



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2022

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)No.20450 of 2021

and

W.M.P (MD)Nos.17098 and 17099 of 2021

T.Karuppaiah

... Petitioner

vs.

1. The Executive Engineer,
Tamil Nadu Housing Board,
Ellis Nagar, Madurai.

2. The Administrative Officer/Manager,
Marketing and Services,
Tamil Nadu Housing Board,
Ellis Nagar, Madurai.

... Respondents

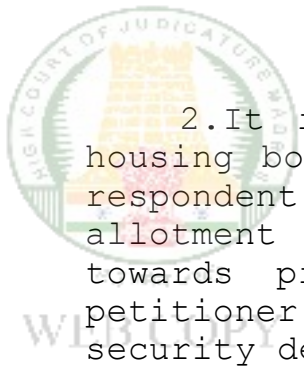
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent, dated 25.08.2020 vide proceedings letter No.MMS/EMI-ARREAR NOTICE/2020 and the consequential orders passed by the second respondent in Letter No.A3/000106/2020, dated 01.09.2020 and 18.09.2020 in Letter No.A3/106/2020 and 09.09.2021 in Letter No.MMS/EMI-ARREAR - NOTICE/2020 as arbitrary and illegal and consequently, to direct the respondents forthwith to re-allot the plot No.HIG-70 of Aruppukottai (ADS) Phase-II in favour of the petitioner.

For Petitioner :Mr.R.Pon Karthikeyan
for P.T.Ramesh Raja

For Respondents :Mr.Mahaboob Athiff

O R D E R

This Writ Petition has been filed challenging the proceedings of the second respondent, dated 25.08.2020 under which the petitioner has been directed to pay the EMI on or before 23.09.2021, failing which the second respondent has cautioned the petitioner that they will cancel the allotment made in favour of the petitioner for Plot No.HIG-49.



2.It is the case of the petitioner that he was allotted a housing board plot bearing No.HIG-70 on 21.02.2020 by the second respondent. According to him, immediately on receipt of the said allotment letter, he has paid a sum of Rs.7,185/- on 16.03.2020 towards principal due. Thereafter, it is the case of the petitioner that he has paid a sum of Rs.3,60,750/- towards security deposit in terms of the allotment letter.

3.However, according to the petitioner, without giving notice to him, the allotment of the plot, namely, HIG-70 allotted in favour of the petitioner has been changed to HIG-49 by the second respondent by its letter, dated 25.08.2020. Thereafter, on 26.04.2021, the petitioner has sent a representation to the second respondent informing them that the original allotment was only for HIG-70 and not for HIG-49 and requesting the second respondent to allot HIG-70 in place of HIG-49. The second respondent has finally passed the impugned proceedings, dated 09.09.2021 calling upon the petitioner to pay the arrears of installments in respect of HIG-49 plot on or before 23.09.2021, failing which, they have cautioned the petitioner that they will cancel the allotment. Aggrieved by the same, the present Writ Petition has been filed.

4.Heard Mr. Pon Senthilkumar, learned Counsel representing for P.T.Ramesh Kumar, learned Counsel for the petitioner and Mr.Mahaboob Athiff, learned Counsel for the respondents.

5.At the outset, the learned Standing Counsel for the respondents would submit that in the approved layout, there is no plot HIG-70 and it was never the intention of the second respondent to allot the petitioner HIG-70 as alleged in the affidavit filed in support of this Writ Petition. He would further submit that by inadvertence, HIG-70 was mentioned in allotment order issued to the petitioner, though allotment was only made for HIG-49, which the petitioner also knows.

6.According to him, the petitioner, knowing fully well that the allotment made by the second respondent was only for HIG-49, has paid the initial payments to the second respondent, which includes the security deposit. He would also submit that thereafter, the petitioner has failed to pay EMI as per the allotment order, dated 21.02.2020.

7.However, the contention of the learned Standing Counsel for the respondents is disputed by the learned Counsel for the petitioner. According to him, the petitioner never accepted the allotment of plot HIG-49, but only agreed for HIG-70. According to the learned Counsel for the petitioner, without giving any notice to the petitioner, arbitrarily and illegally, the second respondent has changed the allotment made to the petitioner from



8.He would further submit that the petitioner has paid the installments sought for by the second respondent as per the allotment order, dated 21.02.2020. It is the contention of the learned Counsel for the petitioner that the petitioner is willing to pay the installments as per the terms and conditions of allotment provided Plot No.HIG-70 is allotted to the petitioner. According to him, the second respondent has arbitrarily changed the allotment from HIG-70 to HIG-49 and the petitioner has not paid EMIs as per the terms of the allotment. Further, it is his case that the details of the EMIs payable by the petitioner has not been intimated to the petitioner by the second respondent.

