



W.A.No.3701 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:17.07.2023

Delivered on: 25.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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1. The Tamil Nadu Housing Board

Rep. by its Managing Director

Anna Salai, Nandanam

Chennai-600 035

2.The Executive Engineer and Administrative Officer

Nmogappair Division/J.J.Nagar Division

Tamil Nadu Housing Board

Thirumangalam

Chennai-600 101

3.The Manager

Marketing and Service

Mogappair Division/J.J.Nagar Division

Tamil Nadu Housing Board

Thirumangalam

Chennai-600 101

.. Appellants

Vs.

1.C.Ravi



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2.The Secretary to Government
Housing and Urban Development Department
Secretariat
Chennai-600 009

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letters Patent praying to set aside the order passed by this Court in W.P.No.19831 of 2013 dated 10.02.2017.

For Appellants : Mr.D.Veerasekaran

For Respondents : Mr.R.Saravanakumar for R1

Mrs.Geetha Thamaraiselvan , Spl.G.P for R2

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

For the sake of convenience, the parties are arrayed as per their rank in the Writ Petition.

2. The Writ Petitioner has filed the Writ Petition challenging the notification issued by the 3rd respondent dated 19.05.2013 for allotment of flats in Nolambur Village, Ambattur Taluk, Thiruvallur District and to quash the same and to consequently direct the respondents to allot one flat to the petitioner in Nolambur Village, Thiruvallur District.



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3. It is the case of the Writ Petitioner that he was allotted a flat by drawal of lots on 31.01.2007 by the respondent board in respect of Scheme-I, Mogappair. The petitioner paid 1/3rd of the total cost in April 2007. After a few months, the 2nd respondent issued a communication on 23.08.2007, informing the petitioner that the plinth area had undergone a change as suggested by CMDA and the petitioner also gave consent for the same and expressed his willingness to pay the additional cost also. However, there was inordinate delay in allotting the flat to the petitioner as there was a litigation in respect of the scheme where the petitioner had applied for allotment. The petitioner came across a notification issued by the respondent Board in “The New Indian Express” that by drawal of lots, allotments will be made in respect of flats at Nolambur, Chennai. This notification is challenged by the petitioner in the Writ Petition.

4. It is the further case of the petitioner that even as early as on 13.08.2008, the 3rd respondent informed the petitioner about pending litigation before in the Supreme Court in respect of the proposed flats in Scheme-I, where the petitioner had applied and the petitioner was given an



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option to get either refund of the amounts paid or for alternate allotment of a flat in Scheme-3 or Scheme-4. The petitioner admittedly did not opt for Scheme-3 and Scheme-4 flats since they were not suitable for his purpose. However, the petitioner alternatively requested for allotment of a flat in another area where the respondent Board was contemplating allotment to the public. The said request was rejected by the respondent Board and they reiterated the earlier option viz., either to get refund or to seek allotment of flat either in Scheme-3 or Scheme-4.

5. According to the petitioner, there were vacant house sites available in Padi Industrial area and also behind Andaman Guest House, Park Road, West Anna Nagar Extension. According to the petitioner, when he had applied and allotted a flat in 2007, the cost fixed by the respondent Board was Rs.3,000/- per sq.ft in Nolambur area and the delay was only on account of the respondent Board and therefore the petitioner was entitled to challenge the subsequent notification in respect of allotment of flats in Nolambur Village.

6. The respondent Board filed a counter affidavit stating that the



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petitioner was given an option to either seek refund or allotment in either Scheme-3 or Scheme-4. The petitioner was not acceptable to any of these options and being the position, the petitioner cannot challenge the notification issued in respect of a totally different locality with which the petitioner had no connection whatsoever. Infact, it is also stated in the counter that one flat in Nolambur Phase-I was reserved for the petitioner and if the petitioner was willing to pay Rs.6,700/- per sq.ft for the same, the Board will allot the flat for the petitioner. Further, the Board has also contended that the rates in Nolambur and Mogappair in Scheme-1 cannot be equated and if the request of the petitioner is acceded to, it will result in severe financial loss to the Board.

7. In so far as the alternate request made by the petitioner, it is contended that the other areas where the petitioner sought for allotment could not be considered for the reasons that either they were plots and not flats or they were available only for Government Rental quarters. Therefore, on these grounds, respondents sought for dismissal of the Writ Petition.



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8. The learned single Judge at the time of final hearing of the Writ Petition, after hearing the counsel for the petitioner as well as the counsel for the Board, directed the Board to allot one flat in Nolambur at the rate of Rs.3,000/- per sq.ft which was the rate originally fixed for allotment of a flat in Mogappair scheme. The learned Single Judge passed this order as a special case in view of the extra ordinary circumstances and facts of the case and further ordered that the same shall not be cited as a precedent by in other cases.

