

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-2-2008

CORAM

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR

W.P.No.3099 of 2004
W.P.M.P.No.2396 of 2007

V. Lakshmi ... Petitioner

Vs.

1. State of Tamil Nadu,
rep.by Commissioner &
Secretary to Government,
Housing & Urban Development Department,
Fort St.George,
Chennai - 600 009.
2. Tamil Nadu Housing Board,
rep.by its Chairman and Managing Director,
Anna Salai,
Nandanam,
Chennai - 600 035.
3. Amavasai Respondents

Prayer: This writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari mandamus calling for the records of the first respondent in connection with the letter bearing reference No.26897/HB.5(1)03-1, dated 22.1.2004 and quash the same and direct the respondents 1 and 2 to restore the allotment made in favour of petitioner in 1988 and issue such further or other orders or directions as this Court deems fit and proper in the facts and circumstances of the case, award costs.

For Petitioner : Mr.V. Prakash,
Senior Counsel
for Mr.P.Chandrasekaran

For 1st Respondent : Mr.Gopinathan,
Addl.Government Pleader

For 2nd Respondent : Mr.R.Girirajan

For 3rd Respondent : Mr.R.Natarajan

O R D E R

By consent of both sides, the writ petition itself was taken up for final disposal.

2. Prayer in the writ petition is to quash the order dated 22.1.2004 issued by the first respondent and direct the respondents 1 and 2 to restore the allotment made in favour of the petitioner in the year 1988.

3. The brief facts necessary for disposal of the writ petition are as follows:

(a) The Tamil Nadu Housing Board made allotments of plots in Vellore neighbourhood Phase-I, Phase-II, Phase-III, Phase-IV and Phase-V by drawal of lots as well as on applications. Some of the plots were allotted on application, which were not found fit for allotment by drawal of lots. In Phase-III, three plots are situated in S.No.147/2 which were acquired from one Krishnaswamy Mudaliar, the combined extent of which is 28 cents. The said plots are rocky in nature. Therefore, the Housing Board decided not to allot the said plots by drawal of lots and resorted to lease-cum-sale of the said plots and one of the said three plot is plot bearing No.508C.

(b) Petitioner applied to the Tamil Nadu Housing Board for allotment of the said plot in the year 1988 and the first respondent by G.O.Ms.No.1373 Housing and Urban Development Department dated 17.10.1998 allotted the plot to the petitioner, having an area of 832 sq.mtrs. Thereafter a regular allotment order was issued by the third respondent on 29.11.1988 based on the filled-in application submitted by the petitioner.

(c) The petitioner made full payment towards cost of the said plot, which was approximately Rs.1,11,000/-. According to the petitioner, the Housing Board permitted the petitioner to erect a fence and compound wall around the plot and towards that petitioner spent Rs.25,000/-. In spite of that petitioner could not enjoy the plot on account of the failure of the Housing Board to evict the third respondent herein.

(d) The third respondent filed O.S.No.28 of 1992 on the file of the District Munsif Court, Vellore, against the petitioner's husband viz., A.Venkatesan for permanent injunction restraining him from interfering with his possession and enjoyment of the suit property, which includes the property allotted to the petitioner.

On 10.7.1997, the said suit was dismissed. The appeal filed in A.S.No.62 of 1997 on the file of the District Court, Vellore was also dismissed on 29.11.2001.

(e) The third respondent claimed that the land comprised in Plot NO.508C is a poromboke land, where she had been residing for several years. He filed W.P.No.1642 of 1992 before this Court and challenged the allotment made in favour of the petitioner. Pending disposal of the writ petition an injunction not to interfere with the possession was granted by this Court on 18.8.1997. The said writ petition was dismissed as withdrawn giving liberty to the petitioner to move the appropriate authority.

(f) Thereafter the third respondent filed O.S.No.899 of 1997 for permanent injunction restraining the defendant from interfering with his possession including the plot allotted to the petitioner and for direction to the first and second respondents herein to cancel the allotment by way of mandatory injunction. The petitioner herein was arrayed as third respondent. He also filed I.A.No.1240 of 1997 for interim injunction. On 19.12.1997 an interim injunction as prayed for was granted. Subsequently the said suit was withdrawn by the third respondent with liberty to file a fresh suit.

(g) Petitioner filed O.S.No.1120 of 2000 against the Tamil Nadu Housing Board and the Executive Engineer Housing Unit, Sathuvachery, Vellore-9, for issuing a mandatory injunction to remove the encroachment made by the third respondent and the said suit is said to be pending. When the suit was pending, petitioner received the impugned order from the Tamil Nadu Housing Board, dated 9.10.2000 cancelling the allotment of plot made in her favour.

