

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2016

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

W.P. Nos.25292 of 2012 and W.P.No.4697 of 2013
and M.P.No.3 of 2012 and W.M.P.No.11229 of 2016

Elephant G.Rajendran

..Petitioner in
both W.Ps.,

Versus

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Housing & Urban Development Department,
Secretariat, Chennai-600 009.
- 2.The Tamil Nadu Housing Board,
Represented by its Managing Director,
Nandanam, Chennai-35.
- 3.The Director General of Police,
Mylapore,
Chennai-4.
- 4.The Joint Director,
Central Bureau of Investigation,
Shastri Bhawan,
Nungambakkam,
Chennai.

.. Respondents in
W.P.No.25292/2012

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Housing & Urban Development Department,
Secretariat,
Chennai-600 009.
- 2.The Tamil Nadu Housing Board,
Represented by its Managing Director,
Nandanam,
Chennai-35.

.. Respondents in
W.P.No.4697/2013

PRAYER: W.P.No.25292 of 2012 is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the fourth respondent to register a case under the relevant provisions of IPC and under the Prevention of Corruption Act and other connected Acts against the officials and beneficiaries who have been illegally allotted MIG Flats by the Housing Board under the said scheme in the year 2007 at Madurai.

W.P.No.4697 of 2013 is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in G.O.(Ms) No.29, Housing and Urban Development (HB4(2)) Department dated 22.01.2001, quash the same and further direct the respondents to cancel all the allotments made to private individuals pursuant to the aforesaid G.O., especially the allotments made under Madurai North Rural Scheme.

For Petitioner :: Mr.Elephant G.Rajendran,
in both W.Ps Party in Person

For Respondents :: Mr.A.L.Somayaji,
R1& R3 in W.P.No. Advocate General, assisted by
25292/2012 & R1 in Mr.V.Jayaprakash Narayanan,
W.P.No.4697/2013 Special Government Pleader and
Mr.Abdul Saleem,
Special Government Pleader

For 2nd Respondent : Mr.R.Muthukumaraswamy, Sr.Counsel
in both W.Ps for Mr.V.Anandhamurthy

O R D E R

(Order of the Court was made by M.M.Sundresh,J.)

The petitioner, who is a practising lawyer, has filed these two writ petitions as a probono. W.P.No.25292 of 2012 has been filed seeking a direction to the 4th respondent therein to register case under the relevant provisions of the Indian Penal Code, Prevention of Corruption Act among other Acts against the officials and the beneficiaries qua the allotment of MIG flats by the Housing Board in the year 2007. W.P.No.4697 of 2013 has been filed challenging the Government Order passed in G.O.(Ms.)No.29 Housing and Urban Development Department dated 22.01.2001 pursuant to which such allotments have been made.

2. Heard the petitioner, learned Advocate General appearing for respondent No.1 in both the Writ Petitions and and for respondent No.3 in W.P.No.25292 of 2012 and Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for Tamil Nadu Housing Board - respondent No.2 in both Writ Petitions.

3. The Government of Tamil Nadu passed an order in G.O.(Ms) No.29, Housing and Urban Development (HB4.2) Department dated 22.01.2001 for the purpose of dealing with the disposal of unsold houses/flats. The said Government Order was passed in view of the inability on the part of the official respondents in disposing of the unsold flats/houses, despite several attempts having been made, such as inviting applications category-wise by giving wide publicity and conduct of draw of lots. Thus, a different attempt was made to sell the unsold flats/houses through first come - first served basis. The basis for issuance of the Government Order is stated in the counter in W.P.No.4697 of 2013 as under:

''(i) During the period from 1997 to 2000, there was a sudden slump of sale in the field of real estate, the Tamil Nadu Housing Board faced financial crisis due to unsold House/Flats and Plots on various schemes of Tamil Nadu Housing Board. The Tamilnadu Housing Board had developed 710 plots with construction of 300 to 400 sq.feet at Madurai North Neighbour Hood Scheme (Anaiyur Section I & II) in the outskirts of Madurai during the year 1995-96. Subsequent to the same, no plots were sold till the year 2000 due to poor demand among the General public. Some of the other schemes in various places all over Tamil Nadu also remained unsold.

(ii) In view of this situation, the Government of Tamil Nadu decided to take appropriate steps to bailout the Tamil Nadu Housing Board from the financial crisis and Accordingly issued G.O.(Ms) No.427, Housing and Urban Development Department, dated 1`8/10/2000, wherein a High Level Committee consisting of,

a) Secretary to Government, Finance Department,

b) Secretary to Government, Housing and Urban Development Department &

c) Managing Director, Tamil Nadu Housing Board

under the Chairmanship of Minister for Housing was constructed to decide the issue regarding the unsold stock of 29,236 plots/house/flats of value Rs.600 crores of the Tamil Nadu Housing Board. The said Committee met on 10/11/2000 and discussed in detail and also gave certain proposals for the sale of unsold stock.

