



Crl.O.P.Nos.7273 and 12843 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 24.08.2023

PRONOUNCING ORDERS ON : 29.08.2023

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Criminal O.P.Nos.7273 and 12843 of 2023
and Crl.M.P.Nos.7809 & 7810 of 2023

Crl.O.P.No.7273 of 2023

R.Durgashankar

.. Petitioner

..Vs..

The Deputy Superintendent of Police
Vigilance and Anti-Corruption
Chennai City-I Detachment
Chennai - 28.

.. Respondent

Prayer : Petition under Section 482 of Cr.P.C., to call for the records of the impugned proceedings in C.C.No.14 of 2019 pending on the files of the Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly, Chennai and quash the same as against the petitioner.

Crl.O.P.No.12843 of 2023

T.Udayakumar

.. Petitioner

..Vs..

1.State through the Deputy Superintendent
of Police, V & Ac, Chennai City I Detachment
Chennai - 600 028.

2. A.Shanker

... Respondents

Prayer : Petition under Section 482 of Cr.P.C., to call for the records of the impugned



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proceedings in C.C.No.14 of 2019 pending on the files of the Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly, Chennai and quash the same so far as it pertains to the petitioner.

For Petitioner : Mr.John Sathiyar, Senior Counsel
for M/s.Ahmed Associates (In Crl.O.P.7273/2023)
Mr.V.Karthic, Senior Counsel
for M/s.S.Ramesh (In Crl.O.P.12843/2023)

For Respondents : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor
(for Sole respondent in Crl.O.P.7273/2023 and
for R1 in Crl.O.P.12843/2023)

ORDER

The petitioners who are arrayed as A5 and A7 before the Court below in the proceedings pending in C.C.No.14 of 2019 before the Special Court for Trial of Cases of M.P. and M.L.A. Of Tamil Nadu at Chennai have filed these Crl.O.Ps., praying for quashing the proceedings pending against them.

2. The case of the prosecution is that a former employee belonging to the Tamil Nadu Housing Board gave a complaint to Directorate of Vigilance and Anti Corruption (DVAC) to the effect that there was large scale illegality in the allotment of housing plots by the Tamil Nadu Housing Board. Based on this complaint, an F.I.R., was registered in Crime No.7 of 2011 for offences under Sections 120B, 420 and 109 of IPC, Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.



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2. The sum and substance of the allegation is that during the period between 2008 and 2010, A1 to A7 had entered into a criminal conspiracy and abet one another in the commission of the offence pertaining to allotment of housing plots under the Government discretionary quota. Pursuant to the same, A1 is said to have given an application for allotment of plot and the plot was allotted in his favour. Similarly, the wife of A1 (A2) also applied for a vacant plot and she was also allotted a plot. The said A2 is also said to have entered into a joint venture agreement with A7 even before the execution of the sale deed in favour of A2 and the plot was handed over to A7 and in this transaction, A2 is said to have unlawfully gained / enriched herself. The further case of the prosecution is that A5 also made an application for allotment of plot on the guise that he is a social worker and he is said to be the son of A4 who was holding an important position during the relevant point of time and he had influenced the allotment of plot in favour of the petitioner and accordingly the plot was also allotted in favour of A5. A5 also entered into a joint venture agreement with A7 even before the execution of the sale deed. The plot was handed over to A7 and A5 had unjustly gained / enriched himself in this transaction. A3 and A4 are Government officials who are said to have misused their official position and abetted / aided the other accused persons to commit the offence. Thus, the crux of the case of the prosecution is that A1, A2 and A5 were helped by the other accused persons for allotment of plots and A2 and A5 entered into a joint venture agreement with A7 even before the sale deed was executed in their favour and the accused persons obtained wrongful gain and wrongful loss was caused to the Government. It is based on these facts, the F.I.R. came to be registered against A1 to A7.



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3. The investigation was completed and final report was filed before the Court below and it was taken on file in C.C.No.14 of 2019 against seven accused persons. The proceedings have already been quashed against A1, A3 and A4. A2 filed a discharge petition before the trial Court and it was dismissed, and as against the same A2 has filed a Criminal Revision Case before this Court and the same is pending. The petitioners have been arrayed as A5 and A7 respectively.