(h) The said order of cancellation was challenged by the petitioner in W.P.No.17863 of 2000 and this Court directed the petitioner to invoke the remedy under section 86 of the Tamil Nadu Housing Board Act, before the Government by filing appeal. Petitioner filed appeal before the first respondent on 7.11.2000. When the appeal was pending the said plot was allotted to the third respondent through G.O(2D)No.122 dated 4.6.2003.

(i) The said order was challenged by the petitioner in W.P.No.18626 of 2003. This Court by order dated 21.11.2003, set aside the allotment in favour of the third respondent and directed the petitioner to submit a copy of the appeal dated 7.11.2000 to the first respondent within one week and the first respondent was directed to pass final orders on the appeal, giving opportunity of hearing to the petitioner as well as the third respondent. Petitioner submitted a representation on 15.12.2003 and one more copy of the appeal to the first respondent on 7.1.2004. The said appeal was rejected by the impugned order dated 22.1.2004 stating that the petitioner should not own a house in any corporation, special grade and 'A' grade municipality or in any capital town in the country either in his/her name or in the name of spouse or

minor children. The said order is challenged by the petitioner on the ground that similar notices issued for cancellation of allotment were withdrawn and the impugned order is passed only to favour the third respondent to file number of civil suits and lost.

4. Second respondent filed counter affidavit by narrating the suits and writ petitions filed by the petitioner as well as the third respondent and also stated that the plot was allotted to the petitioner under Government discretionary quota on 17.10.1988 by the Government. The petitioner at the time of allotment and subsequently, suppressed the fact of allotment of plot No.919 in Vellore Neighbourhood Scheme Phase-II in favour of petitioner's husband viz., A.Venkatesan. Thus, the petitioner obtained double allotment for her family and the allotment made in favour of the petitioner being the last one, the same was cancelled. In the application form submitted for allotment the petitioner has given a different residential address and in the sale deed, lease-cum-sale deed and sale agreement the petitioner's residential address is given as plot NO.919, which shows that they are living together. As per the undertaking given in the application form in favour of the petitioner's husband, if any allotment is received by suppression of facts, the same is liable to be cancelled, thus petitioner's allotment was cancelled.

5. In the counter affidavit filed by the third respondent it is stated that the petitioner suppressed the fact of having an allotment in favour of her husband at the time of submission of application and the petitioner also gave a declaration empowering the Board to cancel the allotment, if any suppression is found subsequently. The plot in favour of petitioner's husband was allotted in the year 1980 and the sale deed was executed in his favour on 20.10.1989. The third respondent is given allotment of the said plot after cancelling the allotment made to the petitioner through G.O.(2D)No.122, dated 4.6.2003, pending disposal of the appeal preferred by the petitioner. This Court directed the first respondent to dispose of the appeal after affording opportunity to the petitioner and the third respondent and by order dated 21.11.2003 made in W.P.No.18626 of 2003, this Court made it clear that the allotment made in favour of the petitioner or in favour of third respondent shall be subject to the orders that may be passed by the first respondent in the said appeal. It is also pointed out in the counter affidavit that the Government issued G.O.Ms.No.2063 Housing and Urban Development Department dated 9.11.1979 for allotment of plots by the Housing Board, wherein it is stated that the applicant should not own a house in any Corporation, Special grade and 'A' grade municipality or in any capital town in the country either in his/her name or in the name of spouse or minor children and in this case, petitioner's husband having been allotted a plot already as stated supra which was suppressed by the

petitioner while submitting application and all time subsequently got an allotment and the same being noticed by the Housing Board, notice was issued to the petitioner and thereafter it was cancelled. It is further stated in the counter affidavit that even now petitioner is not denying the fact of allotment of a plot in favour of her husband prior to the allotment of plot to her. Hence the petitioner is disqualified from submitting application for allotment and therefore there is no illegality in cancelling the allotment order by the Tamil Nadu Housing Board.

6. The learned Senior Counsel appearing for the petitioner submitted that the Government having allotted the land, the Housing Board has no jurisdiction to cancel the same and the cancellation also cannot be made at the instance of the third respondent on whose objection only the second respondent initiated cancellation proceeding and ultimately cancelled the allotment and the same is now allotted to the third respondent. The learned Senior Counsel further submits that allotment made in the year 1988 is cancelled in the year 2000 and the respondents are estopped from cancelling the allotment after all these years.

7. The learned counsel for the second respondent on the other hand submitted that the petitioner has given a declaration in the application that if any suppression is found it is open to the Board to cancel the allotment. Petitioner's husband having been allotted a plot already, which is not disclosed by the petitioner and the same having been found by the Housing Board, the Housing Board exercised its right to cancel the allotment, which was obtained by suppression of fact.

8. The learned counsel appearing for the third respondent also argued on the above line supporting the arguments of the second respondent and prayed for dismissal of the writ petition.

