

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.6824 of 2017

and

Crl.M.P.Nos.4984 & 4985 of 2017

K.Murugiah

.... Petitioner/ Accused No.3

Vs.

State Rep. By
Deputy Superintendent of Police
V & AC, Chennai City-I Detachment
Chennai-28

.... Respondent/Complainant

PRAYER:Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the entire records in C.C.No.25 of 2013 on the file of the learned Special Judge for cases under Prevention of Corruption Act, Chennai and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.Shanmugasundaram,
Sr. Counsel for Mr.A.Gopinath

For Respondent : Mr.A.Natarajan,
State Public Prosecutor
Assisted by Mr.M.Mohamad Muzammil
Govt. Advocate (Crl. Side)

सत्यमेव जयते
O R D E R

This Criminal Original Petition has been filed by the petitioner to call for the records in C.C.No.25 of 2013 on the file of the Special Judge for cases under Prevention of Corruption Act, Chennai and quash the same insofar as the petitioner is concerned.

2.The petitioner is A3 in C.C.No.25 of 2013. Charge sheet came to be filed by the respondent against seven persons for offence under Sections 120(B), 409 and 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act 1988 and 109 IPC.

3.The gist of the case is that the petitioner when he was an

Executive Engineer in Tamil Nadu Housing Board, Besant Nagar Division, Chennai from 30.08.2006 to 24.12.2010 had conspired with the other accused. In pursuant to the conspiracy, to get more benefits for the other accused, the petitioner as Executive Engineer without the knowledge of his superiors converted the seven plots layout scheme in Survey No.76 part, Kamarajar Nagar, Tiruvanmiyur into six plots layout scheme for the convenience of A1 and A5 for joint venture construction and got CMDA approval. In furtherance to common intention, after revised layouts to six plots in the same plan number without cancellation of earlier allotment of 3457 sq.ft. into 5438 sq.ft and without any fresh application created another note file suggesting to allot Plot 540 with an area of 4763 sq.ft. to one of the accused and got it approved by the then Housing Minister witnessed by the then Housing Secretary. Thus the petitioner committed criminal misconduct of intentionally committing to allot plots to the layout in violation of the rules and procedures and caused wrongful loss to the Government.

4.The contention of the petitioner is that the petitioner had joined Tamil Nadu Housing Board as an Assistant Engineer on 07-12-1977 and subsequently promoted as an Assistant Executive Engineer in the year 2005 and thereafter promoted as an Executive Engineer and posted in Besant Nagar Division, Chennai on 30-03-2007 and thereafter promoted as Superintending Engineer in Chennai Circle on 31-5-2012. The petitioner was about to retire on attaining the age of superannuation, to his shock and surprise a suspension order was served on him. In the order it was mentioned that while the petitioner was working as Executive Engineer/Administrative Officer, Nandanam Division in charge of Besant Nagar Division, Tamil Nadu Housing Board, Chennai from March 2008 to April 2008 misusing his official power, allotted plot No.540, Thiruvanmiyur. The petitioner was not aware of any such case pending against him till the date of suspension order served to him.

5.Further submitted that as regards A1 in this case, who is an IPS Officer, the appointing authority/Central Government has declined to grant sanction to prosecute. Thereafter the case against him came to be quashed by this Court, which was taken on appeal to Supreme Court and the Supreme Court confirmed the order of quashing of case against A1. The gravamen of the charge against the petitioner is that he acted without the knowledge of the superiors in the matter of conversion of 7 plots layout scheme in Survey No.76 Part, Kamarajar Nagar, Thiruvanmiyur into 6 plots layout scheme. The petitioner submits that as Executive Engineer had sent his recommendations by letter dated 21-04-2008 to CMDA and marking copies to the Secretary and Personnel Officer, Tamil Nadu Housing Board, Chennai and Chief Engineer, Tamil Nadu Housing Board, Nandanam.

