

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.08.2019

DATED: 03.09.2019

**CORAM :
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

Cont.P.Nos. 1270 & 1271 of 2019

And

W.M.P.No. 11717 of 2019

IN

W.P.No. 12686 of 2018

And

W.M.P.No. 10139 of 2019

IN

W.P.No. 12688 of 2018

A.Ezhilarasi ...Petitioner/Petitioner/Petitioner
in Cont.P.No. 1270 of 2019
Mrs.Sundarammal ...Petitioner/Petitioner/Petitioner
in Cont.P.No. 1271 of 2019

Vs.

1. Thiru. Anandrao Vishnu Patil, I.A.S.,
The Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai - 600 035.
2. Thiru. Rajesh Lakhoni, I.A.S.,
The Secretary to Government
Tamil Nadu Housing Board
Fort St. George
Chennai - 600 009.
3. Thiru. Edwin Sundar Singh
The Executive Engineer/Administrative Officer
Tamil Nadu Housing Board
Hosur Unit, Bagalur Road,
Hosur - 635 109.

...Respondents/Respondents/Respondents

PRAYER IN BOTH CONTEMPT PETITIONS: These Contempt Petitions are filed under Section 11 of the Contempt of Court Act, to punish the respondents for their willful disobedience of the Orders passed in W.M.P.Nos. 10139 & 11717 of 2019 in W.P.Nos. 12688 & 12686 of 2018; dated 30.04.2019.

For Petitioner in both
Cont. Petitions : Mr. R. Shanmuga Sundaram, SC
for Mr. B. Gopalakrishnan

For RR 1 & 3 : Mr. R. Bharath Kumar

COMMON ORDER

Contempt Petition No. 1270 of 2019 arises out of the order passed in W.M.P.No. 10139 of 2019 in W.P.No. 12688 of 2018.

2. Contempt Petition No. 1271 of 2019 arises out of the order passed in W.M.P.No. 11717 of 2019 in W.P.No. 12686 of 2018.

3. W.P.No. 12688 of 2018 had been filed by the petitioner A. Ezhilarasi, in the nature of a Certiorari and Mandamus to quash the public auction sale in respect of Plot No. 16A in Phase No. 6, Hosur Housing Scheme at Hosur, Krishnagiri District and to allot Plot No. 16A in Phase No. 6 by receiving the cost of the same after deducting the

amount already paid for Plot No. 338 in Phase No.16.

4. W.P.No. 12686 of 2018 had been filed by the petitioner Mrs.Sundrammal, in the nature of a Certiorarified Mandamus to quash the auction notification dated 22.04.2018 in respect of Plot No. 606A in Phase No.10, Hosur Housing Scheme, Hosur, Krishnagiri District and direct allotment of Plot No. 606A instead of Plot No. 337 in Phase No.16 which had been allotted to the writ petitioner.

5. This Court had taken up both the Writ Petitions for hearing on 17.05.2018 and had passed the following common order:-

"2. The learned Senior Counsel appearing for the petitioners placed for reference photographs of plots and a perusal shows that houses can never be constructed in the said plots. The petitioners were naturally aggrieved. Thereafter, Hosur Municipality decided to extend housing facilities in other phases also. In the impugned order, a proposal had been made to let out an auction for further phases on

23.05.2018.

3. The grievance of the petitioners is that they had approached the respondents and they had been orally allotted plots in Phase No.3. Even though they had been allotted plots, the auction is being done on 23.05.2018. While allotment was made for Phase No. 16, the petitioners had paid the value of the cost of the plots. This should accrue if they are allotted plots in Phase No.3. While deciding the allottees for Phase No.3, the first respondent is to consider the fact that the petitioners had already paid an amount towards plots in Phase No. 16 and also agree to pay additional amounts towards the plots in Phase No.16 and also agree to pay additional amounts towards the plots in Phase No.3 *** Plot No. 606A in Phase No.10 and while deciding the allottees the first respondent may also consider the petitioners for allotment of plots. This should be done simultaneously on 23.05.2018, on the very same day in which the auction has been scheduled as a special case, since the petitioners had been allotted plots in Phase No.16, in which the house construction can never be built.

4. With these observations, these Writ Petitions stand disposed of. No costs. Consequently, connected miscellaneous Petitions are closed. The petitioners are granted liberty to approach this Court, if they aggrieved over the procedure adopted during auction or if their representations are not considered.

