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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23025 of 2023

and

W.M.P.No.22535 of 2023

P.Jayakumar

... Petitioner

Vs.

- 1.The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
Erode Division,
Sampath Nagar,
Erode – 638 011.
- 2.The Marketing Manager (Sales and Service),
Tamil Nadu Housing Board,
Erode Division,
Sampath Nagar,
Erode – 638 011.
- 3.The District Registrar,
Erode.
(R-3 *suo motu* impleaded *vide* order dated 03.08.2023
made in W.P.No.23025 of 2023 by NSSJ)
- 4.The Managing Director,
Tamil Nadu Housing Board, Nanthanam, Chennai – 35.



5.The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai – 600 009.

(R4 & R5 are *suo motu* impleaded as per order
dated 20.09.2023 made in W.M.P.No.24589
of 2023 in W.P.No.23025 of 2023 by NSSJ)

6.R.Gowthami, W/o Dinesh

... Respondents

(R-6 impleaded as per order dated 20.09.2023
made in W.M.P.No.245889 of 2023 in W.P.
No.23025 of 2023 by NSSJ)

Prayer: Writ Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Certiorari, calling for the entire records relating to the
order dated 28.07.2023 made in Letter No.R4/0407/2011 on the file of the
second respondent herein and quash the same.

For Petitioner	: Mr.C.Munusamy
For R1, R2 & R4	: Mr.P.S.Raman Advocate General assisted by Mr.D.Veerasekaran Standing Counsel for TNHB
For R3	: Mr.U.Baranidaran Additional Government Pleader
For R5	: Mrs.P.Vijaya Devi Government Advocate
For R6	: Mr.R.Sivakumar

**ORDER**

The cancellation of the allotment of Housing Plot No.676 at Muthampalayam phase – VIII in favour of the petitioner in proceedings dated 28.07.2023 is sought to be quashed in the present writ petition.

2. It is not in dispute that the Tamil Nadu Housing Board has allotted a Housing Plot to the extent of 156.38 Square meter situated in the sanctioned plan of Muthampalayam phase – VIII, Middle Income group, Plot No.MIG No.676 at R.S.No.483/2 Part of Erode ‘C’ Village through lot system under the general category on 10.12.2020. Further, it is not in dispute that the writ petitioner had paid the entire amount to the Housing Board and the Housing Board in turn had executed Sale Deed in favour of the petitioner on 24.02.2022. Thus, the writ petitioner has become the absolute owner of the Plot No.MIG No.676 at Muthampalayam phase – VIII Scheme.

3. Surprisingly, the writ petitioner has received the impugned order dated 28.07.2023 stating that the allotment of Housing Plot made in favour of the writ petitioner becomes void and cancelled the allotment. Thus, the present writ petition came to be instituted.



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4. The learned Advocate General, Mr.P.S.Raman, appearing on behalf of the Board would submit that a mistake occurred at the instance of the Authorities of the Board in allotting the Plot No.676 in favour of the writ petitioner. The said Plot No. 676 was originally allotted in favour of one R.Gowthami/6th respondent, who had also paid the plot cost. However, the amount paid by R.Gowthami/6th respondent was not credited in her account by the Board properly and on account of such mistake committed by the Board, the allotment originally made in favour of R.Gowthami/6th respondent was canceled and subsequently, the allotment was granted in favour of the writ petitioner and the Sale Deed was executed.

5. Mr.P.S.Raman, learned Advocate General would further submit that five more plots are available in the very same project including a corner plot and the writ petitioner or the 6th respondent may choose any one of the plots for the purpose of settling the issue in a peaceful manner.

6. Mr.R.Sivakumar, learned counsel appearing for the 6th respondent would oppose the said contention by stating that the 6th respondent was the original allottee and she had paid the entire cost in the year 2015 itself. The cancellation of allotment made in favour of the 6th



respondent was done erroneously by Board Authorities and the 6th respondent has filed W.P.No.14321 of 2023, to direct the respondents/Board to execute a Sale Deed in favour of the 6th respondent based on the allotment of Plot No.MIG No.676 made in her name.

7. This Court has disposed of the W.P.No.14321 of 2023 on 27.06.2023 as follows:

“6. The respondents have no justification to delay the execution of the sale deed in spite of having received the entire sale consideration as early as December, 2018. This attitude of the Housing Board in not executing the sale deed even after receipt of the entire amount from the petitioner, showing lame reasons that because of some officials committed a mistake, cannot be held against the petitioner. This attitude of the respondents officials is not appreciable. Hence, this Court is inclined to dispose of the Writ Petition with the following directions:

(i) The first respondent/Managing Director is directed to conduct enquiry and take appropriate departmental action against the erring officials.

