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W.P.No.11875 of 2019

In the HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.03.2024

Delivered on :03.06.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.11875 of 2019

and

W.M.P.No.12094 of 2019

E.Sarangapani

... Petitioner

-Vs-

1.The Commissioner and Secretary to Government,
Government of Tamil Nadu,
Land Acquisition, Chepauk,
Chennai 600 005.

2.The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai 35.

3.The Executive Engineer,
Tamil Nadu Housing Board,
Mugappair Division,
Anna Nagar Shopping Complex,
Chennai.

... Respondents

PRAYER : Writ Petition filed under Article 227 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the second respondent dated 23.03.2016 and to quash the order in their letter Ref.No.1(3)/7384/2001 made therein and consequently, direct the second



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respondent to allot one plot under the Ex-Owner category in the Nolambur Neighbourhood Scheme forthwith.

For Petitioner : Mr.V.Shanmugham

For Respondents : Mr.D.Veerasekaran,

Standing Counsel for R2 to 3

Mrs.P.Vijayadevi, Government Advocate for R1

ORDER

This Writ Petition has been filed challenging the order passed by the 2nd respondent dated 23.03.2016, rejecting the request made by the petitioner for allotment of one plot under ex-owner category and consequently, direct the 2nd respondent to allot one plot under the Ex-owner category in the Nolambur Neighbourhood Scheme forthwith.

2. The brief facts of the case of the petitioner is as follows:

(i) The petitioner's grandfather Ekambaram had purchased an extent of 1.37 acres of land in S.F.No.338/1, at Nolambur Village, vide Sale Deed dated 22.10.1936. On 30.12.1985, after the demise of his grandfather, the 2nd respondent Housing Board had acquired the aforesaid land for Nolambur Neighbourhood Scheme and passed an Award. On 25.02.1992, in the similar circumstances, the 2nd respondent had issued a Certificate to his father's brother



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viz., Raju for allotment of one plot under the Ex-owner category stating that the acquired land was used under the Ambattur Neighbourhood Scheme. However, the 2nd respondent failed to allot the land to the petitioner's father. Therefore, the petitioner's father had filed W.P.No.653 of 2001, to direct the respondent to allot one plot in the said scheme under the Ex-owner category. This Court, by order dated 12.01.2001, disposed of the writ petition, directing the respondent to consider his application and allot one plot. Thereby, the petitioner's father sent representation on 29.01.2001 for allotment of plot.

(ii) The said representation was kept pending for more than two years and hence, the petitioner's father filed another W.P.No.13824 of 2003 to re-convey the land. This Court, by an order dated 30.04.2003, directed the respondent to consider his representation. However, the petitioner's father was neither allotted with the plot nor the respondents had considered the representation of the petitioner's father for allotment of one plot. Since no action has been taken, once again, the petitioner's father sent another representation dated 12.09.2011. To consider the said representation dated 12.09.2011, the petitioner's father also filed W.P.No.6016 of 2012. This Court, vide order dated 01.08.2013, directed the respondents to pass appropriate



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orders on the said representation. On 25.09.2013, the 2nd respondent has passed a non-speaking order, rejecting the petitioner's father's claim.

(iii) Against the aforesaid order, the petitioner's father once again, filed W.P.No.10198 of 2014. This Court, by order dated 05.11.2015, allowed the said writ petition and quashed the order dated 25.09.2013 and remitted the matter to the 2nd respondent. The 2nd respondent, after providing opportunity of personal hearing to the petitioner's father, by letter dated 23.03.2016, rejected the petitioner's father claim. Since the petitioner's father died on 21.12.2016, the petitioner as a legal heir, having subsisting right to take up the issue, had filed the present writ petition, challenging the said impugned order passed by the 2nd respondent dated 23.03.2016.

3. (i) The learned counsel appearing for the petitioner submitted that the 2nd respondent has allotted plots to various persons under Ex-owner category, therefore, the reason set out in the impugned order is unsustainable. The 2nd respondent, earlier communicated to the petitioner's father stating that they will allot the plot under ex-owner category and had sought for NOC, clearance and obtained documents for the said purpose but failed to allot the plot.



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(ii) Learned counsel for the petitioner would further submit that the petitioner's father had approached this Court as many as four times from 2001 and though obtained orders, his request has been denied. In any of the proceedings, they have raised the issue of their power in allotment. The impugned order has been made with ulterior motive and it is vindictive and discriminatory in nature.

4. (i) The learned counsel for the respondents/Housing Board would submit that the Tamil Nadu Housing Board has acquired total extent of lands of 539.39 acres of Nolambur Village, Ambattur Taluk, including the petitioner's lands and taken possession of those lands on 23.01.1986 itself. The compensation was paid to the petitioner's father and one Raju. who was the brother of petitioner's father (each $\frac{1}{2}$ share). The acquired lands including the petitioner land was fully utilized for Nolambur Phase I Scheme. The approved residential plots were allotted to the general public and possessions were also handed over to them. Further, the road and park site was also handed over to the Villivakkam Panchayat Union on 01.03.2002 itself and there is no land left out for allotment to the petitioner under ex-owner category.



