



WP(MD)Nos.18991 to 18995 of 2023
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/10/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

WP(MD)Nos.18991 to 18995 of 2023

and

WMP(MD)Nos.17079, 17080, 17081, 17082, 17765, 17785,
17804, 17805, 17808, 17809, 17811, 18667, 18679, 18836,
18839, 19329, 19385, 19905 and 19936, 21211 and 21726 of
2023

(1)WP(MD)No.18991 of 2023:-

Neomax Properties Private Limited,
Represented by its Director,
Balasubramanian

: Petitioner

Vs.

- 1.Secretary,
Department of Home,
Prohibition and Excise,
Fort St. George,
Chennai-600 009.
- 2.The Director General Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.
- 3.The Additional Director General of Police,
Economic Offences Wing,
Madurai.
- 4.The Inspector of Police,
Economic Offences Wing-II,
Madurai.
- 5.Ravisankar
- 6.M.Krishnaveni
- 7.V.G.Madhavan
- 8.K.Balasubramanian
- 9.V.Senthilkumar
- 10.G.Rajasekaran
- 11.R.Vennila
- 12.Jainkumar Dinakaran
- 13.A.Nithya
- 14.Ladis Lasington
- 15.Mary Julie Rajini



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16.Ratharajan
17.A.Santhanakumar
18.C.Rajeswari
19.K.Balamurugan
20.Nancy
21.R.Anusha
22.Christhuraja Peeris, S.J.M
23.A.Subramanian
24.S.Azhwar
25.S.Parameswaran
26.S.Sivarama Krishnan
27.S.Iyappan
(R5 to R27 impleaded,
vide order, dated 23/08/2023
made in WMP(MD)Nos.16891,
16893, 16901, 16902, 16903,
16905, 16906, 16913, 16914 &
16921 of 2023 in WP(MD)No.18991
of 2023)

: Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, in the nature of Writ of Mandamus, to direct the respondents to consider the representation, dated 02/08/2023 and to appoint a Commissioner panel headed by Retired Hon'ble High Court Judge or Judges for the settlement and disbursement of the lands for the claimants in Crime No.3 of 2023 on the file of the 4th respondent police and pass such other or further orders.

For Petitioner	: Mr.T.Mohan Senior Counsel for Mr.S.Veeraraghavan
For R1 to R4	: Mr.Hasan Mohamed Jinnah State Public Prosecutor for Mr.S.Ravi Additional Public Prosecutor
For 5 th Respondent	: Mr.N.Anantha Padmanabhan Senior Counsel for M/s.Mathuram Law Associates
For 6 th Respondent	: Mr.S.M.Anantha Murugan



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For Impleading parties : WP(MD)Nos.18991 to 18995 of 2023
: Mr.S.Veeraraghavan
M/s.Yasima Yasmin
for M/s.Ajmal Associates
Mr.H.Mohamed Hussain
Mr.S.Ramasundarvijayaraj
Mr.S.M.A.Jinnah
Mr.S.Ragaventhre
Mr.R.Anand
Mr.M.Nagarajan
Mr.K.Prabhu
Mr.S.Raja

(2)WP(MD)No.18992 of 2023:-

Tridas Properties Private Limited,
represented by M.Charles : Petitioner

Vs.

1.The Secretary,
Department of Home,
Prohibition and Excise,
Fort St. George,
Chennai-600 009.

2.The Director General Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

3.The Additional Director General of Police,
Economic Offences Wing,
Madurai.

4.The Inspector of Police,
Economic Offences Wing-II,
Madurai.

5.Ravisankar

6.M.Krishnaveni
(R5 to R6 impleaded,
vide order, dated 22/08/2023
made in WMP(MD)Nos.16894 and
16896 of 2023 in WP(MD)No.18992
of 2023) : Respondents



WP(MD)Nos.18991 to 18995 of 2023

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, in the nature of Writ of Mandamus, to direct the respondents to consider the representation, dated 02/08/2023 and to appoint a Commissioner panel headed by Retired Hon'ble High Court Judge or Judges for the settlement and disbursement of the lands for the claimants in Crime No.3 of 2023 on the file of the 4th respondent police and pass such other or further orders.

