



Appln.No.422 of 2022 ...
C.S. (Comm. Div.) No.108 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.03.2023	Pronounced on: 11.12.2023
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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Application No.422 of 2022
in
C.S.(Comm. Div.) No.108 of 2021

- 1.The Chairman,
Tamil Nadu Urban Habitat Development Board,
(Formerly Tamil Nadu Slum Clearance Board),
No.5, Kamarajar Salai, Chennai – 600 005.
- 2.The Managing Director,
Tamil Nadu Urban Habitat Development Board,
No.5, Kamarajar Salai,
Chennai – 600 005.
- 3.The Superintending Engineer,
Chennai North II Circle,
Tamil Nadu Urban Habitat Development Board,
(Formerly Tamil Nadu Slum Clearance Board),
No.5, Kamarajar Salai, Chennai – 600 005.
- 4.The Executive Engineer, Division III,
Tamil Nadu Urban Habitat Development Board,
Vyasarpadi, Chennai – 600 039.

..Applicants

Vs.

M/s.P.S.T. Engineering Construction
Represented by its Managing Partner,
V.S.Thennarasu,
2/352, Vavipalayam, Kolaram (Po.),

<https://www.mhc.tn.gov.in/judis>



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Paramathi Velur Tk.,
Namakkal District – 637 201.
..Respondent

Prayer: Application filed under Order XIV Rule 8 of the O.S.Rules read with Order VII Rule 11 of C.P.C., 1908 praying to reject the plaint in C.S.No.108 of 2021.

For Applicants : Mr.Ramanlaal
Additional Advocate General
Assisted by
Mr.Edwin Prabakar
Special Government Pleader

For Respondent : Mr.M.S.Krishnan
Senior Standing Counsel
for Mr.S.Senthil

ORDER

The defendants in C.S.(Comm.Div.).No.108 of 2021 have filed the above application in A.No.422 of 2022 to reject the plaint in the above suit.

The above suit has been filed by the respondent herein (the plaintiff) for the following relief:-

a)To declare that the show cause Notice Rc.No.TNUHDB/815/D1/SE(CC-II)V2017 dated 08.10.2021 issued by the third defendant to the plaintiff as ultravires, null &void and arbitrary, with the consequential relief of a permanent injunction restraining the defendants from in any manner initiating coercive steps to get the plaintiff blacklisted by cancelling or suspending the Plaintiffs Contractor Registration with respect to Lump Sum Agreement C.R. No.7/SE(CC-III) 2017 - 18 dated 06.12.2017 entered into between the



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Plaintiff and the 3rd Defendant, and

- b) To grant a decree of mandatory injunction directing the defendants to assist the Plaintiff Firm to unlock the tenements under lock & key for the purpose of re-doing the balance works at Blocks A, B,C and D of K.P Park, Phase-I, Pulianthope, Chennai, and*
- c) Cost of the suit and*
- d) Pass any further or other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.*

2.The suit has been filed by the respondent based on the alleged threat perceived by the respondent on account of the letter dated 19.08.2021 followed by another notice dated 08.10.2021 of the Superintending Engineer of the Tamil Nadu Urban Habitat Development Board (Formerly Tamil Nadu Slum Clearance Board), the 3rd applicant herein.

3.The respondent had entered into a contract on 06.12.2017 with the 3rd applicant for the construction of 864 economically weaker section multi-storeyed tenements for the applicant.

4.The contract value was for a sum of Rs.91,81,63,852/-. The period of contract was for a period of 18 months starting from 19.1.2018. The case of the respondent is that the work was completed and the building was handed over to the applicants on 10.05.2019.



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5.It is further case of the respondent that an inspection was conducted and completion certificate was also issued to the respondent on 07.8.2019 by the applicant. The respondent claims that the completion of the building was within the stipulated time and was acknowledged and the quality of construction was also certified as “good”.

6.The further case of the respondent/plaintiff is that subsequent development took place and the residential building was virtually converted into a hospital to treat the patients due to outbreak of Covid-19 pandemic. The building was damaged. The property also further damaged due to the trespass to the property by some miscreants.

