

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 22796 of 2015

V.Balachandran

...Petitioner

-vs-

1.The State Information Commissioner
Tamil Nadu Information Commission,
No.2, Theyagaraya Salai
(near Alayamman Temple),
Teynampet, Chennai - 600 018.

2.The Appellate Authority,
State Public Information Office,
The Exe-Engineer & Administrative Officer,
Tamil Nadu Housing Board,
K.K. Nagar Division,
Chennai - 600 083.

3.The Information Officer
The Exe-Engineer & Administrative Officer,
Tamil Nadu Housing Board,
K.K. Nagar Division,
Chennai - 600 083.

4.A.R.Muthuraman

5.Meenakshi

...Respondents

(R4 and R5 impleaded as per order dated 20.01.2020
made in W.M.P. No. 579/2020 in W.P.No. 22796/2015)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records dated 04.06.2015 in Case No. 28249/C/2014, on the file of the First Respondent and quash the same and direct the Respondents to furnish the particulars sought by the Petitioner in his application dated 03.04.2013 from the Third Respondent.

For Petitioner : Mr. V.Chandrakanthan
For Respondents : Mr. Niranjan Rajagopalan (For R1)
Standing Counsel.
Mr. Ambedkar (For R2 and R3)
No appearance (For R4 and R5)

O R D E R
(through video conference)

Heard Mr. V.Chandrakanthan, Learned Counsel for the Petitioner, Mr. Niranjan Rajagopalan, Learned Standing Counsel for the First Respondent and Mr. Ambedkar, Learned Counsel for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had made an application dated 03.04.2013 under Section 6(1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act' for short) to the Third Respondent to furnish the copies of the application for allotment together declaration, lease-cum-sale agreement and sale deed in respect of Flat Nos.27/3 and 22/3 TNHB Quarters, 2nd Street, Phase V, Durga Nagar, Tambaram, Sanetorium, Chennai - 600 047, relating to the Fourth and Fifth Respondents respectively. It was informed by the Third Respondent to the Petitioner in the letter dated 27.04.2013 that the concurrence of the Fourth and Fifth Respondents had been sought for furnishing the said information. According to the Petitioner, since there was no response from the Third Respondent, he made an appeal under Section 19(1) of the Act before the Second Respondent, which was replied by an order dated 20.05.2013 stating that since the Fourth and Fifth Respondents have objected for granting copies of the documents relating to their properties, the information sought by the Petitioner could not be furnished. Thereafter, the Petitioner had preferred Second Appeal in Case No. 28249/C/2014 under Section 19(3) of the Act before the First Respondent. In the order dated 04.06.2015, it has been recorded by the First Respondent that notice of hearing sent to the Petitioner had been returned with postal endorsement 'party out of station' and the First Respondent expressed the view that inasmuch as the information sought by the Petitioner was third party information for which the Third Respondent had followed the prescribed procedure under Section 11 of the Act, the second appeal was dismissed as devoid of merits. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the order passed by the First Respondent.

3. Learned Counsel for the Petitioner submits that the Tamil Nadu Housing Board, which is a Public Authority, allots the houses that it constructs to persons who do not own any house

and as per G.O. (Ms) No. 29, Housing and Urban Development Department dated 29.01.2001 issued by the Government of Tamil Nadu, it has been specifically required that at the time of making application for allotment, the concerned applicant has to declare that he or his wife or any of his family members do not own any house or plot, and if such declaration submitted by the applicant is found to be false, the allotment made in his favour shall be cancelled immediately. In that backdrop, it is contended that inasmuch as the Fourth and Fifth Respondents are husband and wife, the Petitioner wanted to know from the Third Respondent as to whether separate allotments had been made to them for Flat Nos. 27/3 and 22/3 respectively in TNHB Quarters, 2nd Street, Phase V, Durga Nagar, Tambaram, Sanatorium, Chennai - 600 047, which involves public interest and consequently, the First to Third Respondents could not deny the information sought as third party information. The ruling of this Court in M.Kaliaperumal -vs- Central Information Commissioner (Order dated 18.11.2009 in W.P. No. 16070 of 2009) is cited in support of the claim made. There is substantial force in the aforesaid contentions raised by the Learned Counsel for the Petitioner, which requires examination.

4. In this regard, it would be necessary to refer Section 11 of the Right to Information Act, 2005, which reads as follows:-

"11. (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

A plain reading of that statutory provision reveals that it does not require any concurrence from the third party for furnishing of information by the Public Authority, but only contemplates issuance of notice to the third party to place his objections, if any, which would have to be kept in view while taking the decision whether or not to disclose the information that has been sought. Moreover, when the information sought does not involve any trade or commercial secrets protected by law and public interest in disclosure outweighs in importance any possible harm or injury to the interests of the third party, disclosure has to be normally allowed.

