

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on : 06.07.2016)

DATED : 19.07.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.26455 of 2015

and

Crl.M.P.No.2684 of 2016

N.Sheela

.... Petitioner

Vs

State Rep by its:
The Director,
Vigilance and Anti Corruption,
Greenways Road,
Raja Annamalaipuram,
Chennai-600 028.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.
praying to direct the respondent-Police to register the
complaint dated 25.09.2015 and to investigate and to file final
report as engisaged under Code of Criminal Procedure.

For Petitioner : Mr.P.Kumaresan

For Respondent : Mr.S.Shanmugha Velayutham, PP

* * * * *

O R D E R

This Criminal Original Petition has been filed by the
petitioner praying to direct the respondent to register the
complaint dated 25.09.2015 given by the petitioner and to
investigate the same in accordance with law.

2.In the affidavit filed in support of the petition, it has
been averred by the petitioner as follows_

2-1.The residential property/land in No.4A, Anna Street, 14th Main Road, Anna Nagar West, Chennai-40 (Thirumangalam Colony) and larger extent of property initially belonged to one Mr.C.Raghavel, who is none other than the father of the petitioner's husband. The said C.Raghavel inherited the property from his ancestors and thus, he had been in absolute possession and enjoyment of the said property, having residential house, and the said land is classified 'Gramanatham'. The said Raghavel died on 07.05.1996, leaving behind him, Mrs.Gowri, Kannika and Mr.Neelamegam as his legal heirs. During his life time, the said Raghavel executed a Will in respect of all his properties. After the death of the said Raghavel, his legal heirs sold a portion of the property measuring about 2508 sq.ft to one Mrs.Uma Jayachandran, through Power Agent, by way of registered Sale Deed dated 21.02.1997 vide Doc.No.360/1997 at Sub-Registrar's Office, Anna Nagar, adjourning the above said portion. The remaining portion measuring about 2280 sq.ft was allotted to the petitioner's husband Neelamegam and he is having absolute rights, possession and enjoyment over the said property. Earlier, the Tahsildar, Egmore, Nungambakkam Taluk had issued an enjoyment certificate to the said Raghavel stating that he was resident for more than 25 years in the said property. Thereafter, the petitioner's husband got transferred the electricity connection in his name and he has been paying the taxes to the Government and till date, no body raised any objection for his living and enjoyment of the schedule mentioned property. Subsequently, on 06.01.2012, the petitioner's husband Neelamegam executed a registered settlement deed in favour of the petitioner herein, which was registered as Document No.51 of 2012 on the file of the Sub-Registrar Office, Anna Nagar, Chennai. Pursuant to execution of the settlement Deed, the petitioner has taken steps for mutation in revenue records. The petitioner has been in continuous possession and enjoyment of the subject property.

2-2.While so, during the 1st week of June 2013, the officials from the Tamil Nadu Housing Board came and threatened the petitioner and her husband to vacate the premises, claiming that the subject property belonged to Tamil Nadu Housing Board (in short Board). The Board also made attempt to demolish the neighbour's buildings and partly demolished the compound walls of the neighbour's land. Immediately, the petitioner's husband issued telegram to the higher officials requesting not to take any steps to vacate the premises, since they are living there for more than three decades. After receipt of the telegram, the Board issued a letter dated 07.06.2013 rejecting the request. Hence, the petitioner's husband filed a Writ Petition in W.P.No.15877 of 2013, which was disposed of by this Court directing the petitioner to approach the civil Court. Thereafter, the petitioner sent a representation dated

22.09.2013 to the Board to recognize her right over the subject property, as they are residing there for more than three decades. After receipt of the said representation, immediately on 04.10.2013, the Officials of the Board came along with other persons and threatened the petitioner and her husband to vacate the premises. Thereafter, the petitioner filed a suit against the Board, in O.S.No.5506 of 2013 on the file of the learned XV Assistant Judge, City civil Court, Chennai and the said suit is still pending.

2-3.While so, all of a sudden, on 28.02.2014 the officials of the Board came along with rowdy elements and demolished the entire building of the petitioner. Immediately, the petitioner's son gave a police complaint before the V5 Thirumangalam Police Station, Chennai, on the same day, which was registered in C.S.R.No.79/CSR/V5PS/14. The Police enquired about the same and advised the petitioner to approach the Court to get remedy in the pending suit.