For Petitioner : Mr.T.Mohan
Senior Counsel
for Mr.S.Veeraraghavan

For R1 to R4 : Mr.Hasan Mohamed Jinnah
State Public Prosecutor
for Mr.S.Ravi
Additional Public Prosecutor

For 5th Respondent : Mr.N.Anantha Padmanabhan
Senior Counsel
for M/s.Mathuram Law Associates

For 6th Respondent : Mr.S.M.Anantha Murugan

For Impleading party : Mr.S.Veeraraghavan

(3)WP(MD)No.18993 of 2023:-

Glowmax Properties Private Limited,
represented by Thiyagarajan : Petitioner

Vs.

- 1.The Secretary,
Department of Home,
Prohibition and Excise,
Fort St. George,
Chennai-600 009.
- 2.The Director General Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.



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3.The Additional Director General of Police,
Economic Offences Wing,
Madurai.

4.The Inspector of Police,
Economic Offences Wing-II,
Madurai.

5.Ravisankar

6.M.Krishnaveni
(R5 to R6 impleaded,
vide order, dated 22/08/2023
made in WMP(MD)Nos.16886 and
16888 of 2023 in WP(MD)No.18993
of 2023)

: Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, in the nature of Writ of Mandamus, to direct the respondents to consider the representation, dated 02/08/2023 and to appoint a Commissioner panel headed by Retired Hon'ble High Court Judge or Judges for the settlement and disbursement of the lands for the claimants in Crime No.3 of 2023 on the file of the 4th respondent police and pass such other or further orders.

For Petitioner	:	Mr.T.Mohan Senior Counsel for Mr.S.Veeraraghavan
For R1 to R4	:	Mr.Hasan Mohamed Jinnah State Public Prosecutor for Mr.S.Ravi Additional Public Prosecutor
For 5 th Respondent	:	Mr.N.Anantha Padmanabhan Senior Counsel for M/s.Mathuram Law Associates
For 6 th Respondent	:	Mr.S.M.Anantha Murugan
For Impleading party	:	Mr.S.Veeraraghavan



WP(MD)Nos.18991 to 18995 of 2023

(4) WP (MD) No.18994 of 2023:-

Garlando Properties Private Limited,
represented by P.Palanisamy : Petitioner

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Vs.

- 1.The Secretary,
Department of Home,
Prohibition and Excise,
Fort St. George,
Chennai-600 009.
- 2.The Director General Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.
- 3.The Additional Director General of Police,
Economic Offences Wing,
Madurai.
- 4.The Inspector of Police,
Economic Offences Wing-II,
Madurai.
- 5.Ravisankar
- 6.M.Krishnaveni
(R5 to R6 impleaded,
vide order, dated 22/08/2023
made in WMP(MD)Nos.16885 and
16895 of 2023 in WP(MD)No.18994
of 2023) : Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, in the nature of Writ of Mandamus, to direct the respondents to consider the representation, dated 02/08/2023 and to appoint a Commissioner panel headed by Retired Hon'ble High Court Judge or Judges for the settlement and disbursement of the lands for the claimants in Crime No.3 of 2023 on the file of the 4th respondent police and pass such other or further orders.



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For Petitioner

: Mr.T.Mohan
Senior Counsel
for Mr.S.Veeraraghavan

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For R1 to R4

: Mr.Hasan Mohamed Jinnah
State Public Prosecutor
for Mr.S.Ravi
Additional Public Prosecutor

For 5th Respondent

: Mr.N.Anantha Padmanabhan
Senior Counsel
for M/s.Mathuram Law Associates

For 6th Respondent

: Mr.S.M.Anantha Murugan

For Impleading party

: Mr.S.Veeraraghavan

(5)WP(MD)No.18995 of 2023:-

Transco Properties Private Limited
represented by Ashokmetha Panchai : Petitioner

Vs.