5. In the instant case, the Second and Third Respondents whose decision has been confirmed by the First Respondent, have refused the information merely because the Fourth and Fifth Respondents have objected to furnish the same to the Petitioner without specifically addressing the question of public interest involved in the matter, especially the rule which forbids allotment of more than one house constructed by the Tamil Nadu Housing Board to persons in the same family. Since the decision-making process of the Respondents is flawed as it has not been in accordance with that procedure prescribed in the Act, the impugned orders in Letter Nos. Ka.Ka.Na.B2/0541/13 dated 27.04.2013 and 20.05.2013 passed by the Third Respondent and the Order in Case No. 28249/C/2014 dated 04.06.2015 passed by the First Respondent, which cannot be sustained, are set aside and the matter shall stand remitted to the Third Respondent for

fresh consideration. The Third Respondent shall issue due notice for enquiry for appearance of the Petitioner and the Fourth and Fifth Respondents and after affording full opportunity of personal hearing to them, shall deal with each of the contentions raised by them and shall pass reasoned orders on merits and in accordance with law and communicate decision to the parties under written acknowledgment and file report of such compliance by 31.12.2020 before the Registrar (Judicial) of this Court.

6. In the result, the Writ Petition is ordered on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The State Information Commissioner
Tamil Nadu Information Commission,
No.2, Theyagaraya Salai (near Alayamman Temple),
Teynampet, Chennai - 600 018.
- 2.The Appellate Authority,
State Public Information Office,
The Exe-Engineer & Administrative Officer,
Tamil Nadu Housing Board,
K.K. Nagar Division,
Chennai - 600 083.
- 3.The Information Officer
The Exe-Engineer & Administrative Officer,
Tamil Nadu Housing Board,
K.K. Nagar Division,
Chennai - 600 083.

Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

2. V.Balachandran,
S/o. Late Vaidyalingam,
20/1, T.N.H.B. Quarters,
F.T.Z - 3rd Street, Durga Nagar,
Tambaram Sanatorium,
Chennai - 600 047.

3. A.R.Muthuraman,
Flat No. 27/3, TNHB Quarters,
Second Street, Phase V,
Durga Nagar,
Tambaram Sanatorium,
Chennai - 600 047.

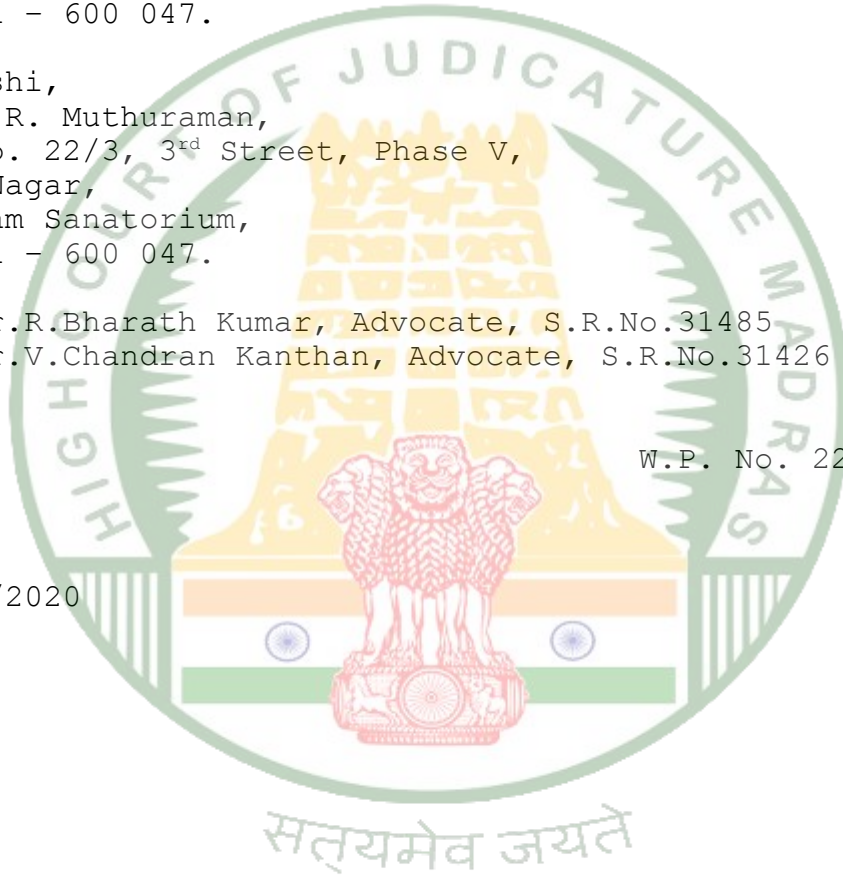
4. Meenakshi,
W/o. A.R. Muthuraman,
Flat No. 22/3, 3rd Street, Phase V,
Durga Nagar,
Tambaram Sanatorium,
Chennai - 600 047.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.31485

+2cc to Mr.V.Chandran Kanthan, Advocate, S.R.No.31426

W.P. No. 22796 of 2015

VG II (CO)
KKV/29/10/2020



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