4. Heard Mr.John Sathiyar, learned Senior Counsel for the petitioner in Crl.O.P.No.7273 of 2023 and Mr.V.Karthic, learned Senior Counsel for the petitioner in Crl.O.P.No.12843 of 2023, Mr.Babu Muthu Meeran learned Additional Public Prosecutor for the official respondent.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. Insofar as the petitioner (A5) is concerned, the request was made by the petitioner to the Government for allotment of plots on 27.11.2006. The allotment was made in favour of the petitioner through a Government Order dated 03.04.2008. Plot No.538 was allotted in favour of A5 to an extent of 4816 Sq.ft. This extent was reduced through an office note dated 23.04.2008 and the extent was reduced to 4716 Sq.ft. The plot was handed over to the petitioner through a letter of transfer from the Housing



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Board dated 24.07.2008. The entire sale consideration was paid by the petitioner and the sale deed was executed in favour of the petitioner by the Housing Board on 25.03.2010. It is thereafter, the petitioner entered into a joint venture agreement with A7.

7. It is at this point of time, a complaint came to be given and there was a lot of hue and cry on the allotment made by the Government under the discretionary quota. Hence, a legal opinion was obtained from the Advocate General of Tamil Nadu and the Advocate General on considering the entire materials, gave an opinion to the effect that there is no legal infirmity in the allotment of plots and that such a discretionary quota is clearly permissible provided that the discretion is exercised within the guidelines prescribed in a transparent manner. The Advocate General has also opined that there is no illegality in the allottees entering into a joint venture agreement to put up construction and what has to be seen is as to whether the allotted area has been used for the purpose for which it was given.

8. It is clear from the materials placed before this Court that the allotment that was made in favour of the petitioner (A5) was never cancelled and in fact, after the controversy was raked up, the petitioner had even addressed a letter to the Housing Board offering to surrender the allotment. This request was declined by the Housing Board through letter dated 21.03.2011. It is also seen from records that the petitioner had paid a total sum of Rs.1,12,96,560/- which included the cost of the plot and



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development charges. It must also be borne in mind that the allotment of plots in favour of the petitioner was alleged to have been done due to the undue influence exerted by A4 and the proceedings against A4 has already been quashed by this Court.

9. It is also seen from records that A3 had filed a quash petition before this Court in Crl.O.P.No.6823 of 2017. A3 is the Executive Engineer in the Tamil Nadu Housing Board during the relevant point of time and he is said to have been instrumental in the allotment in favour of the accused persons. While considering his quash petition, this Court after dealing with the entire materials on record came to the following conclusion.

“ 9.Considering the rival submissions and on perusal of the materials produced, it is not in dispute that the 6 housing plots were approved in the year 1995. The petitioner as Executive Engineer of Tamil Nadu Housing Board, Besant Nagar Division by conversion of 6 plots to 7 plots and thereafter reversion to 6 plots have all been as processed by him as Executive Engineer and it is the procedure to be followed in Tamil Nadu Housing Board that submission of plans and revised plans to CMDA is by the Executive Engineer of the concerned Division. The petitioner had informed his superior officers namely Superintending Engineer and Chief Engineer of Tamil Nadu Housing Board about the proposal of conversion and reversion and that his superior officers were in knowledge and known of the conversion and reconversion. The CMDA have also informed the Secretary/Personnel Officer and Chief Engineer, Tamil Nadu Housing Board about granting directions for the conversion and re-conversion of the plots. Pursuant to the approval, the Pricing Committee consisting of Senior Officers of Tamil Nadu Housing Board including its Chairman and Managing Director had fixed the price for these plots.



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10.From the documents, it is seen that 6 plots in Survey No.76 Part, Kamarajar Nagar has been specifically mentioned that the area and dimension. The learned State Public Prosecutor is not in dispute to the letters of the petitioner. The petitioner on 23.03.2008 had addressed a communication to the Chief Engineer, Tamil Nadu Housing Board, Chennai to revise the proposal of conversion into 6 plots into 7 plots for Kamarajar Nagar and for 11 plots in Thiruvalluvar Nagar. The Superintending Engineer in Memo No.TPI 13132 A/08 dated 24.03.2008 had directed the petitioner to get statutory approval from CMDA. Thereafter, communication has been sent on 25.03.2008 to the CMDA. The CMDA in Letter No.L.2/6043/08 dated 28.03.2008 had approved the proposal received. All these communication copies had been marked to the Secretary/Personnel Officer, Tamil Nadu Housing Board and Chief Engineer of Tamil Nadu Housing Board. Thereafter for approval of CMDA the 7 plots plan was reverted back to 6 plots layout and for approval it was sent to CMDA on 21.04.2008. The CMDA by letter No.L.2/6043/08 had approved the revised plan. Thereafter the same was communicated by the petitioner to the Chairman and Managing Director, Tamil Nadu Housing Board. The Chairman has sent communication letter No.A.1.7/9456-B/08 to the Secretary to Government, Housing and Urban Department about the approved revised proposal and to take appropriate action to bring these plots under Government Discretionary Quota. Thus, from these communications, it is seen that the converting and revising of the layout plots from 6 to 7 and thereafter to 6 again are all with the approval and concurrence of the superiors and Board. Further to it the Board has approved the same and the Chairman and Managing Director of Tamil Nadu Housing Board had communicated the same to the Secretary to Government, Housing and Urban Development Department. 6 plots have been allotted by Government Order under Government Discretionary Quota which are as follows:



