

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.19625 to 19627 of 2013
and M.P.Nos.1 to 1 of 2013

K.Parameswaran .. Petitioner in WP No.19625/2013
A.J.Ponnaiah .. Petitioner in WP No.19626/2013
R.Rajendran .. Petitioner in WP No.19627/2013

Vs

1. The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai-600 009.
2. Tamil Nadu Housing Board
Rep. by its Managing Director,
Anna Salai, Nandanam,
Chennai-600 035.
3. Tamil Nadu Slum Clearance Board
Rep. by its Managing Director,
Kamarajar Salai,
Chennai-600 005.
4. Executive Engineer & Administrative Officer,
Nandanam Division,
Tamil Nadu Housing Board,
Nandanam, Chennai-600035.
5. The Secretary & Personnel Officer,
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai-600035. .. Respondents in all the WPs

Prayer in W.P.No.19625 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the proceedings No.Allot 1.9/20599/2006, dated 01.07.2013 of the fifth respondent, quash the same and consequently for a direction, directing the respondents to covert the allotment of the house bearing No.1-A, IV Main Road, Musthan Thottam Area, C.I.T. Nagar, Chennai-600 035, from rental to ownership basis by converting the same in favour of the petitioner.

Prayer in W.P.No.19626 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the proceedings No.Allot 1.9/20599/2006, dated 01.07.2013 of the fifth respondent, quash the same and consequently for a direction, directing the respondents to covert the allotment of the house bearing No.1-B, IV Main Road, Musthan Thottam Area, C.I.T. Nagar, Chennai-600 035, from rental to ownership basis by converting the same in favour of the petitioner.

Prayer in W.P.No.19627 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the proceedings No.Allot 1.9/20599/2006, dated 01.07.2013 of the fifth respondent, quash the same and consequently for a direction, directing the respondents to covert the allotment of the house bearing No.2-A, IV Main Road, Musthan Thottam Area, C.I.T. Nagar, Chennai-600 035, from rental to ownership basis by converting the same in favour of the petitioner.

For Petitioner in : Mr.R.Saravana Kumar
all the WPs

For Respondents : Mr.P.H.Arvinth Pandian,
in all WPs Additional Advocate General
assisted by Mr.R.Bharath Kumar
for RR 2, 4 and 5

Mr.V.Shanmugasundar,
Special Government Pleader for R1

Mr.S.Prabhu,
Additional Government Pleader for R3

C O M M O N O R D E R

In these writ petitions challenge is laid to the proceedings of the fifth respondent dated 01.07.2013 and consequential direction to the respondents is sought to convert the allotment of the houses from rental to ownership basis in favour of the petitioners.

2. The petitioners in W.P.Nos.19625 and 19626 of 2013 were the employees of the Tamil Nadu Housing Board (hereinafter referred to as "the Board") and the petitioner in W.P. No.19267 of 2013 is the employee of the Board. The City Improvement Trust (in short, "CIT"), which had constructed houses in CIT Nagar, was subsequently taken over by the Board. The petitioners were allotted with the houses bearing Nos.1A, 1B and 2A in 4th Main Road, CIT Nagar, on monthly rental basis

during the year 1980, 1985 and 1993 and they have been regularly paying the rent and other charges.

3. The petitioners claimed that the old Masthan Thottam Slum Area Residents Welfare Association (in short, "the Association") made a representation to the Government praying for conversion of the allotment of the houses from rental to ownership basis, which was acceded to by the Government and G.O.Ms.No.252, Housing and Urban Development [LA 4(1)] Department, dated 18.10.2002 was passed to that effect. The names of the petitioners were not included in the list given by the Association and hence, from 2001 onwards the petitioners have been representing with all respondents seeking similar treatment as that of the other residents. The petitioners claimed that the officials of the Board recommended their case to the Government on the basis that their names have been omitted to be included in the list of the Association, as instead of 54 houses, the list of 50 houses alone were included in the list for allotment of houses on ownership basis. The petitioners claimed that the persons subsequently allotted with the houses on rental basis were given the benefit of ownership allotment, whereas, they have not been given similar treatment. The petitioners also claimed that out of the 54 allottees, 31 allottees including 6 Board staff were issued with the sale deeds and the Board is in the process of issuing sale deeds to the remaining allottees. In such circumstances, since their representations went in vain, they were forced to file W.P.Nos.16735 to 16737 of 2013, wherein, this Court ordered notice to the respondent and thereafter, only upon receipt of the notice, the impugned orders came to be passed by fifth respondent under guise of the proposal to demolish the existing structure and construct houses thereon. Hence, these petitioners are before this Court with these writ petitions.