7.A show cause notice came to be issued to the respondent on the ground that the construction by the respondent was not upto standard. The second applicant proceeded to appoint an agency consisting of the Centre for Urbanization, Buildings and environment (CUBE), the Centre of Excellence of IIT Madras and Govt. of Tamil Nadu to make an inspection on the quality of the building and to recommend for the remedial measures.



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8.The agency conducted an inspection and a report was also given by the Centre for Urbanization, Buildings and Environment (CUBE). The respondent has given its explanation for the report given.

9.A notice was issued to the respondent on 04.10.2021 and called on the respondent to submit an action plan to carry out the remedial measures as suggested by the agency. A further instruction was issued to the respondent to carry out all the remedial measures within 45 days and submit a detailed compliance report.

10.Immediately, thereafter the impugned notice dated 08.10.2021 was issued wherein it is alleged that steps were initiated for suspending /cancelling respondent's registration. Aggrieved by the same, the present suit was filed by the respondent.

11.By Notice dated 08.10.2021, the Superintending Engineer of the respondent Tamil Nadu Urban Habitat Development Board (Formerly Tamil Nadu Slum Clearance Board) has stated as under:-

“Also, a show cause notice was served to you on 19.08.2021, vide reference (v) cited. For which the reply received on 26.08.2021, vide reference (vi), the same was neither acceptable nor satisfactory.



Now, The CUBE has submitted the findings to the Board vide reference (vi) Jan 04.10.2021, wherein they have assessed the quality of Blocks-A, B, C & D on Above aspects and furnished their findings with the remedial action to be undertaken.

As per the general conditions for the Lumpsum Turnkey Design and Build basis contract, specifically mentioned in clause 21 and special condition of the agreement in page :33, you are totally responsible for the "specifications", quality of construction and defects liability for 5 years as mentioned in the Bid document point no.5 in the bidders/contractors certificate, hence you are liable to rectify the defects. Hence the reports were communicated to you vide reference (vii) cited and it was duly acknowledged, wherein it was instructed to complete the rectification works in structural, non structural and workmanship aspects within 45 days.

In view of the above specific lapses in execution of the project, lapses with regard to the quality of constructions and non adherence of the "specifications of the agreement, you are hereby instructed to show cause within 7 days from the date of receipt of this letter, as to why your firm should not be recommended for suspension or cancelation of the contractor registration. Failing which, further action will be taken presuming that there is no further submission from your side."

12.The present Application is predicated on the following grounds:-

- (i)plaint does not reveal the cause of action to file the suit;*
- (ii)The defendant Tamil Nadu Urban Habitat Development Board (Formerly Tamil Nadu Slum Clearance Board) is a Government within the meaning of Section 80 of the Code of Civil Procedure, 1908 and that neither an application for dispensing with notice*



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has been obtained by the plaintiff nor a mandatory notice as is contemplated under Section 80 of the Code of Civil Procedure, 1908 was issued before instituting the said suit.

(iii) The present suit is premature and therefore the plaintiff is liable to be rejected as there cannot be a proceeding to scuttle proceedings under the contract between the plaintiff and the defendants, since the applicants have not yet taken any final decision pursuant to the show-cause notice issued on 08.10.2021.

(iv) The suit is also barred in terms of Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 and Section 41 of the Specific Relief Act. Therefore, the suit is barred under law and therefore the plaintiff is liable to be rejected in terms of Order VII Rule XI (d) of CPC”

13. The learned Additional Advocate General for the applicants submitted that there is no cause of action to file the present suit and the so called perceived threat is premature as no action has been taken against the plaintiff as both the Show Cause Notice dated 19.08.2021 and notice dated 08.10.2021 have not determined *inter se* rights of the parties to the litigation and that the applicants are yet to take action on the basis of the reply dated 18.10.2021 given by the respondent to the Show Cause Notice dated 08.10.2021 and no final decision has been arrived at by the applicants.

