



W.A.No.1104 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B. BALAJI

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E.Mohana Kumar
versus

... Appellant

1.The Government of Tamil Nadu,
Represented by its Secretary,
Housing and Urban Development
Department,
Fort St.George,
Chennai -600 009.

2.The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai-600 005.

3.The Estate Officer-3,
Tamil Nadu Slum Clearance Board,
J.J.Shopping Complex,
Thirumangalam,
Anna Nagar,
Chennai-600 040

... Respondents



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For Appellant

: Mr.K.V.Subramanian
Senior Counsel
for Mr.M.L.Ramesh

For Respondents

: Mr.K.Tippusultan
Government Advocate
for first respondent
Mr.S.Karthikeyan
Standing Counsel
for respondent Nos.2 and 3

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 28.08.2019 in W.P. No.892 of 2019.

JUDGMENT

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

The appellant has filed the writ appeal against the dismissal order dated 28.08.2019 in W.P.No.892 of 2019.

2. According to the appellant, the second respondent/Tamil Nadu Slum Clearance Board, owns a shopping complex at Thirumangalam (Chennai) comprising of basement, ground and three floors. The 60 shops in the ground and first floors had been allotted on rental basis in which during the year 2004-2005, 38 shops had been occupied and 22 shops were vacant. At that time, the Government of Tamil Nadu has



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decided to permit the second respondent to sell the said 60 shops in the ground and first floor by way of public auction through advertisement in dailies. In response to the aforesaid advertisement, issued by the Housing Board, none had quoted over and above the upset price of Rs.2,300/- per square feet that had been fixed in the advertisement. In such circumstances, the existing tenants of the 38 shops came out with a representation requesting to permit them to purchase their respective shops from the second respondent. The Government has accepted the said proposal of the second respondent to effect outright sale of the shops to the tenants who were then in occupation of the same at upset price of Rs.2300/- per square feet. In case if any tenant fails to remit that upset price, such shops may be brought to sale through tender/auction along with other vacant shops. In pursuance of the same, most of the shops in their respective occupation were purchased by the tenants by paying the said upset price.

3. The appellant, who is an Advocate, for the purpose of having his office, had made a request for allotment of Shop No.51, in the first floor of the aforesaid shopping complex on rental basis, which was



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granted to him by proceedings in Na.Ka.No.B2/3477/07 dated 31.01.2008 and he was also paying monthly rent of Rs.26/- per square feet for the extent of 265 square feet occupied by him, which comes to Rs.6,630/- per month and the said lease has been periodically extended every year with enhancement of 5 % per year. The appellant also agreed to purchase the said shop as per the Scheme announced by the Government on the outright sale basis, but there was no response. He also made a representation dated 31.03.2018 requesting for allotment of shop No.51 by extending the same benefits granted to the then existing tenants in G.O.Ms.No.147, Housing and Urban Development Department dated 03.05.2005. Since no action was taken, the appellant had filed a writ petition in W.P.No.892 of 2019 before this Court. This Court, by order dated 28.08.2019, dismissed the said writ petition by holding that G.O.Ms.No.147, Housing and Urban Development Department dated 03.05.2005, will not be applicable to the appellant, in light of the Judgment of the Hon'ble Supreme Court in the case of **Director of Settlements, A.P. vs. M.R. Apparao, 2002 4 SCC 638**. Aggrieved by the said order passed by the Writ Court, the appellant has preferred the present intra court appeal before this Court.



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4. Learned Senior Counsel appearing for the appellant submitted that second respondent board has permitted to sell 60 shops in the ground and first floors on the outright sale basis. Therefore, there is no legal impediment to sell the said shop also on the same terms to the appellant.

5. The second-respondent has stated in the counter-affidavit that as the Government Order in G.O.Ms.No.147, Housing and Urban Development Department dated 03.05.2005, permission was granted to sell 30 shops on outright sale basis as one time measure to the existing tenants and such benefit would not be extended subsequently. Therefore, on the said ground, the same has been rejected in respect of Shop No.51, which the appellant sought to purchase.

6. The Writ Court has elaborately considered the contention of the parties and held that the prayer as sought for by the appellant by compelling the Board to sell the property would not arise by relying upon the decision of the Hon'ble Supreme Court in the case of ***Director of Settlements, A.P. vs. M.R. Apparao, 2002 4 SCC 638***, wherein a Mandamus cannot be issued by compelling the authorities concerned to grant relief unless there is any statutory right.



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7. In the present case, the appellant cannot claim statutory right to sell the Shop No.51 to him considering the fact that similarly placed persons got such benefit. The Government has passed G.O.Ms.No.147, Housing and Urban Development Department dated 03.05.2005 for granting the concession of outright sale to the persons who were already in occupation as tenants one time arrangement. In the present case on hand, the appellant is not entitled in the light of the abovesaid Government Order. However, learned Senior Counsel seeks that it is only a representation of the appellant made to second respondent to consider the request for selling the said Shop No.51 to the appellant. To that extent, the order passed by the Writ Court will not preclude the authorities concerned to consider such representation, if otherwise eligible.

8. It is also pointed out before this Court that the appellant has not paid the arrears amount of Rs.6,39,475/- to the respondent Board. If such amount is paid within a period of four weeks' time, the second respondent is directed to explore the possibility of selling Shop No.51, Thirumangalam Shopping Complex, to the appellant, by considering his representation dated 31.03.2018 and to take appropriate decision in



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accordance with law. We make it clear that we are not expressing any opinion on merits. The said exercise shall be completed within a period of 12 weeks from the date of receipt of the said arrears amount.

9. With the above directions, the writ appeal stands disposed of.

There will be no order as to costs.

[D.K.K., J.] [P.B.B., J.]
31.07.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn

Note: Issue order copy by 03.08.2023



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D.KRISHNAKUMAR, J.
and
P.B. BALAJI, J.

(mrn)

To

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