9. I have considered the rival submissions made by the learned counsel for the petitioner as well as respective respondents.

10. Petitioner submitted an application to the Tamil Nadu Housing Board on 24.5.1988 without disclosing the allotment of a plot in favour of her husband and requested the Managing Director to forward the application to the Government with necessary recommendation. The Executive Engineer, Vellore Housing Unit, through letter dated 25.5.1988 addressed to the Chairman and Managing Director TNHB stated that plot No.508 A, B & C are vacant and the said plots may be allotted to the genuine persons for fetching revenue to the Board. The tentative cost of the plot was fixed as Rs.23,000/- per ground. The Chairman and Managing Director, Tamil Nadu Housing Board, through letter dated 18.8.1988

addressed to the Secretary to Government, Housing and Urban Development Department, Chennai-9, stated that the above plots viz., 508A, B & C may be allotted to eligible persons. The application submitted by the petitioner was also enclosed for consideration of allotment. Thereafter the Government issued G.O.Ms.No.1377 Housing and Urban Development Department dated 17.10.1988, stating that the Managing Director has recommended that the said plot viz., Plot No.508C may be allotted to the petitioner and consequently the plot was allotted to the petitioner, subject to usual terms and conditions prescribed by the Tamil Nadu Housing Board, in its allotment rules. The Chairman and Managing Director, TNHB was requested to take action as ordered in paragraph 2 i.e., as per allotment rules.

11. In the file produced by the Tamil Nadu Housing Board, the allotment made in favour of the petitioner's husband viz., A.Venkatesan based on his application dated 10.12.1979 is also available. In the said application submitted by the petitioner's husband it is stated that no other plot is available in the name of his wife viz. Dhanalakshmi. On the said basis the petitioner's husband was allotted plot No.919 of Phase-II. A sale deed was also executed in favour of petitioner's husband on 19.10.1989. Thus it is beyond doubt that the petitioner's husband is having a plot, already allotted by the TNHB.

12. In the application submitted by the petitioner before TNHB on 24.5.1988, admittedly the petitioner has not disclosed the earlier allotment of plot made in favour of her husband. Therefore there is suppression of fact on the part of the petitioner and the same having not been disclosed, the petitioner's application was forwarded to the Government by the Managing Director of TNHB, pursuant to which plot was allotted to the petitioner subject to the terms and conditions prescribed by the TNHB in its allotment rules.

13. The allotment rules issued by the Government clearly states that a person seeking allotment of a plot of the Tamil Nadu Housing Board should not own a house in any Corporation, special grade and 'A' grade municipality or in any capital town in the country either in his/her name or in the name of spouse or minor children. The same is made clear in G.O.Ms.No.2063 Housing and Urban Development Department dated 9.11.1979. Thus the petitioner is ineligible as per the rules of allotment and her application having been submitted by suppression of fact, the allotment made in favour of the petitioner will not confer any right to claim that she should be permitted to retain the plot.

14. Further petitioner has signed a declaration form as required in the allotment order that if any suppression of fact is

found by the TNHB, the Board is entitled to cancel the allotment and the said declaration form is also signed by the petitioner on 1.12.1988. The said declaration given by the petitioner reads as follows:

"I declare that as on today, I or my wife or husband or any of my minor or dependant child does not own a house or house site or flat, and has also not been allotted any other house or house site or flat and remaining to take over.

I am aware that if at any time, it is found that this declaration given by me is incorrect or false, the Chairman, Tamil Nadu Housing Board may cancel the allotment made in my favour and resume possession of the site/building/flat and forfeit part or whole of the amount paid by me including the Earnest Money Deposit."

15. In the light of the above uncontroverted facts and the declaration given as stated supra, the petitioner has no right to apply for allotment and obtaining allotment by suppression of fact is liable to be cancelled. Accordingly the cancellation made by the second respondent and confirmed by the first respondent is perfectly in order.

16. In support of the cancellation the learned counsel for the second respondent cited the following decisions of the Supreme Court.

(i) In (1995) 5 SCC 313 (Chandigarh Housing Board v. Avtar Singh and Another) and in paragraph 4 the Supreme Court held thus,

"4. Having considered the facts and circumstances, we find that when the regulations prohibit allotment to wife/husband or dependants and if any one has got a house or a flat, by necessary implication both or all, except one among the members of the unit, are ineligible to make separate applications. There need not be any specific rule prohibiting making separate application in that behalf. So long as the couple are tied by marriage bond, both are bound by the regulations for allotment. Therefore, the cancellation per se is not illegal. The question then is whether the entire amount should be forfeited. Obviously, the power of forfeiture was intended to prevent fraud and malpractice in allotment and in case of positive finding in that behalf, courts would be loathe to interfere with the exercise of the power under Regulation 6(2).

