

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 22.06.2017

ORDER PRONOUNCED ON : 21.09.2017

CORAM:

**THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH**

AND

**THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN**

**C.M.P.No.17136 of 2016**  
**and W.A.No.SR74844 of 2016**

R.Govindasamy

...Petitioner

.. Vs ..

1.Government of Tamil Nadu,  
Rep.by its Secretary,  
Housing and Urban Development Department,  
Chennai - 9.

2.The Chairman,  
Tamil Nadu Housing Board,  
Nandhanam,  
Chennai.

3.Ammavasai

...Respondents

**Prayer:** This Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 543 days in filing the above appeal.

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 10.03.2015 passed by the learned single Judge in W.P.No.21855 of 2013 on the file of this Court.

For Appellant : Mr.A.Swaminathan  
For R1 : Mr.P.S.Sivashanmugha Sundaram  
Spl.Govt.Pleader  
For R2 : Mr.V.Anandhamurthy  
For R3 : Mr.R.Natarajan

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**ORDER**

**RMT.TEEKAA RAMAN,J.**

This petition has been filed under Section 5 of Limitation Act, to condone the delay of 543 days in filing the appeal against the order dated 10.03.2015 passed by the learned single Judge in W.P.No.21855 of 2013.

2. The unsuccessful writ petitioner has filed this appeal with the delay of 543 days and this C.M.P. is filed to condone the delay in preferring the writ appeal. At the time of admission, the learned Special Government Pleader took notice on behalf of the first respondent and has submitted that the prayer in the Writ Petition is to direct the second respondent to cancel the sale deed dated 20.06.2008 and sell the property, namely Plot No.508C in T.S.No.146 part and 147 part, Sathuvachari Village, Vellore Neighbourhood Scheme, Phase III, through public auction.

3. Based upon the prayer, the learned Special Government Pleader

submitted that the sum and substance of the prayer made in the Writ Petition is to cancel the sale deed of the year 2008 said to have been issued in the name of the third respondent herein and Writ Petition has been filed in the year 2013.

4. We have heard the rival contentions in respect of both on the part of delay as well as on the merits of the appeal.

5. The appellant/writ petitioner filed the Writ Petition for a direction to the first respondent, the Secretary to Government of Tamil Nadu, Housing and Urban Development Department to consider his representation, dated 09.05.2013 and cancel the sale deed dated 20.06.2008, executed by the second respondent, Tamil Nadu Housing Board in favour of the third respondent in respect of Plot No.508C, Sathuvachari Village, Vellore Neighbourhood Scheme, Phase III, and to sell the property through public auction.

6. Initially, the said plot was allotted to one Lakshmi under Government discretionary quota. The third respondent alleged to have encroached on the property and the said Lakshmi approached the Housing Board to remove the encroachment. The third respondent filed a writ petition before this Court in W.P.No.1642 of 1992, questioning the eviction proceedings and subsequently, Writ Petition was withdrawn on 18.08.1997.

Thereafter, it appears that the third respondent filed a suit in O.S.No.28 of 1992 before the District Munsif Court, Vellore for relief of permanent injunction was dismissed and the appeal in A.S.No.62 of 1997, was also dismissed. Meanwhile, the allotment in favour of Lakshmi, was cancelled by order dated 09.10.2000, which was challenged in W.P.No.17863 of 2000. The appeal filed by the Lakshmi was dismissed by the Government on 22.01.2004. According to the petitioner, the third respondent has obtained an allotment under Government discretionary quota representing that he is a Social Worker, but he is not a Social Worker, but an encroacher. Alleging these facts, the petitioner submitted a representation and since the same has not been considered, the petitioner has filed present Writ Petition in 2013, to cancel the sale deed executed in favour of the third respondent in 2008. On the ground that the allotment in favour of the third respondent is wholly unsustainable and the second respondent, having declared 3rd respondent as an encroacher, received an application on 08.04.2013 to accommodate him, allotted the plot under the Government discretionary quota, while 3rd respondent is not a Social Worker and appears to have obtained a certificate from the Lions Club of Vellore. Further, it is submitted that the facts relating to the cancellation of allotment in favour of Lakshmi has absolutely no relevance to the instant case and the petitioner's representation should be directed to be considered and the plot should be brought for public auction, so as to enable the Board to get the market price and also enable the Writ

Petitioner and others to participate in the public auction.

7. The learned Government Pleader has submitted that:-

a) The petitioner has filed this Writ Petition, at the instance of V.Lakshmi and her husband Mr.Venkatesan, who have colluded with him and sponsored this litigation, having lost all their cases instituted against the third respondent before this Court in W.P.No.3099 of 2004, dated 29.02.2008, W.A.No.455 of 2008, dated 10.04.2008 and Review Application No.151 of 2008 in W.A.No.455 of 2008 dated 27.08.2009.

b) and the Writ Petition is an outcome of mala-fide intentions, since the petitioner has selectively stated the facts relating to litigation between V.Lakshmi and the third respondent prior to cancellation of the plot and purposely suppressed and with-held the relevant material facts, directly touching the claim of the third respondent and this is in order to mislead this Court. It is further submitted that the fact that the sale deed was executed in favour of third respondent, was taken note of by the Division Bench in Review Application No.151 of 2008.

c) The learned counsel referred to the orders passed by this Court in the Writ Petition, Writ Appeal and the Review Application, which were filed by V.Lakshmi against the third respondent and the petitioner has no locus-standi to question the sale in favour of the third respondent and the petitioner is guilty of suppression of material facts.