9. Aggrieved by the said order passed by the learned Single Judge, the Board is before us by way of Writ Appeal.

10. The first and foremost challenge is that when the petitioner was in no way connected to the Nolambur scheme, he had no locus to challenge the said notification and therefore the Writ Petition itself was not maintainable. In so far as the order of the learned single Judge, it was contented that there was no delay on the part of the appellant Board and it was the respondent/writ petitioner who did not avail of any of the options



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given by the appellant Board and having not agreed to either refund or for allotment in either Scheme-3 or Scheme-4, for reasons best known to the respondent/Writ Petitioner, the learned single Judge ought not to have directed allotment of a flat at Nolambur, that too at the same rate of Rs.3,000/- per sq.ft as against the prevailing rate of Rs.6,700/- per sq.ft

11. We have heard learned counsel Mr.D.Veerasekaran, for the appellant Board and Mr.R.Saravanakumar, learned counsel for the 1st respondent/writ petitioner and Mrs.Geetha Thamariselvan, Special Government Pleader for the 2nd respondent. We have also considered the materials on record, including the additional typedset of papers filed by the 1st respondent/writ petitioner and also the order of the learned Single Judge.

12. First and foremost, the Writ Petition challenging the notification in respect of allotment of flats in Nolambur was clearly not maintainable at the instance of the Writ Petitioner, who admittedly did not apply for allotment in the said project and he was in no way connected to the said notification. The only grievance of the 1st respondent/Writ Petitioner is that when he had parted with more than Rs.10,00,000/- way back in 2007 and



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the Board has delayed allotting the flat to him, it would not be fair or equitable to contend that the petitioner has to pay prevailing rates for being allotted a flat at Nolambur and considering all these, according to the counsel for the 1st respondent/Writ Petitioner, the learned single Judge has rightly passed the order under challenge.

13. No doubt, the learned single Judge has sympathised with the Writ Petitioner who having paid more than Rs.10,00,000/- way back in April 2007 was not given a confirmed allotment and taking a sympathetic view in favour of the Writ Petitioner, the impugned order came to be passed.

14. However, as rightly pointed out by the learned counsel for the appellants, the appellant Board cannot be blamed in entirety. As early as on 13.08.2008, within two years from the date of notification advertising sale of HIG flats in Mogappair village, the Board has given an option to the petitioner to get refund of the amount paid by him or give his willingness to get an allotment of flat in Mogappair Scheme-3 and 4. The petitioner did not avail of these options, but instead he wrote to the Board on 29.08.2008 stating that he did not want refund or allotment in Mogappair Area



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Scheme-3 and 4 and the petitioner gave new options as alternatives which were not considered by the appellants for justifiable reasons.

15. As already discussed herein above, the requests were considered by the appellant Board and rejected only on the ground that the 1st respondent/petitioner could not be allotted a plot contrary to his original allotment of a flat and in respect of other project it was specifically reserved for Government rental quarters and therefore the said alternate requests made by the petitioner were rightly rejected. The petitioner has approached this Court challenging the notification in respect of Nolambur Phase -1, clearly to arm twist the appellant Board into allotting him a flat as per his request and wishes.

16. First and foremost, when the 1st respondent/petitioner admittedly did not apply for allotment in respect of the notification under challenge, he has no locus or right to challenge the said notification in respect of Nolambur Phase-1. The only grievance of the 1st respondent/ petitioner can be only with respect to Mogappair scheme, where he had originally applied. We have already seen that despite several opportunities given by



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the appellant Board, it was the 1st respondent/Writ Petitioner, for his personal reasons did not avail of the same. He also refused the offer to refund the amount, which was a bonafide offer by the appellant Board. The learned single Judge has not considered these aspects in detail and as already mentioned above, merely on sympathetic grounds, allowed the Writ Petition, with a direction to allot a flat in Nolambur Phase at the original rate of Rs.3,000/- per sq.ft for which an advertisement was issued in respect of a totally different scheme viz., HIG flats in Mogappair village. We are unable to accept the findings and conclusion of the learned single Judge for the various reasons discussed herein above. We even gave an option to the Writ Petitioner to have a discussion with the appellant Board and come back with an amicable proposal for settlement so that atleast the amounts already paid by the Writ Petitioner can be adjusted in any other flat that may be offered to him by the appellant Board. The matter was infact adjourned for this purpose. However, despite the opportunity granted by us, the parties were not able to reach any amicable solution and only thereafter the appeal has been heard by us.

For the foregoing reasons, we hold that the Writ Petition is not maintainable and the order of the learned single Judge is liable to be set



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aside. However, at the same time, we cannot forget the fact that the 1st respondent/Writ Petitioner has paid a sum of Rs,10,10,400/- way back in April 2007 in anticipation of being allotted a flat by the appellant Board. The appellant Board has been enjoying the said amount paid by the 1st respondent/Writ Petitioner all these years, right from April 2007 and therefore, we direct the appellant Board to refund the sum of Rs.10,10,400/- together with interest at 9% per annum from April 2007 till the date of payment.

With the above direction, the Writ Appeal is allowed. No costs.

(D.K.K.J) & (P.B.B.J)
25.07.2023

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Neutral Citation: Yes/No
To
The Secretary to Government
Housing and Urban Development Department
Secretariat
Chennai-600 009

D.KRISHNAKUMAR, J.,
and



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P.B.BALAJI,J

(kpr)

Pre-delivery judgment in
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25.07.2023