14. It is further submitted that without waiting for the final decision of the applicant, the respondent filed the present Suit seeking to declare the



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Show Cause Notice dated 08.10.2021 as null and void to circumvent the action to be initiated by the applicants and thereby was thwarting the applicants from taking any action against them which amounts to curtailing the applicants from exercising their public duty and taking statutory action against the respondent. It is submitted that there is a clear bar of suit under section 41 of the Specific Relief Act from filing the present suit.

15.It is further submitted that it is mandatory for the respondent before filing of the present suit to issue notice under section 80 C.P.C. as the applicant Board is a “government”.

16.It is submitted that the applicants have not received any notice issued under Section 80 C.P.C and therefore, the Suit is barred under the law and therefore the plaint is liable to be rejected.

17.It is therefore submitted that the respondent has also not filed any petition to dispense with for the non-issuance of the notice under section 80 C.P.C. It is submitted that the Suit filed is without following the issuance of mandatory notice under Section 80 C.P.C. and therefore the Plaint is liable to be rejected.



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18.That apart, it is submitted that the respondent has also suppressed material fact that the suit has been filed without disclosing that that respondent itself issued a letter dated 25.11.2021 to the third applicant and wanted to refer the dispute for arbitration in terms of agreement dated 06.12.2017 and thereby commencing arbitration proceedings under section 21 of the Arbitration and Conciliation Act, 1996.

19.This plea was earlier rejected by this Court vide its order dated 28.01.2022 in A.No.4793 of 2021 filed by the applicant under Section 8 of the Arbitration and Conciliation Act, 1996. Operative portion of the order dated 28.01.2022 in A.No.4793 of 2021 reads as under:-

“16.A careful reading of the above two judgments makes it clear that there was a similar clause that was available in the agreement which restricted reference to Arbitration only those disputes upto Rs.50,000/- and Rs.2 Lakhs respectively; and for claims above the said value, it had to be adjudicated only by the Court of competent jurisdiction. While dealing with this issue, it was held that the existence of an Arbitration agreement must be decided on the basis of the terms of the Arbitration agreement and on a plain reading of the Arbitration clause and if the Arbitration clause restricts the value of the claim which can be referred to the arbitrator, only those claims which falls within the value can be referred for adjudication by the arbitrator and beyond the fixed value, the dispute can



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only go before the competent jurisdictional Court. The above two judgments will squarely cover the issue that is involved in the present case. Even in the present case, the Arbitration cause specifically provides that claims above Rs.50,000/- can be decided only before the jurisdictional Court at Chennai City. This Court has already held that the claims involved in the present case far exceeds Rs.50,000/-.

17.*It is true that the respondent did not file the letter dated 25.11.2021. The question would be as to whether the non filing of this letter will have any bearing while deciding this application and whether it can be construed as a vital suppression. An omission will get the status of suppression only if it has been done deliberately and such omission has resulted in the party getting an undue advantage. In other words, the party would not have been granted a relief by the Court if the material suppressed had been brought to the notice of the Court. Only if the omission results with such a consequence, it will be taken as a suppression and the party has to necessarily face the consequences for such suppression. In the present case, even if the letter dated 25.11.2021 had been filed by the respondent at the time of filing the suit, it would not have put the respondent in a disadvantageous position and in spite of this letter, the respondent could have still maintained the present suit. This Court therefore holds that the non filing of the letter dated 25.11.2021 does not have any bearing while deciding this application.*

18.*Insofar as yet another petition filed by the respondent/plaintiff under Section 11(6) of the Arbitration Act, for appointment of an arbitrator wherein a similar Arbitration clause is found by restricting the value, the authorities therein have taken a stand that only the Civil Court has jurisdiction. Therefore, it is clear that both the sides are taking different stands to suit their convenience and this Court will not decide the application merely based on such a stand taken by the parties and the decision will be taken by considering the facts of the case and applying it to the agreement which provides for an*

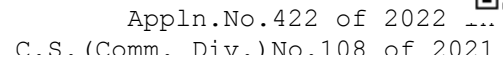


Arbitration clause.