- 1.The Secretary,
Department of Home,
Prohibition and Excise,
Fort St. George,
Chennai-600 009.
- 2.The Director General Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.
- 3.The Additional Director General of Police,
Economic Offences Wing,
Madurai.
- 4.The Inspector of Police,
Economic Offences Wing-II,
Madurai.
- 5.Ravisankar
- 6.M.Krishnaveni
(R5 to R6 impleaded,
vide order, dated 22/08/2023
made in WMP(MD)Nos.16890 and
16892 of 2023 in WP(MD)No.18994
of 2023)

: Respondents



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Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, in the nature of Writ of Mandamus, to direct the respondents to consider the representation, dated 02/08/2023 and to appoint a Commissioner panel headed by Retired Hon'ble High Court Judge or Judges for the settlement and disbursement of the lands for the claimants in Crime No.3 of 2023 on the file of the 4th respondent police and pass such other or further orders.

For Petitioner : Mr.T.Mohan
Senior Counsel
for Mr.S.Veeraraghavan

For R1 to R4 : Mr.Hasan Mohamed Jinnah
State Public Prosecutor
for Mr.S.Ravi
Additional Public Prosecutor

For 5th Respondent : Mr.N.Anantha Padmanabhan
Senior Counsel
for M/s.Mathuram Law Associates

For 6th Respondent : Mr.S.M.Anantha Murugan

For Impleading Party : M/s.Kamala Jayanthi
Mr.S.Veeraraghavan

COMMON ORDER

These writ petitions are filed seeking for direction to the respondents to consider the representation, dated 02/08/2023 and to appoint a Commissioner panel headed by a Retired Hon'ble High Court Judge or Judges for settlement and disbursement of the lands for the claimants in Crime No.3 of 2023 on the file of the 4th respondent police.



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2. The facts in brief:-

The de-facto complainant lodged a complaint stating that one Chellammal, Narayanasamy and Manivannan approached him, on knowing that they are having money and informed that the functioning of Neomax Properties Private Limited having its Head Quarters at Madurai. In the above said company, one Kamalakannan, Balasubramanian and Veerasakthi and others are Directors. They informed him that they also have invested money and benefited. If money is deposited, it will become double in 2 ½ years. They have also stated that they are offering high interest rate. So, he and his mother were taken by the above said Chellammal, Narayanasamy to the Head quarters of the above said company. At that time, one Kamalakannan, Balasubramanian and Veerasakthi and others were present. They have shown some video clippings and explained various schemes introduced by them. They have also promised that they offer interest at the rate of 12% to 30%. He was also informed that several branches are functioning in several places and other companies also conduct this business. And also informed that they purchased various properties in various villages and after forming lay out and developing the same they used to sell the properties and the money will be returned to him with double amount. For acknowledgement of the money, they are giving certificates.



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3. Believing the words of the above said persons, he and his mother Janaki deposited various amounts on various dates as described in the complaint. They also mentioned the amount deposited, date of deposit, date of maturity and maturity amount details. In token acknowledgement of the above said deposit, they have issued Bonds. But from 15.02.2023, the money deposited through the Agent Chellammal was neither returned nor paid any interest. When he contacted the above said Office, there was no proper reply. Later, he came to know that they have been cheated. Totally Rs.73.50 Lakhs was deposited.

4. On the basis of the above said complaint, case was registered in Crime No.3 of 2023 for the offences punishable under Sections 406, 420 & 34 of IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, (herein after referred to as 'the Act, 1997') on 20.06.2023. Originally, 11 persons have been shown as accused. The first accused is Neomax Properties Private Limited; the second accused is Garlando Properties Private Limited; the third accused is Transco Properties Private Limited; Tridas Properties Private Limited has been arrayed as fourth accused; The fifth accused is Glowmax Properties Private Limited; All other accused are individual persons working in various capacities in the above said companies.



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5.The above said FIR was registered, on 20/06/2023.

Investigation was taken up. Pending investigation process, some of the accused persons were arrested and some moved anticipatory bail and those applications were dismissed.

6.Pending the above said process, on 02/08/2023, the A1 Company namely Neomax Properties Private Limited through its Director Balasubramanian sent a petition/representation, to the various authorities for setting out the following facts, so also the following persons:-

1.Mr.M.Charles on behalf of Tridas Properties Private Limited, an associate company of Neomax, on 31.07.2023.

