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W.P(MD).No. 7549 of 2014 batch case

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**ORDER RESERVED ON : 30.11.2022 &
31.03.2023**

ORDER PRONOUNCED ON : 02.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).Nos.7166, 7549, 7550, 7551, 7552,
7938, 7939, 7940 and 8212 of 2014
and W.P(MD).Nos.18349,18628, 18629 18630, 18464, 18568,
19238 and 19401 of 2022**

and

**M.P(MD).Nos. 1,1,1,1,1,1,1 & 1 of 2014 and W.M.P(MD).Nos.13558,
13559,13561, 13563, 13560,13562, 13459, 13460, 13497, 13499,14033,
14035, 13362, 13365, 14165 & 14168 of 2022**

W.P(MD).No.7166 of 2014

1.P.Alwarappan

2.P.Narayanan

.....Petitioners

Vs

1.The Secretary to the Government of India
Ministry of Works, Housing and Supply
New Delhi

2.The Secretary, Tamil Nadu Government
Municipal Administration and Water Supply Department
Chennai 600 001

3.The District Collector
Tuticorin District
Tuticorin

4.The Commissioner
Tuticorin Municipal Corporation



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Tuticorin

....Respondents

(Second petitioner impleaded vide Court order dated 21.04.2015)

Prayer in W.P(MD).No.7166 of 2014: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in A16/19456/2007 dated 20.03.2014 on the file of the 4th respondent and quash the same as illegal, ultra vires, unconstitutional and for consequential relief.

W.P(MD).No.7166 of 2014:

For Petitioners	: Mr.S.Ramesh
For R1	: Mr.S.Jeyasingh CGSC
For R2 & R3	: Mr.N.GA.Natraj Government Advocate
For R4	: Mr.N.Anandkumar

COMMON ORDER

W.P(MD).Nos. 7166, 7549, 7550, 7551, 7552, 7938, 7939, 7940 and 8212 of 2014 have been filed challenging an order passed by the Commissioner, Tuticorin Municipal Corporation demanding higher rent from the occupants of 9 residential houses based upon a resolution passed by the Corporation in Resolution No.40 dated 21.02.2014.

2.W.P(MD).Nos.18349,18628, 18629 18630, 18464, 18568, 19238, and 19401 of 2022 have been filed challenging the letter of the Secretary to Government, Municipal Administration and Water Supply Department under



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which the request of the occupants for sale of the houses to them has been rejected on the ground that there is a ban for sale of the building in view of G.O.Ms.No.730, Rural Development and Local Administration Department dated 14.04.1976.

3.Contentions of the learned counsel appearing for the petitioners are as follows:

(i).The Government of India had announced a Housing Scheme for low income group on 17.01.1955. Under the said scheme, the Central Government would disburse loan to the State Government for enabling persons in the low income group to build and own their houses. Up to 80% of the actual cost of the houses including the land will be borne by the Central Government and the balance 20% has to be resourced from the Co-operative Society or Housing Finance Corporation. Under the said scheme, 30 houses were constructed by the Tuticorin Municipality and they were handed over to the occupants. Some of them were the employees of the Municipality and the rest belonged to the low income group.

(ii).As per Housing Scheme of the Central Government, the State Government or any authority designated by it, cannot continue to be the permanent owner or could rent the houses. Therefore, the allotment in favour of the petitioners was not on a rental basis, but only as a owner or on a hire purchase basis.



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(iii).The amounts that were periodically paid by the occupants were only towards the instalments of owned house and not as the rent to the Municipality. Therefore, the Municipality has no right whatsoever to enhance the rent by way of passing a resolution. Therefore, the order impugned in the first set of writ petitions filed in the year 2014 have to be set aside.

