



WEB COPY



W.P.No.11997 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11997 of 2023

South Breeze Apartment Owners' Welfare Association
Represented by its President ... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by Principal Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai.

2.The Managing Director,
Tamil Nadu Housing Board,
Koyambedu, Chennai.

3.The Commissioner,
The Corporation of Greater Chennai,
Ripon Building,
Chennai – 600 003.

4.The Manager,
Sale and Allotment Service,
Tamil Nadu Housing Board,
Besant Nagar Division,
No.48, Dr.Muthulakshmi Salai,
Adyar, Chennai – 600 020.

5.The Executive Engineer
Tamil Nadu Housing Board,
Besant Nagar Division,
No.48, Dr.Muthulakshmi Salai,
Adyar, Chennai – 600 020.

... Respondents



W.P.No.11997 of 2023

WEB COPY

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to grant permission to redevelop the property namely "South Breeze Apartment" being Block No.H-54, South Avenue, Kamaraj Nagar, Thiruvanmiyur, Chennai – 600 041 as per the undertaking given by the fifth respondent herein in Cont.P.No.151 of 2017.

For Petitioner : Mr.M.Suresh Kumar
for M/s.R.Mitesh

For Respondents : Mr.S.Jayachandran for R1
Government Advocate
Mr.D.Veerasekaran for R2, R4 & R5
Standing Counsel for TNHB
Ms.P.T.Ramadevi for R3

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the respondents to grant permission to redevelop the property namely "South Breeze Apartment" being Block No.H-54, South Avenue, Kamaraj Nagar, Thiruvanmiyur, Chennai – 600 041 as per the undertaking given by the fifth respondent in Cont.P.No.151 of 2017.



W.P.No.11997 of 2023

WEB COPY

2.The petitioner had earlier filed writ petition in W.P.No.17400 of 2016 contending that originally allotment granted in favour of the allottee in respect of flat no.13 was cancelled and subsequently, no allotment has been made and it is under lock and key and also under dilapidated condition. It was further contented by the petitioner that since the entire flats have become old, the petitioner association took a decision to demolish the entire flats and to put up new superstructure consisting of very many flats and since the ownership of flat no.13 is not made known and also whether it is allotted in favour of somebody or not, submitted a representation dated 08.02.2016, to the fifth respondent, however, no orders were passed and this Court vide order dated 01.06.2016, disposed of the said writ petition by directing the fifth respondent to dispose of the petitioner's representation, within a time frame.

3.Since the order of this Court dated 01.06.2016 made in W.P.No.17400 of 2016 was not complied by the fifth respondent, the petitioner filed contempt petition in Cont.P.No.151 of 2017 as against the fifth respondent and in the said contempt petition, the learned Standing Counsel who appeared for the Tamil Nadu Housing Board



W.P.No.11997 of 2023

had

WEB COPY

submitted that the title documents are with the Tamil Nadu Housing Board and the purchaser is yet to get the sale deed executed by the Tamil Nadu Housing Board and on instructions, the learned Standing Counsel had further submitted that if the petitioner Association or the Corporation of Chennai approaches the Tamil Nadu Housing Board for demolition of the dilapidated superstructure, they will fully co-operate for the same. Observing the submission made by the learned Standing Counsel who appeared for the Tamil Nadu Housing Board, this Court had closed the contempt petition on 31.01.2020.

4.Pursuant to the order of this Court dated 31.01.2020 made in Cont.P.No.151 of 2017, the petitioner approached the Greater Chennai Corporation, however, the petitioner was informed that the request for demolition would be considered only after getting necessary permission to redevelop the property from the Housing Board. Thereafter, the petitioner made representation to the Tamil Nadu Housing Board seeking permission to redevelop the property, however, there was no response. Hence, this writ petition.



W.P.No.11997 of 2023

5.The learned counsel appearing for the petitioner submitted

WEB COPY

that since the Tamil Nadu Housing Board has not issued no objection certificate to the petitioner for redeveloping the property, they are not in a position to approach the competent Authority for redeveloping the property.

6.Pointing out to the counter affidavit filed by the respondents 4 and 5, the learned Standing Counsel appearing for Tamil Nadu Housing Board stated that, the South Breeze Apartment Owners' Welfare Association is insisting for redevelopment of the apartment by stating that the apartment is not in a suitable condition for living and it imposes threats to the residents residing there and it is exponential gain for the Housing Board, however, its President did not submit any authorized order or requisitioning letter from the Greater Chennai Corporation due to its dilapidated condition. The original allottee of flat no.13 expired on 23.03.2016 and since her legal heirs did not approach the Tamil Nadu Housing Board, it is not possible to issue sale deed without confirming the title of the appropriate owner.



W.P.No.11997 of 2023

7. Heard the arguments advanced on either side and perused the materials available on record.

8. Perusal of records disclose that the apartment consists of 24 flats and 23 flats were sold in favour of the members of the petitioner Association and sale deed has not been executed in respect of one flat. The petitioner had earlier filed writ petition in W.P.No.17400 of 2016 and since the order of this Court dated 01.06.2016 made in W.P.No.17400 of 2016 was not complied by the fifth respondent, the petitioner filed contempt petition in Cont.P.No.151 of 2017 as against the fifth respondent.

9. In Cont.P.No.151 of 2017, the learned Standing Counsel who appeared for the Tamil Nadu Housing Board had submitted that the title documents are with the Tamil Nadu Housing Board and the purchaser is yet to get the sale deed executed by the Tamil Nadu Housing Board and on instructions, the learned Standing Counsel had further submitted that if the petitioner Association or the Corporation of Chennai approaches the Tamil Nadu Housing Board for demolition of the dilapidated superstructure, they will fully co-operate for the same, however, the Tamil Nadu Housing Board taking a contra stand



W.P.No.11997 of 2023

later is not sustainable one.

WEB COPY

10.Since, the original allottee of flat no.13 has already expired and since her legal heirs did not approach the Tamil Nadu Housing Board for execution of sale deed and since the entire apartment is in dilapidated condition, the Tamil Nadu Housing Board refuse to grant no objection certificate is not sustainable one.

11.Hence, this Court directs the Tamil Nadu Housing Board to issue no objection certificate to the petitioner Association, within a period of four weeks from the date of receipt of a copy of this order and co-operate with the petitioner Association for redevelopment of the apartment. The Tamil Nadu Housing Board is entitled for retaining one flat in the apartment namely, flat no.13.

12.The writ petition is accordingly disposed of. No costs.

28.04.2023

pri

Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

7/9



WEB COPY



W.P.No.11997 of 2023

To

- 1.The Principal Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai.
- 2.The Managing Director,
Tamil Nadu Housing Board,
Koyambedu, Chennai.
- 3.The Commissioner,
The Corporation of Greater Chennai,
Ripon Building,
Chennai – 600 003.
- 4.The Manager,
Sale and Allotment Service,
Tamil Nadu Housing Board,
Besant Nagar Division,
No.48, Dr.Muthulakshmi Salai,
Adyar, Chennai – 600 020.
- 5.The Executive Engineer
Tamil Nadu Housing Board,
Besant Nagar Division,
No.48, Dr.Muthulakshmi Salai,
Adyar, Chennai – 600 020.



WEB COPY



W.P.No.11997 of 2023

M.DHANDAPANI,J.
pri

W.P.No.11997 of 2023

28.04.2023