2.Mr.Thiyagarajan, Glomax Properties Limited on 02.08.2023.

3.Mr.P.Palanisamy, on behalf of Garlando Properties Limited, on 02.08.2023.

4.Mr.Ashok Metha Panchai, on behalf of Transco Properties Private Limited, on 02.08.2023.



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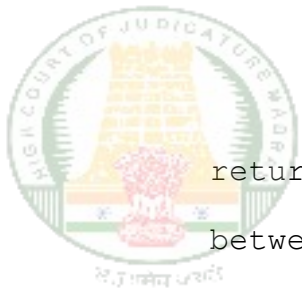
all are the associate companies of Neomax Properties Private Limited.

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(i)M/s.Neomax Group of Companies are doing real estate business along with the above named associate companies. Their object is to carry on business of real estate and property development. They purchased lands in acres, getting approval, forming lay out comprising minimum of 1000 plots and selling the same to the customers.

(ii)To add the value and ensure the safety of the customers, they constructed hotels, petrol bunk, school, college and hospital inside the Lay-Out area. In a like manner, they have also constructed a school, catering college, 100 Bedded Hospital, Drive-inn Restaurant and petrol bunk inside the Virudhunagar Project. The customers paid advance amount for purchasing lands. For acknowledgment of the advance amount, booking confirmation receipts were also issued. The understanding is that after payment of the entire sale consideration, sale deed will be executed in favour of respective customers.

(iii)But the case has been registered in Crime No.3 of 2023, as stated above, on 20/06/2023. Company never received any deposits, never promised to give high



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return. As mentioned above, there was an agreement between the company and the customers to pay the amount in advance and after payment of the entire sale consideration, sale deed will be executed. So, the group of companies got approval from DTCP Approval for 9,79,89,044.1 SQFT (2,249.565 Acres) in 16 Lay-out projects. Out of the above said land, 40% of the total area was utilized for development of layout, roads, OSR as per the guidelines. Out of the above said total extent, for 1,95,19,480.21 Square Feet sale deeds have been executed to the customers numbering about 15,000.

(iv) The remaining extent is 4,12,65,276.35 SQFT (DTCP approval plots). On 28/07/2023, the documents pertaining to 9Cr SQFT in 2,249 acres were produced before this court, while hearing CrI.OP(MD)No.13071 of 2023 batch etc., and proposed to settle the issue by way of sale deeds. A request has also been made to appoint a Commission Panel headed by a Retired High Court Judge and Judges as Commissioner and to resolve the dispute, in Crime No.3 of 2023 on the file of the Economic Offences Wing-II, Madurai.

(v) In the same, they extracted section 5A of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997. They cited similar examples in respect of Anubhav Planatations, Sneham



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Finance, Bharathi Gems and Jewels, Devi Gold House, Eswari Finance and Investment where competent authorities were appointed by the Special Court for the purpose of attachment and distribution of the proceeds to the depositors. But those matters are pending for several years. So, the criminal trial is dragged on endlessly, causing serious prejudice to the accused. The above said process did not help the depositors to recover the money. So the petitioner wants to settle the issue by proving the bonafide-ness.

7.As stated above, the above said request was made, on 02/08/2023. Similarly, writ petitions have been filed on the very same day, re-presented, on 3/08/2023.

8.Similar request was made by the company, at that time of hearing the anticipatory bail also, when I was holding the roster. But I expressed a view that it may go beyond the scope of Bail jurisdiction.

9.So, they moved these writ petitions, pending the above said anticipatory bail process. Later, anticipatory bail was dismissed by this court, in CrI.OP(MD)Nos.13071, 13465 and 14119 of 2023, by order, dated 22/08/2023.

10.Some of the accused have been arrested and others not. Similarly, another proceeding was also initiated by



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some of the depositors, seeking transfer of the investigation to CBI. It is also listed before the Coordinate Bench of this court. At the time of hearing, it was informed to this court that the said application was reserved for orders.