4. Resisting the prayer of the petitioners, the fourth respondent filed a common counter affidavit dated 22.02.2017, wherein, it is stated that the petitioners are living in houses, which have 310 sq.ft., in the lands comprised in 877 sq.ft., 656 sq.ft. and 609 sq.ft. respectively and they are/were employees of the Board. On the other hand, the built up area of the 50 row houses allotted to the slum dwellers have 228 sq.ft. of built up area as since the allottees in 50 row houses in the old Musthan Thottam were slum dwellers, and based on the representation given by the Association, the Government issued G.O.Ms.No.252, dated 18.10.2002 for conversion of 50 row houses from rental to hire purchase basis. It is admitted that the houses bearing numbers 1A, 1B, 2A and 2B were not included in the said G.O., on the ground that they are pucca houses constructed by the Board and hence, they could not be handed over to the Tamil Nadu Slum Clearance Board. It is also submitted that the request of the petitioners were placed before the Board Committee and the Board in its Resolution No.9.08, dated 25.9.2006 had resolved

to reject the request of the petitioners and that the case of the petitioners could not be considered by the Board and the Government. The fourth respondent has also submitted that the government have taken a policy decision to demolish the old rental building, which were constructed during the period of CIT and to reconstruct more houses in order to accommodate more number of general public, since these houses are located at prime area of the city. It is in this situation, since the houses allotted to the petitioners are under demolition and reconstruction process, the request of the petitioners to convert their rental allotment into outright purchase basis is not feasible for compliance.

5. The fourth respondent also contended that the Government has taken a policy decision to demolish and reconstruct the rental houses with maximum Floor Space Index (FSI) as per the Second Master Plan to provide more number of accommodation to general public and hence, the Board has passed the order directing the petitioners to vacate and handover the rental houses, so as to enable the Board to demolish and reconstruct the houses and the orders passed by the board are sustainable in the eye of law. The fourth respondent claimed that the allottees under the occupation of the houses on rental basis cannot compel the Government or the Board to convert the rental premises into ownership.

6. In the counter affidavit filed on behalf of the second respondent in August, 2020, it is stated that the Board took a policy decision in the year 2007 not to convert the rental houses into ownership category and thereafter, not even a single house was allotted to any of the individuals into outright basis, which were originally allotted under rental basis. The second respondent also contended that some of the similarly placed persons, who were given accommodation on rental basis in the same scheme, have filed the writ petitions before this court in vain and the intra court writ appeals filed by them before the Division Bench of this court and the appeal filed before the Hon'ble Supreme Court have been dismissed. Hence the petitioners cannot maintain the writ petitions.

7. The second respondent also claimed that there is no discrimination on the part of the Board in rejecting the request of the petitioners and on the other hand, if the buildings under the occupation of the petitioners are demolished and a new building with modern amenities are constructed, it would definitely serve better purpose to many people. It is also submitted that the Board being a public body must be in a position to utilise its land for profitable purposes by giving allotment to general public.

8. Heard the learned counsel for the petitioner, the learned Additional Advocate General assisted by the learned standing counsel for the Board, the learned Special Government

Pleader and the learned Additional Government Pleader for the respondents.

9. The learned Additional Advocate General relied on G.O.Ms.No.52, Housing and Urban Development [HB 4(1)] Department, dated 05.03.2012 to drive home the point that the Government has accepted the proposal of the Board and granted in principle administrative sanction for reconstruction of 474 flats for various categories at a cost of Rs.77.70 crore under Self Financing mode, after demolishing of the dilapidated old buildings. In the list of the houses to be demolished, the houses under the occupation of the petitioners are also shown. The learned Additional Advocate General also relied on the orders passed by the Division Benches of this Court, which were upheld by the Hon'ble Supreme Court, to contend that the similar requests made by the allottees were negatived by the Courts and submitted that these writ petitions are liable to be dismissed.

10. This Court has carefully considered the materials available on record.

11. At the outset, it is relevant to note that some of the similarly placed persons as that of the petitioners filed W.P.No.41009 of 2016 seeking a similar relief and this court vide order dated 07.02.2017 rejected the request in the following manner :