19. *In view of the above discussion, this Court has absolutely no hesitation to hold that the dispute involved in the present case cannot be referred to Arbitration since it has a value of more than Rs.50,000/- and as a result, this application is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.*
20. *Before drawing the curtains, this Court wants to impress upon the authorities to revamp the entire Arbitration clause. Obviously, there is a total non application of mind on the part of the authorities which is apparent from the general conditions of contract which forms part of the agreement and it continues to make reference to the provisions of Arbitration Act 1940. This Act has been replaced by Arbitration and Conciliation Act 1996 which came into effect on 22.08.1996. In spite of the same, for an agreement entered into in the year 2017, reference is made to the 1940 Act. The fixation of the value of the claims upto Rs.50,000/- to refer the dispute to Arbitration has absolutely no meaning in the present day scenario and such a clause has become archaic. authorities will have to blame themselves for there own disadvantageous position. If the authorities had applied their mind and had not acted in a mechanical fashion, they would not have fixed the value as ridiculous as Rs.50,000/- and this dispute would not have landed in this Court. This Court wanted to add this footnote to this order with a fond hope that the authorities will wake up to the reality and immediately take steps to revamp the entire Arbitration clause in all their agreements. In order to take effective steps, there shall be a direction to mark a copy of this order to the Chief Secretary of the The Government of Tamil Nadu, who will instruct all the departments to act upon the directions issued in this order."*

20. It is submitted that no prejudice is going to be caused to the

respondent and that the right of the respondent is protected because the



21. The learned Additional Advocate General for the applicants submits that the law and subject of rejection of plaint is clear. The Court is merely required to look at the pleading and examine whether the suit is barred under law or not. The Court is not even required to look into the evidence of either party contesting the application filed for rejection of plaint.

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23.The learned Additional Advocate General for the applicants has

placed reliance on the following decisions:-

- (i) **Amar Nath Dogra Vs. Union of India**, AIR 1963 SC 424;
- (ii) **Ponnuswamy Vs. Nambeesan**, 1978 SCC Online Ker 94;
- (iii) **T.P.K.Nair Vs. The Union of India & Others**, 1990 SCC Online Ker 150;
- (iv) **Laxmi Chand and others Vs. Gram Panchayat, Kararia and others**, (1996) 7 SCC 218;
- (v) **State of A.P. and others Vs. Goverdhanlal Pitti**, (2003) 4 SCC 739;
- (vi) **Vithalbhai (P) Ltd., Vs. Union Bank of India**, (2005) 4 SCC 315;
- (vii) **State of A.P. and others Vs. Pioneer Builders, A.P.**, (2006) 12 SCC 119;
- (viii) **Prem Lala Nahata and another Vs. Chandi Prasad Sikaria**, (2007) 2 SCC 551;
- (ix) **State of Punjab Vs. Amarjit Singh**, (2011) 14 SCC 713;
- (x) **State of Kerala and others Vs. Sudhir Kumar Sharma and others**, (2013) 10 SCC 178;
- (xi) **Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others**, (2014) 14 SCC 731;
- (xii) **Y.Savarimuthu Vs. State of Tamil Nadu and others**, (2019) 13 SCC 142;
- (xiii) **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through legal representatives and others**, (2020) 7 SCC 366;
- (xiv) **Competent Authority, Calcutta Vs. David Mantosh and others**, (2020) 12 SCC 542;
- (xv) **Ambalal Sarabhai Enterprises Limited Vs. K.S.Infraspace LLP and another**, (2020) 15 SCC 585 and
- (xvi) **Colonel Shrawan Kumar Jaipuriyar alias Sawran Kumar Jaipuriyar Vs. Krishna Nandan Singh and another**, (2020) 16 SCC 594.



24.The learned Senior Counsel for the respondent has drawn attention to the decision of the Hon'ble Supreme Court in the case of **State of Punjab and Others vs. Raja Ram and Others**, (1981) 2 SCC 66, rendered in the context of Section 80 of C.P.C In this connection a reference was made to Section 34 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971.

25.It is submitted that the notice contemplated under Section 80 CPC does not apply to the Applicant's Board as it has been defined under Section 34 of the Tamil Nadu Slum Areas Act, 1971. It is submitted that the applicant as a body corporate is having perpetual succession which can sue and be sued in such name and therefore, the Applicant's Board is not a Government or a Public officer under Section 80 of CPC and therefore it is submitted the plaint cannot be rejected on this ground.

