

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-9-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.36727 of 2006

and

MP Nos.1 of 2006 and 1 of 2007

S.Manoharan ... Petitioner

vs

1.The Chairman
Tamil Nadu Housing Board
Nandanam
Chennai 600 035.

2.The Executive Engineer
Tamilnadu Housing Board
Phase I, Sathuvachari
Vellore 632 009.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents herein to execute the sale deed in respect of the Plot measuring an extent of 259.52 square meter at Plot No.S-3 at VNHS Phase-III, Sathuvachari Village, Vellore, to and in favour of the petitioner herein.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.N.Kannadasan

Additional Advocate General
for Mr.R.Girirajan

ORDER

Seeking a writ of mandamus directing the respondents to execute the sale deed in respect of the plot measuring an extent of 259.52 square meter at Plot No.S-3 at VNHS Phase-III, Sathuvachari Village, Vellore, in favour of the petitioner, this writ petition has been brought forth.

2.The affidavit in support of the petition and the counter affidavit are perused. The Court heard the learned Counsel for the petitioner and also the Additional Advocate General for the respondents.

3.The case of the petitioner as could be seen, is that a plot measuring an extent of 259.52 Square Meter at Plot No.S-3 at VNHS Phase-III, Sathuvachari Village, Vellore, was allotted to the petitioner by the second respondent as per G.O.No.2D 256, dated 5.7.2002, under the Social Welfare Category; that the plot was a commercial one; that based on the

Government of Tamilnadu order, the allotment order was issued on 18.3.2003; that pursuant to the same, the petitioner was given possession of the above plot after executing the necessary lease cum sale agreement which contains the terms and conditions of the allotment order; that he also made the initial deposit of Rs.1,19,000/- as per the conditions of the allotment order; that he was directed to pay a sum of Rs.21,212/- every month for a period of 36 months with interest at 13% per annum towards the balance cost of the above said plot; that accordingly, the entire amounts have been paid; that once the payments have been made pursuant to the agreement, a duty was cast upon the respondents to execute the sale deed; that it is not in controversy that the entire sale consideration has been paid; but, the sale deed has not been executed; that under the circumstances, a legal notice was issued on 10.7.2006; that even then, the respondents have not done so; that on the contrary, they have issued a reply notice on 20.7.2006, containing untenable allegations; that according to the respondents, the final cost has not been fixed; but, it is not correct; that once the entire payments have been made as per the agreement between the parties, they are bound to execute the sale deed, but not done so, and hence, a direction has got to be issued by way of a writ.

4.The learned Counsel for the petitioner reiterated the averments found in the affidavit, and would also further submit that in the instant case, it is not in controversy that the entire payment has been made; that when a notice was issued, there was a reply stating that the final cost has got to be fixed; that the final cost if to be fixed as per the stipulations of the conditions, there should have been a claim for enhancement of compensation from the land owners; that in this case, it is not so; that it is nothing but evasion on the part of the respondents in not doing so, and hence, a direction as requested by the petitioner, becomes necessary.

5.Contrarily, the learned Additional Advocate General would submit that it is true that the allotment was made; that even a reading of the allotment order would clearly reveal that the final cost has to be fixed; that it is also true that he has made payments; but, the final cost has not been fixed for which purpose, the Department has addressed a communication to the Governments, and the orders are awaited; that only then, the final cost would be fixed; that on fixation of the final cost, a demand could be made, and the petitioner has to make payment; that at this stage, no question of execution of the sale deed would arise; that under the circumstances, the writ petition itself is premature, and it has got to be dismissed.

6.The Court paid its anxious consideration on the submissions made.

7.It is not in controversy that a plot was allotted in favour of the petitioner as referred to in the petition, under the Social Welfare Category. The allotment order is also perused, which would speak that after the payment of the initial deposit, he has to make a payment of Rs.21,212/- every month for a period of 36 months with interest at 13% per annum towards the balance cost of the above said plot. It is also not in controversy that the entire payment has been made. The only contention put forth by the petitioner's Counsel is that once the entire payment has

been made, there is no question of fixation of any balance of consideration that would arise; and that even the reading of the allotment order would clearly reveal that re-fixation would arise only if any claim for enhancement of compensation is pending. According to him, it is not the case of the first respondent department that it was pending so. In such circumstances, this Court is unable to countenance the same. The very reading of the allotment order would clearly reveal that the re-fixation has got to be done. What was recovered from him was not the final cost. Now, the final cost is yet to be fixed. It is also brought to the notice of the Court by the learned Additional Advocate General that for the purpose of fixation of the final cost, the Government has been addressed by the department, and they are awaiting the orders. Under the circumstances, it would be fit and proper to issue a direction to the respondents to fix the final cost within a period of twelve weeks herefrom and make a demand whereby the payment has got to be made by the petitioner. Accordingly, a direction is issued. The petitioner is also directed to make payment of the same within a period of eight weeks therefrom. On being performed, there cannot be any impediment for the department to execute the sale deed as expeditiously as possible preferably within a period of twelve weeks therefrom. Accordingly, this writ petition is disposed of. No costs. Consequently, connected MPs are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To:

1.The Chairman
Tamil Nadu Housing Board
Nandanam
Chennai 600 035.

2.The Executive Engineer
Tamilnadu Housing Board
Phase I, Sathuvachari
Vellore 632 009.

1 cc To Mr.K.Govi Ganesan, Advocate, SR.60669.
1 cc To Mr.R.Girirajan, Advocate, SR.60502.

WP No.36727 of 2006

TEJ(CO)
RVL 05.10.2007

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