by the Deputy Registrar (Housing). The petitioner viz., M.G.K.Elumalai is not a railway employee and he was inducted illegally as member in the year 2005 by Mr.C.K.Raghavan, Special Officer. The resolution dated 07.12.2009 to divide the land meant for public purpose and allotting the same to the petitioner viz., M.G.K.Elumalai as Plot No.89A for residential purpose is illegal. There is no record in the Society's account for payment of Rs.15,000/- as advance to the 1st respondent, as alleged by the petitioner. Based on the letter of the petitioner, the 3rd respondent passed impugned communication, holding that plot will be sold based on the rate fixed by the Fixation Committee of the Government. The Plot earmarked for public purpose must be used only for the purpose for which it was earmarked and approved by the concerned authority. The Society has given a representation dated 12.11.2018, setting out all the above facts to the Government stating that plot reserved for public purpose like Schools, Gardens, Children's Playground, Well, etc., cannot be sold and



used for any other purpose and the Society cannot be forced to sell the property reserved for public purpose. The plot reserved for public purpose cannot be sold to the petitioner and petitioner is not entitled for the relief sought for and prayed for dismissing the Writ Petition and allowing the Writ Petition viz., W.P.No.30512 of 2019 filed by the Society.

5. Heard the learned counsel appearing for the petitioner in W.P.No.19902 of 2019 & 3rd respondent in W.P.No.30152 of 2019, learned Senior Counsel appearing for the 2nd respondent in W.P.No.19902 of 2019 & petitioner in W.P.No.30512 of 2019 as well as the learned Additional Government Pleader appearing for the respondents 1 and 3 in W.P.No.19902 of 2019 & respondents 1 and 2 in W.P.No.30512 of 2019 and perused the entire materials available on record.

6. From the above materials, it is seen that the Plot No.89A was allotted to the petitioner by allotment letter dated 07.12.2009. As per allotment letter, the cost of plot was fixed at Rs.1,800/- per sq.ft. The petitioner was put on notice that final cost will be fixed by 1st respondent taking into consideration the development expenses, legal expenses and other expenses. According to the petitioner, he has paid Rs.5,000/- on 15.12.2009 and Rs.10,000/- on 28.01.2010 itself. According to the Society, the Plot in question is earmarked for public purpose in layout and the same has to be maintained for the purpose like Garden, Schools, Children's Playground, Well, etc. The erstwhile Special Officer illegally passed a resolution subdividing Plot No.89 meant for public purpose as Plot Nos.89A and 89B and allotted the Plot No.89A to the petitioner. The learned Senior Counsel appearing for the 2nd respondent Society in W.P.No.19902 of 2019 & petitioner in W.P.No.30512 of 2019 has also stated that this Court directed the authorities to maintain the plot as Park and Play area. In view of the order of this Court, the Corporation has established a park. From the materials on record, according to the petitioner, he has paid Rs.5,000/- on 15.12.2009 and Rs.10,000/- on 28.01.2010 itself. On the other hand, the learned Senior Counsel submitted that there is no record in the Society for receipt of such payments. The petitioner, in the year 2012, started giving representation to the authorities and filed Writ Petition No.10545 of 2014 for execution of sale deed. This Court dismissed the Writ Petition filed by the petitioner, on the ground of maintainability, giving liberty to the petitioner to approach the appropriate authority. On the representation given by the petitioner dated 24.05.2017, the 3rd respondent Deputy Registrar (Housing), the concerned authority, has informed the petitioner that final cost will be as per the rate fixed by the Fixation Committee of the Government. The said order impugned in both the Writ Petitions is invalid and illegal. The Plot No.89 was earmarked for public



purpose namely park and well. The Special Officer, in the absence of Board of Directors and without convening general body meeting, illegally passed resolution subdividing Plot No.89 into two residential plots as Plot Nos.89A and 89B. The sub-division as residential plots is invalid. The contention of the learned Senior Counsel that M.G.K.Ezhumalai is not an employee of Railways and is not entitled to be admitted as member is not denied by the learned counsel for the petitioner in W.P.No.19902 of 2019. Further in W.P.No.26183 of 2017 filed by one S.Tamilarasi, this Court recording the submission of the Commissioner, Chennai City Municipal Corporation and the Zonal Officer, Zone - XIII that Open Space Reserve (OSR) land has been restored and there are no encroachment, disposed the Writ Petition.

The contention of the learned Senior Counsel that subsequent to the order of this Court dated 26.10.2017 made in W.P.No.26183 of 2017, the Corporation has restored the land and established Park is not denied by the learned counsel for the petitioner. In view of the above, the impugned proceedings Na.Ka.No.711/2017/C dated 10.10.2018 is set aside. In view of Plot No.89 is restored for public purpose and park is established, W.P.No.30512 of 2019 is allowed. Consequently, connected Miscellaneous Petition is closed. In view of allowing W.P.No.30512 of 2019, W.P.No.19902 of 2019 is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Registrar Cooperative Societies (Housing),
State of Tamil Nadu,
TNHB Complex,
Second Floor - Annex,
48, Ritherdon Road,
Chennai 600 007.
2. The Deputy Registrar (Housing),
26, Ramanathan Street,
T.Nagar,
Chennai 600 017.



3. The Special Officer,
Madras Divisional Railway Staff,
Cooperative Building Society Ltd.,
No.12/A, 5th Cross Street,
Mahalakshmi Nagar,
Adambakkam, Chennai 600 088.

4. The President,
Madras Divisional Railway Staff,
Cooperative Building Society Ltd.,
Plot No.106, No.3, 7th Street,
Mahalakshmi Nagar,
Adambakkam, Chennai 600 088.

+1cc to Mr.K.V.Sajeev Kumar, Advocate, S.R.No.12671
+2ccs to M/s.R.Meenal, Advocate, S.R.No.12713 & 13714
+1cc to the Government Pleader, S.R.No.13377

W.P.Nos.19902 & 30512 of 2019

MG (CO)
PM/30/03/2022