26.It is submitted that the respondent has not suppressed any material fact, as the arbitration notice dated 25.11.2021 was issued only in respect of the issue as to whether the respondent is bound to re-do only the works pointed out by CUBE in its report dated 04.11.2021 or rectify the damages caused to the electrical fittings and fire-fighting systems caused by



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the miscreants as well.

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27.It is submitted that the application in A.No.4793 of 2021 filed in the present suit, seeking to refer the present suit to arbitration as per Section 8 of Arbitration and Conciliation Act, 1996 was dismissed on 28.01.2022 holding that the agreement dated 06.12.2017 stipulates that for claim above Rs.50,000/- the parties have to approach Civil Court having jurisdiction at Chennai and therefore no alternative remedy is available under Section 8 of the Arbitration and Conciliation Act, 1996. In view of the same, plaint cannot be rejected.

28.It is submitted that the plaint reveals the cause of action to file the suit. In this regard, it is submitted that the cause of action for filing the present suit arises out of the show cause notice dated 08.10.2021 issued by the applicant/defendant wherein the applicants directed the respondent to complete rectification works in structural and non-structural and workmanship aspects within 45 days and to show cause within 7 days as to why the respondent firm should not be recommended for suspension or cancellation of the contractor registration.



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29.It is submitted that the entire issue arises out of the Agreement dated 06.12.2017 entered between the applicants and the respondent for the construction of 864 EWS multi storied tenements at K.P. Park for a value of Rs. 91,81,63,852/-.

30.It is submitted that the arbitrary action of the applicants to blacklist the respondent could only be prevented by filing a civil suit before this Hon'ble Court having jurisdiction to hear the case and decide it on merits.

31.It is submitted that the fact that the applicants directed the respondent to rectify the defect and at the same time to show cause against blacklisting in both the letters dated 19.08.2021 and 08.10.2021 shows *malafide* intention and arbitrary action being taken by the Applicants against the respondent in violation of the principles of natural justice is the cause of action for filing the present suit and therefore, plaint cannot be rejected on this ground..

32.It is submitted that the present suit was filed, when there was imminent danger of blacklisting the respondent by the applicants and when plaint disclosed such cause of action, it cannot be rejected at the threshold.



the application filed by the applicants for rejection of plaint is liable to be dismissed and that the veracity of the averments and disputed facts in the applicants affidavit can only be decide in the suit after a full-fledged trial.

36.It is submitted that the suit is also not premature. In this connection, reference is made to the following decisions:-

- (i)**Bolo vs. Koklan and Others**, (2020) 5 SCC 353;
- (ii)**Daya Singh and Another vs. Gurdev Singh (Dead) by LRS. and Others**, (2010) 2 SCC 194 and
- (iii)**Zee Telefilms Limited (Now Known As Zee Entertainment Enterprises Limited) vs. Suresh Productions and others**, (2020) 5 SCC 353.

37.The learned Senior Counsel for the respondent has also relied on the following case laws:-

- (i)**Kamta Prasad Singh &Another vs. The Regional Manager, Food Corporation of India and Others**, AIR 1974 Pat 376;
- (ii)**V.Padmanabhan Nair vs. Kerala State Electricity Board**, AIR 1989 Ker 86;
- (iii)**Chairman, Electricity Board, Bihar and another vs. Binay Kumar Jha**, AIR 2011 Pat 187;
- (iv)**Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut**, (2005) 7 SCC 749;
- (v)**Vasuki and Ors. Vs. V.M. Ramesh**, S.A.No.600of 2019, Madras High Court;
- (vi)**M/s. Erusian Equipment &Chemnicals Ltd. vs.**



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- State of West Bengal and another, (1975) 1 SCC 70;**
(vii)Gorkha Security Services vs. Government(NCT of Delhi) and others, (2014) 9 SCC 105;
(viii)UMC Technologies Private Limited vs. Food Corporation of India and another, (2021) 2 SCC 551;
(ix)VETINDIA Pharmaceuticals Limited vs. State of Utar Pradesh and another, (2021) 1 SCC 804.

