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W.A.No.1347 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.10.2024

Pronounced on : 28.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.A.No.1347 of 2022

and

C.M.P.Nos.8616, 8617 & 8951 of 2022

S.Ganesan

Vs.

... Appellant

1. Tamil Nadu Housing Board,
Represented by its Managing Director,
Nandanam, Chennai – 600 035.

2. The Executive Engineer &
Administrative Officer,
K.K.Nagar Division,
Tamil Nadu Housing Board,
Housing Board Complex,
Anna Nagar, Chennai – 600 040.



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3.The Executive Engineer,
Sites and Service Division,
K.K.Nagar Division,
Tamil Nadu Housing Board,
Housing Board Complex,
Anna Nagar, Chennai – 600 040.

4.The Secretary & Personnel Officer,
Tamil Nadu Housing Board,
Nandanam, Chennai – 600 035.

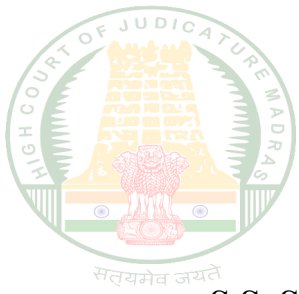
5.The Superintendent,
K.K.Nagar Division,
Tamil Nadu Housing Board,
Housing Board Complex,
Anna Nagar, Chennai – 600 040.

... Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 30.11.2021 in W.P.No.16149 of 2020 on the file of this Court.

For Appellant	:	Mr.R.Syed Mustafa
For Respondents	:	Mr.P.S.Raman Advocate General assisted by Mr.D.Veerasekaran Standing Counsel for TNHB

J U D G M E N T



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S.S. SUNDAR, J.

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This Writ Appeal is directed against the order of the learned Single Judge dated 30.11.2021 dismissing the writ petition filed by the appellant in W.P.No.16149 of 2020 filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order of the 4th respondent dated 19.10.2020 and consequential order dated 14.10.2020 passed by the 2nd respondent and to direct the 1st respondent to register the sale deed in favour of the appellant in respect of Plot No.PC-16, MMDA Colony, Arumbakkam, Chennai.

2.A commercial plot bearing Plot No.PC-16 at Arumbakkam Village belongs to the Tamil Nadu State Housing Board was brought to public auction. It is not in dispute that the appellant became the successful bidder in the auction conducted in the year 1986 by the 3rd respondent and he was allotted the commercial plot for a sum of Rs.4,78,921.95. As per the terms and conditions, the appellant was directed to pay 25% of the cost of plot amounting to Rs.1,19,731/- towards initial deposit as per the provisional order of allotment dated 23.12.1986. However, due to financial constraints,



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it is stated by the appellant that he was unable to pay the said amount despite time was given. Therefore, the allotment was cancelled by the 2nd respondent by order dated 01.06.1987.

3.However, the appellant submitted a representation on 27.01.1988 seeking extension of time to pay the initial deposit. The 2nd respondent, by communication dated 22.11.1993, permitted the appellant to pay the initial deposit along with interest @ 12% p.a. and revocation fee of Rs.5,000/-. It is admitted that the appellant paid a partial amount and agreed to pay the remaining amount with interest as suggested. It is stated by the appellant that, upon partial payment, the 2nd respondent passed an order dated 04.02.1994 revoking the order of cancellation of allotment.

4.Even after revocation of the order cancelling allotment, it is admitted that the appellant remitted only a sum of Rs.30,000/- towards interest and sought for permission to pay the remaining amount in installments. Thereafter, the 2nd respondent passed an order on 28.02.1994 permitting the appellant to pay the balance cost of the plot within a period of



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five years on monthly installments of Rs.8,260/- along with interest @ 12%

p.a., commencing from March, 1994. It is not in dispute that the appellant has taken possession of the plot in March, 1994. The appellant deposited the balance interest on the initial deposit of Rs.71,772/- and started paying monthly installments. The appellant has constructed a house in the property.