(iv).The individual occupants have addressed representation to the Secretary to Government Municipal Administration seeking to sell the houses to them. The same was rejected under the impugned orders which were challenged in the writ petitions filed in the year 2022. Under the impugned order, the Secretary to Government has cited G.O.Ms.No730, Rural Development and Local Administration Department dated 14.04.1976 to reject the claim on the ground that there is a ban for selling the land and building belonging to the Government and Local Bodies. The said Government order dated 14.04.1976 is not applicable to the occupants, in view of the fact that the houses were constructed with the Finance Assistance of the Central Government and they are governed by a Special Scheme. Therefore, the said letter under which the request of the occupants were rejected is not sustainable in the eye of law.

4.Contentions of the learned Additional Advocate General appearing for the Tuticorin Corporation are as follows:



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(i).All the 30 houses were constructed only by the Municipality under the scheme issued by the Government of India in the year 1954. Therefore, all the 30 houses are owned only by the local body.

(ii).The Government has passed G.O.Ms.No.730 dated 14.04.1976 imposing a ban for alienation of land and building belonging to the local bodies. Therefore, the said G.O, is applicable to the Tuticorin Municipality/Corporation also. In view of the said ban, the request of the occupants cannot be considered.

(iii).All the occupants have taken possession of the property only as tenants and therefore, they cannot turn around and contend that the allotment was on the basis of an hire purchase scheme. The occupants were regularly paying the rent that was demanded by the local body and they are estopped from contending that they have got a right to make a claim for alienation of the said houses.

(iv).Out of 30 houses, 21 houses were sold to the Municipal staff after getting permission from the Government and sale deeds have also been executed. The Corporation by their resolution had decided to keep the remaining 9 houses on a rental basis.

(v).The occupants were paying meagre rent ranging from Rs.24/- to Rs.30/-. The Tuticorin Municipality was upgraded as Tuticorin Corporation in the year 2008. Therefore, the Sub Registrar, Tuticorin by his proceedings



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dated 28.10.2013 has furnished a report with regard to the revised price prevailing in the said locality. On the basis of the said report, the Assistant Engineering of Tuticorin Corporation was directed to fix the fair rent to the building. Accordingly, the fair rent was fixed to the said buildings. The said fair rent fixed for the building was approved by the Corporation by their Resolution No.40 dated 21.02.2014. Based upon the said resolution, the impugned communication has been addressed to the occupants and therefore, the communication seeking enhancement of rent are legally sustainable and there are no merits in the writ petitions.

(vi).The occupants cannot challenge the letter of the Secretary to Government dated 19.02.2002 in view of the fact that the said letter only reiterates G.O.Ms.No.730 Rural Development and Local Administration Department dated 14.04.1976. Without challenging the Government order dated 14.04.1976, the writ petitions filed challenging the impugned letter dated 19.02.2002 is not maintainable. Hence, he prayed for dismissal of both batch of writ petitions filed in the year 2014 and 2022.

5.I have considered the submissions made on either side and perused the materials available on record.

6.It is admitted by both the parties that the petitioners are in occupation of 9 houses and the same were constructed under the Housing Scheme announced by the Central Government.



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7.The salient features of the said Housing Scheme are as follows:

(a).The Central Government would disburse loan to the State Government to enable persons in the lower income group to build their own houses. In turn, the State Government was expected to pass on the loan to the individual or Co-operative Housing Society belonging to the low income group.

(b).The Central Government would provide loan assistance only to an extent of 80% and the balance 20% of the finance has to be raised through the individual Co-operative Society or the Housing Finance Corporation.

(c).The State Government should try to arrange allotment of land to intending builders at a low price.

(d).The houses can be constructed either by the individual or by the Co-operative Society or by the State Government or any authority designated by the State Government.

(e).The State Government or any other authority designated by it which builds the houses cannot continue to be the permanent owners and rent those houses. The houses must be sold outright or on a hire purchase basis to Co-operatives or individuals.

