



W.P.No.8802 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.10.2022

DELIVERED ON : 27.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.8802 of 2014
and M.P.No.2 of 2014

The Syndicate Bank Employees
(Annanagar) Welfare Society,
rep by its President,
890, Syndicate Bank Colony,
Annanagar Western Extension,
Chennai - 600101.

.. Petitioner

Vs.

1. National Commission for Scheduled Castes,
rep by Assistant Director,
State Office (Tamilnadu and Puduchery)
Floor No.2, Block-5,
Shastribhavan, Chennai - 600006.
2. Government of Tamilnadu
rep by Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600009.
3. Registrar of Cooperative Societies (Housing)
Tamilnadu Housing Board,
Nandanam, Chennai - 600035.
4. The Tamilnadu Housing Board,
rep by Executive Engineer,
Annanagar Division,



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Thirumangalam, Chennai - 600101.

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5. Syndicate Bank Employees Cooperative
House Building Society Ltd.,
rep by its President,
890, Syndicate Bank Colony,
Annanagar Western Extension,
Chennai - 600101.

6. The Deputy Registrar of Cooperative
Societies (Housing)
17, Ramanathan Street,
Thiyagarayanagar,
Chennai - 600017.

7. M.A.Balakrishnan

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records of the first respondent relating to his order dated 14.08.2012 and quash the same.

For Petitioner : Mr.P.Anbarasan

For Respondent 1 : Mr.S.Makesh
ACGSC

For Respondents 2, 3&6 : Mr.J.C.Durairaj
Additional Government Pleader

For Respondent 4 : Mr.D.Veerasekaran

For Respondent 5 : Mr.R.Subramanian

For Respondent 7 : Mr.S.Sathia Chandran

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ORDER

WEB COPY This writ petition has been filed challenging the order dated 14.08.2012, passed by the first respondent National Commission for Scheduled Castes, in and by which, the 3rd respondent was directed to cancel the registration made with regard to Plot No.890 in favour of the petitioner and the same has to be allotted to Mr.M.A.Balakrishnan, the 7th respondent herein.

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

(i) The case of the writ petitioner is that the writ petitioner is a Society registered under the Tamil Nadu Societies Registration Act, 1975. The 5th respondent viz., Syndicate Bank Employees Cooperative House Building Society Ltd., was formed in the year 1973, as per G.O.Ms.No.787, Housing Department, dated 20.08.1973, with the main object to buy or acquire land for allotment of house sites to the employees of Syndicate Bank. At that time, the 4th respondent Housing Board, sponsored the Anna Nagar Western Extension lay out and plots were made available in plenty. The 5th respondent Society booked 89 plots, for providing house sites to the employees of Syndicate Bank.



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WEB COPY (ii) However, as there was no demand for the plots to the expected level, the 5th respondent Society surrendered 39 plots to the 4th respondent Housing Board. Out of 50 plots, the 4th respondent Housing Board allotted three plots directly to the employees of the Syndicate Bank. For the remaining 47 plots, the 5th respondent Society furnished the names of employees of the Syndicate Bank for allotment of plots by the 4th respondent Housing Board. Plots were made available to all the eligible members who furnished applications and paid the site cost. None of the members, who thus came forward to get allotment, was left out because plots were available in plenty.

(iii) The members of the 5th respondent Society wanted to have one plot retained for the common utility and facilitation for the Syndicate Bank Colony. Therefore, the General Body of the 5th respondent Society passed a resolution on 26.01.1974, to retain Plot No.890 which was supposed to be an inauspicious plot and for which there was no takers, for the purpose of common utility.

(iv) However, later, the members of the 5th respondent Society



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organised a welfare society, the petitioner herein, for the benefit of the residents of the colony. The General Body of the 5th respondent Society again resolved in its meeting held on 25.01.2001 and requested the 4th respondent, Housing Board to allot Plot No.890 to the petitioner welfare Society. 49 allottee members had already contributed at a minimum rate of Rs.200 each towards the cost of Plot No.890 as early as on 1974/75 and the General Body resolved on 25.01.2001 to repatriate a part of the share capital of those members to the 4th respondent Housing Board towards the site cost.

(v) The 4th respondent Housing Board executed sale deeds to all the members of the 5th respondent Society to whom allotment of 47 plots were suggested, including Plot No.890 allotted to the petitioner welfare society. However, the sale deed was registered in the name of the petitioner welfare society only on 10.03.2004, during the regime of the Special Officer and possession was also taken by the petitioner welfare society. The office of the petitioner Welfare Society and the office of the 5th respondent Cooperative House Building Society are located in this plot. The plot is used by the resident members for the purpose of water tank, watchman shed, etc and for other such common purposes.



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(vi) When the matter stood thus, the Special Officer filed an Arbitration claim on 21.11.2012, to cancel the sale deed in favour of the petitioner. A suit in O.S.No.874 of 2013 was also filed by the Special Officer of the 5th respondent Society to declare the sale deed dated 10.03.2004 executed in favour of the petitioner Society by the 4th respondent Housing Board as null and void.

