



W.P.No.18532 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 27.10.2022

DELIVERED ON : 03.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.18532 of 2015
and M.P.No.1 of 2015

1. J.Sayeeda Banu
2. M.Vishwanathan
3. T.Venkatesan
4. M.R.Madhubalan
5. R.George Prabakaran
6. R.Vijayalakshmi
7. G.Kamalakshmi
8. J.Jaya
9. R.Saroja
10. M.Vijayaraman

.. Petitioners

Vs.

1. Tamil Nadu Housing Board rep by
Managing Director,
No.36, Anna Salai,
Nandanam, Chennai - 35.
2. Managing Director,
Tamil Nadu Co-operative Milk Producer Federation Ltd.,
Aavin Illam, Madhavaram Milk Colony,
Chennai - 57.
3. The Executive Engineer cum Administrative Officer,
Tamil Nadu Housing Board,
K.K.Nagar Division,
Chennai - 600 083.



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4. Prem Nagar Owners Welfare Association,
N, P, Q, R Blocks,
Rep. by its President,
EWS Flats, South Boag Road,
Chennai - 600 017.
(R4 Impleaded by an order of this Court
in W.M.P.No.27233 of 2022 dated 03.11.2022) .. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus forbearing the respondents from permitting any 3rd party including the 3rd respondent to put up any building or construction within the compound of the flats allotted to the petitioner and others in various blocks from blocks A to M allotment made under the M.T.B. Scheme at South Boag Road, T.Nagar, Chennai - 17.

For Petitioners : Mr.S.Sundaresan

For Respondents 1 & 3 : Mr.D.Veerasekaran
Standing Counsel

For Respondent 2 : Mr.T.K.Ashok Kumar

For Respondent 4 : Mr.Prashant Rajagopal

Advocate Commissioner : Mr.P.M.Sozhendran

ORDER

This writ petition has been filed seeking to forbear the respondents from permitting any third party including the 3rd respondent herein to put up any building or construction within the compound of the flats allotted to the



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petitioners and others in various blocks from Blocks i.e., A to M allotment made under the M.T.B. Scheme at South Boag Road, T.Nagar, Chennai – 17.

2. The brief facts leading to the filing of this writ petition is as follows:

(i) The petitioners herein are the purchasers of a flat for each of them from the Tamil Nadu Housing Board (TNHB) in the year 1977. The grievance of the petitioners is that after a lapse of nearly 38 years, the Tamil Nadu Housing Board is attempting to permit a third party like Aavin to have their milk booth inside their compound with nearly 1000 sq.ft and thereby hindering the free movement of their vehicles and passage.

(ii) According to the petitioners, one of the sale deeds dated 02.03.1977, entered into between the Housing Board and the original allottee of the Housing Board Mr.N.Vishwanathan would clearly reveal that the Housing Board has sold in his favour with the absolute right over the common pathway and other vacant place within the compound.

(iii) There are totally 200 allottees in the compound at South Boag Road, T.Nagar, Chennai – 17. The process of construction and allotment



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were made as early as in 1972 and the sale deeds were effected between 1992 to various dates. Apart from the absolute right over the flat purchased by the petitioners herein, equal absolute right was given to the purchasers/allottees under the third schedule to the sale deed.

(iv) The allotment and the sale of the flat in the above mentioned place under a scheme called M.T.B. Scheme and the Housing Board has no right to claim any right or authority over the flats already sold. While so, a small Aavin booth located just adjacent to the above flats seem to have moved the TNHB to have a pucca construction within the compound in the common place allotted to the petitioners and others for the purpose of play ground, parking of vehicles and having free passage.

(v) The Housing Board has got no right over the property already sold in favour of the petitioners and other allottees under M.T.B. scheme at South Boag Road, T.Nagar, Chennai. According to the petitioners, the above question was ultimately dealt with by the Hon'ble Full Bench of this Court in W.A.No.783 of 2011 and the Hon'ble Full Bench has held that the TNHB has no right to interfere with the possession and enjoyment of the flat owners and their right over the common property in the compound of the original



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allottees and the persons claiming right under the original allottees.

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(vi) The Hon'ble Full Bench has also held that the Housing Board has no right. The above property in possession and enjoyment of the allottees, permitting any third party like Aavin etc., to have their building inside the compound affecting the interest and right of the allottees. Thus the act of the Housing Board permitting Aavin for construction inside the compound is not only arbitrary and unreasonable but also against the Principles of Natural Justice. With the above grievance the petitioners have filed the present writ petition.

