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W.P.No.33835 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33835 of 2019

and

W.M.P.Nos. 34353 of 2019 & 17267 of 2021

- 1.S.Balasubramanian
- 2.M.P.Chandrasekar
- 3.G.Suganya

... Petitioners

Vs.

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai – 600 009.
- 2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai – 600 035.
- 3.The Executive Engineer,
Wood Working Unit Division,
K.K.Nagar Scheme,
Tamil Nadu Housing Board,
Thirumangalam,
Chennai – 600 101.
- 4.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
Gandhi-Irwin Road, Egmore, Chennai – 600 008.



WEB COPY

W.P.No.33835 of



5. Brindavan Tower Owners Welfare Association,
Represented by its General Secretary,
Dr.G.Vijayan Siva, S/o.Ganesan,
129, Anna Main Road, K.K.Nagar,
Chennai – 600 078

(R4, R5 impleaded as per Order dt
10.02.2020 made in W.M.P.No.34761 of
2019 in W.P.No.33835 of 2019 by CVKJ)

6.R.Bavithra

7.Ajay

8.L.Raghuraman

... Respondents

(R6 to R8 impleaded as per Order dt.
10.01.2024 made in W.M.P.Nos.25288, 25290 & 25337
of 2023 in W.P.No.33835 of 2019 by SMSJ)

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to allot car parking facility either open or covered to the petitioners, owners of residential Flat of MIG I & II Flats under Self Finance Scheme, Wood Working Unit Division, K.K.Nagar, Chennai-600 078, without restricting the number of car parking facility and by resorting to lot method as stated in the Communication issued by the 3rd respondent in Letter No.WWUD/Plg/002/2018 dated 19.11.2019 and to execute the sale deed in favour of the petitioners for the respective flats purchased by them without linking car parking facility.



For Petitioners	: Mr.G.Sankaran, Senior Counsel for Mr.S.Nedunchezhiyan
For R1	: Mr.P.Balathandayutham Special Government Pleader
For R2 & R3	: Mr.R.Shunmugasundaram Assisted by Mr.D.Veerasekaran Standing Counsel for TNHB
For R4	: Mrs.P.Veena Suresh Standing Counsel for CMDA
For R5	: Mr.V.Srikanth
For R6 to R8	: Mr.C.R.Malarvannan

ORDER

The Writ of mandamus has been instituted to direct the respondents to allot either open or covered car parking facility to the petitioners, owners of residential Flat of MIG I & II Flats under Self Finance Scheme, Wood Working Unit Division, K.K.Nagar, Chennai-600 078, without restricting the number of car parking facility and by resorting to lot method as stated in the Communication issued by the 3rd respondent in letter dated 19.11.2019 and to execute the sale deed in favour of the petitioners for the respective flats purchased by them.

2. The relief as such sought for in the writ proceedings has emerged from and out of the contractual obligation between the petitioners and the 2nd



and 3rd respondents/Tamil Nadu Housing Board (hereinafter referred to as “TNHB”). The TNHB has advertised for sale of 352 residential flats in MIG-I and MIG-II blocks in Wood Working Unit Division, under the Self financing Scheme in November 2014, promising the allottees either with the open car parking or closed car parking facility. Pursuant to the said advertisement, the writ petitioners have submitted their respective applications and got the allotment of flats. In the application forms, there is a column, whether the applicant is willing to purchase the flat with covered car parking and the advertisement would also provide the list of facilities provided in the project premises. As per the advertisement, the following items are provided:

1. *Located at heart of the City*
2. *Easy connectivity to all Schools & Colleges*
3. *Nearer to Shopping Plazas & Restaurants*
4. *Park*
5. *Power Backup for Lifts & common area*
6. *Lifts*
7. ***Covered/Open Car Parking***
8. *Metro Water supply*
9. *UG Sewer Arrangement*
10. *CMDA Approved*
11. *Clear Title*
12. *Security Cabin*

3. The learned Senior Counsel for the petitioner Mr.G.Sankaran



and Mr.V.Srikanth, learned Counsel for the 5th respondent would submit that the promise was provided to the intending purchasers for covered car parking and all the applicants have submitted their respective applications with an option to provide car parking.