11. So this is the factual background.

'If not appointed, then the relief to the depositors or the investors, will see no light of the day and will be elusive, as the figures of pending matters, in the special courts, indicate. Trial will take a longer time to complete so also the proceedings by the competent authorities'.

This is the substance of the petitioners arguments.

'If appointed, then commission will go endlessly without the possible destination in sight, ultimately it will be an exercise in futile, as the figures will indicate the failure stories, in similar matters where commissions appointed'.

This is the apprehension of the State and some of the depositors.



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12.Filing of the writ petition, even without giving breathing time to the authorities concerned is highly deprecated in many cases. The urgency for which the petitions were filed on the date of the representation is not understandable.

13.As mentioned in the order passed in Cr1.OP(MD)Nos.13071, 13465 and 14119 of 2023, dated 22/08/2023 in the anticipatory bail application, even at the time of first hearing, Mr.N.R.Ilango, the learned Senior counsel submitted that they wanted the matter to be settled by appointing, either a retired High Court Judge or Competent person. They wanted to show their *bona fide*. So, it is seen that right from the beginning, stand of the company is to settle the issue by appointing a competent person.

14.According to the learned Senior counsel, when a *bona fide* and genuine proposal is made by the company, it must be properly appreciated and complied. But serious objections have been made not only by the State, but also by some of the depositors. During the course of hearing, some of the depositors supported the request of the company and some of them not. So, all were heard at length.



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15.No doubt that the genuine attempt or prayer to settle the issue even at the initial stage cannot be found fault, and it must be appreciated. But, at the same time, the question, which arises for consideration is whether it will satisfy the requirement of law and the request that has been made by the petitioners is legally sustainable.

16.The learned State Public Prosecutor has made a preliminary objection stating that for invoking Article 226 of the Constitution of India, there must be inherent right to invoke the jurisdiction to enforce that right. According to him, against the statutory provisions provided under section 5A of TNPID Act, the petitioners cannot sustain these petitions. He would also rely upon the judgment of the Coordinate Bench of this court passed in **WP No.14577 of 1999, dated 24/03/2023 (R.Subramanian Vs. The Reserve Bank of India)**. In that case, the Company, was Alwarpet Benefit Fund Limited, Chennai. When they committed violation of the benefit fund, the case was registered. A similar request was made, but the request was negatived with the following observation:-

*"7.The practice of appointing
Administrator of Financial
Establishments by the High Court may not*



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be appropriate in view of the fact that an Expertise in financial business is required. Hon'ble Judges are not Experts in the field or Financial Establishments and the Government has to take over such Establishments and appoint the Competent Authorities to deal with the affairs of such Financial Establishments falling sick. More-so, the High Court cannot monitor the progress through Administrators appointed by the High Court for longer time and it is not preferable also."

17.Originally, the request was considered. It was filed in 2019 and High Court Judges were appointed. But they died one after another, but the depositors did not realize the money. Para '8' may be extracted hereunder:-

"8.In the present case, the Three Hon'ble Judges appointed were died one after another and still M/S.Alwarpet Benefit Fund Ltd., is unable to repay the amount due to the depositors. The experience have shown that High Court appointed Administrators are unable to



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run the Financial Establishments to the satisfaction of the creditors and the members."

18. In the dispute, practical difficulty in the event of appointing such person has also been highlighted in para 9, which is extracted as under:-

"9. The present writ petition is pending for the past about 23 years. The High Court cannot monitor the day-to-day affairs of such Financial Establishments by keeping the writ petition pending for several years. Thus, this Court is of the considered opinion that the Competent Authorities of the Government under Status must be allowed to administer such Sick Institutions in the manner contemplated. It would be easy for the Courts to fix the responsibility and accountability of such Government Authorities in the matter of dealing with the members and the aggrieved depositors of M/s. Alwarpet Benefit Fund Limited."



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19. So finally, DRO, who is the competent authority under section 4 of TNPID Act was directed to take control of the situation.

