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W.P.No.24172 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.No.24172 of 2024

and

W.M.P.No. 26430 of 2024

GEM STONE BEACH RESORT PVT. LTD.,
REP. BY ITS ONE OF THE DIRECTORS MR. S.R.ASAITHAMBI,
NO. 76, CATHEDRAL ROAD,
CHENNAI - 600086.
Petitioner

...

Vs

1. STATE OF TAMIL NADU,
REP. BY ITS SECRETARY TO GOVERNMENT,
TAMIL NADU HOUSING BOARD,
NO. 100, SANTHOME HIGH ROAD,
MULLIMA NAGAR, MANDAVELIPAKKAM,
RAJA ANNAMALAI PURAM,
CHENNAI -600 004.
2. THE TAMIL NADU HOUSING BOARD,
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR,
BESANT NAGAR DIVISION,
TAMIL NADU HOUSING BOARD,
NO. 48, DR.MUTHULAKSHMI NAGAR,
LB ROAD, ADYAR,
CHENNAI -600 020.
3. P.RAJAMANI

... Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, direct the second respondent to consider the petitioner's representation to the second respondent TNHB on 01.04.2024 and also direct the second and third respondent to execute the sale in favour of the petitioner.

For Petitioner : Mr.V.Ragavachari, Senior Counsel
Assisted by Revathy Vasudevan

For R1 : Mr.K.Suresh
Government Advocate

For R2 : Mr.D.Veera Sekaran,
Standing Counsel for TNHB

For R3 : Mr.M.Santhanaraman

ORDER

This writ petition is filed for a writ of mandamus directing the second respondent, namely, the Tamil Nadu Housing Board represented by its Chairman & Managing Director, to consider the petitioner's representation dated 01.04.2024 and to direct the second and third respondents to execute the sale deed in favour of the petitioner.



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2. The case of the petitioner is that the third respondent, *P.Rajamani*, was working as a manager in the petitioner company, namely Gem Stone Beach Resort Private Limited, for a few years. The Tamil Nadu Housing Board, the second respondent herein, had allotted a flat bearing No. H.39/F1, Sea Shore Apartment, situated at Thiruvanmiyur, Chennai on 14.06.1995, vide its Allotment Order No. B6/10592.H/94 in the name of the third respondent on behalf of the petitioner company. The petitioner company had great trust over the third respondent, and it accepted the aforesaid allotment in the name of the third respondent. The petitioner company had paid all the instalments to the Tamil Nadu Housing Board, the second respondent, by way of cheques from the period 17.02.1999 to 13.05.2002 without any default. The third respondent, *P.Rajamani*, had appointed the Managing director of the petitioner company, namely *S.R.Asaithambi*, as his Power of Attorney Agent registered as document No. 1905/1996 dated 23.09.1996 on the file of the Joint I, Sub Registrar office, Saidapet. While so, the third respondent stopped reporting to the office, and despite the petitioner's best efforts, the third respondent did not respond. Consequently, the petitioner company took steps to have the sale deed executed in its name. Legal notices and representations were sent, but the third respondent sent a false reply to the legal notice and a



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rejoinder was sent to him. It is under these circumstances that the petitioner company is approaching this Court with the aforesaid relief.

3. The case of the petitioner is resisted by the second respondent by filing a counter affidavit. The second respondent submitted that the Government vide G.O.2D No. 185 H&U D Department dated 30.03.1995 ordered the allotment of HIG Flats No. 39/F1 at Thiruvannamiyur extension in favour of the third respondent, namely *P.Rajamani*. Subsequently, Application No. 0694 was submitted on 23.05.1995, and the provisional allotment order was made on 14.06.1995. The firm cost was fixed at Rs.7,08,709/-with a condition to pay the initial deposit of Rs.3,08,309/- within 21 days from the date of receipt of the order. On 30.08.1995, the initial deposit was made, and therefore, a regular allotment order was issued on 11.09.1995 for the HIG Flat No. 39/F1 at Thiruvannamiyur extension for an extent of 93.75 square metres in favour of the third respondent, *P. Rajamani*. The same was issued with a condition to pay the remaining amount of Rs.4,00,000/- on monthly instalments of Rs.6,409/- for 13 years on or before the 15th of every month with 20% penal interest. The possession of the said flat was handed over to the third respondent, *P.Rajamani*, on 06.02.1996. The entire outstanding due for

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the said flat was paid by the third respondent, *P.Rajamani*, on 28.04.2006.

Subsequently, the Besant Nagar Division of Tamil Nadu Housing Board had sent a periodic intimation letter dated 04.03.2011 and 15.07.2013 to the third respondent, *P.Rajamani* for execution the sale deed for the said flat on production of the original documents including application form, regular allotment order and payment receipts etc. The said third respondent sent two letters on 08.09.2014 and 03.08.2015 stating that the entire flat cost was paid on 28.04.2006, but challan for payment of Rs.1,74,842/-was not available with him and requested to execute the sale deed for the said flat in his favour. Again, on 09.08.2021, the Housing Board sent a letter to the third respondent, *P.Rajamani* to produce the original documents and execute the sale deed in respect of the said flat. Under these circumstances, the present writ petition is filed. Therefore, they pray for dismissal of the writ petition.