8. Heard both and perused the records.

9.It appears that originally, the subject matter of the plot was allotted to Lakshmi in the year 1988 and it is alleged to have been encroached by the third respondent herein and when eviction proceedings commenced, the Writ Petition was filed by the third respondent herein and the same was withdrawn. Subsequently, he filed the suit and appeal suit, which were dismissed. However, in the year 2000, it appears that the allotment was made in favour of the said allottee was concerned and she filed Writ Petition No.17863 of 2000 which is also dismissed with liberty to move the statutory appeal before the Government and when the appeal was pending, the plot was re-allotted to the third respondent in the year 2003 and thereafter, the appeal filed by the allottee was dismissed by the Government on 22.01.2004.

10.The Writ Petitioner has contended that the third respondent herein was re-allotted under Social Worker category, but he is not a Social Worker, but only an encroacher and having obtained a certificate from the Lions Club. However, the sale deed was executed by the Tamil Nadu Housing Board, the second respondent herein in favour of the third respondent on 20.06.2008 and Writ Petition has been filed only in the year 2013 with delay of 5 years and there is latches on the part of the Writ Petitioner. He stated that he is old and sick and he has collected materials under the Right to Information Act and he projected his case with regard to the above factual position before the learned Single Judge.

11. After consideration of the entire materials, the learned single Judge observed that there is no acceptable explanation for the inordinate delay of 5 years in filing the Writ Petition. Further, the Writ Petition having been filed in individual capacity and the petitioner has no locus-standi to file this Writ Petition and also held that before filing of the Writ Petition, the original allottee was litigating the matter against the respondents 2 and 3 herein which has ended in favour of the second respondent-Housing Board by the orders of Division Bench in the Writ Appeal as well as in the Review Application in W.A.No.455 of 2008 and Review Application No.151 of 2008 respectively, and the learned single Judge also held the Writ Petitioner is guilty of not disclosing all material facts and chosen selectively to make it appear as if he is a genuine person and he has an attitude of suppressing the material facts and ultimately, the Writ Petition was dismissed.

12. After going through the entire records, we concur with the findings rendered by the learned single Judge on the merits of the case. On the point of delay of 543 days in filing the appeal, except the plea of medical illness, no other positive explanation has been offered by the appellant herein for condoning the delay and hence, we hold that the appellant has not satisfactorily explained the inordinate delay of 543 days, besides there is no merits in the appeal itself, and hence, on both point of view, we are not

inclined to entertain the application.

13.In this view of the matter, this Civil Miscellaneous Petition is dismissed. Consequently, connected W.A.S.R.No.74844 of 2016 is rejected.

No costs.

[H.G.R.,J.] [T.K.R.,J.]

21.09.2017

Index : Yes / No

Internet: Yes /No

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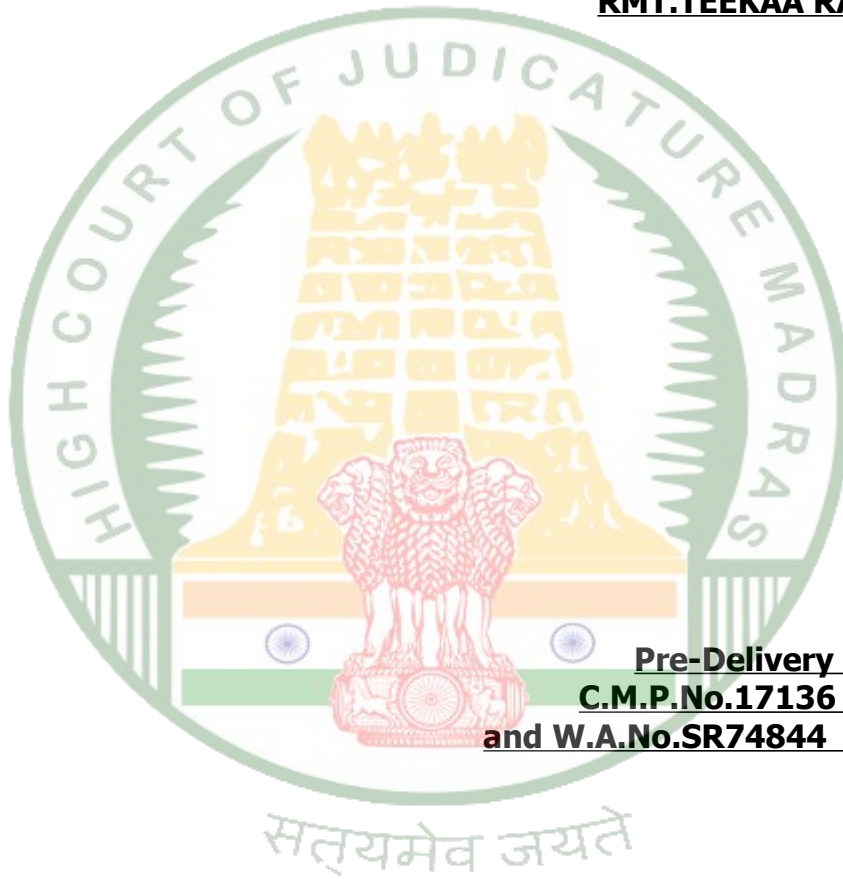
1.The Secretary,  
Housing and Urban Development Department,  
Chennai - 9.

2.The Chairman,  
Tamil Nadu Housing Board,  
Nandhanam,  
Chennai.

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**HULUVADI G.RAMESH, J.**  
AND  
**RMT.TEEKAA RAMAN,J.**

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**Pre-Delivery order in**  
**C.M.P.No.17136 of 2016**  
**and W.A.No.SR74844 of 2016**

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