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20. A similar difficulty has also been brought to the notice of this court by Mr. N. Anandha Padmanabhan, learned Senior counsel, who is representing some of the victims. He would go to the extent of saying that in one of the cases, where a Hon'ble retired High Judge was appointed, no conclusion is reached, due to some sort of allegations against Judge, he resigned from the post. According to the learned Senior counsel, Mr. N. Anandha Padmanabhan, the attempt that has been made by the petitioners will take no one to nowhere.

21. Similar view has also been expressed by the learned State Public Prosecutor and some of the victims.

22. In response to the above said preliminary argument, the learned Senior Counsel appearing for the petitioners would submit that such sort of baseless allegations should not stand in the way of exercising the jurisdiction under Article 226 of the Constitution of India, since the material that has been placed before this court by the company will show their bonafideness.



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23.He would also submit that the money received from the complainant or the victims, as the case may be, cannot be construed as deposits, as defined in various provisions of various Acts, as has been dealt with by this court.

24.He would simply say that the facts, circumstances and the business of the company turn to the category of pure real estate business subject to the provisions of the Real Estate (Regulation and Development) Act, 2016.

25.He would submit that the very registration of the FIR itself is *per se* illegal. But this argument was not raised at the time of hearing the anticipatory bail petition. So, this court had no occasion to deal with this point and this is a new ground, that has been raised.

26.Apart from that, the learned Senior counsel also pointed out some of the misconception in the anticipatory bail order. But it appears that no further step was taken by the accused in that matter. So, we need not concentrate on the alleged misconception.

27.Section 3 of the Real Estate (Regulation and Development Act, 2016 reads as under:-



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3. Prior registration of real estate project with Real Estate Regulatory Authority.-(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority,



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and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2)Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required-

(a)where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b)where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the



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case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

28. According to him, Neomax Properties Private Limited has been registered under the above said provisions of the Act before the competent authority. So further steps can be taken, only as per the above said provisions of the Act.

29. He would further submit that what has been received by the company cannot be construed as deposits, but only as advance amount, as mentioned in the representation, dated 02/08/2023. So, according to him, at any event, the offences alleged are not attracted.

30. Per contra, the learned State Public Prosecutor would submit that out of the several companies, only in respect of the project in Virudhunagar, project has been registered and others are not.



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31.Mr.N.Anandha Padmanabhan, the learned Senior

counsel appearing for the 4th respondent would submit that now the investigation is at the preliminary stage, the court can go only by the averments in the complaint and cannot travel beyond that, since it is not a petition for quashment. There is a clear allegation to the effect that promising, either to execute sale deed in respect of plots or to return the money in double to the public. So according to him, this will *per se* show that it is a deposit and not the advance amount of sale consideration.

32.Even if we see that The Real Estate (Regulation and Development) Act, 2016 also apply, the learned State Public Prosecutor would submit that the application of TNPID Act can not be ruled out since the investigation still pending. He would rely upon section 2(3) of TNPID Act, which reads as under:-

*“**Financial Establishment**’ means an individual, association of individuals, a firm or a company registered under the companies Act 1956 (Central Act, 1956) carrying on the business of receiving deposits under any scheme or arrangement or in any other manner, but does not include corporation or a co*



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operative society owned or controlled by any State Government or the Central Governemnt or a banking companyas defined in section 5(c) of the Banking Regulation Act, 1949."

33.According to the learned Special Public Prosecutor, if money is received in any form from the public for the purpose of carrying on the business of whatever nature the Act will come into play.

34.I totally agree with the stand taken by the State Public Prosecutor for the simple reason that even if we take for argument sake that The Real Estate (Regulation and Development) Act, 2016 will apply, there is no complete prohibition for the application of the State Act namely TNPID Act.

35.More-over, there is a complete prohibition on the company to enter the sale transaction without proper agreement.

36.Section 13 of the Real Estate (Regulation and Development) Act, 2016 read as under:-



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"13.No deposit or advance to be taken by promoter without first entering into agreement for sale.-(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2)The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."



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37.From the reading of the above said provision, position is clear that no deposit or advance can be received by the company from any of the customers. But here absolutely, as mentioned above, there was no written agreement, only advance receipt has been issued. By taking into account the nature of the business it must be construed only as deposit. The above said view was taken considering the nature of the business undertaken by the company.

