BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8764 of 2015
and
M.P.(MD)No.2 of 2015

1.M.S.M.Mohideen(died)

2.Thavulath Nisha ... Petitioners

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner,
Corporation of Trichirappalli,
Trichirappalli Office of Corporation Building,
Bharathidasan Salai,
Contonment,
Trichy-620 001. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order/notice bearing No.Na.Ka.F1/48084/1991-Ariya Mayyam dated 15.12.2014 and quash the same.

For Petitioners : Mr.D.Sivaraman

For Respondents : Mr.D.Gandhiraj
Special Government Pleader for R1

: Mr.R.Baskaran
Additional Advocate General
assisted by M/s.R.B.Law Associates for R2

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the first respondent and the learned Additional Advocate General assisted by the learned counsel appearing for the second respondent.

2. The first petitioner M.S.M.Mohideen was an employee of the corporation of Trichirappalli. He joined service way back in the year 1968. The local body was then a municipality. It had constructed 65 houses and the corporation employees were occupying them. Vide G.O.Ms.No.865, Rural Development and Local Administration Department, dated 20.04.1972, 63 houses were allotted to the employees and they were to be sold to them on hire purchase basis. On 14.04.1976, G.O.Ms.No.730, Rural Development and Local Administration Department came to be issued and there was a ban on sale of immovable properties belonging to the local bodies. On 04.11.1989, the

petition mentioned premises bearing Door No.14A , Thiagi Arunachalam Nagar was allotted to M.S.M.Mohideen on rental basis. As already noted, there were totally 65 houses. 63 houses were sold to various employees. Remaining 2 houses were occupied by M.S.M.Mohideen/first petitioner herein and one Sikkanthar. The petitioner applied to the local body for allotting Door No.14A in his favour. The municipal corporation passed a resolution on 30.01.1992 for selling the said house in favour of the first petitioner after obtaining permission from the Government. The value was fixed at Rs.17,368/-. Interestingly, on the same terms, the other house was sold in favour of Sikkanthar in the year 1991 itself by granting exemption. For reasons that are not quite clear, the case of the petitioner was not considered. The petitioner retired from service on 31.08.1996. He continued to be in occupation of the premises. On 08.10.1996, the Government rejected the proposal for selling the property in favour of the first petitioner. The petitioner submitted representation seeking review of the said order. That was also rejected on 18.02.2001. Challenging the same, the first petitioner filed W.P.No.16832 of 2001. The Writ Petition was allowed on 16.12.2010. Subsequently, after further battles, the Government passed G.O.(3D)No.12, Municipal Administration and Water Supply (MO.2) Department, dated 08.12.2011 granting permission to sell the house to the first petitioner at the prevailing rate. Subsequently, the Commissioner, Trichirappalli

Corporation called upon the petitioner vide notice dated 27.11.2012 to pay a sum of Rs.21,76,350/-. Without any demur, the petitioner paid the said amount. Thereupon, the sale deed dated 01.03.2013 was executed. At this stage, the registration department took the view that he has to pay a sum of Rs.92,246/- towards deficit stamp duty and Rs.13,180/- towards registration charges. The 1st petitioner paid the same without any demur. Thereafter, he executed a settlement deed in favour of his daughter. The petitioner had been asked to pay the deficit stamp duty on the ground that the sale consideration did not reflect the true market value. When this was brought to the notice of the Government, the Government sent letter dated 10.10.2013 in this regard to the local body and there upon, the corporation of Trichirappalli issued demand notice dated 11.07.2014 and 15.12.2014 calling upon the petitioner to pay a further sum of Rs.13,17,204/-. The subsequent demand is put to challenge in this writ petition.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The learned Special Government Pleader appearing for R1 and the learned Additional Advocate General appearing for R2 submitted that the Government had passed G.O.(3D)No.12, dated 08.12.2011 granting permission for selling the petition mentioned premises in favour of the first petitioner at the prevailing rate. The valuation was incorrectly done originally and that is why, the corporation called upon the petitioner to pay a sum of Rs.21,76,350/- alone. The error in valuation came to the notice of the authorities only when the registration department raised demand. The learned Additional Advocate General would point out that any sale deed should reflect the true market value of the property. If the first petitioner felt that the market valuation was correct, he would have definitely questioned the same immediately. The fact that he remitted the deficit stamp duty and registration charges without demur indicates that the valuation done by the municipality was not proper. According to the learned Additional Advocate General, the impugned demand is a mere reflection of the correct valuation of the property which the first petitioner had already accepted. He therefore called upon this Court to sustain the impugned demand and dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. It is true that the petitioner did not question the parameters laid down in G.O.(3D)No.12, dated 08.12.2011. He also did not question the demand of the registration department to pay the deficit stamp duty. The learned counsel for the petitioner states that the petitioner retired from service way back in the year 1996 and that he was not keeping good health and that during the pendency of the writ petition, the first petitioner had passed away. Merely because a person had not engaged the authorities in litigation, that would not mean that he had accepted the decision of the authorities as correct. As rightly pointed out by the learned counsel appearing for the petitioner, the issue has to be approached with reference to the principles of equality and fairness. 65 houses were constructed and 63 houses were sold in the year 1972 itself. Remaining two houses were in the occupation of the two municipal employees namely M.S.M.Mohideen and Sikkanthar. A sum of Rs.18,730/- was accepted from Sikkanthar and the property was sold in his favour in the year 1991 itself. The petitioner was placed in similar circumstances. However, when his request was rejected, this Court allowed W.P.No.16832 of 2001, dated 16.12.2010. Paragraph Nos.7, 8 & 9 of the said order read as follows:-