Xerox copy of memo dated 14.12.2018 attached."

6. The further contention of the petitioner in W.P.No. 12688 of 2018 was that the respondent had sent a letter dated 12.02.2019 inviting her to participate in the public auction for commercial Plot No.15A on 27.02.2019. The further contention of the petitioner Sundarammal in W.P.No. 12686 of 2018 was that she was also invited to participate in the public auction for commercial Plot No. 15A on 27.02.2019.

7. It was stated by both the petitioners that inviting both of them to participate in the public auction without allotment of the plots, was in violation of the orders of this Court.

8. Consequently, the petitioner in W.P.No. 12688 of

2018, A.Ezhilarasi filed a direction petition in W.M.P.No. 10139 of 2019 seeking modification of an earlier order dated 17.05.2018 and seeking to issue specific orders directing the respondents to allot and hand over Plot No. 16A in Phase No.6, Hosur Housing Scheme at Hosur, Krishnagiri District, by receiving the cost of the same after deduction of the amount already paid with respect to Plot No. 338 in Phase No.16.

9. Simultaneously, the petitioner in W.P.No. 12686 of 2018, Sundarammal had also filed a direction petition in W.M.P.No. 11717 of 2019 seeking modification of the order dated 17.05.2018 and seeking to issue specific order directing the respondents to allot and hand over Plot No. 606A in Phase No.10, Hosur Housing Scheme, Hosur, Krishnagiri District, instead of Plot No. 337 in Phase No. 10.

10. A common order was passed by this Court on 30.04.2019. It is extracted below:-

"...2. Mr.R.Shanmuga Sundaram learned Senior Counsel stated that the writ petitions are prepared to deposit any amount which they are directed to do so under the terms and conditions of the

Housing Board for seeking allotment of the mentioned plots.

3. However, it is the stand of the Housing Board that the plots sought are commercial plots and the Government has no power to allot them under discretionary quota. This stand is also disputed by Mr.R.Shanmuga Sundaram, learned Senior Counsel by pointing out that in another housing unit at Thirupattur, Vellore District, a commercial plot had been allotted by discretionary quota.

4. Be that as it may, since on 15.03.2019, this Court had passed an order in W.P.No. 6941 of 2019 directing that the Housing Board shall complete the proceedings relating to examining the eligibility conditions as stipulated with respect to the petitioner and consider their case, and pass necessary orders on or before four weeks from 23.05.2019.

5. The learned counsel for the Housing Board, Mr.R.Bharath Kumar has informed the Court that the Housing Board shall not deal with the plots which are the subject matters of these writ petitions. For filing a report from the Tamil Nadu Housing Board regarding the

decisions taken by them on the representations of the writ petitions call on 25.06.2019."

11. It is stated by the petitioners in both the Contempt Petitions that they had communicated the said order to the respondents and had sought allotment of the mentioned plots. However, the Housing Board had taken a stand that the plots sought were commercial plots and consequently, they cannot be allotted under discretionary quota. By an order dated 14.06.2019, the Executive Engineer/Administrative Officer, Tamil Nadu Housing Board, Hosur Unit, Hosur, had stated that the writ petitioners were issued notice to participate in the public auction scheduled on 27.02.2019, but both the said notices had been returned as "no such person". It was further stated in the order that the petitioners can participate in the public auction and bid for the commercial plots. It was stated that the commercial plots, namely, 16-A in Phase No.6 and 606A in Phase No.10 cannot be allotted under discretionary quota in view of the fact that they were commercial plots. It is under these circumstances that the Contempt Petitions have been filed.

12. This Court had not issued notice in the Contempt Petitions.

13. In the independent affidavits filed in support of the writ petitions by both the writ petitioners, they had suppressed one material fact.

14. The writ petitioner A.Ezhilarasi in W.P.No. 12688 of 2018 had stated in her affidavit that she had been allotted Plot No. 338 in Phase No.16 on the ground that she was a social worker under the discretionary quota. Similarly the writ petitioner Sundarammal in W.P.No. 12686 of 2018 had stated that she had been allotted Plot No. 337 in Phase No.16 under the quota of widow in discretionary quota. Both of the writ petitioners stated that the said two plots were unsuitable for occupation since they were surrounded by Mountain, Big Stones and Velikathan trees. They have therefore sought alternate plots. It was based on that representation that this Court had directed the respondents to examine the possibility of allotting alternate plots to the writ petitioners. However, it has subsequently transpired that the Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Hosur Housing Unit had issued communications dated 10.07.2012 to both the writ petitioners stating that since they had

failed to pay the initial deposit within the stipulated period, Plot Nos. 338 and 337 which had been allotted to A.Ezhilarasi and Sundarammal respectively had been cancelled.