3. Impleading petition in W.M.P.No.27233 of 2022 has been filed by Prem Nagar Owners Welfare Association seeking to implead them as 4th respondent and the same has been allowed by this Court. The 4th respondent association represent 112 owners residing in N, P, Q and R blocks of the apartments constructed by the Tamil Nadu Housing Board under the Mambalam Tank Bund Scheme in T.Nagar in the year 1978. Originally there were 544 houses under EWS scheme. Pursuant to allotments by the Tamil Nadu Housing Board, the flat owners divided themselves into 4 colonies with defined boundaries viz., Amudham Colony, Kanchi Colony,



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Anna Colony and Prem Nagar Colony and formed associations that are duly registered with the authorities. According to them, although areas were marked for shops, no shops were allotted in the earmarked site from 1979 to till date. It is submitted that between 1985 to 1987 an Aavin booth was constructed encroaching into the common area belonging to Anna Colony and Prem Nagar Colony. In order to remove the said encroachment, the petitioners herein i.e., residents of Anna Colony, M Block had approached this Court to remove the Aavin shop which had encroached into their area.

4. Whereas, the 4th respondents also received notice dated 12.10.2022, from the Housing Board stating that this Court has passed an interim order in W.P.No.18532 of 2015, dated 27.09.2022, for removal of encroachment in all the blocks. It is their contention that a Hon'ble Full Bench of this Court in ***Tamil Nadu Housing Board Vs. Mary Rani Immanuel and others*** reported in ***2013 (3) CTC 129*** has held that common area inside the Housing Board complex will belong to the association of owners and that the Housing Board shall have no semblance of right over the same. It is their contention that the building in Prem Nagar was constructed in 1979 and the building is now in ruinous condition and there is grave threat to life of the residents of Prem Nagar Colony and that they have decided to



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redevelop the property and they have also chosen a builder. Hence they have also been impleaded.

5. Common counter affidavit has been filed by the 1st and 3rd respondent inter alia contending as follows :

(i) According to the Housing Board, the land bearing T.S.No.6743/1 & 5, Block No.143, measuring an extent of 60 grounds 480 sq.ft. at T.Nagar village was taken over from Tamil Nadu Slum Clearance Board (TNSCB) in the year 1975 for forming the Housing Schemes. The entire area was divided as per the approved layout vide P.P.S.P.No/L.O.=118/84, dated 28.11.84, under "Mambalam Tank Bund Scheme" which consists of 544 EWS flats and shop site Nos.1 to 5. The flats were allotted to the respective allottees.

(ii) As per the approved layout, some of the places were specifically earmarked as shop sites to cater to the needs of public in and around the scheme layout. According to the approved layout, there are 5 number of saleable shop site (1 to 5) which was earmarked inside the scheme layout.

The area details of the scheme are furnished as follows:

<i>S.No.</i>	<i>Description</i>	<i>Area</i>
1	Saleable Area	
a.	Flats	37 Gr. 2350 sq.ft.
b.	Shops	9 Gr. 0430 sq.ft.
	Total	47 Gr. 0380 sq.ft.
2	Non-Saleable area	



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<i>S.No.</i>	<i>Description</i>	<i>Area</i>
a.	Roads	8 Gr. 2100 sq.ft.
b.	Parks	4 Gr. 0400 sq.ft.
	Total	13 Gr. 0100 sq.ft.
	Total Scheme extent	60 Gr. 0480 sq.ft.

(iii) It is also submitted that the final cost for the scheme was fixed vide Proc.No.S-3/30178/90, dated 01.06.1990 and the cost of each flat was fixed as Rs.16,600/-. At the time of fixation of the cost of the flat, the land meant for construction of shop site (1 to 5) measuring an extent of 9 grounds 430 sq.ft. was excluded from the overall cost of the scheme. The cost from the allottees were collected for an extent of 37 grounds 2350 sq.ft. only. Hence it is their contention that the petitioners have no right to claim the land earmarked in the layout for shops. A portion of the land in shop site No.4 was allotted to Aavin Milk Booth and the said land was handed over to Aavin in the year 1985 and the sale deed was executed in the year 2011 vide Doc.No.1131 of 2011, dated 20.05.2011. The petitioners have no rights to claim the property and they have no locus standi. It is their further contention that the allottees in the scheme have encroached the said vacant land vested with Tamil Nadu Housing Board.



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(iv) It is their further case that, in this scheme, a similar case was already dealt with by this Court in W.P.No.2395 of 2001, wherein, this Court has held that the Housing Board had reserved the said land for two shops at the time of execution of sale deeds. The appeal filed against that judgment before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.14417 of 2008 was dismissed on 11.08.2014. Therefore, it is their contention that the petitioners cannot rely upon the Full Bench judgment since the subject land of shop sites were not at all handed over or sold to the petitioners. Hence, prays for dismissal of the writ petition.