(vii) The petitioner came to know that all these actions were taken only in pursuance to the direction given by the first respondent after obtaining the informations through RTI. Whereas, the first respondent entertained a representation made by the 7th respondent to allot Plot No.890 and the first respondent passed an order directing to cancel the sale deed and allot the said plot to the 7th respondent otherwise punitive action under the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities Act, 1989) should be initiated.

(viii) Challenging the impugned order of the first respondent, the present writ petition has been filed on the ground that the first respondent failed to conduct proper enquiry on the complaint made by the 7th respondent. Direction has been given due to the fact that the Special Officer



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has not answered properly. The direction of the first respondent is against the very scope of the National Commission for Scheduled Castes and its Rules. As the above direction is contrary to the Rules, the same is challenged in this writ petition.

3. Counter affidavit has been filed by the 1st respondent inter alia contending as follows :

(i) An enquiry was conducted by the Hon'ble Member of the National Commission for Scheduled Castes, Headquarters, New Delhi on 14.08.2012. The said enquiry was conducted with due notice to all the parties. The 5th respondent Society was represented by its Special Officer. The Minutes of the Meeting was recorded on 14.08.2012 and was forwarded to the Respondents. After enquiry, it was found that the 4th respondent was wrong and illegally transferred the Housing Plot No.890 to the petitioner and thus violated the Acts and Rules.

(ii) After receiving the Minutes report, the 2nd respondent has also initiated action. The 6th respondent who is the Special Officer for the 5th respondent House Building Society, invoked the arbitration clause and filed an application before the 3rd respondent. The 3rd respondent initiated the



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arbitration proceedings and the parties appeared before the arbitration proceedings. The 6th respondent contended that the petitioner Society is not a member of the 5th respondent House Building Society.

(iii) The Housing Society purchased the land from the Tamil Nadu Housing Board and allotted the same to their members, but it is found that the petitioner misdirected the Housing Board authorities and registered Plot No.890 for the Welfare Society members use and thereby victimized the 7th respondent who is the member of the 5th respondent Building Society.

(iv) Based on the complaint from the 7th respondent, the 1st respondent initiated action and enquired the case. A Meeting was held on 14.08.2012 at the State Guest House, Chennai presided by the then Member of the Commission. The meeting was attended by the 2nd, 3rd and 5th respondents. After hearing the parties, the 1st respondent Commission found that Plot No.890 was illegally transferred to the petitioner Society and thereby left the Scheduled Caste person in the street. Therefore the first respondent forwarded the minutes for necessary action. Subsequently, arbitration proceedings was initiated and after giving sufficient opportunity to the petitioner and the 4th respondent the Arbitration Award has been



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passed. Hence, the 1st respondent seeks to dismiss the writ petition.

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4. The 2nd respondent filed counter affidavit, inter alia, contending as follows:

(i) The Housing Board executed sale deeds to all the members of the 5th respondent society who were allotted 47 plots including the Plot No.890 allotted to the petitioner welfare society. The sale deed bearing No.1415 of 2015 was registered on 10.03.2004 in favour of the petitioner welfare society, during the regime of the special officer.

(ii) Thiru M.A.Balakrishnan, the 7th respondent herein has made a complaint to the National Commission for Scheduled Castes that he is holding a membership in the fifth respondent society from 1981 and he is the senior most SC member and as per the bye law on 36 B (i), (ii), (iii), (iv) and (v) he is the most entitled person. He complained that he was not allotted a plot by the fifth respondent society and he complained that the Plot No.890 has been illegally allotted to the petitioner Society.

(iii) The case of non-allotment of Plot No.890 to Mr.M.A.Balakrishnan, by the 5th respondent was taken serious note of by



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the National Commission for Scheduled Castes and the Principal Secretary Housing and Urban Development Government of Tamil Nadu and the Registrar of Co-operative Societies (Housing) were requested to appear before the Commission.

(iv) Accordingly in the meeting held on 14.08.2012 at the State Guest, Chennai convened by Mrs.Latha Priya Kumar, Member, National Commission for Schedule Castes, the case of non allotment of Plot No.890 by the 5th respondent Society to Mr.M.A.Balakrishnan, the 7th respondent herein was discussed in detail and minutes were passed on 14.08.2012. In the meeting it was finalized that immediate action should be taken to cancel the registration made on Plot No.890 in favour of the petitioner and the same to be allotted to the 7th respondent and punitive action under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on erring officials should be initiated.

(v) In pursuance of the above minutes, the 6th respondent initiated arbitration proceedings under Section 90 of the Tamil Nadu Cooperative Societies Act and the petitioner participated in the arbitration proceedings and filed a detailed reply statement and thereafter the 6th respondent passed



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an award dated 04.01.2013 cancelling the allotment of Plot No.890 made in favour of the petitioner.