15. Both the petitioners A.Ezhilarasi and Sundarammal have deliberately suppressed this fact of cancellation of allotment of the plots before this Court. Subsequently, this cancellation had been further confirmed by order dated 15.03.2013 with respect to both the writ petitions. Thus as on date of the filing of the writ petitions both the writ petitioners had not brought to the notice of this Court that the plots allotted to them had actually been cancelled. This being a suppression of a material fact, I hold that both the contempt petitioners are not entitled for any relief.

16. The applications seeking modification of the earlier order also do not survived. Once it is held that there has been suppression of vital material fact in the affidavits filed in support of the writ petitions, I hold the Contempt Petitioners cannot even seek modifications of any order.

17. Accordingly, the Contempt Petitions are dismissed and the modification applications are also dismissed with cost of Rs.1,00,000/- (Rupees One Lakh only) each payable by A.Ezhilarai and Sundarammal respectively to the Tamil Nadu State Legal Services Authority, Chennai. A copy of this order is directed to be issued to the Collector of Krishnagiri District to recover the cost amount if not paid on or before 30.09.2019 through the provisions of the Revenue Recovery Act. A copy of this order is directed to be issued to the Member Secretary, Tamil Nadu Legal Services Authority to intimate the Collector, Krishnagiri District, if the costs as directed are not paid.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

vsg

//Certified to be true copy//

Dated at Madras this the day of 2019.

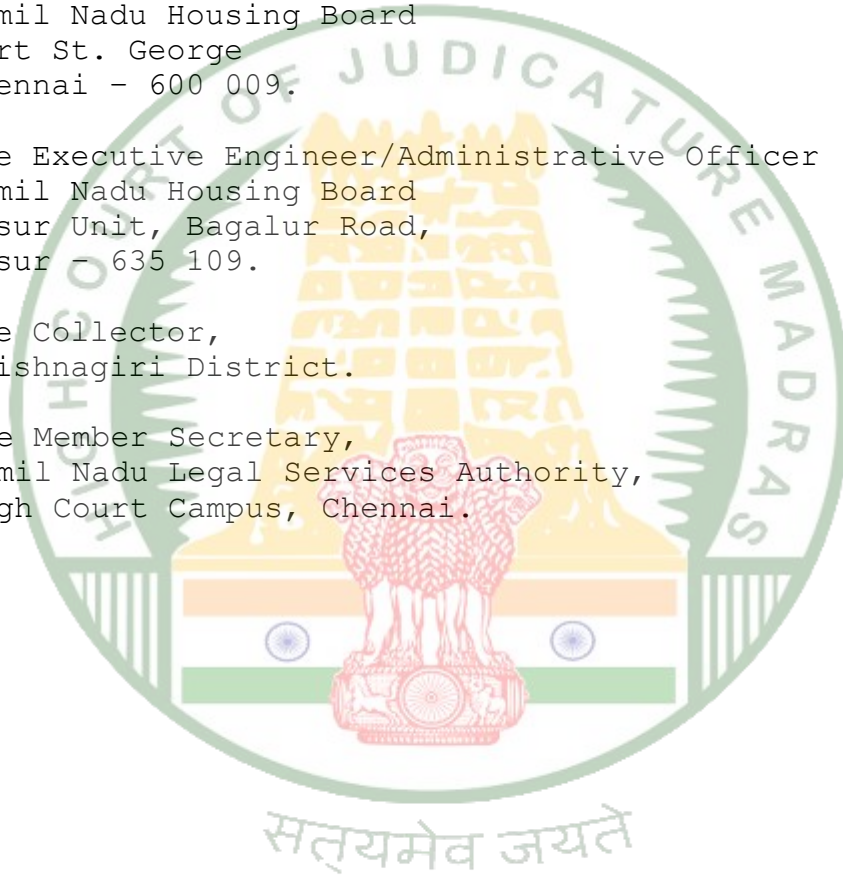
COURT OFFICER (O.S.)

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Smi/26/09/2019

To

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Nandanam, Chennai - 600 035.
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5. The Member Secretary,
Tamil Nadu Legal Services Authority,
High Court Campus, Chennai.



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