6. The learned counsel appearing for the petitioners mainly contended that the lands have been sold long back and the common area has been under the enjoyment of the flat owners. As the Housing Board has already sold the property, they have no right whatsoever to disturb the possession of the petitioners. When the entire land is within the compound of the housing board, now the Housing Board has permitted Aavin booth to put up construction by encroaching upon the common path way. Therefore it is his contention that as per the judgement of the Hon'ble Full Bench of this Court in ***Tamil Nadu Housing Board Vs. Mary Rani Immanual*** reported in **2013 (3) CTC 129** the Hon'ble Full Bench has held that the Housing Board has no



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right to interfere with the common area given to the society.

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7. Further, it is his contention that the Advocate Commissioner's Report also cannot be relied upon as the Advocate Commissioner measured the property only with the help of the Housing Board officials. Therefore, his report cannot be given any importance. It is his further contention that pursuant to the orders of this Court, now the Housing Board has removed the alleged encroachments and restricted the access to the flat owners. The learned counsel therefore submitted that as long as the absolute sale is made in favour of the petitioners the Housing Board have no right whatsoever.

8. The learned counsel would further contend that till now the shops earmarked has not been allotted to any one and the same is in the possession of the association. He further submitted that Prem Nagar Owners Welfare Association have filed an undertaking that they have decided to demolish the premises for redevelopment by protecting TNHB's rights in the shop area in the joint patta within a period of 6 months from the date of order of this Court in this writ petition and that they have also undertake to build a shop complex for TNHB as per the area available in the original document and scheme in their redevelopment plan. Therefore, it is his contention that their



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possession should not be disturbed at this stage.

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9. Whereas, the learned standing counsel appearing for the Housing Board would vehemently contend that what has been sold is only flats. According to the approved layout, 5 shops have been earmarked inside the scheme layout. The cost has been collected excluding the shop area. It is his further contention that the saleable flat area is only 37 grounds 2350 sq.ft. and the saleable shop area is 9 grounds 0430 sq.ft. and the shop area has not been sold and it has been retained by the Housing Board. Further, the sale consideration was also collected only in respect of 37 grounds 2350 sq.ft. from the allottees and the land meant for construction of 5 shops measuring an extent of 9 grounds 430 sq.ft. was excluded from the over all cost of the scheme and it was never sold to the writ petitioners at any point of time. Hence, it is the contention of the learned counsel that now one shop has been allotted to Aavin milk booth.

10. It is his contention that shop site No.1 was sold to the Tamil Nadu Co-operative Milk Producer Federation Ltd., and there is only a clerical mistake and they will execute necessary rectification deed in respect of the said shop. It is his contention that there were huge encroachment made by



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the petitioners in respect of the shop area retained by the Housing Board. The learned Advocate Commissioner appointed by this Court filed a report stating that 16 ft. road and 5 ft. set off were also encroached upon by the flat owners. Pursuant to the interim order of this Court dated 27.09.2022, some encroachments have been removed.

11. At any event, it is his contention that in the same scheme similar writ petitions were filed by the Amudham Kudiyruppu Narpani Sangam, who were also allotted in the same scheme, claimed right over the common shop area retained by the Housing Board. This Court in W.A.No.3614 of 2004, held that as long as the common area has not been sold to the writ petitioner therein, they cannot claim any right over the same and allowed the writ appeal. The Special Leave Petition filed against the writ appeal was dismissed by the Hon'ble Apex Court. Hence, the learned standing counsel submitted that the petitioners cannot restrain the Housing Board from allotting shop area in the scheme layout to anybody. Hence the learned standing counsel prays for dismissal of the writ petition.

12. I have heard the learned counsel on either side and also perused the entire materials available on record carefully.



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13. The writ petition has been filed mainly on the ground that the entire area inside the colony which was formed later by the purchasers belongs to the flat owners. It is their contention that since Housing Board has already sold the flats, the owners are entitled to the entire common area and the Housing Board has no right whatsoever. Much reliance was placed on the Hon'ble Full Bench judgement of this Court in ***Tamil Nadu Housing Board Vs. Mary Rani Immanual*** reported in **2013 (3) CTC 129**. In the said judgement the Hon'ble Full Bench while answering the reference has held as follows:

"18. Thus, after elaborately considering the facts and circumstances of the case, relevant provisions and the case laws, we answer the reference in the following manner.

Reference i:

Whether the allottees of flats in a Scheme evolved and implemented by the Housing Board, after execution of sale deeds in their favour by the Housing Board would be entitled to demolish the building and construct a new apartment complex with additional dwelling units and sell such additional dwelling units to third parties without obtaining no objection certificate from the



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Housing Board.