38.I have considered the arguments advanced by the learned Additional Advocate General for the applicants and the learned senior counsel for the respondent.

39.The applicants have been established as a body corporate under the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. The said Act has been enacted to implement the Directive Principles of State Policy embodied in the Constitution as is evident from the preamble to the Act.

40.The applicant Board is a body corporate having a perpetual succession and a common seal. The applicant can sue and can be sued by its name. It has no share capital and functions under the grants given by the Government of Tamil Nadu.

41.The applicants / Tamil Nadu Urban Habitat Development Board



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(formerly Tamil Nadu Slum Clearance Board) was established by the Government by a Notification issued in this behalf under Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971.

42.The main function of the applicant board is to eradicate slum and to provide hygienic tenements in Tamil Nadu to slum dwellers. The applicant is a “NON PROFITABLE” corporate body incorporated to implement the Directive Principles of State Policy enshrined in Part IV of the Constitution of India. It takes up various welfare activities in the State of Tamil Nadu, which was earlier carried out by the Tamil Nadu Housing Board.

43.As per Section 46 of the Act, all property, assets, rights and liabilities of the State Housing Board shall, in so far as such property, assets rights and liabilities are related immediately before the date of the establishment of the Board to the improvement of the slum area, the clearance of the slum area and the re-development of the slum clearance area, stand transferred to and vested with the applicant Board. If any dispute arises whether any property, assets, rights and liabilities stand transferred to and vested in the Board under sub-section (1) to Section 46, the dispute shall be referred to the decision of the Government and their decision shall be final.



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44. Similarly under Section 47 of the Act, the applicant Board can enforce certain contracts and agreement. It read as under:-

“47. Board to enforce certain Contracts and agreements.-

- (1) All contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the date of the establishment of the Board and to which the State Housing Board is a party, in so far as such contracts, agreements and instruments are relatable to the improvement of a slum area, the clearance of a slum area and the re-development of the slum clearance area shall be of as full force and effect against or in favour of the Board and may be enforced or acted upon as fully and effectually as if, instead of the State Housing Board, the Board had been a party thereto or as if they had been entered into or issued in favour of the Board.*
- (2) If, on the date of the establishment of the Board, any suit, appeal or other legal proceeding of whatever nature by or against the State Housing Board is pending then such suit, appeal or other legal proceeding in so far as it is relatable to the improvement of the slum area, the clearance of a slum area and the re-development of a slum clearance area, shall not abate, be discontinued or be in anyway prejudicially affected by reason of the transfer to the Board of the property, assets, rights and liabilities of the State Housing Board or of anything done under this Act, but the suit, appeal or other legal proceeding may be continued, prosecuted and enforced by or against the Board.*

Explanation - *For the purpose of this sub-section ‘legal proceeding’ includes any proceeding under the Land Acquisition Act proceeding under the Land Acquisition Act, 1984 (Central Act 1 of 1984).”*

<https://www.mhc.tn.gov.in/judis> 45. Functions carried out by the applicant are statutory in nature and



in the exercise of powers vested under the Tamil Nadu Slum Areas (Improvement & Clearance) Act, 1971. The applicant Board is a State within the meaning of Article 12 of the Constitution of India as it is carrying an essential function of the State. Article 12 of the Constitution of India reads as under:-

“12. Definition—*In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”*

46.The applicant Board is a “State” within the meaning of Article 12 of the Constitution of India, as all its senior officers are officers of State Government.

47.Though the applicant is not a “municipality” as defined in Art.243-(P)(e) of the Constitution of India, yet it statutorily carries out the functions entrusted with the Municipalities under Twelfth Schedule to the Constitution of India under Section 45 of the Tamil Nadu Slum Areas (Improvement & Clearance) Act, 1971.

48.As per article 53 of the Constitution, the executive power of the



Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution.

49. Similarly, under Article 154 of the Constitution, the executive power of the State shall be vested with the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution.

50. Like under Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President, under Article 166 all executive actions of the Government of a State shall be expressed to be taken in the name of the Governor.