(ii) In AIR 2000 SC 2616 = (2000) 6 SCC 415 (Chandigarh Housing Board v. Narinder Kaur Makol) in paragraph 12 and 13 it is held as follows:

"12. In our opinion, in view of the admitted fact that there is a residential flat on the second and third floors of the ground floor commercial plot, it must necessarily be held that the husband of the respondent owned a residential house within the territory in question and that therefore the respondent (wife of the first allottee) is not eligible for allotment of another residential plot from the said authority. It must be realised that these plots are allotted on concessional basis to the allottees by the public authority and the relevant regulations must therefore be interpreted in such a manner as to save (sic serve) their real purpose so that the plots are available, as far as possible, to the largest number of persons, and for preventing the same family members, husband or wife or dependants, as the case may be, from getting more than one plot or house, for the same purpose. We are of the view that the words "residential house" in Regulation 6(1) must be treated as including a flat constructed above the commercial flat on the ground floor. This will be so even if originally the plot was allotted for commercial purposes, if incidentally construction of residential flat above the ground floor commercial plot is permitted as per the plans. In other words, even though the plot is allotted as a commercial plot, if it is permissible to build a residential flat above the commercial plot, and is so constructed, then such a residential flat will come within the prohibition in Regulation 6(1).

13. We, are therefore, of the view that the declaration made by the respondent that her husband did not own a residential house was not correct. It may be a bona fide statement by her, but it does not in our opinion reflect the facts correctly. The cancellation of the allotment in favour of the respondent by the authorities on 15-12-1994 was therefore, justified."

(iii) The respondents are justified in relying on the undertaking given by the petitioner for cancelling the allotment as held by the Supreme Court in (2007) 4 SCC 410 (Shiv Kant Yadav v.

Indian Oil Corporation and others) in paragraphs 14 to 16 the Supreme Court held thus,

"14. There was a requirement to disclose the true and correct fact which does not appear to have been done.

15. The undertaking reads as follows:

"That I am fully aware that Indian Oil Corporation (name of the oil company) under its policy will not appoint me as their dealer/ distributor, if I am employed. I shall have to resign from the service and produce proof of acceptance of my resignation by my employer to Indian Oil Corporation Ltd. (name of the oil company) before issuance of letter of appointment for the dealership/distributorship.

That if any information/ declaration given by me in my application or in any document submitted by me in support of my application for the award of SKO/LDO dealership/distributorship or in this undertaking shall be found to be untrue or incorrect or false Indian Oil Corporation (name of the oil company) would be within its rights to withdraw the letter of intent/terminate the dealership/distributorship (if already appointed) and that, I would have no claim, whatsoever, against Indian Oil Corporation (name of the oil company) for such withdrawal/termination."

16. In view of the undertaking that if any factual misstatement or declaration is made that permits cancellation of the allotment. The order of the High Court does not suffer from any infirmity to warrant interference. The appeal is dismissed with no order as to costs."

17. The unreported judgment of this Court cited by the learned counsel for the petitioner in W.P.No.7836 of 1994 dated 26.4.2001 (K.O.Parasuram v. Allottee Service Manager, Vellore Housing Unit, TNHB) will not help the case of the petitioner in any manner as in that case, the learned Judge was considering the case where the petitioner was owning a farm land with a small farm house, and condition No.12 of the conditions was also withdrawn by the Government through G.O.Ms.No.29 Housing and Urban Development Department, dated 29.1.2001. Taking note of the said factual

aspect, the learned Judge permitted the petitioner to make representation to the Government and the Government was directed to pass appropriate orders in the light of the existing allotment conditions. Hence the said case is clearly distinguishable.

18. Here in this case, the cancellation order was passed on 9.10.2000 and the said plot is allotted to the third respondent, who was not owning any plot in his name or in the name of any member of his family.

19. In the light of the above cited Supreme Court Judgments and having regard to the declaration submitted by the petitioner and admittedly petitioner's husband having been allotted a plot already, the said allotment made in favour of the petitioner is not in order and therefore the cancellation of the allotment is legal and no interference is called for.

The writ petition is dismissed. No costs. Connected miscellaneous petitions are also dismissed.

Vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner & Secretary to Government,
Housing & Urban Development Department,
Fort St.George, Chennai - 600 009.
 2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam, Chennai - 600 035.
- 2 ccs to Mr. R. Natarajan, Advocate SR No. 11229
 - 1 cc to Mr. P. Chandrasekaran, Advocate SR No. 11352
 - 1 cc to Mr. R. Girirajan, Advocate SR no. 11535

VSV(CO)
SR/4.3.2008

Order in
W.P.No.3099 of 2004
& connected MP.