Answer:

In view of the discussions made above, We hold that the allottees of the flats in a scheme implemented by the Tamil Nadu Housing Board, after execution of the sale deed in their favour by the Tamil Nadu Housing Board are entitled to demolish the existing superstructure and put up new apartment blocks with additional dwelling units and sell the same to the third parties without obtaining No Objection Certificate from the Tamil Nadu Housing Board, as long as the construction are within the parameters of the rules and regulations of the CMDA.

Reference ii:

Whether the restrictive covenants contained in the deed of sale executed by the Housing Board in favour of the allottee would bind the allottee or his successor in interest and by virtue of which whether the allottee shall be required to keep the common areas as such without claiming any exclusive right over the same.



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Answer:

The restrictive covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of the allottees will not prevent the allottees or the subsequent purchasers from the allottees, in utilising the common areas, so long as the Society or Association which have been formed by the allottees gives consent for the same and no doubt, that the construction are within the parameters of the rules and regulations of the CMDA

Reference iii:

Whether the Housing Board is justified in contending that such restrictive covenants are valid and enforceable in the light of the fact that the land on which the apartment complex had been constructed, had been acquired from the public by invoking the provisions of the Land Acquisition Act on the ground that the lands are required for a public purpose.

Answer:

Though, the land have been acquired from



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the public by invoking the provisions of the Land Acquisition Act, on the ground that the lands are required for public purpose, the public purpose ends with the construction of the Housing Board flats and handing over the same to the allottees after execution of the sale deed. When once the scheme is implemented, the Housing Board loses its rights and the scheme does not come into play."

14. Though the Hon'ble Full Bench has answered that the restrictive covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of the allottees will not prevent the allottees or the subsequent purchasers from the allottees, in utilising the common areas, so long as the Society or Association which have been formed by the allottees gives consent for the same and no doubt, that the construction are within the parameters of the Rules and Regulations of the CMDA.

15. Perusal of the entire reference answered by the Hon'ble Full Bench, it could be seen that when the common area has already been sold to the purchasers, the Housing Board cannot prevent the purchasers from using the common area. Whereas, in the case on hand, the question is not with



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regard to the common area. Even at the time of allotment, as per the approved plan, certain shops namely Shop Nos.1 to 5 area have been clearly demarcated and retained by the Housing Board and excluding the above shop area measuring an extent of 9 grounds 0430 sq.ft. the amount was fixed for the flats.

16. The sale deed dated 17.03.1999 referred to in the typed set of papers does not indicate that the shop area is also the subject matter of sale. Only the flat area measuring an extent of about 37 grounds 2350 sq.ft. alone has been sold by the Housing Board. The approved layout filed in the typed set of papers also clearly shows that the shops have been excluded and clearly identified and it is not the subject matter of sale in favour of any of the purchasers. Such being the position, the entire shop area of 9 grounds 0430 sq.ft. retained by the Housing Board is not the subject matter of sale in favour of the flat owners. The mere fact that the shop area remains vacant all these years, the writ petitioners cannot claim any right over the said land as their common ground.

17. It is relevant to note that the entire scheme coming under the 'Mambalam Tank Bund Scheme' consisting of 544 flats have been sold. It is



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admitted by the newly impeaded party, viz., the 4th respondent herein, that after purchase, for convenience, the owners have divided themselves into 4 colonies with defined boundaries viz., Amudham Colony, Kanchi Colony, Anna Colony and Prem Nagar Colony.

18. Originally the writ petitioners are owners of 'M' block, South Boag road. But the fact remains that the entire sale is made as per the approved layout No.P.P.S.P.No./L.O./118/84, dated 28.11.1984. The cost was finalised as Rs.16,600/- per flat vide proceeding in Proc.No.S-3/30178/90, dated 01.06.1990. On a careful perusal of the finalisation of the final cost, it could be seen that the cost has been fixed for 37 grounds and 2350 sq.ft. alone i.e., for the flats area and the flats have been sold. Thus, cost was fixed for the entire 544 EWS flats under the 'Mambalam Tank Bund Scheme'. The approved plan also mentions that space has been earmarked for 5 shops measuring an extent of 9 grounds 0430 sq.ft. and all along the same remained with the Housing Board. When the cost itself is fixed only for the specific area of 37 grounds 2350 sq.ft. and not relating to 9 grounds 0430 sq.ft., it cannot be said that the entire shop area would also form part of the common area sold to the flat owners.