(vi) The petitioner herein aggrieved against the said arbitration award, has filed revision petition under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983 before the 3rd respondent, which was initially not entertained by the 3rd respondent. The petitioner challenged the same before this Court and this Court remanded the matter to the 3rd respondent to hear the revision petition on merits and in accordance with law. In pursuance of the order of this Court, the revision is heard by the 3rd respondent and it is pending disposal.

(vii) The writ petition has been filed by the Syndicate Bank Employees Welfare Society, which is an association, and as per the various decisions of this Court, the Association / Union cannot file writ petition. It is submitted that the petitioner is not a necessary party in the proceedings held, leading to passing of minutes on 14.08.2012, by the 1st respondent.

(viii) It is contended that the petitioner having participated in the arbitration proceedings and revisions proceedings held in pursuance of the



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impugned minutes, he is estopped from agitating the impugned minutes

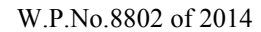
dated 14.08.2012.

(ix) It is contended that the petitioner has no locus standi to question the decision taken by the first respondent, as he is an alien to the matter involved in the allotment of plot by the 5th respondent Society.

(x) The petitioner who is not at all a member of the 5th respondent Society cannot file the present writ petition.

(xi) It is further contended that the role of the Government is only to give permission for formation of housing society and it the duty of the Special Officer of the concerned society to allot the plot to the eligible members of the society as per Tamil Nadu Cooperative Societies Act / By-laws, as well as instructions of Registrar of Co-operative Societies / Deputy Registrar (housing) concerned. The Registrar of Cooperative Society (Housing) is the competent authority to monitor all housing societies in the State.

(xii) The writ petition filed by the petitioner is devoid of merits and



to be dismissed.

contended as follows :

fitness of things if these parties were also called for the enquiry by the 1st

too at the intervention of a Court of Law and he should have made a proper

respondent.



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(iv) The Anna Nagar Western Extension lay-out was sponsored by the 4th respondent Housing Board. As such, the 5th respondent Cooperative Society did not follow the policy of reservation of plots for SC/ST categories. Further, at that time, the plots were available in plenty and the 5th respondent had surrendered 39 plots.

(v) The 7th respondent had not made any representation in time asking for the allotment of a plot to him. In deed the 7th respondent remained as a silent spectator to all the moves taken by the 5th respondent to get the plot registered in the name of the petitioner and he did not make objection to it.

(vi) The 7th respondent has raised the issue of failure to observe the reservation policy after the lapse of very many years which is not sustainable in law.

6. Counter affidavit has been filed by the 4th respondent inter alia contending as follows :

(i) The 7th respondent, a Member of the 5th respondent Society is claiming Plot No.890. However, during the relevant period, when there was



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no takers for a huge number of plots of the said lay-out of Tamil Nadu Housing Board, the 7th respondent had not approached the 4th respondent either directly or through the 5th respondent society. As now the cost of the plot has increased manifold and that is the reason for the belated claim of the 7th respondent.

(ii) It is contended that the 7th respondent had already purchased a flat at Kodambakkam/Chennai, during May 1989 and made payment of the cost of the flat through a loan availed of by him from his employer, viz., Syndicate Bank. Thereafter, the 7th respondent directly purchased a flat at Belly Area, Anna Nagar, Chennai from an allottee of the Tamil Nadu Housing Board. As such as per the Rules of the Tamil Nadu Housing Board, the 7th respondent is not entitled for allotment of any more plot/flat by the Tamil Nadu Housing Board.

(iii) The 5th respondent, when a Special Officer managed it, filed a suit in O.S.No.874 of 2013 seeking to declare the Sale Deed No.1415 of 2004 as null and void. However the suit was rejected by the Court on 14.07.2014 and the said order has become final.



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(iv) The Special Officer of the 5th respondent also filed an arbitration claim challenging the sale deed before the 6th respondent. The 6th respondent passed an erroneous order dated 04.01.2013, cancelling the sale deed. Against the said order, the petitioner filed a revision and the same is still pending.

(v) The reasons for all these action by the then Special Officer of the 5th respondent society were not earlier revealed. Only subsequently, it was revealed that all such steps were taken by the 5th respondent pursuant to the order dated 14.08.2012, passed by the 1st respondent Commission. It is reiterated that the sale transaction was effected on payment of sale consideration by the petitioner and therefore the 1st respondent Commission cannot interfere in the same.

(vi) Rule 14(1) A & B of the Development Control Rules of the Chennai Metropolitan Development Authority permits the usage of residential plot for various community purposes. Thus, it can be seen that there was no impropriety in the sale of the plot to the purchaser, the petitioner herein.



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(vii) The 7th respondent after a lapse of 44 years since the allotment of plots by the 4th respondent cannot now claim any allotment of plot/flat, as a matter of right, invoking the police of communal reservation. Hence, seeks dismissal of the writ petition.