2-4.It is further averred by the petitioner that the Board created forged documents and initiated proceedings dated 31.10.2014 to allot the subject property to one Mr.M.S.Jain, who is the Managing Director of one M/s.Kran Global Chems Limited. The act of the officials of the Board was purely fraudulent. The Officials of the Board misused their power and created several forged documents to execute a Sale Deed in favour of one Mr.M.S.Jain, alleged to be highest bidder of the auction conducted by the Board. In fact, only three persons had participated in the alleged auction proceedings namely_

- 1)M.S.Jain, (Tender Amount Rs.2,56,40,250/-)
- 2)M/s.Kiran Global Chems Limited (Tender Amount of Rs.2,54,30,300/-)
- 3)Mr.Varun Jain, (Tender Amount of Rs.2,53,90,000/-)

All the participating persons in the auction were interrelated to each other. The second bidder Mr.Atul Jain is none other than the first bidder/successful bidder's own son. Like wise, the third bidder is also another son of the first bidder. Hence, it is very clear that father and two sons alone had participated in the auction held by the Board and that fact would prove the conspiracy between the Chairman and Board officials. Thus, the three bidders entered into criminal conspiracy in creating fabricated documents and caused wrongful loss to the government. Hence, the petitioner has lodged a complaint dated 25.09.2015. Since no action was taken on the petitioner's complaint, she has come forward with the present petition before this Court.

3.When the matter was taken up for consideration, the learned counsel for the petitioner made a detailed submission

adverting to the averments made in the affidavit.

4. But, the learned Public Prosecutor, by filing a detailed counter, would contend that the petitioner sent a complaint dated 25.09.2015 to the respondent against the officials of the Board and the said complaint was received by the respondent on 06.10.2015 and contents of the complaint was perused. As the complaint did not disclose any specific offence under the Prevention of Corruption Act, the complaint was forwarded to the Managing Director, Tamil Nadu Housing Board, No.493, Anna Salai, Nandanam, Chennai, vide Ref.No.8874/2015/HB/CC-HQ, dated 13.10.2015 for necessary action at their end. On 29.10.2015, a letter was addressed to the Managing Director, Tamil Nadu Housing Board, No.493, Anna Salai, Nandanam, Chennai, by the Director, Directorate of Vigilance and Anti-Corruption requesting to intimate the action taken on the petition. In response to the letter, the Managing Director, Tamil Nadu Housing Board, has forwarded a report of the Superintending Engineer i/c Chennai Circle vide Letter No.DC4/25729/2015, dated 05.11.2015. In the said report, it was concluded that the land in question belongs to the Board and that the petitioner is the encroacher (Trespasser) and she has no legitimate right to claim right over the property. Further, it is mentioned in the report that there is no case made out and it deserves no consideration.

5. In this regard, the learned Public Prosecutor, by inviting the attention of this Court to the extract of the report of the Superintending Engineer dated 05.11.2015, submitted that in Ann Nagar Scheme, the land in S.No.207/24 was acquired along with other lands and the Scheme layout was approved by MMDA during the year 1967 onwards and scheme has been implemented. Encroachment was made by several persons. The eviction notice was served on the encroachers and on receipt of the notice, the encroachers went to the Court and filed W.P.Nos.4737/2007, 7289/2007 and 7668/2007 and got interim stay on 26.12.2011, with a direction permitting the petitioners to survey the land/site in question by the Government Surveyor in the presence of the official of the Board after giving intimation. Subsequently, a joint inspection was made on 08.11.2012 and inspection report was received from the Tahsildar, Egmore-Nungambakkam Taluk on 27.12.2012 stating that T.S.No.22/1 ((Old R.S.No.207/24 part) is vested with the Board in Adangal. Subsequently, the said writ petitions filed by the encroachers were dismissed by this Court on 26.04.2013. Thereafter, eviction proceedings were initiated by the Board. During the eviction, the husband of the petitioner herein gave written acceptance to vacate the land within two days. But, instead of vacating the land, contrary to the statement made earlier, the husband of the petitioner herein had filed W.P.No.15877 of 2013, but the said Writ Petition was dismissed