5. Even thereafter, the appellant committed default and the appellant was directed to settle the arrears of monthly installments by an order dated 12.12.1997. By a communication dated 27.02.1998, the appellant was called upon to pay a sum of Rs.77,300/- towards balance cost with interest and penal interest charges on or before 31.03.1998. After payment of monthly installments from 01.06.1994 to 31.03.1998, i.e., a sum of Rs.7,63,403/-, the appellant by a letter dated 07.11.2001 requested the respondent to execute a sale deed in his favour in respect of the subject plot. However, a revised working sheet was prepared by the respondent and the appellant was directed to pay a sum of Rs.15,26,023/- as on December, 2002. By a communication dated 17.08.2004, issued by the 2nd respondent, the appellant was informed that the allotment was cancelled as he did not pay the entire

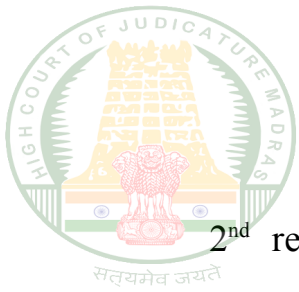


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amount in time. Subsequent representations of the appellant to reconsider were also rejected and the allotment was cancelled for the reasons stated in the earlier communication dated 17.08.2004.

6.The appellant filed a writ petition in W.P.No.30373 of 2005 challenging the same and obtained an interim order on 17.09.2005 on condition to pay a sum of Rs.21,07,348/- without prejudice to the rights of either parties. However, the 2nd respondent directed the appellant to withdraw the writ petition for them to consider the representation of the petitioner to pay the amount determined to revoke the cancellation of allotment. It is the case of the appellant that, it was only at the request of the respondents to withdraw the writ petition, the appellant withdrew the writ petition on 30.07.2010. However, no order was passed by the respondents in his favour any time thereafter.

7.The appellant preferred another writ petition in W.P.No.5531 of 2012 challenging the orders dated 17.08.2004 and 08.09.2005 passed by the



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2nd respondent. The said writ petition was allowed and the order impugned was set aside on the ground that the order was not passed adhering to the principles of natural justice. Hence this Court remitted the matter for fresh consideration by the 1st respondent after giving opportunity to the appellant.

8.It was pursuant to the order of this Court dated 24.02.2020 in W.P.No.5531 of 2012, the appellant was called upon to appear for enquiry on 02.06.2020 along with all necessary documents. The appellant thereafter submitted his explanation. After hearing the petitioner on 02.06.2020, it appears that the representation of the appellant was placed before a Committee and the Committee after deliberation formed an opinion that the Board would incur a great loss if the cancellation of allotment is revoked. Hence, the 2nd respondent confirmed the order of cancellation of allotment. The 2nd respondent directed the appellant to hand over the plot, as the allotment in his favour was cancelled by proceedings of Committee dated 19.09.2020. The 4th respondent rejected the request of the appellant seeking restoration of allotment of the subject plot and thereafter, the appellant filed the present writ petition in W.P.No.16149 of 2020.



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9.A detailed counter affidavit was filed by the 2nd respondent narrating several events, particularly the conduct of the appellant who failed to pay 25% of the cost of the plot and the first order of cancellation. It was pointed out that, despite several opportunities were given to the appellant to pay the dues in installments and thereafter on terms, the appellant did not pay the amount and therefore, it is contended by the respondents that the appellant is not entitled to any relief as he is a chronic defaulter. The respondents also came with a calculation to project that it is not possible to give fresh allotment for the price taking note of the original amount found due. In the counter affidavit filed in the Writ Court, the respondents contended that the cost of plot is more than Rs.3,40,00,000/- and the Board, which has taken a firm decision cancelling the allotment for non-payment of arrears within a reasonable time, would incur heavy loss in case the appellant is given the allotment taking note of the amount due with interest. Sum and substance, the contention of the respondents is that the appellant, who failed to pay the installments in due time despite several opportunities being provided to him, cannot be shown any indulgence by this Court. An additional counter was



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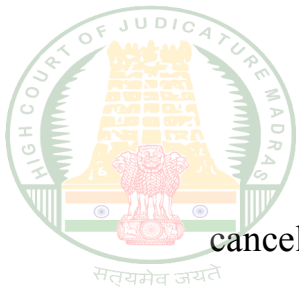
also filed not only reiterating the stand taken by them in the counter affidavit earlier filed, but also focusing on the huge revenue loss to the Board.

Learned Advocate General submitted that the market value as on date is around Rs.4.86 Crores.

10.Learned Single Judge, after elaborately considering the pleadings as borne out from records, dismissed the writ petition. However, the learned Single Judge directed the respondents to refund the amount already paid by the appellant with simple interest, if the amount is not refunded earlier.