38.Now it is also admitted by them that the amount received by way of advance or deposit as the case may were used in various concerns namely hospital, school, etc., mentioned in the representation, dated 02/08/2023. They would say that for the purpose of enhancing or arising the valuable money, the above said investments have been made and this has been greatly commented by the victims and the learned State Public Prosecutor that they have siphoned off the money received from the public to various concerns. Not only that but also they registered various companies under various names. More particularly, the counter affidavit filed by the 5th respondent as elaborated in detail about the number of the companies registered in various names. So according to the prosecution/victims, it cannot be construed as mere real estate business issue. Larger issues are involved, so it requires thorough investigation. That parallel fact



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finding agency cannot be appointed even by this court. So according to them, to derail the investigation process these petitions have been filed.

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39.Per contra, the learned Senior counsel appearing for the petitioners would submit that section 19 of the Real Estate (Regulation and Development) Act, equally protects the investors and the company. He would also rely upon the tabulation format annexed in the typed set of papers, and the representation, dated 02/08/2023. He would submit that now the total area available with the company for settlement is 4,12,65,276.35 sq.feet.

40.Para 8 of the affidavit filed on 27/09/2023 is extracted hereunder:-

"8.I state that after registration of 1,95,19,480.21 sqft to 15,000 customers balance DTCP Approval Land available for registration is 5,09,51,443 sqft. As our offices have been locked-down and Hard Discs have been ceased from our offices by EOW Dept I have arrived from the available that the number of customers whom we have to register plots are 32,048 and



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number of sqft to be registered for them in 2,23,51,906 sqft. And the balance land available for sale is 2,85,99,537 sqft.

9.I state that on 26/06/2023 a sale deed (Sale Deed 3144,3145 of 2023) was executed by our company to the defacto complainant on the file of SRO Vadipatti Taluk, Madurai to an extent of 15,517 square feet land for a sale consideration of Rs.51,94,950. On 25.06.2023 NEOXAX GROUP has refunded Rs.25,00,000/- to the defcato complainant's account at the request of Mrs.P.Janaki (mother of Defacto complainant) and A.Perumalsamy (father of defacto complainant) who had invested in NEOMAX GROUP for buying plots. I state that NEOMAX GROUP has other companies (sister concerns), where all the companies are ready for settlement and disbursement of land to the customers who had paid their entire sale consideration."



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41.By pointing out this, the learned Senior counsel appearing for the petitioners would submit that as per the materials available with them as on date, the total number of customers are 32,048. Number of square feet registered by them is 2,23,51,906 and the balance available salable property is 2,85,99,537. On 26/06/2023, the property was sold to the de-facto complainant. So according to him, when plots are available for sale, the above said land can be distributed to the customers, if the commissioner is appointed.

42.With regard to the objection made by the State and the victims, over the observation made by this court in WP No.14577 of 1999, it has been submitted by the learned Senior counsel that it cannot be taken to mean that in all the situations, it is not desirable to appoint a retired Judges or competent person. Even the complicated matters are being dealt by the retired High Court Judges, of course with the assistance of the counsels.

43.He would also submit that the former Hon'ble Retired Chief Justice of India is also taking up a matter as one man commission. So according to him, simply because of some of the commissions fail, it cannot stated that door must be closed in all the cases.



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44.No doubt that successive failure will be on both matters. But the core question which arises for consideration is, whether this is the fittest case to exercise the power under Article 226 of the Constitution of India.

45.As rightly contended by the learned State Public Prosecutor, unless the right exists which is conferred upon a person, in part III of the Constitution of India, he cannot sustain a petition under Article 226 of the Constitution of India. Equally, he would submit that it is not a corresponding duty cast upon the authorities to appoint an officer. He would also draw the attention of this court to the prayer sought for in all the petitions.

46.No doubt that the prayer is not happily worded, but we can take the substance of the prayer. If we take the substance of the prayer, then what the petitioners wants to appoint an officer by the order of this court.

