



WP(MD) No.20235 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON
25.11.2024

PRONOUNCED ON
06.01.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.20235 of 2016

G.Murukesan

... Petitioner

1.State of Tamil Nadu,
Rep., by its Secretary to Govt.,
Housing and Urban Development Dept.,
Fort St., George,
Chennai – 600 009.

2.The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai – 600 035.

3.The Executive Engineer & Admn., Officer,
Madurai Housing Unit,
Tamil Nadu Housing Board,
Ellis Nagar, Madurai – 625 016.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the third respondent to execute a modified deed in favour of the petitioner for the 772 sq.ft., dropped in the MDU394 utchappatty plot in the sale deed 1082/2014 executed on 26.02.2014 at Thirumangalam Sub Registrar office to the petitioner.



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For Petitioner : Mr.R.Ramasamy

For Respondents: Mr.R.Suresh Kumar AGP for R1
Additional Government Pleader

Mr.R.Sivakumar Standing counsel for R2&R3

ORDER

The petitioner had approached this Court seeking for a mandamus to direct the third respondent for execution of a modified sale deed to include an extent of 772 sq ft., in the sale deed executed on 26.02.2014.

2. Heard Mr.R.Ramasamy, learned counsel appearing for the petitioner, Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the first respondent and Mr.R.Sivakumar, learned Standing counsel appearing for the second and third respondents.

3. Mr.R.Ramasamy, learned counsel appearing for the petitioner would submit that the third respondent herein had called for a sealed tender cum open auction sale of a commercial site. The petitioner had submitted his bid. The upset price was fixed at Rs.10,17,000/- and the petitioner had quoted Rs.12,00,000/- and he being the highest bidder, was declared as the



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successful bidder. The petitioner had made the necessary payments as envisaged under the tender notice. However, the third respondent by communication dated 20.11.2012, had rejected the proposal without giving any valid reason. Hence, he had challenged the same before this Hon'ble Court in W.P(MD).No.16769 of 2012.

4. The third respondent filed counter indicating that an extent of land was shown higher than what was available and even the upset price was fixed only for the lesser extent of land and since there was certain discrepancies, the said auction was recalled with respect to the said land. However, considering the fact that the petitioner was willing to take the lesser extent of land, this Court had directed the respondent to execute a sale deed in favour of the petitioner. However, after execution of the sale deed, the petitioner found that there existed the piece of land measuring an extent of 772 sq.ft., which was the land that there was claimed to have been erroneously included. He would further submit that the respondent had fraudulently represented the Court, what was actually available is only 1938 sq.ft., wherein on facts, it was shown that there is an extent of 2710 sq.ft., and therefore, the balance land ought to be included in favour of the



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petitioner by considering the fact that the petitioner's offer was for the entire extent of 2710 sq.ft. Therefore, he made a representation to the respondent, which remained unconsidered, hence he approached this Court seeking for a direction to the respondents to execute the sale deed for an extent of 2710 sq.ft., which had been fraudulently excluded by the third respondent.

5. Countering his arguments, the learned Senior counsel appearing for the respondents 2 & 3 would submit that originally what was approved for the sale of 1938 sq.ft., of commercial site, however, erroneously the third respondent had been issued a auction notice for an extent of 2710 sq.ft. Since, there was an erroneous extent mentioned in the auction sale notice, the second respondent had refused to approve the auction sale. The petitioner challenging the same had approached this Court earlier in W.P.(MD).No.16769 of 2012 and when the same was brought to the notice of this Court, the petitioner had given an undertaking that he would take the sale of 1970 sq.ft., for the sum which had already made a bid and had given up his right to claim the balance land. In such an event, this Court had given a direction to the respondent to execute the sale deed for a lesser extent of land. But however after execution of the sale deed, the petitioner



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had been in illegal encroachment of the adjacent land and now try to make a claim that the petitioner is entitled for having title even in respect of the excess land. He would submit that the petitioner's rank is encroacher in the balance land. That apart, he would submit that when he had given up his right and had restricted his claim to an lesser extent of land, now the petitioner cannot claim a larger extent of land. Therefore, the present Writ Petition should not be entertained by this Court.

6. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

7. The third respondent had issued a tender notice for sale of a commercial site measuring a extent of 2710 sq.ft., and the petitioner was declared as successful bidder as he had bid the highest amount. The sale was not approved, as there was certain variations in the extent of land.

8. It is to be noted that in the earlier round of litigation, the petitioner had agreed to take the lesser extent of land instead of the land, which was



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advertised and had also agreed to forgo the remaining extent of 772 sq.ft.

This Court in its order dated 18.02.2013, had directed the third respondent to execute a sale deed for a lesser extent. For better appreciation, the relevant paragraphs in the aforesaid order is extracted hereunder:-

6. The only reason which weighed with the Auction Sale Confirmation Committee to cancel the auction appears to be the variation in the matter of measurement of the area offered for sale. It is the contention of the Housing Board that the petitioner would demand allotment of 2710 square feet of land for a sum of Rs.12,00,000/- (Rupees twelve lakhs only). The Board would be in a position to allot only 1938 square feet of land, which is the area of the shop site bearing No.MDU-394 at Uchappatty. There are no other reasons mentioned in the proceedings of the Auction Sale Confirmation Committee. Now that the petitioner himself is prepared to take 1938 square feet of land instead of 2710 square feet and agreed to forgo the remaining extent of 772 square feet, there is no difficulty to accept his offer. Since the only ground for cancellation of the bid was on account of the wrong description of area and in view of the undertaking given by the petitioner that he is prepared to accept the lesser area for the very same amount, necessarily the matter requires fresh consideration by the Housing Board.

Disposition:

7. In the result, the impugned order dated 20 November,



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2012 is quashed. The Tamil Nadu Housing Board is directed to consider the case of the petitioner for allotment of 1938 square feet of land for a sum of Rs.12,00,000/- (Rupees twelve lakhs only) on the basis of the offer made by him. The Tamil Nadu Housing Board is further directed to pass appropriate orders in this regard, as expeditiously as possible and in any case, on or before 08 April, 2013.

9. This specific undertaking given by the petitioner, had been recorded by the learned Single Judge of this Court. Having given an undertaking, it is not open to the petitioner to make a claim for the remaining land, which he had forgone. In view of the same, I do not find any reasons warranting issuance of mandamus as prayed for by the petitioner.

10. In fine, the Writ Petition is dismissed. However, there shall be no order as to costs.

06.01.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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K.KUMARESH BABU.,J.

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To

- 1.State of Tamil Nadu,
Rep., by its Secretary to Govt.,
Housing and Urban Development Dept.,
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Chennai – 600 009.
- 2.The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai – 600 035.
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Madurai Housing Unit,
Tamil Nadu Housing Board,
Ellis Nagar, Madurai – 625 016.

*A Pre-delivery order made in
W.P.(MD)No.20235 of 2016*

06.01.2025