"7.Learned Senior Counsel vehemently pointed out that earlier round of litigation matter went to the Supreme Court and the Supreme Court is seized of the matter wherein the status quo was granted. He further relying upon the judgment of the Supreme Court contend that since the petitioners are similarly placed person and they are identical one and they should be granted the same relief even though they are not added as party in the earlier round of litigation. On a careful perusal of the affidavit of the petitioner, it shows that the first and fifth petitioners filed their respective allotment orders and others lost their allotment orders during flood. Even though there are 119 houses remaining including the petitioner house to whom the sale was not made outright but they have been promised that if they vacate the premises voluntarily they are entitled to get back new houses. They want the property to put up the construction for housing board where the houses are in dilapidated condition. Unfortunately, they did not approach the court and they are not added as parties in the earlier round of litigation. Hence, the status quo granted does not create any right. In this case, the respondent produced a layout plan where they stated that some of the properties possession has been taken. Of course, the

petitioners' possession has not been taken. Considering the fact that the impugned order has stated that those persons who are surrendering their houses will be given allotment in the new construction and that they are asked to appear before the Executive Engineer and Administrative Officer on or before 16.09.2016 to present the papers and documents to make them eligible to get allotment in new construction, I do not find any discrimination in the impugned order as stated by the petitioners. Further, the writ petition is premature in view of the fact that in the impugned order, they are given only an opportunity to appear on 16.09.2016 and without even appearing for the same, straight away they have filed the writ petition and they have not ensured their option for new allotment. Hence the writ petition is not maintainable. Hence, the writ petition is dismissed."

12. The intra Court writ appeal preferred against the said order was also dismissed on 23.03.2018 by a Division Bench of this court in W.A.No.211 of 2017.

13. The learned Additional Advocate General placed reliance on the Board Resolution dated 25.09.2006, wherein, it is stated that it was resolved to reject the request of the individuals, though the Managing Director of the Board had recommended the case of the petitioners for favourable consideration.

14. It is also important to note that the First bench of this court in W.P.No.13978 of 2012, vide order dated 19 10 2006, rejected a similar writ petition filed by the allottees of the Board premises and the said order reads as follows :

"The claim of the petitioners is that their representation dated 03.04.2012 seeking direction to the respondents to sell the plots occupied by them in Model Hutment Road, Masthan Garden, Nandanam should be favourably considered on the analogy of the allotment of the similar allotment made to 50 residents vide G.O.Ms.No.252, dated 18.10.2002.

2. In the counter-affidavit of the Tamil Nadu Slum Clearance Board/respondent No.3, it has been explained that houses were built on the land owned by the Tamil Nadu Housing Board/respondent No.2 and allotments were made on rental basis. A decision was taken to build new houses in the land, as the houses were old and dilapidated. As per G.O.Ms.No.252, dated 18.10.2002 of respondent No.1, 50 houses built by the Tamil Nadu Housing Board in Mastan Thottam, CIT Nagar and 14 ground land situated in the place, where row houses are there in Mastan Thottam Scheme Area alone were transferred

for sale by collection of amounts by the Tamil Nadu Slum Clearance Board and paid to the Tamil Nadu Housing Board as per the rehabilitation measure of the Tamil Nadu Slum Clearance Board. The land on which the petitioners are located is stated not to have been allotted to the Tamil Nadu Slum Clearance Board and continues with the Tamil Nadu Housing Board/respondent No.2, which does not have any such scheme for transfer of the constructed houses.

3. The learned counsel for respondent No.2, in fact, submits that some of them have even been vacated, while steps have been taken in respect of others.

4. The aforesaid shows that the representation filed by the petitioners had become infructuous, as the same has not been accepted.

5. In view of the aforesaid, the writ petition is dismissed, leaving the parties to bear their own costs."

15. In such circumstances, when these writ petitions were taken up for hearing on 17.08.2020, this Court directed the petitioners to approach the second respondent, who was directed to hold an enquiry on 24.08.2020. Pursuant to the said order of this Court, the petitioners were called for an enquiry on the given date, i.e., on 24.08.2020, during which the board offered the following proposals to the petitioners :

"1. The Board has already decided to provide alternate accommodation for 115 Nos. of rental allottees in the CIT Nagar Scheme, Nandanam, in the new Scheme. Accordingly, the Board is ready to provide alternate allotment under public Rental Scheme to the 3 Nos. of Petitioner in the new scheme following Tamil Nadu Housing Board norms.

2. The Board is ready to allot the flats, which will be constructed in the C.I.T. Nagar, Nandanam or any other place at the cost fixed by the Board at the time of allotment under Self Financing Scheme."

Since the petitioners are not acceptable to the said proposal, the Board claimed that these writ petitions deserve to be dismissed as devoid of merits.

16. The request of the petitioners have already been rejected by the Board as early as on 25.09.2006 and the petitioners have not challenged the same.

17. It is also relevant to note that the petitioners earlier filed W.P.Nos.16735 to 16737 of 2013 seeking the relief of considering their representations on par with the 50 other allottees and for the reasons best known, the

petitioners withdrew the said petitions and they were dismissed as withdrawn by this Court on 09.07.2018.