The proposal forwarded by the petitioner had been approved by CMDA. Thereafter the Pricing Committee in their meeting on 22-04-2008 fixed rate for all the 6 plots and the same was approved in the meeting of the Board. The Pricing Committee comprised of Chairman and Managing Director, Secretary and Personnel Officer, Financial Advisor, Chief Engineer and Chief Accounts Officer of Tamil Nadu Housing Board, who are all senior and superior officers of the petitioner, who had deliberated and thereafter fixed the price for the 6 housing plots. Thus, they were very much known and aware of conversion of the 7 plots layout scheme into 6 plots layout scheme. Further, the Tamil Nadu Housing Board by Letter No.A.1(7)-9456-B-08 dated 22-04-2008 informed the Government about revised layout approved by CMDA and requesting to bring these plots under Government Discretionary Quota. Thus, the case against the petitioner that he had acted without the knowledge of his superiors is false. The petitioner rendered his unblemished service of 36 years and the proposal of conversion of 7 plots into 6 plots is purely on administrative decision approved by his superior officers, Pricing Committee and the Board. Further the petitioner as Executive Engineer only executed the document based on the allotment orders issued by the Government by way of Government Order to the 6 plots, allotted under Government Discretionary Quota.

6.The petitioner had acted only as per the directions of the Government orders and the Board directions and there was no violation of any rule or regulation by the petitioner. The petitioner at no point of time had taken any suo-motto decision and all the acts of the petitioner were through higher officials, with their knowledge. The case is on the charge, of allotment of plots, the petitioner has no role in the allotment of the plots and the plots were allotted by the Government through Government Orders and prayed for quashing of the charge sheet.

7.The petitioner further had referred Listed document No.71 wherein the successor to the petitioner one Ramakrishnan by letter dated 23-02-2011 had addressed a letter to one of the allottees, wherein it is mentioned that "Hence, your request for surrendering of plot which is coming as your share to the Housing Board and return of the cost paid towards the plot as well as the cost of the plot will not be legally tenable and possible. As the Board has not suffered any financial loss as the allotment procedures have been properly followed and as there is no precedence of taking back the plot by the Board, your request cannot be considered".

8.The learned State Public Prosecutor appearing for the respondent concurs that the petitioner is only an Executive Engineer whose role is limited in allotment of plots in this

case since allotments are made by the Governments Discretionary Quota through Government Orders. As per G.O.Ms.No.869 dated 13-10-1995 the Community Centre site of Survey No.76 of Thiruvannamiyur Village was permitted to be converted into 6 residential plots. As per procedure for making application to CMDA, it is the Executive Engineer/ Administrative officer of the concerned Division to pay necessary charges and make application to CMDA. The CMDA accepting the application by letter No.2/24783/95 dated 23.11.1995 had approved the plan and forwarded the same to Tamil Nadu Housing Board which is well before the petitioner's took over as Executive Engineer, Besant Nagar Division. Further the learned State Public Prosecutor fairly submitted that there is no loss caused to the Tamil Nadu Housing Board due to the conversion and re-conversion of plots. It is also submitted that the 6 plots were allotted under Government Discretionary Quota by way of Government Orders.

9.Considering the rival submissions and on perusal of the materials produced, it is not in dispute that the 6 housing plots were approved in the year 1995. The petitioner as Executive Engineer of Tamil Nadu Housing Board, Besant Nagar Division by conversion of 6 plots to 7 plots and thereafter reversion to 6 plots have all been as processed by him as Executive Engineer and it is the procedure to be followed in Tamil Nadu Housing Board that submission of plans and revised plans to CMDA is by the Executive Engineer of the concerned Division. The petitioner had informed his superior officers namely Superintending Engineer and Chief Engineer of Tamil Nadu Housing Board about the proposal of conversion and reversion and that his superior officers were in knowledge and known of the conversion and reconversion. The CMDA have also informed the Secretary/Personnel Officer and Chief Engineer, Tamil Nadu Housing Board about granting directions for the conversion and re-conversion of the plots. Pursuant to the approval, the Pricing Committee consisting of Senior Officers of Tamil Nadu Housing Board including its Chairman and Managing Director had fixed the price for these plots.

