



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. Nos.24786, 24787, 18497, and 19275 of 2013
and

M.P.Nos.1, 2, 1, 1, 2, 1, 2 and 3 of 2013

WP.No.24786 of 2013

M/s.Lake View Residency (Regn.No.241/2012)

Rep. by its President,
H1/35 Lake View Residency,
Ayappakkam, Chennai 600 077.

.. Petitioner

..Vs..

1. The Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Chennai 600 009.

2. Tamil Nadu Housing Board,
Rep. by its Managing Director,
Anna Salai, Nandanam,
Chennai 600 035.

3. The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
J.J.Nagar Division, Thirumangalam,
Chennai 600 101.

4. M/s.New Vanavil Flats Welfare Association,
Rep. by its Secretary,
Block No.M1 to M10, TNHB Flats,
Thiruverkadu Main Road,
Ayappakkam, Chennai 600 077.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the proceedings of the 3rd respondent made in letter No.JJA9/0432/2009 dated 12.08.2013 and quash the same consequently direct the respondents 2 and 3 to hand over the maintenance of the multi-storied flats constructed in Ayappakkam Housing Scheme Phase-I and II to the petitioner association.



WP.No.24787 of 2013

M/s.Lake View Residency (Regn.No.241/2012)
Rep. by its President,
H1/35 Lake View Residency,
Ayappakkam, Chennai 600 077.

.. Petitioner

..Vs..

1. The Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Chennai 600 009.
2. Tamil Nadu Housing Board,
Rep. by its Managing Director,
Anna Salai, Nandanam,
Chennai 600 035.
3. The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
J.J.Nagar Division, Thirumangalam,
Chennai 600 101.
4. Thendral Kudil Welfare Association,
Rep. by its Secretary,
H2/29, TNHB HIG Flats (848),
Thiruverkadu Main Road,
Ayappakkam, Chennai 600 077.

.. Respondents

PRAYER in WP.No.24787 of 2013: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the proceedings of the 3rd respondent made in letter No.MR/PLG/938/2013 dated 29.04.2013 and quash the same consequently direct the respondents 2 and 3 to hand over the maintenance of the multi-storied flats constructed in Ayappakkam Housing Scheme Phase-I and II to the petitioner association.

WP.No.18497 of 2013

M/s.Lake View Residency (Regn.No.241/2012)
Rep. by its President,
H1/35 Lake View Residency,
Ayappakkam, Chennai 600 077.

.. Petitioner

..Vs..



1. The Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Chennai 600 009.
2. Tamil Nadu Housing Board,
Rep. by its Managing Director,
Anna Salai, Nandanam,
Chennai 600 035.
3. The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
Mogappair Division, Thirumangalam,
Chennai 600 101.
4. Marutham Residents Welfare Association,
Rep. by its Secretary,
L12/15, LIG, TNHB (848),
Thiruverkadu Main Road,
Ayapakkam, Chennai 600 077.

.. Respondents

PRAYER in WP.No.18497 of 2013: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the proceedings of the 3rd respondent made in letter No.JJN/PLG/938/2013 dated 30.05.2013 and quash the same consequently direct the respondents 2 and 3 to hand over the maintenance of the multi-storied flats constructed in Ayapakkam Housing Scheme Phase-I and II to the petitioner association.

WP.No.19275 of 2013

Sathyam Residency Owner's Association,
Rep. by its President,
D.Gowrisankar,
L-12/8, Tamilnadu Housing Board,
Ayapakkam, Chennai 600 077.

.. Petitioner

..Vs..

1. The Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Chennai 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 35.



3. The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
J.J.Nagar Division, Thirumangalam,
Chennai 600 101.

4. The Marudam Kudiyiruppu Welfare Association,
Rep. by its President,
D.Bhaskar,
Thiruverkadu Main Road,
L/12/15 LIG, Tamil Nadu Housing Board,
Ayapakkam, Chennai 600 077.

.. Respondents

PRAYER in WP.No.19275 of 2013: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in respect of letter No.JJN/PLG/938/2013 dated 30.05.2013 issued by the third respondent and quash the same and direct the third respondent to handover the maintenance work to the petitioner association.

