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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21927 of 2024
and W.M.P.Nos.23913 and 24163 of 2024

K.Saroja ... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Housing Board, CMDA complex,
Market Road, Koyambedu,
Chennai 600 107.

(R1 cause title suo moto amended
as per order dated 12.08.2024
in W.P.No.21927 of 2024 by MDIJ)

2.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Erode Housing Unit,
Sampath Nagar,
Collectrate Complex,
Erode 638 001. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent pertaining to his letter No.R4/00715/2022 and

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quash the proceedings dated 09.02.2024 and consequently direct the 2nd respondent to execute the sale deed pertaining to Plot No.MIG-1061, Mudhampalayam Scheme, Phase-I, Erode in the name of the petitioner.

For Petitioner : Mr.R.Sivakumar

For Respondents : Mr.D.Veerasekaran

O R D E R

This writ petition has been filed to call for the records of the 2nd respondent pertaining to his letter No.R4/00715/2022 and quash the proceedings dated 09.02.2024 and consequently direct the 2nd respondent to execute the sale deed pertaining to Plot No.MIG-1061, Mudhampalayam Scheme, Phase-I, Erode in the name of the petitioner.

2. The case of the petitioner is that the 2nd respondent vide order dated 25.06.1998 alloted Plot No.1061, Muthampalayam N.H.Scheme, Phase-I to the petitioner's son namely K.Vivekananthan, who subsequently died on 05.08.2016. The tentative land cost of the subject plot was arrived at Rs.1,25,250/- and the initial deposit amount to the tune of Rs.45,850/- was paid and the remaining amount of Rs.85,400/- along with

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interest at the rate of 18% to be paid through EMI for a period of 156 months at the rate of Rs.1,359/-. Though the plot was purchased in petitioner's son name, the payment was made only out of joint family resources.

(ii). On receipt of the initial deposit amount, the 2nd respondent issued possession certificate dated 16.06.1999 and ever since from the said date, the plot was in our possession. Though the EMI period was available upto the year 2011, the entire cost was paid by August, 2006. On such payment, when the petitioner requested the 2nd respondent for execution of sale deed, he insisted that thought he payment was made, they have to wait till the completion of the EMI period, that was upto the year 2011. Thus, having paid the entire land cost even by August, 2006, the petitioner's son was waiting for the execution of sale deed. Having paid the entire land cost even by August, 2006, he was waiting for the execution of sale deed. In the meantime, the petitioner's son died on 05.08.2016.

(iii). After his death, the petitioner requested the 2nd respondent

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for name change and the 2nd respondent vide order dated 22.04.2022 ordered for name transfer. On 25.04.2022, the Head Surveyor duly handed over the possession to the petitioner and she was in possession of the subject land from the year 1996. While so, the 2nd respondent unnecessarily delayed the execution of sale deed without any valid reason. In the said circumstances, she sent a letter dated 10.05.2022 requesting the 2nd respondent to issue the draft sale deed, so that it can be registered without any further delay, whereas, the 2nd respondent issued a impugned order dated 09.02.2024 stating that the allotment in favour of his son late K.Vivekanandhan was cancelled. Aggrieved by the same, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner would submit that name transfer dated 22.04.2022 was effected only after due enquiry and after due satisfaction of the relevant facts. Therefore, the reasoning that allotment in favour of petitioner's son was already cancelled is not tenable. In fact, the demand for final settlement was also raised and the entire amount to the

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tune of Rs.17,00,000/- was also received by the 2nd respondent. Hence, the action of the respondents in delaying the execution of sale deed is not sustainable one.

4. Per contra, learned counsel appearing for the respondents would submit that the allottee has to pay the monthly installment till June, 2011, but he has paid only till August, 2006. Based on the documents, the allotment of the said Plot No.MIG 1061, Muthampalayam Phase I has been cancelled and it has been brought to the vacant list in the year 2006. Thereafter, the petitioner paid a sum of Rs.17,00,000/- through RTGS for the said plot and while generating the receipt, it was found that the said plot has already been brought to vacant land and has been priced by the Board for resale. Hence, the receipt for a sum of Rs.17,00,000/- was not generated. After the date of cancellation, the amount paid by the petitioner to the Board will be returned to the petitioner and the said plot will be brought back to a new lot and re-allotment will be followed as per the Board rules. Hence, he prayed for dismissal of the present writ petition.

5. This Court gave its anxious consideration to the submissions

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made by the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials placed before this Court.

6. Originally, the subject land was allotted to the petitioner's son and he died on 05.08.2016. Subsequently, name was transferred to the petitioner vide order dated 22.04.2022 which is not in dispute. Further, it is not in dispute that the second respondent received a sum of Rs.17,00,000/- on 29.10.2022 and subsequently, after a lapse of two years, impugned order dated 09.02.2024 passed by the 2nd respondent stating that already allotment order was cancelled.

7. This Court insisted the respondents to produce the file with regard to the cancellation and declaration of plot as vacant land. Admittedly, no records was produced before this Court and the learned counsel for the respondents submitted that no records is available with the respondent department. However, the said contention cannot be accepted

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since no departmental proceedings were initiated against officials for loss of original document. Moreover, the stand of the 2nd respondent that the subject plot was brought under the list of empty plots cannot be a valid reason to deny the execution of sale deed in favour of the petitioner that too after effecting proper name transfer and having received the entire sale consideration. Hence, the impugned order dated 09.02.2024 passed by the 2nd respondent is set aside and the 2nd respondent is directed to execute the sale deed pertaining to Plot No.MIG-1061, Mudhampalayam Scheme, Phase-I, Erode in the name of the petitioner, within a period of two(2) weeks from the date of receipt of a copy of this order.

8. With the above directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

20.08.2024

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
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To

1. The Managing Director,

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M.DHANDAPANI, J.

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