> "7. Indisputably, the total number of houses constructed under the Scheme were 65 in numbers. Prior to G.O.Ms.No.730, 63 houses were sold to the respective allottees. Out of the remaining two houses, one was occupied by Mr.Sikkanthar and the other was occupied by the petitioner. Though the Municipal Corporation was in favour of selling the same to these persons, the

Municipal Corporation could not do it on its own because in the meanwhile, G.O.Ms.No.730 came into force. Even after the said G.O., the Municipal Corporation was of the view that both the houses will have to be sold to the respective allottees, otherwise there would be no purpose in retaining the two houses when 63 houses were already sold. Considering the said proposal of the Municipal Corporation, the Government h as granted permission for selling the house occupied by Mr.Sikkanthar. When that be so, absolutely, I find no reason as to why the Government has taken a different stand insofar as the petitioner is concerned. The impugned order only reflects the arbitrary exercise of power by the Government offending Article 14 of the Constitution.

8. The learned counsel for the respondents are not in a position to explain to the Court as to why the petitioner alone is discriminated when other persons were favoured with orders to sell the respective house to them. Therefore, I am of the view that the impugned order is liable to be set aside and the petitioner is also entitled for the same relief as it was extended to Mr.Sikkanthar.

9. In such view of the matter, the writ petition is allowed. The impugned order of the first respondent is set aside and the matter is remitted back to the first respondent who shall pass appropriate orders within a period of three months from the date of a copy of this order. While passing such order, the first respondent shall have regard to the observations made in this order and also shall have regard for G.O.Ms.No.168, Municipal Administration and Water Supply (M.7) Department, dated 23.06.1991."

7. From a reading of the said order, one can safely come to the conclusion that this Court wanted the respondents to treat the first petitioner on par with Sikkanthar. But the first petitioner was called upon to pay a sum of Rs.21,76,350/-. The petitioner could have as well questioned the same. He did

not do so. Probably, on account of appreciation of real estate price, he thought it prudent to accept the valuation done by the corporation. The petitioner paid the said amount. The sale deed was executed pursuant to the direction passed by the High Court. The Corporation was the vendor. Therefore, the question of undervaluation does not arise at all. G.O.(3D)No.12, dated 08.12.2011 passed by the Government stipulated that the property should be sold at the prevailing rate. It obviously means the market rate. It is well known that the market value rate and the guideline value are different concepts. Though the guideline value is supposed to reflect the market reality, in practice, it may turn out to be more or less than the market value. The demand raised by the registration department cannot be indicative of the prevailing rate. The impugned demand is patently unreasonable. It is quashed. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

19.09.2023

Index : Yes / No
Internet : Yes/ No
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To

The Secretary,
Municipal Administration and Water Supply
Department,
Fort St.George,
Chennai-600 009.

G.R.SWAMINATHAN, J.

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