10.From the documents, it is seen that 6 plots in Survey No.76 Part, Kamarajar Nagar has been specifically mentioned that the area and dimension. The learned State Public Prosecutor is not in dispute to the letters of the petitioner. The petitioner on 23.03.2008 had addressed a communication to the Chief Engineer, Tamil Nadu Housing Board, Chennai to revise the proposal of conversion into 6 plots into 7 plots for Kamarajar Nagar and for 11 plots in Thiruvalluvar Nagar. The Superintending Engineer in Memo No.TPI 13132 A/08 dated 24.03.2008 had directed the petitioner to get statutory approval from CMDA. Thereafter, communication has been sent on 25.03.2008 to the CMDA. The CMDA in Letter No.L.2/6043/08 dated 28.03.2008

had approved the proposal received. All these communication copies had been marked to the Secretary/Personnel Officer, Tamil Nadu Housing Board and Chief Engineer of Tamil Nadu Housing Board. Thereafter for approval of CMDA the 7 plots plan was reverted back to 6 plots layout and for approval it was sent to CMDA on 21.04.2008. The CMDA by letter No.L.2/6043/08 had approved the revised plan. Thereafter the same was communicated by the petitioner to the Chairman and Managing Director, Tamil Nadu Housing Board. The Chairman has sent communication letter No.A.1.7/9456-B/08 to the Secretary to Government, Housing and Urban Department about the approved revised proposal and to take appropriate action to bring these plots under Government Discretionary Quota. Thus, from these communications, it is seen that the converting and revising of the layout plots from 6 to 7 and thereafter to 6 again are all with the approval and concurrence of the superiors and Board. Further to it the Board has approved the same and the Chairman and Managing Director of Tamil Nadu Housing Board had communicated the same to the Secretary to Government, Housing and Urban Development Department. 6 plots have been allotted by Government Order under Government Discretionary Quota which are as follows:

S. No.	Plot No.	G.O. Ref.:	Date	Board's Ref.:	Date
1	538	(2D) 427Hg&UD.Dept.	23.04.2008	AL1.7/58998/06	24.04.2008
2	539	(2D) 428Hg&UD.Dept.	23.04.2008	AL1.7/58998/06	08.05.2008
3	540	(2D) 143Hg&UD.Dept.	05.06.2009	AL1.7/58998/06	19.06.2009
4	541	(2D) 707Hg&UD.Dept.	08.07.2008	AL1.7/58998/06	17.07.2008
5	542	(2D) 1101Hg&UD.Dept.	05.09.2008	AL1.7/58998/06	16.09.2008
6	543	(2D) 432Hg&UD.Dept.	23.04.2008	AL1.7/58998/06	15.05.2008

11.The petitioner being the Executive Engineer had issued the allotment order in pursuance to the Government Order. The Tamil Nadu Housing Board has not sustained any loss in allotment of the 6 plots. In view of no loss sustained by the Tamil Nadu Housing Board and the allotment are of Government's Discretionary Quota made through Government Orders and the petitioner being an Executive Engineer has to execute the sale deed to the allottees as per the Government Order and the petitioner is not the reason for the other accused entering into joint venture agreement with the builders and further all the communication and correspondences are with the

knowledge of the superior officers.

12.In view of the same, the continuation of the proceedings as against the petitioner is an abuse of the process of law. Hence the case against the petitioner alone in C.C.No.25 of 2013 is quashed. In the result, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Special Judge
for cases under Prevention of Corruption Act
Chennai
- 2.Deputy Superintendent of Police
V & AC, Chennai City-I Detachment
Chennai-28
- 3.The Public Prosecutor
High Court of Madras
- 4.The Section Officer
Criminal Side
High Court of Madras

+1cc to Mr.A.Gopinath, Advocate, SR.No.89592

+1cc to the Public Prosecutor, SR.NO.89422

सत्यमेव जयते

Cr1.O.P.No.6824 of 2017
and

Cr1.M.P.Nos.4984 & 4985 of 2017

Kak(12/11/2019)

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