7. Counter affidavit has been filed by the 5th respondent inter alia contending as follows :

(i) The main object of the 5th respondent society is to buy or acquire land for allotment of house sites to the employees of the Syndicate Bank, who constituted the Society for their benefit.

(ii) The then Special Officer of the 5th respondent society had filed an arbitration claim to cancel the sale deed in favour of the petitioner before the 6th respondent without getting any sanction from the General Body or consulting the past office bearers of the Society and thus acted against the mandate of the General Body of the Society, which is the ultimate authority of the Society as enshrined in Section 32(1) of the TN Cooperative Societies Act, 1983.

(iii) The impugned order dated 14.08.2012, has been passed without



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providing adequate opportunity to the petitioner and also the 5th respondent Society, hence it is illegal.

(iv) The layout was not sponsored by the 5th respondent but by the 4th respondent Housing Board, which alone had to follow the Rules of Reservation.

(v) When the General Body of the 5th respondent passed resolution to retain Plot No.890 for common purpose, the 7th respondent attended the meeting but he did not make any objection to it nor demanded the plot for him. The 7th respondent did not remit any amount and book the plot for him nor did he make even a request for it.

(vi) Enquiry Officer under Section 81 of the TN Cooperative Societies ct, 1983 had rendered the finding that there was no irregularity in the allotment of Plot No.890 to the petitioner and this report was accepted by the 6th respondent. The main reason for the 7th respondent to aspire for the Plot No.890 after the lapse of 37 years from 1977 is he soaring value of the plot. The 5th respondent seeks to allow the writ petition.



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8. Counter affidavit has been filed by the 7rd respondent inter alia

contending as follows :

(i) The writ petitioner is admittedly a Society registered under the TN Societies Registration Act, 1975. Similarly, the 5th respondent is a co-operative Society registered under the TN Cooperative Societies Act, 1983. As per the Bye-law No.5 of the 5th respondent society, a person over 18 years of age but below 53 years of age and who is competent to contract and who is the bonafide employee of the Syndicate Bank and its branches all over India, with at least 3 years of continuous service excluding probationary service shall be eligible for admission as a member. In view of the above, the writ petitioner cannot become a member of the 5th respondent society. Hence the allotment made to the petitioner by the 5th respondent was found illegal by the 3rd respondent as early as on 30.04.2010 who directed the allotment made to the petitioner to be cancelled.

(ii) As per the bye-law 36B(v) of the 5th respondent society, 10 % of the house sites/buildings at the time of allotment should be reserved for SC/ST. As a senior most SC member, the 7th respondent made a written request on 12.04.2000 to the 5th respondent to allot plot No.890, the 5th respondent illegally allotted the said plot to the petitioner vide sale deed



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dated 10.03.2004.

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(iii) The above illegal allotment to the petitioner was set at naught by the 6th respondent by an award dated 04.01.2013 and the petitioner preferred a revision and as the same is pending he approached the 1st respondent Commission. The 1st respondent Commission after series of meeting found his eligibility was undeniable and therefore directed to allot the said plot No.890 to him, which is within the legally permissible ambit and power of the 1st respondent Commission and it is legally sustainable and hence seeks dismissal of the writ petition.

9. The learned counsel appearing for the petitioner would submit that originally 89 plots were allotted by the 4th respondent Housing Board to the 5th respondent House Building Society. As there were no takers, 39 plots were surrendered to the 4th respondent. Out of 50 plots, the 4th respondent allotted directly three plots to the employees of the Syndicate Bank. For the remaining 47 plots, the Cooperative Building Society furnished the names of employees of the Syndicate Bank for allotment of plots by the Housing Board. Now the petitioner Association has been formed for the benefit of their members and the General Body of the 5th respondent Society passed a



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resolution on 26.01.1974 to retain Plot No.890 for the purpose of common utility. Thereafter the General Body of the 5th respondent Society in its meeting held on 25.01.2001, requested the 4th respondent to allot Plot No.890 to the Petitioner Welfare Society.

10. The learned counsel appearing for the petitioner further submitted that now one Mr.M.A.Balakrishnan, 7th respondent herein, made a representation to allot Plot No.890 to him as he belongs to Scheduled Castes. The National Commission for Scheduled Castes took cognizance of the same and directed cancellation of the sale deed registered in favour of the petitioner society and directed the authorities to allot the said plot No.890 to the 7th respondent, otherwise punitive action under the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act, 1989 should be initiated against the erring officials.

11. The learned counsel appearing for the petitioner further submitted that the plot in question Plot No.890 was retained only for common purpose as early as on 26.01.1974, a resolution to that effect was also passed in the General Body. Thereafter, the 4th respondent registered the said Plot No.890 in favour of the petitioner welfare society on



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10.03.2004 vide registered sale deed bearing No.1415 of 2004 during the regime of the Special Officer. Now the first respondent passed the impugned order directing to cancel the registered sale deed as if there was atrocities against the 7th respondent.