(ii) The first respondent/Managing Director is also directed to take a decision for allotment of the plot in favour of the petitioner.



(iii) The entire exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

(iv) The first respondent / Managing Director is also directed to file a report before this Court on or before 28.07.2023, failing which, the first respondent shall appear before this Court.

7. With the above directions and observations, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.”

8. Since, the 6th respondent has succeeded in the above said writ petition and the Order dated 27.06.2023 has become final, the allotment granted in favour of the writ petitioner is to be cancelled and the Sale Deed is to be executed in favour of the 6th respondent.

9. Mr.C.Munusamy, learned Counsel for the petitioner would submit that the mistake of the Housing Board cannot be a ground to cancel the allotment made in favour of the writ petitioner in accordance with the rules in force. Admittedly, the allotment made in favour of the 6th respondent was cancelled on 05.11.2019 and thereafter, the said Plot No.676 was allotted in favour of the writ petitioner and the petitioner paid the entire plot cost and



the Sale Deed was also executed in his favour. Thus, the title stands transferred in the name of the writ petitioner. At this juncture, the Board cannot cancel the allotment made in favour of the writ petitioner for the purpose of registering a Sale Deed in favour of the 6th respondent. The learned Counsel for the petitioner would further submit that the 6th respondent has filed W.P.No.14321 of 2023 without even impleading the writ petitioner.

10. Mr.R.Sivakumar, learned Counsel for the 6th respondent would oppose the said contention by stating that the 6th respondent was not aware of the allotment made in favour of the writ petitioner and therefore, the writ petitioner was not impleaded.

11. This Court is of the considered opinion that at least, the Housing Board should have informed the Court that the said plot allotted in favour of the 6th respondent was cancelled in the year 2019 and the subject Plot No.676 was allotted in favour of R.Jayakumar/writ petitioner and a Sale Deed was executed. The conduct of the Housing Board Authorities in this context, deserves to be deprecated. Being public servants, they are expected to place on the facts before this Court, when a writ petition was filed by the



allottee. As rightly pointed out by Mr.Sivakumar, the 6th respondent may not be aware of the fact regarding the allotment made in favour of the writ petitioner.

12. May that as it be, this Court is of the considered opinion that a mistake or suppression committed on the part of the Board Authorities resulted in filing of the present writ petition by the writ petitioner. The Board Authorities, if informed these facts before the Court at the time of passing final order in W.P.No.14321 of 2023, the issues in entirety could have been resolved in accordance with law. Subsequent allotment of Plot no.676 made in favour of the writ petitioner was not informed before this Court by the Board Authorities and the 6th respondent says that she was not aware of the fact.

13. The learned Advocate General on instructions, made a submission that the Board is ready and willing to allot one plot in the same project either in favour of the writ petitioner or in favour of the 6th respondent.



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14. This Court is of the considered opinion that the Sale Deed was executed in the name of the writ petitioner. Thus, the writ petitioner is holding valid title in respect of Plot no.676. Contrarily, the 6th respondent who paid the amount in the year 2015, was not granted any allotment order nor Sale Deed has been executed. Instead of interfering with the title already transferred in the name of the writ petitioner, the 6th respondent may choose any one of the five vacant plots available in the same project and on identification of a plot, the Tamil Nadu Housing Board shall execute a Sale Deed in favour of the 6th respondent. However, the cost is to be recovered as per the plot size by adjusting the plot cost already paid. Excess amount if any is to be refunded.

15. Therefore, the title stands in the name of the writ petitioner stands confirmed. The 6th respondent/Gowthami is permitted to choose any one of the five available plots as per the sketch provided before this Court which is also shown to Mr.R.Sivakumar, the learned Counsel for the 6th respondent, on identification of one plot in the same project, the respondent is directed to execute a sale deed in favour of the 6th respondent within a period of eight (8) weeks from the date of receipt of a copy of this order.



With these directions, the impugned order passed by 2nd respondent/ in letter no.R4/0407/2011 dated 28.07.2023 is quashed.

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16. Accordingly, the writ petition stands allowed. No costs.
Consequently, connected miscellaneous petition is closed.

05.02.2024

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Index : Yes / No

Speaking order / Non-Speaking Order

Neutral Citation : Yes / No

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