18. Though the petitioners, with some supportive documents, claimed that their cases were recommended by the Board for favourable consideration to the Government, it is pertinent to state that the first respondent in Letter No.33743/LA4(1)/2005-9, dated 01.06.2006, sought for certain particulars from the second respondent. The said letter reads as follows :

"I am directed to invite your attention to the reference first cited wherein the various petitions received from the Masthan Thottam residential Sangam were forwarded to you and you have been requested to send the action report to Government on or before 25.5.2006. But no reply have been received so far, in this Department. I am therefore request you to send your reply in the matter to Government immediately.

2. In the reference third cited you have stated that four number of allottees were omitted and request the Government to add four number of allottees in Masthan Thottam.

3. In this connection, I am to request you to clarify the following :-

i) How the four number of allottees were omitted during the preparation of list of allottees in Masthan Thottam.

ii) Who is responsible for this omission.

iii) Whether any action has been taken against the person responsible.

iv) The four allottees now mentioned whether comes under original allottee/legal heirs/subsequent allottees.

v) Whether they have paid the full amount of land cost ?

vi) What is names of the four allottees ?"

The reply of the second respondent is not placed before this Court.

19. Be that as it may, it is relevant to state that in the representation dated 14.10.2010, the petitioners requested the Housing Board to sell the houses to them as per the market rates, as has been ordered by the Government in respect of the other subsequent tenants, who have been included in G.O.Ms.No.252, dated 18.10.2002 and the same reads as follows :

"இந்நிலையில் அரசு மஸ்தான் தோட்டப்பகுதியில் காலதாமதமாக ஒதுக்கீடு பெற்ற ஒதுக்கீடுதாரர்கள் (எரளெநுரநவே யட்டிவவநந) பார்வை 1-ல் காணும் அரசாணையின்படி நிர்ணயம் செய்த விலைக்கு விற்பனைப்படி; j;puk; வயங்க இயலாது என தெரிவித்துள்ளதாக தெரிகிறது.

எனவே மஸ்தான் தோட்டப்பகுதியில் தாமதமாக ஒதுக்கீடு பெற்றவர்களுக்கு விற்பனை பத்திரம் வழங்கும்போது விடுபட்ட மேற்கண்ட நாங்கள் குடியிருக்கும் குடியிருப்ப,களுக்கும் விலை நிர்ணயம் செய்து விற்பனைப்பத்திரம் வழங்குமாறு மிகவும் தாழ்மையுடன் கேட்டுக்கொள்கிறோம். "

20. This is on the basis of the communication of the Managing Director of the Housing Board dated 26.06.2007 in Letter No.A.1.9/20599/2006, treating 26 out of 50 allottees as subsequent tenants/occupants and to sell the houses to them as per the market rates, if they were willing to pay and buy the same. Thus, it is clear that the petitioners are agreeable to purchase the houses at the market rates.

21. It is well-settled that no tenant can seek the Housing Board to execute the sale deed converting the rental allotment into an ownership one, as a matter of right, even if some of the similarly placed persons were given such benefit. It is also pertinent to state that the Housing Board in the year 2007 itself took a policy decision not to convert the rental houses into ownership basis and the same cannot be interfered with by this Court.

22. As indicated above, the Housing Board has given two options to the petitioners in the meeting held on 24.08.2020 based on the directions of this Court, either to provide alternate allotment under public Rental Scheme in the new scheme following Tamil Nadu Housing Board norms or to allot the flats, which will be constructed in the C.I.T. Nagar, Nandanam or any other place at the cost fixed by the Board at the time of allotment under Self Financing Scheme. This itself is a concession shown upon the petitioners, as except the petitioner in W.P.No.19627 of 2013, the other two petitioners were ex-employees of the Board and they are not in service. If they want allotment of a flat even under Self Financing Scheme, they have to participate in the drawal of lots, in which, they may succeed or lose.

23. In such circumstances, it is open to the petitioners to choose any one of the options given by the Housing Board and utilize the opportunity on or before 31.12.2020. If the petitioners fail to exercise the said option within the time limit stipulated above, it is open to the Housing Board to take suitable action against the petitioners as per the Housing Board norms, in the manner known to law.

24. With the above directions, these writ petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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To

1. The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai-600 009.
2. The Managing Director,
Tamil Nadu Housing Board
Anna Salai, Nandanam,
Chennai-600 035.
3. The Managing Director,
Tamil Nadu Slum Clearance Board
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Nandanam, Chennai-600035.
5. The Secretary & Personnel Officer,
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai-600035.

+3ccs to Mr.E.Ved Bagath Singh, Advocate SR.No.33127

+1cc to Mr.S.Prabhu, Advocate SR.No.33567

+1cc to Mr.R.Bharath Kumar, Advocate SR.No.33251

सत्यमेव जयते

W.P.Nos.19625 to 19627 of 2013
and M.P.Nos.1 to 1 of 2013

BR(CO)
GMY(18/11/2020)

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