12. Whereas, the learned counsel appearing for the 5th respondent would submit that the resolution has been passed in the year 1974 allotting Plot No.890 for common purpose. Thereafter the Housing Board allotted the plot to the petitioner and a sale deed has also been executed. Now, the first respondent cannot set aside the same.

13. Whereas the learned counsel appearing for the 4th respondent Housing Board would submit that originally 89 plots were allotted to the 5th respondent and 39 were surrendered and out of the remaining 50, three plots were sold directly by the 4th respondent and 47 plots were allotted by the 4th respondent to the employees of the 5th respondent Society. 7th respondent has never made any application for allotment at the relevant point of time. Now on the basis of the resolution passed in the year 1974 the property has been retained for common purposes by the Society, which has been sold to the petitioner welfare society in the year 2004. Suit has been filed in this



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regard, which was rejected. Therefore, the order passed by the first respondent cannot be sustained in the eye of law. It is his contention that there was no investigation done to find out if any rights of the 7th respondent has been deprived. Therefore, mechanically an order has been passed which led to the filing of the arbitration proceedings by the authorities since they have been forced to take such step otherwise they will have to face criminal prosecution under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

14. Whereas the learned counsel appearing for the 1st respondent would submit that the first respondent derives power under Article 338(5) of the Constitution of India and they have all the power to investigate and monitor all the matters relating to the safeguards provided for the Scheduled Castes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards. To enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes. Accordingly on the basis of the representation made by the 7th respondent that the plot has been allotted contrary to the bye laws, the Commission has found that such allotment is against the bye laws, directed allotment of the said plot to



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the 7th respondent. Therefore, the order does not suffer from any infirmities and it is well within the Rules of Procedure of the National Commission for Scheduled Castes and the same cannot be questioned in a writ proceedings. According to the learned counsel, arbitration proceedings has been initiated by the Registrar of Cooperative Society wherein the sale deed has also been set aside and revision has also been filed and in such circumstances, the writ petition is not maintainable.

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

16. The 5th respondent Syndicate Bank Employees Cooperative House Building Society Limited has been formed pursuant to G.O.Ms.No.787, Housing Department, dated 20.08.1973. The object of the 5th respondent Society is to buy or acquire land for allotment of house sites to the employees of Syndicate Bank. After formation of the Society, the Housing Board by letter dated 24.12.1973, allotted 89 plots and thereafter it appears that 39 plots have been surrendered to the Housing Board as there was no takers from the employees of the Syndicate Bank.



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17. A Resolution has also been passed in this regard in the year 1974

to acquire a suitable plot for the office of the Society in the proposed colony from the Housing Board and to meet the cost of this, to collect contribution from the members, whose loans stand sanctioned by the bank. Thereafter, again another Resolution has been passed on 31.08.1980, to retain the Plot No.890 for Society's purposes and also resolved to authorise the Board to explore the possibilities of leasing out the land to any member / collective bodies who would come forward to put up a suitable building, a portion of which would be made available for common use. Thereafter, resolution has also been passed to the effect that the request of Syndicate Bank Employees' (Anna Nagar) Welfare Society for registration of Plot No.890 in their name viz., Syndicate Bank Employees (Annanagar) Welfare Society is approved. Pursuant to the same, a sale deed has been executed in the year 2004 by the 4th respondent Housing Board conveying the property in plot No.890 to the petitioner Society.

18. It is the specific stand of the Housing Board out of 89 plots allotted to the employees of the Syndicate Bank, 39 plots were surrendered and 3 plots have been sold by the 4th respondent directly and the remaining 47 plots were allotted by the 4th respondent.



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20. Based on the above order, it appears that now arbitration



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proceedings has been initiated by the Registrar. It is relevant to note that the powers of the National Commission for Scheduled Castes is derived from Article 338(5) of the Constitution of India. Chapter I deals with Constitutional provision which reads as follows:

"I Constitutional Provisions :- The duties of the Commission as laid down in the Article 338(5) of the Constitution are:

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;



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(e) to make in such report recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify."

21. It is relevant to note that the investigation and inquiry by the Commission has to be done as provided in Chapter III of the Rules. Rules 7.1 and 7.2 reads as follows:

"7.0 Investigation and Inquiry by the Commission:-

7.1 The Commission shall function by holding 'sittings' and 'meetings' at any place within the country and also through its officers at the Headquarters and in the State Offices. The Members of the Commission including the Chairperson and the Vice-Chairperson shall



function in accordance with the procedure prescribed under these rules.