(f).The State Government can disburse this loan to the local body for construction of housing to their low paid staff. In such cases, the ownership



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of those houses will vest with the local body which can either be rented out to low paid staff or can be sold out to the staff. However, the total amount of land for local body should not exceed 25% of the total loan made available to the State Government under the Scheme.

8.A careful perusal of the above said Housing Scheme formulated by the Central Government by their letter dated 17.01.1955 clearly shows that the State Government or any other authority which builds the houses cannot retain the same as a permanent owner and rent those houses. The houses have to be compulsorily sold outright or on a hire purchase basis to Co-operatives or individuals. The very object of the housing scheme is to enable persons in the low income group to build their own houses.

9.Only in cases where the loan is disbursed to the local body, the houses constructed by the said local body could be retained by them as the owner and rented out to their low paid staff. Even in such cases, there is no bar on the part of the local body to sell it either outright or on a hire purchase basis to their own staff. However, there is a restriction upon the State Government to the extent that they can disburse only 25% of the Central Government funds to the local bodies for owning such houses which are meant for their staff. Therefore, it is clear that the Central Government funds if received by the local body through the State Government and the houses were constructed by the local body, only to the extent of 25% of the houses



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could be retained by the local body as a owner.

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10.A reading of the scheme in entirety shows that the object of the scheme floated by the Central Government is to enable the persons of low income group to build and own houses and not to be tenants permanently.

11.The Government of Tamil Nadu had passed G.O.Ms.No.730 Rural Development and Local Administration Department dated 14.04.1976. As per the said G.O, the Government of Tamil Nadu has imposed a complete ban on the alienation of any land or building belonging to the Government or local bodies. The Government of Tamil Nadu had issued G.O.Ms.No.1406 dated 16.04.1957 to regulate the construction and sale of houses by the local bodies. The said G.O. was amended by G.O.Ms.No.2194 dated 06.06.1958. As per the said amendment only 25% of the houses constructed by the local body can be allocated to the employees. Therefore, it is clear that out of 30 houses constructed by the Tuticorin Municipality, not more than 8 houses could be allotted either on a rental basis or on a outright purchase to their own employees. However, in the present case, out of 30 houses, 21 houses have already been sold out to the staff of the Tuticorin Corporation which is clearly in violation of the above mentioned Government orders.

12.All the writ petitioners herein (except the petitioner namely I.Paul



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Thomas who is the petitioner in WP(MD).Nos. 7549 of 2014 and 18464 of 2022) are not employees of Tuticorin Corporation. Neither the petitioners nor the respondent corporation have produced the order of allotment in favour of these non-employees. The Corporation has not explained in their counter affidavit as to under what category or status, the houses were allocated to the petitioners who were not employed by the Corporation. Therefore, it has to be construed that these non employees were allocated houses only under the general category.

13.As per housing scheme announced by the Central Government, neither the State Government nor the local body which had received the funds through the State Government could retain the same as owners of the building and rent them out, except when they are rented to their own staff. There is also a ban for renting out or sale of these houses to the staff of the local body to the maximum extent of 25% under the Central Government Scheme. The said outer extent of 25% is also reflected in G.O.Ms.No.2194 dated 06.06.1958.

14.The erstwhile Tuticorin Municipality had received funds from the State Government only under the Central Government Housing Scheme. Therefore, the local body is bound by the conditions imposed under the Central Government Housing Scheme.

15.As far as the non employees of the local bodies are concerned, they



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cannot be allotted houses as tenants. Either the houses have to be sold on a outright basis or on a hire purchase scheme to them. Any attempt made on the part of the State Government or the local body to retain the ownership of the said houses would be clearly in violation of the Central Government Housing Scheme under which 80% of the financial assistance has been provided by the Central Government. When the Central Government has provided 80% of the financial assistance for the construction of the houses, it is not known under what authority, the State Government or the local body are claiming title or ownership of the said houses, especially with regard to the allotment to non employees.