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S.No	Plot No.	G.O. Ref.:	Date	Board's Ref.:	Date
1	538	(2D)427Hg&UD.Dept.	23.04.2008	AL1.7/58998/06	24.04.2008
2	539	(2D)428Hg&UD.Dept	23.04.2008	AL1.7/58998/06	08.05.2008
3	540	(2D)143Hg&UD.Dept.	05.06.2009	AL1.7/58998/06	19.06.2009
4	541	(2D)707Hg&UD.Dept.	08.07.2008	AL1.7/58998/06	17.07.2008
5	542	(2D)1101Hg&UD.Dept.	05.09.2008	AL1.7/58998/06	16.09.2008
6	543	(2D)432Hg&UD.Dept.	23.04.2008	AL1.7/58998/06	15.05.2008

11.The petitioner being the Executive Engineer had issued the allotment order in pursuance to the Government Order. The Tamil Nadu Housing Board has not sustained any loss in allotment of the 6 plots. In view of no loss sustained by the Tamil Nadu Housing Board and the allotment are of Government's Discretionary Quota made through Government Orders and the petitioner being an Executive Engineer has to execute the sale deed to the allottees as per the Government Order and the petitioner is not the reason for the other accused entering into joint venture agreement with the builders and further all the communication and correspondences are with the knowledge of the superior officers.

10. It is clear from the above that the entire allotment of plots had taken place pursuant to a Government Order under the Government discretionary quota and the Tamil Nadu Housing Board did not sustain any loss in the allotment of the 6 plots. Therefore, the very crux of the allegation that the accused persons have obtained a wrongful gain and caused a wrongful loss to the Government was set at naught by this Court. This order was further confirmed by the Apex Court while dismissing S.L.P.No.8255 of 2021 by order dated 01.10.2021.



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11. Insofar as the petitioner (A7) in Crl.O.P.No.12843 of 2023 is concerned, he is a developer who had entered into a joint venture agreement with A2 and A5. Insofar as A5, this Court has already held that the joint venture agreement was entered into only after the sale deed was executed in favour of A5. Insofar as A2 is concerned, the allotment was made in favour of A2 on 05.06.2009. The joint venture agreement was entered into on 08.10.2009. The sale deed was executed in favour of A2 by the Housing Board on 25.02.2010 and the Power of Attorney was executed by A2 in favour of the petitioner to proceed further with the development of the property on 09.04.2010. These facts are clearly stated by L.W.10 while recording his statement under Section 161(3) of Cr.P.C.

12. The plot that was allotted in favour of A2 was not cancelled at any point of time and A2 continues to be the absolute owner of the plot. The petitioner (A7) is only a developer who had entered into a joint venture agreement with A2 and A5. This Court has already held that the Tamil Nadu Housing Board did not sustain any loss by allotment of plots. Therefore, as a consequence, there was no unlawful or wrongful gain obtained by A2 and A5 and A7 who had entered into a joint agreement with A2 and A5 also cannot be faulted with for having entered into an agreement and obviously he has not caused any loss to the Housing Board or to the Government. That apart, there is no bar in law or in any of the guidelines, restraining the allottees from entering into a joint venture agreement with a builder. In fact A7 was not even cited as an accused in the initial stage and he was brought in subsequently only on the ground that he entered into an



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agreement with A2 and A5. This Court is not able to find any ground to sustain the prosecution as against A7 and no offence has been made out against him.

13. In the light of the above discussion, this Court finds that no offence has been made out against A5 and A7 and the continuation of criminal proceedings against them will only result in abuse process of Court which warrants the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. Ex consequenti, the proceedings against the petitioners (A5 and A7) in C.C.No.14 of 2019 on the file of Special Court for Trial of Cases of M.Ps. and M.L.As. Of Tamil Nadu at Chennai, is hereby quashed.

14. In the result, both the Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

29.08.2023

Index : Yes/No
Internet : Yes/No
KST

To

1. The Deputy Superintendent of Police
Vigilance and Anti-Corruption
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2. Special Court for Trial of Criminal Cases Related to
Elected Members of Parliament and Members of
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N.ANAND VENKATESH,J.
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Pre-Delivery Order in Crl.O.P.Nos.
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