51. As per sub-clause (3) to Article 166 of the Constitution, The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.



52.As per clause (60) to section 3 of the General Clauses Act, 1897, unless there is anything repugnant in the subject or context “State Government”, as respects anything done after the commencement of the Constitution, shall mean, in a State, the Governor, and in a Union Territory, the Central Government.

53.Section 3(23) of the General Clauses Act, 1897 defines the expression “Government” as both Central Government and State Government. It reads as under:-

“3.Definitions:-

(23)“Government” or “the Government” shall include both the Central Government and any State Government”

54.Section 2(e) of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 defines “Government” as “State Government”. The applicant Board is a “Government” under Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, it is discharging the function of the Government through its officers.



55.Although not relevant, definition of Government in Finance Act, 1994 after the Act was amended by Finance Act, 2012 may be referred to. The expression “Government” has been defined in Section 65B(26A) of the Finance Act, 1994. It reads as under:-

“65.Definitions:-

65B.Interpretations:-

(26A) “Government” means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder;’

56.It indicates that “Government” means, the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but does not include any entity, whether created by a statute or otherwise, unless it is established that its accounts are required to be kept in accordance with article 150 of the Constitution or the rules made thereunder.

57.Article 150 of the Constitution of India reads as under:-

“150. Form of accounts of the Union and of the States:-

The accounts of the Union and of the States shall be



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kept in such form as the President may, the Comptroller and Auditor-General of India, prescribe.”

58.Under Article 150 the format for maintaining the accounts are prescribed and the applicant indeed required to maintain its account and the same has to be placed before the Assembly under article 151 of Constitution of India.

59.The definition of “Government” is very wide which includes State Government and its Department and Central Government and its Department, whether created by a statute or otherwise, which are required to keep the accounts in accordance with Article 150 of Constitution of India.

60.Since the applicant Board is a “Government”for the purpose of Finance Act, 1994 amended by Finance Act, 2012, it cannot be said it is not “Government” for the purpose of Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971.



61.The applicant is represented by its Board of Directors consisting of Chairman, Managing Director and other officers of the Board. Both the Managing Director and the Secretary of the Board are its Chief Executive Officers of the Board.

62.A reference is made to Section 35 and 37 of the Act which read as under:-

Section 35	Section 37
<i>Constitution of the Board:-</i> <i>(1) The Board shall consist of a Chairman, the Managing Director and such member of other official and non-official members not exceeding fifteen as may be prescribed.</i> <i>(2) The Chairman, the Managing Director and other members of the Board shall be appointed by the Government.</i> <i>(2A) The Managing Director shall be the Chief Executive Officer of the Board.</i> <i>(3) No act or proceeding of the Board shall be invalid by reason only by the existence of any vacancy among its members or any defect in the appointment of a member thereof."</i>	<i>Appointment of officers and servants:-</i> <i>(1) The Secretary to the Board shall be appointed by the Government.</i> <i>(2) The Secretary shall be the Chief Executive Officer of the Board.</i> <i>(3) The Board may appoint such other officials and servants as it considers necessary for the efficient performance of its functions.</i>

63.Chairman, the Managing Director, Secretary and other Members of the applicant Board are appointed by the Government. Both Managing Director and the Secretary of the applicant Board are the Chief Executive



Officer of the applicant Board. The pay and other conditions of service of the officers and servants of the Board shall be such as may be prescribed.

Employees are governed by the conditions of Service under the Tamil Nadu (Conditions of Service) Act, 2016.

64. Where any officer or servant of the State Housing Board, is appointed in the Board, his or conditions of service (including conditions as to pay, provident fund, pension and gratuity) shall be subject to such rules as may be made in this behalf by the Government. Thus, not all the employees of the Board are Government Servants. However, all its Principal Officers are Government Servants.