7.1.1 The Commission may adopt any one or more of the following methods for investigating for inquiring into the matters falling within its authority:

- (a) by the Commission directly;*
- (b) by an Investigating Team constituted at the Headquarters of the Commission;*
- (c) through its State Offices;*
- (d) by the State Agencies; and*
- (e) by any other institution/Deptt. funded by Central Government and its statutory bodies.*

7.2 (a) Investigation and Inquiry by the Commission directly

7.2 (a) (i) The Commission may hold sittings for investigation into matters relating to safeguards, protection, welfare and development of the Scheduled Castes for inquiry into specific complaints for which the Commission decided to take up investigation or inquiry directly. Such sittings may be held either at the Headquarters of the Commission or at any other place within the



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country.

7.2 (a) (ii) The sitting(s) of the Commission would be held after giving due notice to the parties intended to be heard and also due publicity/notice to the general public. Care will be taken to see that the members of the Scheduled Castes who are affected in the matter under investigation or inquiry are given due information through notice or publicity.

7.2 (a) (iii) When a decision for direct investigation is taken, an officer not below the rank of Investigator/Research Officer/Section Officer along with necessary staff may be attached to the Member(s) entrusted with such investigation or enquiry and they shall take all steps to arrange such sittings.

7.2 (a) (iv) The Commission shall convene meeting of all the Chief Secretaries, Secy. (Home), Secy. (Social Welfare), DGPs of the State and Secretaries of the Government of India, who may be considered accountable for the implementation of the programme of the safeguards as enumerated under Article 338(5)(a) once in a year for monitoring the safeguards and development.

7.2 (a) (v) In accordance with Clause (8) of Article 338 of the Constitution, while investigating



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in a matter referred to in sub-clause (a) or in inquiring into any complaint referred to in sub-clause (b) of clause (5) of Article 338, the Commission shall have all the powers of civil court trying a suit and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

7.2 (a)(vi) The Commission for the purpose of taking evidence in the investigation or inquiry, requires the presence of any person and when considered necessary may issue summons to him/her with the approval of the Chairman. The summons for enforcing attendance of any person from any part of India and examining him/her



during the course of investigation and inquiry by the Commission shall provide at least 15 days' notice to the person directed to be present before the Commission from the date of receipt of the summons. In serious cases of atrocities, three days' notice will be given to the person directed to be present before the Commission from the date of receipt of the summons by him/her.

7.2 (a) (vii) Where the property, service/employment of Scheduled Castes and other related matters are under immediate threat and prompt attention of the Commission is required, the matter shall be taken cognizance by issue of telex/fax to the concerned authority for making it known to them that the Commission is seized of the issue and that authority will be prohibited to take any action till the completion of the enquiry in the matter by the NCSC. Urgent reply by telegram or fax shall be called from the concerned authority. In case no reply is received within three working days, the authority concerned may be required to appear before the Commission at a three days' notice for enquiry.

7.2 (a) (viii) The Commission may issue



commission/under Clause 8(e) of Article 338 of the Constitution to take evidence in any matter under investigation or inquiry and for this purpose appoint any person by an order in writing. The Commission may make further rules for payment of fee and travelling and other allowances to persons appointed to take evidence on commission.

7.2 (a) (ix) After holding the required sittings, the Member(s) who conducted the investigation shall make a report, which shall be sent to the enquiry officer appointed under Rule, 34 or any other officer authorized by the Commission to receive the report. The report received in the Commission shall be submitted within 3 days to the Chairperson for inspections. After examination, action may be initiated on the report with the approval of the Chairperson.

7.2 (b) Investigation or inquiry by an Investigation Team constituted at the Headquarters of the Commission

7.2 (b) (i) The Commission may decide about the matter that is to be investigated or enquired into by an Investigating Team of officials



of the Commission, provided that in case the matter is urgent, the decision for such investigation or inquiry may be taken by the Chairperson.

7.2. (b) (ii) The Investigating Team shall hold the investigation or inquiry, as the case may be, promptly and for this purpose, may initiate necessary correspondence including issuance of notices for production of documents in Form I, appended to these rules.

7.2 (b) (iii) The Investigating Team may visit the area concerned after observing due formalities for obtaining approval of tours and other administrative requirements and after giving information to the concerned local authorities regarding the matter, purpose, scope and procedure of the investigation or inquiry. The Investigating Team may enlist the help of the officers and staff of the concerned State Office but the responsibility of preparing and presenting the report shall rest with the head of the Investigating Team.

7.2 (b) (iv) The Investigating Team shall submit the report of the investigation or inquiry, as the case may be, to the Chairman/Secretary or a subordinate officer of the Commission as may be directed by general or specific orders by the



Chairperson within the stipulated time, if any. If the time limit stipulated is likely to be exceeded, the head of the Investigating Team shall obtain the orders of the Chairperson through the Officer-in-charge of the matter. The report shall be examined and put upto the Chairperson for a decision regarding the action to be taken on the report.

7.2 (b) (v) The decision of the report shall be sent to the Secy Joint Secy/Officer-in-charge placed before the Chairperson of the Commission who will take appropriate action in the matter.