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19. It is also relevant to note that in the same scheme namely 'Mambalam Tank Bund Scheme' another colony viz., Amudham Kudiyiruppu Narpani Sangam has filed a similar writ petition claiming shop area as common area belonging to the flat owners in W.P.No.2395 of 2001, though the learned Single Judge allowed the writ petition, the same was put under challenge in the Writ Appeal in W.A.No.3614 of 2004 (***Tamil Nadu Housing Board Vs. Amudham Kudiyiruppu Narpani Sangam***). The Hon'ble Division Bench has clearly held, in paragraph 9 of the said judgment, that 9 grounds 0430 sq.ft. land was earmarked for shops and excluding the shops, the cost of flats was fixed. Therefore, at the time of fixation of cost of the flats, the land meant for shops were excluded and finally held that Amudham Kudiyiruppu Narpani Sangam has no right to claim the lands which was not mentioned in the sale deeds.

20. In paragraph 10 of the above judgement, the Hon'ble Division Bench relied upon a judgement of the Hon'ble Apex Court in S.L.A(Civil) Nos.6156-6157 of 2002 (***A.P.Housing Board Vs. Adarsha Welfare Association***), wherein, the Hon'ble Apex Court has held that once the lands are earmarked for commercial purpose, it must be held that the Board had power to construct shopping complex as per the requisite sanction granted by



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the authorities. Relying on the above judgment, the Hon'ble Division Bench has held that no objection can be taken against such a course and allowed the writ appeal. Challenging the above judgement, a Special Leave to Appeal in S.L.P.(C) No.14417 of 2008 has been filed before the Hon'ble Apex Court and the same was dismissed on 11.08.2014, by the Hon'ble Apex Court. Therefore, when a similar prayer has already been sought by one of the Association who are the purchasers under the same scheme, the petitioners now cannot raise the same ground in this writ petition.

21. That apart, as already discussed, the fixation of cost, is only in respect of 37 grounds 2350 sq.ft. and 9 grounds 0430 sq.ft. which was earmarked for shops, have been totally excluded and therefore, it cannot be said that the sale deed has also included the shop area. Therefore, this Court is of the view that the writ petitioners have no right what so ever to restrain the Housing Board from promoting or allotting the shop area which was earmarked for commercial purpose by way of sale or any other mode.

22. The learned Advocate Commissioner appointed by this Court has filed a report to the effect that Shop No.1 was allotted to Tamil Nadu Co-operative Milk Producer Federation Limited vide sale deed in Doc.No.1131



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of 2011, dated 20.05.2011 on the file of the Sub Registrar, Thyagaraya Nagar and the same lies in front of Block No. 'D' and not before Block No.'M'. The learned standing counsel appearing for the respondent Housing Board would submit that it is only a clerical error in the sale deed and necessary rectification deed would be executed in this regard. As long as the land earmarked is a shop area was never part of the sale deed executed in favour of the allottees, it is for the Housing Board to execute necessary rectification deed to rectify the clerical mistake crept in the sale deed.

23. The Report of the learned Advocate Commissioner further indicate that various encroachments have been found on the 16 ft road in the petitioners' block and this Court by an interim order dated 27.09.2022, directed the Housing Board to remove the said encroachments.

24. Such view of the matter, the writ petitioners have no right to restrain the Housing Board from dealing with the property retained by them, which was not the subject matter of the sale deed. The impleaded 4th respondent association has filed an undertaking to the effect that they undertake to demolish the premises for redevelopment by protecting TNHB's rights in the shop area in the joint patta within a period of six months from the date of this order. They also undertook to build a shop complex for



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TNHB as per the area available in the original document and scheme in their redevelopment plan.

25. This Court is of the view that as the area has already been identified and earmarked, the impleaded 4th respondent also cannot use the area earmarked as shops and it is for the Housing Board to utilise the same. The writ petitioners cannot develop that area. Such view of the matter the writ petition is dismissed and it is for the Housing Board to take necessary steps to remove all the encroachments. Consequently, the connected miscellaneous petition is closed. No costs.

03.11.2022

Index : Yes / No
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To

1. The Managing Director,
Tamil Nadu Housing Board,
No.36, Anna Salai,
Nandanam, Chennai - 35.
2. Managing Director,
Tamil Nadu Co-operative Milk Producer Federation Ltd.,
Aavin Illam, Madhavaram Milk Colony,
Chennai - 57.
3. The Executive Engineer cum Administrative Officer,
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N.SATHISH KUMAR, J.

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PRE-DELIVERY ORDER
in W.P.No.18532 of 2015
and M.P.No.1 of 2015

RESERVED ON : 27.10.2022

DELIVERED ON : 03.11.2022