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(ii) Learned counsel for the respondents would further submit that the plots under ex-owner category would be allotted only if the ex-owners are very poor and having not more than 0.10 acres of land and they are depending on the land for their livelihood. There is no provision for allotment of plot/flat under ex-owner category as mandatory. However, the petitioner does not fall within that category.

(iii) Learned counsel would further state that the Government in their letter dated 14.02.1983, opined that the preference shown to all the ex-owners in the allotment as a matter of right may negative the very purpose of lands for providing houses to the houseless. Such preferential allotment of plot/flat to ex-owner can be considered only in rare case, where the Board and the Government had convinced that hardship has been caused to the party (the ex-owner) on account of acquisition of land from him/her and under such circumstances, allotment can be made in any scheme area without any concession as to pricing.

(iv) Learned counsel for the respondents/Housing Board would further submit that though the petitioner's father approached this Court by filing series of writ petitions, and got order of this Court to consider their claim, the Board has rejected their claims since it was not feasible for



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compliance. The petitioner has filed the present writ petition also for similar relief as sought in the earlier writ petitions. As of now, there is no plot available in the Nolambur Phase I and II scheme and there is no provision for allotment of plot/flat under ex-owner category as mandatory. Therefore, the 2nd respondent has passed the impugned order as per the guidelines for allotment of plots/flats/houses under ex-owner category issued by the 1st respondent.

5. In reply to the above contention of the learned standing counsel for the respondent/Housing Board, learned counsel for the petitioner would submit that the petitioner enquired with few of the neighbours and confirmed that there are still unsold plots available in the layout and also produced records and photographs to show that still the plots are available in the said scheme. He would further state that he visited the site and took pictures where the TNHB Board had affixed in the site mentioning that the land belongs to them and trespassers will be prosecuted, which means that these lands are still held by the Board only. Further, a commercial plot is available in S.No.7 at Nolambur Neighbourhood Scheme Phase-II adjacent to plot Nos.71 and 72 and one plot adjacent to plot No.73A and 73 wherein the petitioner's father had been requesting since 2001. Therefore, the learned counsel would pray for



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allotting one plot for the petitioner in those unsold plots. Further, there are more than 25 lot available in Ayappakkam Neighbourhood schemes, few plots more particularly Plot 3/C1- 486 measuring about 2000 sq.ft. At J.J.Ngar Scheme. Therefore, they can very well allot a plot to the petitioner under this category. Therefore, he would seek to allot one plot for the petitioner in those unsold plots and no prejudice would be caused to the respondents are there are may of unsold plots.

6. Heard both sides and also perused the materials available on record.

7. I is not in dispute that the land belonging to the petitioner's father was acquired by the TamilNadu Housing Board for Nolambur Phase I Housing Scheme in the year 1986 and compensation was also paid to the petitioner's father. The approved residential plots were allotted to the general public and possessions were also handed over to them. Further, only if the ex-owner is having not more than 0.10 acres of land and that they are very poor and depending on the land for their livelihood, the plots under ex-owner category



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would be allotted. The petitioner does not fall within the category and there is no provision for allotment of plot/flat under ex-owner category as mandatory.

8. Further, the Government vide letter dated 14.02.1983, had opined that preferential allotment of plot/flat to ex-owner can be considered only in rare case. As contended by the learned Standing Counsel, plots cannot be allotted to all the ex-owners as a matter of right, as it may negative the very purpose of lands for providing houses to the houseless. Only, when the Board and the Government was convinced that hardship has been caused to the ex-owner on account of acquisition of land from him/her, allotment can be made in any scheme area without any concession as to pricing. In the present case, it is not so.

9. The petitioner is not very poor and suffering for their livelihood. The Government had carefully considered the request of the petitioner and only thereafter, rejected the request of the petitioner. The allotment to ex-owner can be considered only for the deserving ex-owners. Only as per the guidelines for allotment of plots/flats/houses under ex-owner category issued by the 1st respondent, the 2nd respondent has passed the impugned order, rejecting the



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request of the petitioner. If the claim of the petitioner is considered, it would amount to opening a floodgate, causing serious problem and prejudice to the Housing Board. Therefore, this Court is of the opinion that there is no infirmity or illegality in the impugned order passed by the 2nd respondent.

10. In the result, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.06.2024

Indes:Yes/No
Speaking order/Non-speaking order
vsi/sk

To

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J.NISHA BANU, J.

vsi/sk

Pre-delivery Order
in **W.P.No.11875 of 2019**

03.06.2024