by this Court on 26.07.2013. The husband of the petitioner again filed O.S.No.5506 of 213 in the name of his wife (petitioner herein) before the City Civil Court, Chennai, which is still pending. On the dismissal of W.P.No.15877 of 2013 filed by the husband of the petitioner herein, the encroachment was cleared by the evicting and demolishing the building on 04.10.2013 with the help of police and fenced the area. The encroacher damaged the fencing during night and broke the name Board of the Tamil Nadu Housing Board displaced at the site. Again the petitioner herein filed a writ petition in W.P.No.26976 of 2014 and same was also dismissed by this Court on 10.10.2014. By filing repeated cases, the petitioner tried to stall the disposal of the site in question. Hence, to dispose the subject land, legal opinion was obtained from the Legal Advisor on 22.07.2014. The Legal Advisor has opined that if there is no interim order against the Board, the Board can proceed further. Based on the legal opinion, the process of the fixing of cost for the above said plot was initiated by the Executive Engineer and Administrative Officer, Anna Nagar Division. Based on the proposal submitted by the Executive Engineer and Administrative Officer, Anna Nagar Division and based on the recommendation of the Pricing Committee, the Board vide Resolution No.9.12 dated 01.07.2014 has fixed the market value of Rs.12,500/- per square feet as the upset price, which is higher among three values ie., Guideline value, Ruling rate and Market rate. The upset price of the plot for open auction was fixed at Rs.2,51,38,000/- for the said plot. Advertisement was published in the dailies for the disposal of the site in question through auction on 02.08.2014 in English Daily and on 03.08.2014 in Tamil Daily. The open auction was conducted by fixing upset price of Rs.2,56,40,250/-, which was the highest rate amount the tender bid. At the end of open auction, the plot was knocked down by the higher bidder Thiru.M.S.Jain for Rs.2,67,80,000/- which is Rs.16,42,000/- higher than the upset price of Rs.2,51,38,000/- fixed by the Board. The recommendation of the Executive Engineer and Administrative Officer, Anna Nagar Division for acceptance of the highest bidder was placed before the Board for approval. The Board in its Resolution No.9.04, dated 20.10.2014 had approved the highest offer for a value of Rs.2,67,80,000/- by the bidder Thiru.M.S.Jain for allotment of Plot No.A4, Koyambedu Village, Anna Nagar Scheme. Based on the above Board's Resolution, a confirmation allotment order vide letter No.ANA10/2982/2014, dated 27.11.2014 had been issued to the higher bidder Thiru.M.S.Jain. The highest bidder had remitted the full cost and the sale deed was issued to him on 02.03.2015 after following all the required procedures for such cases. It is the contention of the learned Public Prosecutor that absolute there was no violation of law in allotting the plot to the Higher Bidder and since eviction proceedings were initiated against the petitioner, present false complaint has been lodged by her.

Thus, the learned Public Prosecutor sought for dismissal of the petition.

6.Heard both sides and perused the materials available on record.

7.From a perusal of the materials available on record, it is seen that by following all the procedures under law, the subject property was sold in a public auction to the higher bidder. Further, the respondent had addressed a letter dated 29.10.2015 to the Managing Director, Tamil Nadu Housing Board, No.493, Anna Salai, Nandanam, Chennai, and obtained a report from the Managing Director, Tamil Nadu Housing Board. In the said report, it was concluded that the land in question belongs to the Board and that the petitioner is the encroacher (Trespasser) and she has no legitimate right to claim right over the property. Further, it is mentioned in the report that there is no case made out and it deserves no consideration. It is further seen from the materials on record that a joint inspection was made on 08.11.2012 and inspection report was received from the Tahsildar, Egmore-Nungambakkam Taluk on 27.12.2012 stating that T.S.No.22/1 (Old R.S.No.207/24 part) is vested with the Board in Adangal. Moreover, in respect of the dispute, already a civil suit in O.S.No.5506 of 2013 has been filed by the petitioner and the same is pending before the City Civil Court, Chennai. Considering the factual aspect of the case, this Court is of the view that it is not a fit case to give a direction to the respondent as sought for by the petitioner. Hence, the criminal original petition is liable to be dismissed.

In fine, the Criminal Original Petition fails and the same is dismissed. Connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ssv

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To

1.The Director,
Vigilance and Anti Corruption,
Greenways Road,
Raja Annamalaipuram,
Chennai-600 028.

2. The Public Prosecutor,
High Court, Chennai.

+1 cc to Government Pleader sr.40615

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and
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