7.2 (c) Investigation and inquiry through the State Offices

7.2 (c) (i) The Chairperson, the Vice-Chairperson, the Members having jurisdiction over the subject may decide about an investigation or inquiry that may be carried out through the State Offices of the Commission. The decision will be conveyed to the Officer-in-Charge of the concerned State Office who will be asked to get the matter investigated or inquired into within a stipulated time and send the report. The State Office shall conduct the investigation or inquiry through interrogation, on the spot visit, discussions and



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correspondence and examination of documents as may be necessary in the case and shall follow any special or general instructions issued in the matter by the Chairperson/V.C./Member through the officials of the Commission from time-to-time.

7.2 (c) (ii) If the investigation or inquiry cannot be completed within the stipulated time, the officer-in-charge of the State Office may send a communication to the Secretariat of the Commission before the expiry of the stipulated time and explain the circumstances and reasons for non-completion of the investigation or inquiry, as the case may be, within the stipulated time. The Secretary to the Commission or the Member under delegated functions may consider the request and communicate a revised date after taking approval of the Chairperson for the completion of the investigation or inquiry.

7.2 (c) (iii) If during the course of investigation or inquiry, the Head of the State Office feels that it is necessary to invoke the powers of the Commission to require the production of any document or compelling the attendance of a person, he may make a special report with full facts to the



Secretariat of the Commission. On receipt of such special report, the matter shall be placed before the Chairperson/Member in-charge of the subject/State/UT who may make an order that necessary legal processes to compel attendance or to require production of any document may be issued. The summons and warrants issued for the purpose may be served on the person concerned either directly or through the officer-in-charge of the State Office as may be directed by the Chairperson authorizing issue of such legal process.

7.2 (c) (iv) After completion of the investigation or inquiry, as the case may be, the head of the State Office shall submit the report to the Secretary of the Commission suggesting the course of action that could be followed in the matter. The gist or findings of the report may be placed before the Chairperson with specific proposals by the Secretary/Joint Secretary who may decide about further action in the matter.

7.2 (d) Investigation by the State Agencies

The Chairperson may decide about an investigation or inquiry that may be carried out through the State Agencies. The decision will be



conveyed to the Chief Secretary/Officer-in-Charge of the concerned State/State Agency(s) who will be asked to get the matter investigated or inquired into within a stipulated time and send the report.

7.2 (e) Investigation by any other institution/Deptt funded by Central Government and its statutory bodies."

22. Thus, the above Rule 7 makes it very clear that whenever there is any complaint to be enquired by the Commission, the Commission has to follow proper procedure like summoning and enforcing the attendance and also receiving the evidence on affidavits and also requiring production of documents etc., Without following any of the procedures as contemplated in the Rules, just sitting in one meeting and merely on the basic of the 7th respondent's representation, the 1st respondent Commission cannot direct to cancel the registration of Plot No.890 in favour of the petitioner welfare society and to allot the said plot to Mr.M.A.Balakrishnan the 7th respondent herein.

23. It is specifically averred by the 4th respondent Housing Board that the 7th respondent has already purchased a flat at Kodambakkam,



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Chennai during May 1989 and made payment of the cost of the flat through a loan availed by him from his employer viz., Syndicate Bank. Subsequently, he has directly purchased a flat at Belly Area, Anna Nagar, Chennai from an allottee of the Tamil Nadu Housing Board. This flat, along with other flats in the complex, was later demolished and re-constructed by the Housing Board and the 7th respondent took delivery of the same and occupied the new flat on 12.11.2001. Based on his signed declaration, the Housing Board executed a Lease-cum-Sale Deed during 2001 and the 7th respondent has again mortgaged the said flat with the Syndicate Bank, Housing Finance Branch, Chennai and availed housing loan from them on 17.10.2001. As such, as per the Rules of the Tamil Nadu Housing Board, the 7th respondent is not entitled for allotment of any more plot/flat by the Tamil Nadu Housing Board.

24. Therefore, without going into all these aspects merely on the basis of the representation given by the 7th respondent and that the official respondents were not able to answer when oral questions put by the Commission, the impugned direction came to be issued mechanically by the 1st respondent Commission.



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25. Even though there is power vested with the 1st respondent Commission, the Rules and Procedures contemplated therein has to be followed properly and proper enquiry or investigation has to be carried out. Without seeing any documents in this regard right from the year 1973 and the resolutions passed by the General Body, mechanically the impugned order has been passed.

26. Despite 89 plots were allotted to the petitioner Society by the 4th respondent Housing Board, 39 plots were surrendered to the 4th respondent. Out of the 50 plots, except 3 plots, which were sold directly by the 4th respondent to the employees of the Syndicate Bank, the other 47 plots were allotted by the 4th respondent Housing Board to the members of the petitioner Society. At the relevant point of time, the 7th respondent has not even applied for allotment, therefore, it cannot be said that there is discrimination or there was any deprivation of his right.