15.The request of the occupants for alienation of the houses in their favour has been rejected by the State Government only citing G.O.Ms.No.730 Rural Development and Local Administration dated 14.04.1976. This Government Order would be applicable only to those lands and buildings that are exclusively owned by them.

16. As admitted by the respondent in their counter, the houses were constructed only utilising the financial assistance of the Central Government under a Special Scheme of the Central Government dated 17.01.1955. The said Central Government Scheme clearly points out that the State Government or any other authority which is designated by the State Government to carry out the construction work cannot retain the ownership



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of the property and rent it out. Therefore, the said G.O.Ms.No.730 dated 14.04.1976 is not applicable to the houses constructed by the local body through the Central Government Scheme. Hence, the letter of the Government of Tamil Nadu citing the said Government Order dated 14.04.1976 in order to reject claim of the occupants is not legally sustainable.

17.All the writ petitioners (except the writ petitioner namely I.Paul Thomas in W.P(MD) Nos. 7549 of 2014 and 18464 of 2022) are not the employees of the local body. Their allotment at the first instance should only be considered to be under the hire purchase scheme. The amounts that were periodically deposited by the said occupants should only to construed to be instalments under the said hire purchase scheme. Therefore, the contentions of the learned Additional Advocate General that the occupants were regularly paying the rent and they are estopped from contending other wise is not legally sustainable. The Corporation has not chosen to file the original allotment order in favour of these writ petitioners to establish that they were allotted only on a rental basis and not under hire purchase scheme.

18.In the light of the Central Government Scheme and considering the fact that the petitioners are not employees of the local body, this Court is constrained to arrive at a finding that these petitioners were not inducted as tenants into the property. When they are not inducted as tenants into the



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property, the question of demanding or enhancing the rent does not arise.

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19. According to the respondents, the petitioner in W.P(MD) Nos. 7549 of 2014 and 18464 of 2022 namely T.Paul Thomas was allotted a house while he was an employee of the Tuticorin Municipality. However, no records have been placed before this Court by either side to establish the said fact. Already the local body had sold 21 house to its employees. Therefore, it is not known why T.Paul Thomas alone was discriminated and left out. Hence, the said employee is also entitled to get a sale deed under the Central Housing Scheme. Till a sale deed is executed, the local body can fix and collect the rent from the employee.

20. With regard to other occupants/petitioners, the Government or local authority have no right whatsoever to demand higher rent in view of the fact that they cannot be treated as tenants. The respondents have to calculate the balance sale consideration after deducting the amount that was deposited by the other petitioners periodically.

21. In view of the above said deliberations, the following orders are passed:

(i). W.P(MD).Nos.7166, 7550, 7551, 7552, 7938, 7939, 7940 and 8212 of 2014 (except W.P(MD) No. 7549 of 2014) stand allowed setting aside the order demanding enhancement of rent.

(ii). W.P(MD).Nos.18349, 18464, 18628, 18629 18630, 18568, 19238



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and 19401 of 2022 stand allowed setting aside the order of the first respondent and the respondents are directed to execute and register the sale deed after receiving full sale consideration in favour of the petitioners in accordance with the Low Income Group Housing Scheme of Government of India, Ministry of Works, Housing and Supply dated 17.01.1955.

(iii).W.P(MD).Nos.7549 of 2014 is disposed of with a direction to the respondents to retain the petitioner as a tenant till a sale deed is executed by the local body. The said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

02.06.2023

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To

- 1.The Secretary to the Government of India
Ministry of Works, Housing and Supply
New Delhi
- 2.The Secretary, Tamil Nadu Government
Municipal Administration and Water Supply Department
Chennai 600 001
- 3.The District Collector
Tuticorin District
Tuticorin
- 4.The Commissioner
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).Nos.7166, 7549, 7550, 7551, 7552,
7938, 7939, 7940 and 8212 of 2014
and W.P(MD).Nos.18349,18628, 18629 18630, 18464, 18568,
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