

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

WA.Nos.1152, 1153 and 1154 of 2020
and CMP Nos.14198, 14199, 14200, 14201,
14202 and 14196 of 2020

K.Parameswaran ... Appellant in W.A.No.1152 of 2020
R.Rajendran ... Appellant in W.A.No.1153 of 2020
A.J.Ponnaiah ... Appellant in W.A.No.1154 of 2020

-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 - 600 035.

5. The Secretary & Personnel Officer,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai -600 035.

.. Respondents in all the appeals

Appeals filed under Clause 15 of the Letters Patent against the common order dated 08.10.2020 in W.P.Nos.19625 to 19627 of 2013 on the file of this Court.

WP.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 5th Respondent quash the same and consequently for a direction directing the Respondents to convert the allotment of the house bearing No.1-A IV Main Road Musthan Thottam Area C.I.T. Nagar Chennai-35 from rental to ownership basis by conveying the same in favour of the Petitioner

WP.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 5th Respondent quash the same and consequently for a direction directing the Respondents to convert the allotment of the house bearing No.1-B IV Main Road Musthan Thottam Area C.I.T. Nagar Chennai-35 from rental to ownership basis by conveying the same in favour of the Petitioner

WP.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 5th Respondent quash the same and consequently for a direction directing the Respondents to convert the allotment of the house bearing No.2-A IV Main Road Musthan Thottam Area C.I.T. Nagar Chennai-35 from rental to ownership basis by conveying the same in favour of the Petitioner

For Appellants : Mr.R.Saravanakumar

For 1st respondent : Mr.V.Jayaprakash Narayanan
State Government Pleader

For R.2,R.4 and R.5 : Mr.R.Bharathkumar
(for TNHB)

COMMON JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The appeals are directed against a common judgment and order of October 8, 2020, on three writ petitions filed by three erstwhile employees of the Tamil Nadu Housing Board.

2.The facts are not much in dispute. The writ petitioners or their predecessors-in-interest were allotted flats at Masthan Garden in C.I.T Nagar, Chennai. The construction was made in the year 1954 and the original allotments were made contemporaneously.

3.It appears that in or about 2001, a scheme was put in place by the State or the appropriate authority for conversion of the rental flats at Masthan Garden colony to ownership flats. A cluster of 50 flats was allowed to be converted from rent to ownership. Four similarly situate, but different, flats in the Masthan Garden colony were not included in the scheme.

4.The four allottees of such four flats or the persons who were in possession of such four flats made a representation to the respondents in 2001 for the four flats to also be included as part of the scheme. One flat has since been allotted to the Fire Department and is not the subject-matter of the present proceedings; the three other flats continue to be occupied by the three writ petitioners and it is upon their request for conversion of the rental flats to ownership flats being rejected in 2013 that the writ petitions came to be filed in the same year.

5.The appellants rely on several documents to claim that there was a mistake on the part of the respondent authorities in not including these three appellants or the allottees of the four flats and making a distinction between the 50 other similar flats and the four flats. The appellants refer to their representation of September 21, 2001 to the Managing Director of the Tamil Nadu Housing Board. In such representation, the appellants requested the Board to make their "present rental flats as ownership flats". The appellants next refer to a letter dated June 10, 2002, issued by the Executive Engineer of the Board to the Revenue Officer indicating that the four flats were adjacent to the 50 Masthan Garden flats and should have been treated similarly as the 50 other flats which were converted from rental flats to ownership. Indeed, the relevant letter records, in its final paragraph, as follows:

"Hence, this is to inform that, when action is taken for Masthan Garden Flats action can be taken including these 4 flats."

6.The appellants claim that their representations continued thereafter and in 2006, an internal finding of the Managing Director noticed the appellants' plight and the Managing Director recommended the acceptance of the appellants' request. However, the Chairman of the Board ultimately rejected the request.