27. It is relevant to note that the 7th respondent has already purchased two flats from the 4th respondent Housing Board, sale deeds were executed and loan was also availed by him from the Syndicate Bank. These matters have not been looked into by the 1st respondent Commission. When the



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power is vested on the 1st respondent Commission under the Constitution of India and procedure has been set out therein to find out and investigate certain aspects particularly with regard to the discrimination or deprivation of rights and safeguards of the Scheduled Castes, investigation or inquire ought to have been conducted by the 1st respondent Commission as per the Rules of Procedure as set out in this regard. However, perusal of the material records shows that none of the Rules or Procedures have been followed by the 1st respondent Commission.

28. The Tamil Nadu Housing Board Circular Memo No.P-2/47217/93, dated 23.08.1993, makes it very clear that as per the norms prescribed in G.O.Ms.No.2063 (Housing), dated 09.11.1979, for allotment of Tamil Nadu Housing Board Plots/Flats/Houses, the applicant should not own a house/flat/plot in any Municipal Corporation, Special Grade and 'A' Grade Municipalities or any of the capital town in the country either in his/her name or in the name of the spouse or minor children. The Circular further clarifies that the applicant should also give a declaration to the effect that he/she does not own a house or flat or house site in any Municipal Corporation, Special Grade and 'A' Grade Municipalities/Township/Town Panchayat in Tamil Nadu and in any housing scheme of Tamil Nadu



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Housing Board anywhere in Tamil Nadu or in any State/Union Territory
Capital Town in the country either in his/her name or in the name of the
spouse or minor children.

29. When the stand of the 4th respondent Housing Board is that the 7th respondent has not made any application when the plots were available and based on the resolution of the petitioner welfare society, the 4th respondent Housing Board has allotted Plot No.890 to the petitioner welfare society on outright sale basis. Further the fact remains that the 7th respondent has already purchased properties from the 4th respondent Housing Board by availing loan from his employer Syndicate Bank, without examining all these aspects as per the Rules and Procedures as set out and without making any investigation or inquiry in the matter, merely on the basis of some non-reply by the officials, there cannot be any such direction to cancel the registered sale deed executed by the 4th respondent Housing Board in favour of the petitioner welfare society.

30. It is also stated that a suit has been filed by the Special Officer of the 5th respondent Society to declare the sale deed executed by the 4th respondent in favour of the petitioner as null and void in O.S.No.874 of



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2013, however, the same was rejected by the learned VII Assistant Judge, Civil Court, Chennai by its order dated 14.07.2014.

31. Further, pursuant to the impugned order passed by the 1st respondent Commission, now it appears that arbitration proceedings have been initiated by the 6th respondent to cancel the Sale Deed by the Registrar of Cooperative Societies by invoking Section 90 of the Tamil Nadu Cooperative Societies Act, 1983. It is to be noted that such dispute has been raised only pursuant to the directions of the 1st respondent Commission.

32. Therefore, when an outright sale deed has been executed by the 4th respondent Housing Board in favour of the petitioner, it can be tested only by a Civil Court, since title has been transferred. Therefore, though this Court has not ventured to look into the correctness of the arbitration proceedings, the fact remains that the arbitration proceedings itself is a result of the directions contained in the order of the 1st respondent Commission to cancel the registered sale deed or otherwise the officials will be prosecuted under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thus, it is very clear that the proceedings initiated in the name of arbitration itself is to avoid any punitive



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action under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as recommended by the 1st respondent Commission.

33. Be that as it may, in any event, the order passed by the 1st respondent Commission is clearly without non-application of mind and without conducting proper inquiry by following the Rules and Procedure as contemplated in this regard. Accordingly, this Court has no other alternative except to set aside the impugned order passed by the 1st respondent Commission. Accordingly, this writ petition is allowed and the impugned order dated 14.08.2012, passed by the 1st respondent Commission is set aside. Consequently, the connected miscellaneous petition is closed. No costs.

27.10.2022

Index : Yes / No
kk

To

1. The Assistant Director,
National Commission for Scheduled Castes,
State Office (Tamilnadu and Puduchery)
Floor No.2, Block-5,
Shastribhavan, Chennai - 600006.
2. The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600009.



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3. Registrar of Cooperative Societies (Housing)

Tamilnadu Housing Board,
Nandanam, Chennai - 600035.

4. The Executive Engineer,
The Tamilnadu Housing Board,
Annanagar Division,
Thirumangalam,
Chennai - 600101.

5. The President,
Syndicate Bank Employees Cooperative
House Building Society Ltd.,
890, Syndicate Bank Colony,
Annanagar Western Extension,
Chennai - 600101.

6. The Deputy Registrar of Cooperative
Societies (Housing)
17, Ramanathan Street,
Thiyagarayanagar,
Chennai - 600017.



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N.SATHISH KUMAR, J.

kk

ORDER
in W.P.No.8802 of 2014
and M.P.No.2 of 2014

RESERVED ON : 20.10.2022

DELIVERED ON : 27.10.2022