
(2010) 12 MAD CK 0154

Madras High Court

Case No: Writ Petition No's. 1 and 21806 of 2010

R. Srinivasan and Others

APPELLANT

Vs

Tamil Nadu Housing Board

RESPONDENT

Date of Decision: Dec. 13, 2010

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Advocate: S. Sundaresan, for the Appellant; Vijayakumar, for RR1, D. Veerasekaran, for RR2 and Bharathidasan, for RR3, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.M. Sundresh, J.

The writ petition has been filed by the Petitioner seeking a writ of mandamus directing the 2nd Respondent to consider the application of the Petitioner for planning permission without insisting on No Objection Certificate from the 1st Respondent.

2. The Petitioners are the owners of the property situated in Block No. 14, TNHB flats, South Avenue, Kamaraj Nagar, Thiruvanmiyur, Chennai 600 041. The Petitioners have purchased the property from the Housing Board from various individuals. Thereafter, in pursuant of the sale deed executed by the 1st Respondent from 1992 to 1995, the Petitioners made an application to the 2nd Respondent on 20.09.2010 seeking permission to construct the building. Since the 2nd Respondent has orally informed the Petitioner that the application cannot be sustained without the No Objection Certificate from the 1st Respondent, the Petitioner has come forward to file the present writ petition.

3. Mr. S. Sundaresan, the learned Counsel for the Petitioner submitted that the entire property in Block No. 14 has been conveyed in favour of the Petitioner by the 1st Respondent without retaining any portion thereof. Therefore, in as much as the Petitioners are the absolute owners of the entire property sold by the 1st

Respondent, the question of getting a No Objection Certificate from the 1st Respondent does not arise. The consideration of the Planning permission has to be done by the 2nd Respondent and hence, the 1st Respondent does not have any interest over the same.

4. In support of this, the learned Counsel for the Petitioner has relied upon the judgment of the Division Bench of this Honourable Court passed in Writ Appeal No. 1052 of 2007 wherein this Honourable Court has held as follows:

The learned Counsel appearing for the Appellant Housing Board apart from insisting the above said point would also submit that the first Respondent cannot be permitted to use the common area to put up the commercial complexes. When this Court has directed the learned Counsel for the Appellant to produce the Rules which permit the Tamil Nadu Housing Board to collect 10% of the market value from the occupants after the registered sale deed has been executed, the learned Counsel is unable to point out any such rule. Therefore, it is clear that there is absolutely no reason for the Tamil Nadu Housing Board to insist for 10% market value for the purpose of issuance of No Objection Certificate. The allotment has been made nearly thirty years ago and admittedly the entire sale consideration and other charges have been paid by the allottees and documentations have been made and therefore the allottees have sold away the properties to the third parties.

In such circumstances, unless there is a statutory rule enabling the Housing Board to make such collections, the Housing Board cannot arbitrarily refuse to issue the No Objection Certificate on the basis that it is entitled to collect 10% market value.

5. The learned Single Judge also relied on W.P. No. 18750 of 2010 after following the earlier order passed in W.P. No. 14206 of 2008 dated 09.07.2008 wherein it has been held as follows:

The matter in issue was considered by this Court in many matters. I had an occasion to consider the same while disposing of the W.P. No. 14206 dated 09.07.2008, Paragraph 2 of the order made therein is usefully extracted under:

It is not in dispute that the construction was made more than thirty years and the flats allotted to various persons who have paid the entire sale consideration to the Tamil Nadu Housing Board and in such circumstances, when the property required a demolition and reconstruction, it is not proper on the part of the Corporation to ask for No Objection Certificate. It is also brought to our notice that in many number of similar cases, this Court has held that such No Objection Certificate is not required. IN the case of Ramakrishna Nagar Flat allottees/ Owners Co-Operative Housing Society v. Tamilnadu Housing Board (1997) TNLJ 420, that after the MIG and LIG flats are allotted to the allottees, the entire area belonged to the allottees and Housing Board has no control over the possession and management of the said area.

In view of the above facts and circumstances, I am inclined to direct the first Respondent to consider, process and approve the Petitioners applications for planning permission without insistence of "No Objection Certificate" from the first Respondent. The said exercise shall be carried out by the second Respondent, within a period of four weeks from the date of receipt of a copy of this order. No costs.

6. The learned Counsel for the 2nd Respondent also submitted that the order passed by this Honourable Division Bench which has been relied on subsequent in number of cases by the learned Counsel have become final. Hence, taking note of the above said settled position, coupled with the fact that the Petitioners are the absolute owners of the property over which the planning permission is sought from the 2nd Respondent, a direction is issued to the 2nd Respondent to process the application of the Petitioner dated 20.09.2010 on merits and in accordance with law without insisting for a No Objection Certificate from the first Respondent within a period of eight weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is ordered accordingly. Consequently, connected miscellaneous petition is closed.

No costs.