7.Another internal note of the Board, which appears to have been prepared in the year 2007, dealt with the cases of these three appellants and opined that the three appellants be treated as the original allottees at par with the allottees of 1954 and be provided sale deeds with the property being valued as in 1983, just as the 50 other similarly placed flat owners had been treated. Finally, the appellants rely on a writing of May 19, 2006, where the Managing Director of the Board again recommended that the appellants be permitted to purchase the flats outright as the appellants' names appeared to have been omitted from the original list.

8.The case that is sought to be made out by the appellants is that the original scheme included the appellants' three flats as well and that at the time of the recommendation being made for conversion of the rental flats into ownership flats, the names of four persons had been missed out, including the names of these three appellants. The word "omitted" used by the Managing Director in the internal communication of May 19, 2006, appears to be the source of sustenance for founding the argument that a mistake was committed in 2001 for which the appellants continued to make representations till the respondents refused to rectify the mistake in 2013, whereupon the appellants approached the Writ Court within ten days of the order of rejection of July 1, 2013.

9.A reading of the very documents that the appellants rely on would, however, indicate a completely different picture. It does not appear that the four other flats in the Masthan Garden colony were included along with the 50 flats that were recommended to be made over to the original allottees on ownership basis from the existing rental basis. Indeed, the very first representation made by the appellants requests the authorities to include the four flats that had been left out. No case of any mistake was made out.

10.The initial report of the Board also reveals that the appellants' flats were similarly situated as the 50 other Masthan Garden colony flats though the appellants' flats were larger in size measuring approximately 310 sq. ft. against the approximately 228 sq. ft. that the other flats measured. It is evident that the initial scheme propounded by the authorities in 2001 was limited to the 50 flats and did not include the four adjacent flats, three of which are claimed by the appellants herein. There was no mistake in any name being accidentally missed out, though there may have been a mistake in not including the four adjacent flats along with initial lot of 50 flats.

11.Apart from the fact that this does not appear to be a case of a right being vested in the appellants and such right being denied, it appears that the appellants did not pursue the matter in right earnest and now seek to use the word "omitted" in the letter of May 19, 2006, to attack the impugned rejection of July 1, 2013. In the meantime, the policy of the State has changed and rental flats are no longer, after about 2006, allowed to be taken over as ownership flats without paying the current market value thereof.

12.It is also of some significance that the three flats of the appellants are in a highly dilapidated condition and demolition orders may have already been passed. In such a scenario, particularly when the flats today are of no value and the flats have been enjoyed by the appellants for such a long time, there is no further modicum of right that the appellants can squeeze out of the present situation. It is possible that the appellants continue to occupy the dilapidated flats, but the appellants have no right to assert ownership over the space that they continue to occupy or claim conversion of their limited rights as tenants to those as owners.

13.The order impugned refers to an option that was given by the Board to the appellants. The Board has submitted that it was under no obligation to give the appellants any choice, but considering the circumstances, the offer had been made.

14.If the offer is still valid, it will be open to the appellants to accept the same. However, as far as the three flats are concerned, the appellants have no rights to claim ownership over or in respect thereof. If any order of demolition has been made, the same has to be carried out in accordance with law.

There is no merit in the appeals. The judgment and order impugned do not call for any interference. W.A.Nos.1152, 1153 and 1154 of 2020 are dismissed. However, there will be no order

as to costs. Consequently, C.M.P.Nos.14198 to 14202 and 14196 of 2020 also stand dismissed.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

sra

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
Kamarajar Salai, Chennai - 600 005.
4. The Executive Engineer & Administrative Officer,
Nandanam Division,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
5. The Secretary & Personnel Officer,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam, Chennai -600 035.

+3 ccs to M/s.E.VedaBagath Singh Advocate sr1022
+3 ccs to M/s.R.Bharath kumar Advocate sr1005
+1 cc to the Government Pleader sr751

WA.Nos.1152, 1153 and
1154 of 2020

rr(co)
aa12/03/2021