4. An agreement for sale of house flats was admittedly signed between the parties. However, in the said agreement, there is no mentioning about the car parking facility and the schedule in the agreement do not speak about the allotment of any car parking to the purchasers. However, the subsequent 'B' Certificate issued by the TNHB to the State Bank of India, to secure loan, it is stated about the covered car parking allotted to the purchasers. Therefore, this Court is of the considered opinion that the agreement cannot be equated with the 'B' Certificate issued for the purpose of securing loan from the Nationalised Banks. In individual cases, the allotment was made in favour of some purchasers and in respect of those purchasers, such 'B' Certificates could have been issued. However, in the agreement for sale of house flats, there is no mentioning about the allotment of car parking to the purchasers and there is no mentioning in the schedule.

5. The learned Advocate General, Mr.R.Shunmugasundaram,



would submit that there was no assurance given for allotment of car parking to the purchasers. It is an option provided to the purchasers, subject to the availability of car parking in the premises. Therefore, the purchasers cannot claim car parking facility as an absolute right. More so, such assurance has not been provided in the agreement for sale. Thus, the claim of the writ petitioners are beyond the scope of the sale agreement entered into between the TNHB and the purchasers of the flat.

6. No doubt, a blanket publication issued by the TNHB has given a wrong impression on the purchasers that they will get car parking facility, if they exercise their option. However, the availability of number of car parking were not notified by the TNHB, along with the original advertisement, which will probably misled the purchasers and finally they came to know there is no car parking facility.

7. However, all these disputed issues relating to contract cannot be adjudicated in writ proceedings under Article 226 of the Constitution of India, admittedly, the purchase of flats was made pursuant to the advertisement issued by the TNHB and the agreement for sale signed between the parties.



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Therefore, the terms and conditions and the rights of the parties are to be determined after elaborate adjudication with reference to the documents and evidences available on record. Such an adjudication cannot be done in writ proceedings. More so, it is a Civil Right which is claimed by the writ petitioners herein. Such disputes relating to the Civil Rights are to be adjudicated before the competent Civil Court of law. High Court based on mere pleadings in the affidavit cannot form an opinion and hold that the petitioners are entitled either for car parking or for any other alternate remedy or otherwise.

8. The learned Advocate General would submit that the petitioners are not entitled to claim car parking as an absolute right. Mere advertisement would confer no right, since it is subject to availability and discretion of the TNHB to provide car parking facility. Therefore, exercising an option would not confer any right and such an exercise must be considered by the TNHB at the time of allotment of car parking. In the present case, the car parking facilities were provided based on the availability and the TNHB at no point of time promised that the car parking facility will be provided to the purchasers and thus, the very claim set out is untenable.



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9. A perusal of the advertisement would reveal that the facility of car parking is made available. But, the Sale Agreement did not speak about any allotment of car parking to the purchasers. In a 'B' Certificate issued to the Banks for loan would alone state about the car parking, allotted to a particular allottee, who is securing such certificate for the purpose of availing bank loans. Therefore, this Court cannot form an opinion that mere advertisement stating that the car parking are available, would confer any right to the allottees to seek the same as an absolute right. However, the TNHB in the subsequent advertisements have stated that the car parking allotment will be made based on lot system. Subsequently, the same would not have any implication in respect of the allotments already made in the subject property.

10. In view of the disputed fact and further considering the advertisement and the Agreement of Sale entered into between the parties, this Court do not find that the petitioners have established any absolute right for the purpose of granting the relief, to direct the respondents to allot car parking. If any grievance exists, the petitioners are at liberty to approach the



competent Civil Court of law for appropriate relief.

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With these observations, the Writ Petition stands dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

10.01.2024

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Index : Yes / No

Speaking order / Non-Speaking Order

Neutral Citation : Yes / No

To



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- 2.The Managing Director,
Tamil Nadu Housing Board,
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