(iii) Thereafter the said Committee was re-constituted as suggested by then Hon'ble chief Minister and a new Committee headed by,

a. The Chief Secretary was constituted and in which,

- b. The Development Commissioner;
- c. Finance Secretary;
- d. Housing Secretary;
- e. Revenue Secretary; and
- f. Managing Director, Housing Board

were the members of the said committee and the said committee was directed to come up with concrete proposals at the earliest in respect of various issues including the aforesaid relevant issue of the sale of unsold stock of the Housing board.

(iv) Accordingly, the second committee had also met on 02/01/2001 and submitted their proposal and based on the proposals submitted by both the committees, a cabinet meeting was held on 08/01/2001 regarding the unsold stock of 29,236 plots/houses/flats constructed by the Tamil Nadu Housing Board throughout Tamil Nadu to the value of 600 Crore, the proposals of the Committees in respect of the sale of the unsold stock relaxing/modifying the existing procedure were accepted and Accordingly the Government (Ms) No.29, Housing and Urban Development Department, dated 22/01/2001 came to be issued.''

4. In respect of 710 flats/houses in Madurai North Neighbourhood Scheme, unfortunately, only one flat/house could be sold through the lot in favour of Postal Department. Thus, there were no takers, perhaps, for the reason that there was a slump in the real estate market, construction having been made in the year 1995-96 and the scheme being located in a low lying area in the outskirts of Madurai. Accordingly, after a long gap, about 602 numbers of houses have been sold spanning over the period of 2004-2008. In total, 1940 houses/flats were sold as per the Government Order encompassing a period of eleven years in the entire Madurai Division. The petitioner came to know about the sales effected through the newspaper report made on 3.8.2012. Immediately, he made a representation to the Director General of Police, Chennai on 6.8.2012. On the very same day, he stated to have sent a petition under the Right to Information Act to the respondent - Housing Board seeking particulars of the Scheme. Thereafter Writ Petition No.25292 of 2012 has been filed, followed by the subsequent writ petition. These are the background facts governing the cases.

5. The petitioner submitted that proper procedure for public auction was not followed. It is a case of the authorities acting hand in glove with the beneficiaries. There is a loss to the public exchequer. The State has to act as a trustee on behalf of the people. The distribution process must be fair and transparent. To

buttress his submission, reliance has been made on the decision of the Apex Court in Centre for Public Interest Litigation and others Vs. Union of India and others, ((2012) 3 SCC 1).

6. The learned Advocate General appearing for the official respondents and the learned Senior Counsel appearing for the Tamil Nadu Housing Board submitted that the writ petitions lack bonafides. It is a private litigation in the garb of public interest. At the time of filing the writ petition in W.P.No.25292 of 2012, necessary parties have not been impleaded. Even otherwise, the petitioner has stated only two persons. Thus, all the beneficiaries are not impleaded, though the Government Order is sought to be questioned. There is an unexplained delay and hence these writ petitions are liable to be dismissed for laches. Merely based upon news paper report writ petitions cannot be maintained. The above decision of the Apex Court does not have any application to the case on hand. As held by the Supreme Court in Natural Resources Allocation in Re, Special Reference No.1 of 2012 (2012) 10 SCC 1), it is not necessary that in all circumstances a public action has to be resorted to. The facts of the case would clearly indicate that all attempts made by the official respondents ended in vain. The decision was made by keeping in consideration of the economic necessity. The unsold flats/houses are in dilapidated condition, thus justifying the stand taken earlier. The petitioner has not demonstrated fraud having been committed. Learned Advocate General however submitted that the said Government Order was passed based upon the fact situation. Taking note of the escalation in the real estate value, there is no proposal to follow the said procedure in future. Therefore, it is submitted that the writ petitions will have to be dismissed.

7. As rightly submitted by the learned Advocate General, the writ petitions are liable to be dismissed on the ground of delay and laches and non-joinder of necessary parties. The allotments have been made between the years 2004 and 2008 in pursuant to the impugned Government Order passed in the year 2001. The petitioner has chosen to file the first writ petition in the year 2012. Except two of the beneficiaries, none of the other beneficiaries are before this Court. In a public interest litigation, it is not known as to why the petitioner has not chosen to implead the other beneficiaries, who are stated to be similarly placed. The 1st writ petition has been filed based upon a mere news paper report. It is not supported by any other material fact. Therefore, we are of the considered view that for the aforesaid reasons alone the writ petitions are liable to be dismissed.