11.Aggrieved by the same, the writ petitioner has preferred the above Appeal raising several grounds.

12.Normally, Courts will not interfere in this kind of matters, but for the facts admitted. The fact that the appellant got provisional order of allotment on 23.12.1986, is not in dispute. Even though the appellant committed default, the appellant was permitted to settle the entire dues in monthly installments. Even though there was order revoking the



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cancellation of allotment in February 1994, the appellant was permitted to remit 25% of the cost and the revocation fee by order dated 04.02.1994. The order dated 04.02.1994 reads as follows :

“I am to inform you that the cancellation orders issued by this office in the reference first cited is hereby revoked and the plot C.P.16 at Arumbakkam is restored in your favour since you have paid the initial deposit amount of Rs.1,19,731/- vide Pay order No.196478, dt.4.2.94 and paid the revocation fee of Rs.5,000/- under Receipt No.0066884, dated 4.2.94.”

Thereafter, by proceedings dated 28.02.1994, the appellant was informed confirming the revised allotment subject to payment of interest and other amounts indicated in the order. By proceedings dated 08.11.2004, the Executive Engineer and Administrative Officer of Housing Board required the appellant to pay a sum of Rs.20,77,911/- for the plot to reconsider to withdraw cancellation of allotment. Thereafter, by a communication dated 19.11.2004, the appellant expressed his willingness to pay the amount as demanded in 10 days' time.

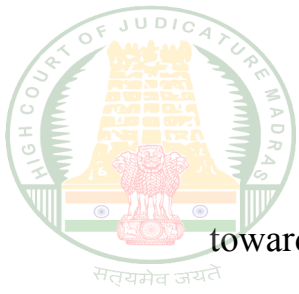
13.From the sequence of events, it is seen that the respondents are also to be blamed for giving hope to the appellant by granting time on several



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occasions. As pointed out earlier, the appellant has given several instances and pointed out circumstances to indicate that the appellant was always made to believe that the allotment would be restored if he pays the amount due with interest. The learned Judge who heard the writ petition observed that the 2nd respondent committed serious illegality in the matter of revocation of cancellation and found fault with the respondents for not taking timely action for bringing the property for public auction to realise the current value of the plot to the Board. The learned Judge further felt that the Executive Engineer and Administrative Officer has failed to consider the sequence of events before granting time to the writ petitioner. After hearing both sides elaborately, this Court found that the appellant is not entitled to any indulgence. However, the fact that substantial payments had been made immediately after allotment. Subsequently, permission was granted to pay dues in monthly installments. Even though the appellant is not entitled to any concession, learned counsel appearing for the appellant would accept the amount towards market value to be reworked taking note of the money which the appellant had already paid. It is in the said circumstances, taking into account the market value as on date and giving some concession



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towards part payments paid in intervals by the appellant, this Court is inclined to allow the writ petition, provided the appellant pays a sum of Rs.3,00,00,000/- [Rupees Three Crores only] within the period as indicated below.

14. Accordingly, this Writ Appeal is allowed and the order of learned Single Judge dated 30.11.2021 is set aside. The appellant is now permitted to pay the said sum of Rs.3,00,00,000/- (Rupees Three Crores only) in three monthly installments in the following manner :

- i. 1st installment for a sum of Rs.1,00,00,000/- (Rupees One Crore only) on or before 15.02.2025.
- ii. 2nd installment for a sum of Rs.1,00,00,000/- (Rupees One Crore only) on or before 15.03.2025.
- iii. 3rd installment for a sum of Rs.1,00,00,000/- (Rupees One Crore only) on or before 15.04.2025.

Upon payment of the last installment, the respondents shall execute the sale deed in respect of the plot in favour of the appellant or his nominee within a period of four weeks from the date of remittance of the last installment. No



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costs. Consequently, connected miscellaneous petitions are closed.

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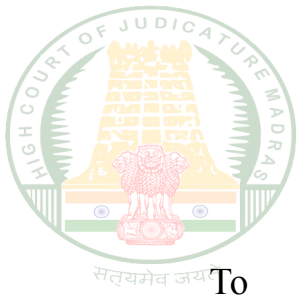
(S.S.S.R., J.) (A.D.M.C., J.)
28.01.2025

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Internet : Yes

Index : Yes

Neutral Citation : Yes



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To
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S.S. SUNDAR, J.
and
A.D. MARIA CLETE, J.

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Judgment in
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28.01.2025