9.This Court has perused and examined the following documents for orders:

(a)Allotment order of the second respondent, dated 21.02.2020 issued in favour of the petitioner;

(b)Receipt issued for receiving monthly installment for the plot HIG-70, dated 16.03.2020;

(c)Receipt issued for the initial payment for the plot HIG-70, dated 21.03.2020;

(d)Impugned order of the second respondent, dated 25.08.2020;

(e)Impugned order of the second respondent, dated 01.09.2020;

(f)Impugned order of the second respondent, dated 18.09.2020;

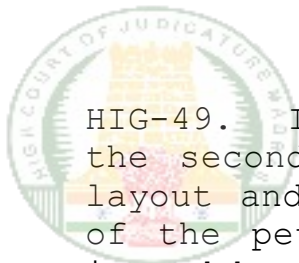
(g)Representation given by the petitioner, dated 26.04.2021;

(h)Representation sent by the petitioner to the second respondent with postal receipts, dated 31.08.2021; and

(i)Impugned order of the second respondent, dated 09.09.2021.

10.After perusing and examining the aforementioned documents/orders, this Court finds that originally the allotment was made by the second respondent in favour of the petitioner, as seen from the allotment order, dated 21.02.2020, only for HIG-70. Thereafter, receipts have also been issued by the second respondent on 16.03.2020 and 21.03.2020 with regard to the payment made by the petitioner only for HIG-70. According to the second respondent, as seen from the impugned proceedings, dated 18.09.2020, they had by inadvertence mentioned a wrong plot number.

11.In the allotment order, dated 21.02.2020 as well as in the receipts, dated 16.03.2020 and 21.03.2020, wherein, they had mentioned the plot as HIG-70, whereas, the correct Plot No. is



HIG-49. It is also informed by the learned Standing Counsel for the second respondent that there is no Plot HIG-70 in the said layout and therefore, it is impossible to allot HIG-70 in favour of the petitioner, as per the allotment order, dated 21.02.2020 issued by the second respondent in favour of the petitioner.

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12.However, the same is refuted by the learned Counsel for the petitioner, who reiterated that the petitioner was in fact allotted only Plot HIG-70 and not plot HIG-49. According to him, plot HIG-49 is not suitable for the petitioner and Plot HIG-70 was accepted by the petitioner only after inspecting the said plot and having got himself satisfied about the same. The petitioner has also given representations thereafter on 26.04.2021 and 31.08.2021 to the second respondent with regard to his grievance.

13.After perusing and examining all the documents placed before this Court, this Court is of the considered view that opportunity of hearing ought to have been given by the second respondent to the petitioner before taking action against the petitioner for non payment of the arrears of EMI in accordance with the allotment order dated 21.02.2020, as originally the allotment was made, as seen from allotment order, dated 21.02.2020, only for plot No.HIG-70 and not for HIG-49. Though the second respondent categorically states that Plot HIG-70 is not available in the layout and only HIG-49 was allotted to the petitioner and since change of plot has been communicated to the petitioner, after receipt of the allotment order, dated 21.02.2020 and after receipt of initial payments, this Court is of the considered view that opportunity of hearing will have to be given to the petitioner before any drastic action is taken by the second respondent with regard to the non payment of EMIs by the petitioner.

14.Therefore, the impugned orders, dated 25.08.2020, 01.09.2020, 18.09.2020 and 09.09.2021 are hereby quashed and the matter is remanded back to the second respondent for fresh consideration and on merits and in accordance with law. Accordingly, the second respondent is directed to pass final orders on merits and in accordance with law with regard to the non payment of arrears of EMI by the petitioner and for cancellation of plot allotted in respect of the plot HIG-49 on merits and in accordance with law after affording a fair hearing including granting him the right of personal hearing within a period of twelve weeks from the date of receipt of a copy of this order. The second respondent is also directed to consider the petitioner's request for allotment of alternate plot instead of HIG-49.



15. With the above observation, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

cmr

To :

1. The Executive Engineer,
Tamil Nadu Housing Board,
Ellis Nagar, Madurai.
2. The Administrative Officer/Manager,
Marketing and Services,
Tamil Nadu Housing Board,
Ellis Nagar, Madurai.

+1 CC to M/s.P.T.RAMESH RAJA, Advocate (SR-7975[F] dated 23/02/2022)

Order made in
W.P. (MD) No. 20450 of 2021

22.02.2022

USK/08.03.2022/5P/4C