8. Coming to the merits of the case, we do not find any error in the Government Order passed. The said Government Order was passed in the year 2001 by taking into consideration all the relevant materials. The construction was made way back in the year 1996. On facts, there is no dispute about the inability of the official respondents in effecting sales of the flats/houses. Thus,

the decision was made by considering the ground realities in order to mitigate the loss suffered. When there is no dispute that even in pursuant to the draw of lots, only one property could be sold, the rationale forming part of the said decision cannot be questioned. It is not as if in all cases a public property has to be sold notwithstanding the absence of any taker. The Apex Court in Natural Resources Allocation in Re, Special Reference No.1 of 2012 (2012) 10 SCC 1) was pleased to hold that Article 14 does not re-define any economic policy and auction would be one of the preferable methods, though not the only method. Applying the ratio laid down therein, we do not find any lack of reasonableness or fairness in the impugned Government Order passed. It is not as if every method adopted by the public authority other than auction can be termed as ultra vires the Constitution. When the choice is economic, the same cannot be termed as arbitrary. It is not as if the official respondents did not take recourse to the other methodologies. In fact, after exhausting all other methods, the first come - first served procedure was adopted. The petitioner is unable to demonstrate any illegality warranting interference, especially when it is passed as a one time measure with the sole object of disposing the unsold flats/houses lying for years. We do not understand as to how the petitioner can seek the relief as sought for in W.P.No.25292 of 2012 without any supporting materials. A fraud cannot be presumed and it is for the party, who alleges, to prove to the satisfaction of the Court, which is apparently lacking. There is absolutely no material on the alleged nexus between the respondents and the beneficiaries.

9. In the result, the writ petitions stand dismissed. However, the statement of the learned Advocate General that the impugned Government Order is only one time measure and the same would not be adopted in future is hereby recorded. No costs. Consequently the connected miscellaneous petition in W.M.P.No.11229 of 2016 is closed.

10. The other M.P.No.3 of 2012 is filed by the petitioner during the pendency of W.P.No.25292 of 2012 seeking to implead the two private respondents, who are the purchasers of two of the above said properties in the year 2007 contending that they are the beneficiaries under the impugned Government Order. In view of our discussion in earlier paragraphs, we find no necessity to allow the said miscellaneous petition. Accordingly, the miscellaneous petition is dismissed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary, State of Tamil Nadu,
Housing & Urban Development Department,
Secretariat, Chennai-600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-35.

3.The Director General of Police,
Mylapore, Chennai-4.

4.The Joint Director, Central Bureau of Investigation,
Shastri Bhawan, Nungambakkam,
Chennai.

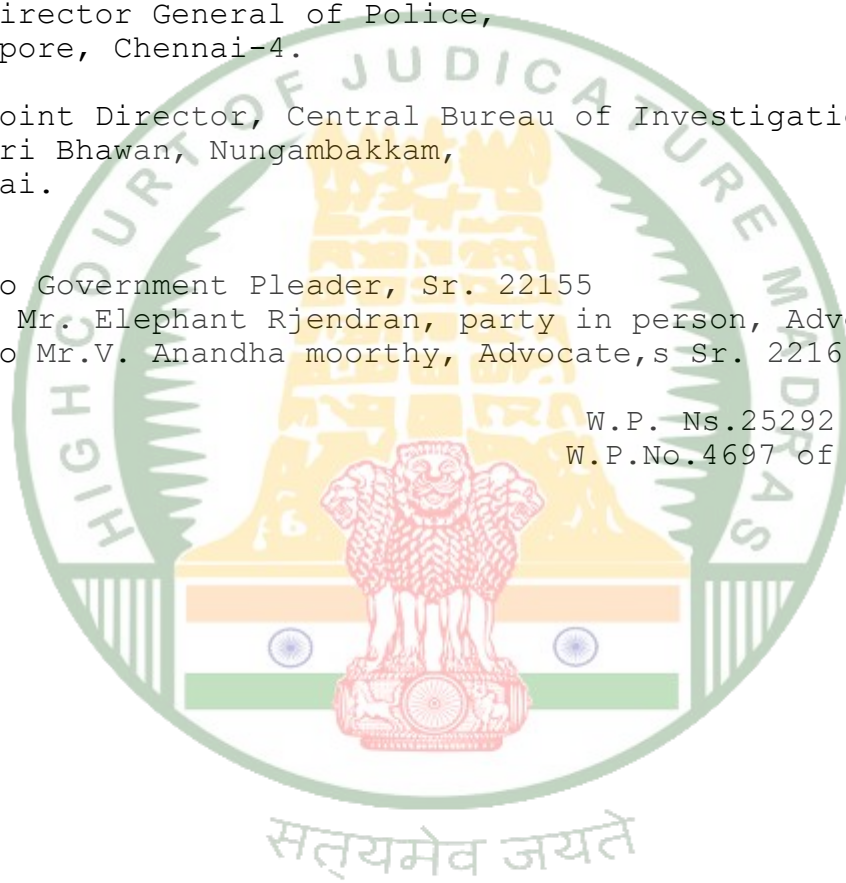
2 ccs to Government Pleader, Sr. 22155

1 cc to Mr. Elephant Rjendran, party in person, Advocate Sr. 22543

2 ccs to Mr.V. Anandha moorthy, Advocate,s Sr. 22168, 22169

W.P. Ns.25292 of 2012 and
W.P.No.4697 of 2013

GJ (CO)
kk 25/4



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