For Petitioner	: Mr.S.Thirumavalavan (in all Wps)in WP Nos.24786,24787&18497 WP19275/2013 Mr. K. Sathyabal for Mr.P. Mohanraj
For Respondents	: Mr.C.Selvaraj (for R1 in all WPs) Government Advocate Mr.R.Bharathkumar (for R2 & R3 in all WPs) Dr.G.Krishnamurthy (for R4 in WP.Nos.18497 & 19275 of 2013) No Appearance (for R4 in WP.Nos.24786 & 24787 of 2013)

C O M M O N O R D E R

The writ petitions on hand are instituted questioning the handing over of the maintenance of the flats constructed by the Tamil Nadu Housing Board to the Association formed by the residents/owners. Associations filed writ petitions mainly on the ground that the Tamil Nadu Housing Board has violated the terms and conditions of the agreement while handing over the maintenance to the Residents Welfare Association. The respective



associations are claiming that they are registered bodies and the procedures contemplated and the terms and conditions agreed were flouted by the Tamil Nadu Housing Board and thus the handing over of the maintenance in favour of a particular welfare association is to be set aside and the Housing Board should follow the procedures for the purpose of handing over the maintenance of the flats by the welfare association.

2.The learned counsel appearing on behalf of the Tamil Nadu Housing Board made a submission that after handing over of possession to the respective flat owners, the flat owners were allowed to form an association and they have handed over the maintenance to the welfare association in the year 2013 itself. Now, the Housing Board is not looking after the maintenance of the flats and the welfare associations are maintaining the property by collecting maintenance charges from the residents of the respective flats.

3.The learned counsel for the petitioner in W.P.No.19275 of 2013 made a submission that Housing Board has not handed over the maintenance in respect of MIG flats. However, the said fact is disputed by the Tamil Nadu Housing Board by stating that the maintenance in respect of the MIG flats were also handed over and challenging the said handing over of the maintenance, the writ petition is filed in W.P.No.18497 of 2013.

4.Thus, it is made clear that the entire maintenance of the flats in the project had already been handed over by the Housing Board to the respective welfare associations. The allegation raised against the Housing Board is that certain terms and conditions of the agreement are violated and therefore, the maintenance handed over by the Tamil Nadu Housing Board to a particular association is to be cancelled and it is to be handed over to the writ petitioner associations. Looking into the nature of allegations and the idea of the petitioners for filing the present writ petitions reveals that some of the association wants to take over the maintenance from the other association are in other words, there is a dispute between various associations in the complex.

5.Near about 848 flats are in the project and huge amount of maintenance charges are collected. There is a possibility of irregularities in dealing with the maintenance of the flats in the association. However, it is for the residents/owners who all are the members of the association to watch the activities of the association and in the event of any such irregularity or illegality, appropriate actions are to be taken at the instance of the members. Contrarily, Housing Board at this length of time cannot be brought into the area of maintenance of the flats since they had handed over the maintenance long back in the year



2013 itself.

6. It is not in dispute between the parties that after handing over of the possession, the owners shall form an association and such an association must take over the maintenance when the terms and conditions of the agreement stipulates such taking over of the maintenance by the welfare association, there is no irregularity in respect of handing over of the maintenance to the welfare associations. But, the disputes between the association and the residents/owners who all are residing in that flats cannot be resolved by the Housing Board. It is for the associations to approach the competent Court of law for the purpose of redressing their grievances with reference to the disputes between various associations. As far as the Tamil Nadu Housing Board is concerned, if at all the petitioners raised certain violations in respect of terms and conditions of the agreement, then also an adjudication is required with reference to the documents, evidences including oral evidences and such an elaborate adjudication cannot be undertaken by the High Court in a writ proceedings under Article 226 of the Constitution of India.

7. Such disputed facts and issues cannot be decided in a writ proceedings merely based on the affidavit and counter affidavit filed by the respective parties to the writ petitions. Such adjudication require examinations, scrutinization of documents in original and evidences. Thus, the parties aggrieved are at liberty to approach the competent Court of law for the purpose of redressal of their grievances. As far as the maintenance of the flats are concerned, the Tamil Nadu Housing Board had already handed over the maintenance to the welfare association, if the other residents/owners of the association are not in agreement with the decision taken by the Housing Board. It is left open to them to adjudicate the matter before the appropriate forum.

8. In view of the facts and circumstances, this Court cannot consider issuing a direction to handover the maintenance once again to the Tamil Nadu Housing Board in these writ petitions and therefore the writ petitions deserve no merit consideration and consequently stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar



vs/kbs

To

1. The Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Chennai 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
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3. The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
J.J.Nagar Division, Thirumangalam,
Chennai 600 101.
4. The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
Mogappair Division, Thirumangalam,
Chennai 600 101.

+2ccs to Mr.S.V.S. Ilamvazhuthi, Advocate, S.R.No.57784,57783

+4ccs to Mr.R.Bharathkumar, Advocate, S.R.No.58244

+1cc to the Government Pleader, S.R.No.58005

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SS(CO)
CT 09/12/2021