65. The members of the applicant Board are officers of the Government. As per Tamil Nadu Slum Clearance Board (Constitution) Rules, 1971, besides Chairman, the applicant Board consists of the following persons:-

- “(2) Members of the Board** – The Board shall besides the Chairman, consist of the following members, namely:-
- (a) five non-official members appointed by the Government.
 - (b) the Secretary to Government, Labour Department, ex-officio;
 - (c) the Secretary to Government Health and Family Planning Department, ex-officio;
 - (d) the Secretary to Government, Revenue Department, ex-officio;
 - (e) The Secretary to Government, Rural Development and Local Administration Department, ex-officio;
 - (f) The Secretary to Government, Social Welfare Department,



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- ex-officio;
- (g) The Secretary to Government, Finance Department or an officer of the Finance Department nominated by the Secretary to Government, Finance Department, ex-officio;
 - (h) The Chairman, Tamil Nadu Housing Board, Madras, ex-officio;
 - (i) The Mayor of Madras or the Commissioner, Corporation of Madras, ex-officio;
 - (j) Director of Town Planning, Madras, ex-officio.”

66.A reference is made to Sections 36 and 38 of the Act. They read

as under:-

Section 36	Section 38
Conditions of service of members:-	Conditions of service of officer and servants:-
The terms and conditions of the service of members of the Board shall be such as may be prescribed.	(1)The pay and other conditions of service of the officers and servants of the Board shall be such as may be prescribed. (2) Where any officer or servant of the State Housing Board is appointed in the Board, is appointed in the Board , his conditions of service (including conditions as to pay, provident fund, pension and gratuity) shall be subject to such rules as may be made in this behalf by the Government.”

67.Thus, the Board consisting of officers of Government, discharge the functions of the State Government under Article 154 of the Constitution of India.

68.The Applicant Board collects amounts from slum dwellers and others and has categorised the same under different heads in its Audit Report titled as Audit Report on the Annual Accounts of the Tamil Nadu Slum



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Clearance Board for each of the Financial Years.

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69.The said Audit Report is prepared for being presented before the Legislative Assembly as is required under the Tamil Nadu Slum Areas (Improvement & Clearance) Act, 1971 and the Constitution of India.

70.Its accounts are also presented before the Legislative Assembly of the State during Budget Session of Government of Tamil Nadu. Applicant Board neither declares dividends nor has any share holders. It is a statutory corporation incorporated to deal with welfare activities for marginalized sector of society who live in slums under inhumane conditions and is carrying on essential function of the State.

71.Thus, the applicant Board is a Government. Therefore, the arguments of the applicant that the suit is barred in view of Section 80 of CPC merits acceptance. The plaint filed is therefore liable to be rejected as the suit is barred under Section 80 of CPC.

72.Further under Section 9 of C.P.C, although the Courts have



jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. There is an express bar

under Section 9 of C.P.C. Section 9 of C.P.C reads as under:-

“Section 9-Courts to try all civil suits unless barred:-

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

1[Explanation I].--A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

2[Explanation II].--For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]

73.Under Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, there is a clear bar to entertain suit. Section 65 of the Act clearly bars the jurisdiction of the Civil Court to entertain suit. Therefore, on this count also the plaint is liable to be rejected under Order VII Rule 11 (d) of CPC. For clarity, Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 reads as under:-

“65. Bar of Jurisdiction of civil courts:-

Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Government are, or the prescribed



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authority is, empowered by or under this Act, to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

74.Further, Rule 10 & Rule 11 of the Tamil Nadu Slum Clearance Board Works Code contemplates a separate mechanism for resolving dispute with its registered contractors. Thus, even on this count the suit is also impliedly barred in view of the provisions of the Tamil Nadu Slum Clearance Board Works Code.

75.Thus, the suit filed by the respondent is even otherwise clearly barred under law and therefore, the plaint is liable to be rejected.

76.Thus, this Application deserves to be allowed. Accordingly, this application stands allowed and the plaint in C.S.(Com.Div.) No.108 of 2021 stands rejected. Consequently, the interim injunction granted by this Court on 02.12.2021 in O.A.No.775 of 2021 in C.S.(Com.Div.) No.108 of 2021 stands vacated. Accordingly, A.No.29 of 2022 is allowed. Consequently, the connected applications are closed. No costs.

11.12.2023



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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

C.SARAVANAN, J.

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