47.Now coming back to the issue, as stated above, larger issues are involved in this matter. Even though the learned Senior counsel appearing for the petitioners would submit that they are not insisting upon any order with regard to the investigation, but the fact remains that more than one litigations are involved. According to them, one is among the investigation ins Economic



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Offences Wing. Another by Coordinate Bench of this court seeking transfer of the investigation. Third one the petition before the National Company Law Tribunal, Bench-II, Chennai, CP No.70 of 2023 filed by one of the customers to declare the Neomax Properties Private Limited as Insolvent. Another matter is the present request. So four sides are pulling in different directions.

48. When we go through the counter filed by the 5th respondent, as mentioned above, several companies have been floated in the name of several persons.

49. At the time of hearing, one of the learned counsel came voluntarily stating that he is also one of the happy customers of the company and he has satisfied with the services rendered. He is also benefited by the project and he was travelling with the company for so many years. According to him, no illegal activity is carried on by the company. As stated above, no doubt that some of the customers are satisfied, but not the whole.

50. Mr. N. Anandha Padmanabhan, learned Senior counsel appearing for some of the victims would submit that even though the company says that they are ready to settle the issue, but by practising or playing fraud upon the



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investors, they drew deposits and purchased property in remote areas, which will not fetch not more than 1000 per cent. Now the company says that it is willing to settle the issue, in respect of the properties lesser value also, an irony.

51.He would also submit that even now the agents are preventing the villagers from giving complaints. So according to him, this is not as simple as stated by the petitioners to take steps of the available lands, distribute the same to the customers by a retired Judge. This is the one angle of aspect.

52.The learned Senior counsel appearing for the petitioners would submit that absolutely, no prejudice is going to be caused to any one and not even to the State. The ultimate sufferers will be the victims and the depositors as the case may be. They want to save the depositors from the loss. How many years will it take for the Special Court to settle the issue through the competent authority may not known. So according to him, this is the genuine attempt, which must be appreciated and taken into confidence.

53.As rightly pointed out by the learned State Public Prosecutor, when special provision is available in the statute, that must be resorted to. Only the



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investigation is pending and more facts are brought to be collected during the course of the investigation. Now it is the premature stage to say. Only the thorough investigation by the competent agency will bring out the truth. It may not be stated that the investigating officer or agency are incompetent to deal with the matters. This cannot be taken into account without any basis and also cannot be a reason for appointing the retired High Court Judge to distribute the assets.

54.Considering the enormous money involved and ramification of the issue and the evolving proportion, even though there are some satisfied customers to some extent, I am of the considered view that if a retired High Court Judge is appointed in this matter, it will take nowhere. No purpose is also going to be served as the past experience has shown as detailed in the counter affidavit filed by the 5th respondent and also brought to the notice of this court by the learned Special Public Prosecutor.

55.In response to the alternative remedy, the learned Senior counsel appearing for the petitioners would submit that it is not a bar to exercise the power under Article 226 of the Constitution of India.



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56.No doubt that alternative remedy may not be a bar for invoking the Article 226 of the Constitution of India.

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57.The principles are enumerated in more than on one occasion. In **Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai [(1998) 8 SCC 1]**, it is observed that:-

"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural



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justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

58. But here, the issue is entirely different and none of the exception enumerated are attracted. As stated above, from four sides the issue is pulled. When the Statute prescribes certain mode of the procedure, it must be adopted first. Section 5(A) of the TNPID Act can be resorted to even before filing of the final report. If really the petitioner/s want(s) to settle the issue, they can very well approach the concerned authority under section 5(A) of the Act.

59. So looking from any angle, the representations that have been made by the petitioners cannot be considered. So all the petitions deserve dismissal and accordingly, **dismissed.** Consequently, connected Miscellaneous Petitions are closed.

20/10/2023

Index: Yes/No
Internet: Yes/No
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Note: Issue order copy
on 30/10/2023



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To,

- 1.The Secretary,
Department of Home,
Prohibition and Excise,
Fort St. George,
Chennai-600 009.
- 2.The Director General Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.
- 3.The Additional Director General of Police,
Economic Offences Wing,
Madurai.
- 4.The Inspector of Police,
Economic Offences Wing-II,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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