4. The writ petition is resisted by the third respondent. In his counter-affidavit, he states that he belongs to the social strata as stipulated by the Tamil Nadu Housing Board and is therefore eligible to receive an allotment for a residential flat. Accordingly, he applied for the allotment of the HIG



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Flats No. 39/F1 at Thiruvannamiyur extension, and the same was granted to him vide letter No. B6/10592.H/94 on the file of the second respondent on 11.09.1995. At the time receiving the allotment, he was employed in the petitioner company as a site engineer. He worked more than 15 to 16 hours a day, and the management was responsible for paying the arrears of incentives. The case of the third respondent is that the initial amount of Rs.3,08,309/- was payable and the subsequent amount was also paid every month, out of the amount liable to be paid towards incentives. He took physical possession of the said flat and has been sending representations to have the sale deed executed in his favour. Since on account of his avocation, the third respondent was visiting various outstations, in the guise of helping the third respondent was asked to execute a General Power of Attorney in favour of the Director of the petitioner company, namely S.R. Asaithambi. According to the third respondent, the claim of the petitioner company is barred by the provisions of the Prohibition of Benami Property Transactions Act, 1988.

5. Heard *Mr. V. Ragavachari*, the learned Senior Counsel, appearing on behalf of the petitioner. His first contention is that when the petitioner company instructed the third respondent to make an application, he



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fraudulently made an application on his name. It is his further submission that there was no liability for the petitioner company to make the payments if the flat was for the third respondent. Only because the application was made on behalf of the petitioner company did the petitioner company pay the entire consideration. The payment of consideration was the primary transaction for this Court to consider while deciding who would be the beneficiary of the allotment. Because the allotment was made in favour of the third respondent, a power of attorney was also obtained from the third respondent in favour of the Director of the petitioner company. The petitioner suddenly left the employment of the petitioner company. In breach of trust, he is now refusing to represent before the second respondent that the sale deed can be executed in the name of the company itself. Therefore, when the second respondent receives a representation, it is for the second respondent to conduct a detailed enquiry in this regard and come to the conclusion. The money was paid only by the petitioner company. Even a corporate entity is entitled to get allotment from the Housing Board, which the flat can be used for the residence of its employees. Therefore, the application was made only in that capacity. Therefore, the petitioner prays that this Court direct the second respondent to conduct a detailed inquiry and if it is found that it is only the petitioner who



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paid all the amounts and the application was made on behalf of the petitioner, then the sale deed should be issued in the name of the petitioner.

6. *Mr. D.Veera Sekaran*, the learned Standing Counsel appearing on behalf of the Tamil Nadu Housing Board, would submit that as of date, all the allotment and other documents stand in the name of the third respondent. However, the third respondent should come with all the original documents, including the receipts and approach the office of the second respondent for execution of the sale deed. Only after verification of the same can the sale deed be executed. The third respondent has not approached the second respondent so far, even though he has made representations. He has to approach the second respondent with all the originals, including the receipts. It is at this stage that the present writ petition has been filed. The learned counsel would also point out to the condition No. 10 of the allotment order which is extracted hereunder:-

“10. The allotment is made to the allottee on the specific understanding that the allottee should not part with the possession alienate, assign or otherwise encumber his or her rights in the above plot/flat/house until the cost of the plot/flat/house determined under condition No. 2 is paid in full or till the expiry of a period of 5 years from the date of this order of allotment or till



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any pending write whichever is later, without the written prior approval of the Board.”

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7. *Mr. Santhanaraman*, the learned counsel appearing on behalf of the third respondent, would submit that he did not commit any fraud. He applied for and received the allotment. Only towards the incentives due to his employment with the petitioner company, the company undertook to pay the amount, and accordingly, the amounts were paid. The amounts paid by the company were the lawful dues to the third respondent. The third respondent executed the power of attorney only because he believed in the assistance offered by the Director of the company. The third respondent never parted with the possession and has not violated any of the conditions. Therefore, merely because some of the challans regarding the payment are absent, the second respondent board cannot deny the execution of the sale deed in favour of the third respondent. The Housing Board should execute the sale deed only in favour of the third respondent. By way of reply, the learned Counsel would submit that as on date, it is only the petitioner who is in possession and not the third respondent.

8. I have considered the rival submissions made on either side and



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perused the material records of the case.

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9. Firstly, it is the case of the petitioner company that the third respondent was supposed to make an application on behalf of the petitioner company. Instead, the third respondent fraudulently made it in his name. Then, the following circumstances are against the petitioner Company:-

(i) It can be seen that the petitioner company was aware of the allotment order since the Director, who has sworn the affidavit in support of the writ petition, namely *S.R.Asaithambi* himself, has taken a power of attorney from the third respondent. Therefore, it is not their plea that they were unaware of the allotment order in the individual name of the *P.Rajamani*. All along, there was no representation to the Housing Board, nor was there any request or notice to the third respondent for change of name.

(ii) This allotment, as per the pleading made by the Housing Board, was made under the Government order passed in in G.O.2D. No. 185 H&U D Department, dated 30.03.1995. The Government had directed the Housing Board to allot the flat in its discretionary quota by way of a government order.



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While doing so, it takes into consideration the applicant alone. Therefore, it was only the *P.Rajamani*'s circumstances that were taken into account while making the order under the discretionary quota. Therefore, the petitioner company was aware of all these facts; it cannot now plead that the third respondent was supposed to make an application in the name of the petitioner company or on behalf of the petitioner company but that he wrongfully made it in his name. I reject the said contention given the power of attorney and also the Government Order.

(iii) There is yet another factor this Court takes into account, condition

No.11 of the allotment order, and the same is extracted hereunder:-

“11. The allotment now made is subject to the specific understanding that you do not own any house or house site in Tamil Nadu or outside Tamil Nadu as declared by your application of allotment.”

10. Therefore, while making the allotment, the Housing Board had to take into account the fact that the particular applicant did not own any other house or house site in Tamil Nadu. However, since the petitioner is a corporate entity, the question of whether it would be entitled to an allotment



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or not, or whether it owned other properties, was not taken into account.

Therefore, the plea that the application was made only for the petitioner company but the third respondent committed mischief can never be upheld. The second respondent is a Housing board. It is supposed to provide housing. Whether housing can be provided to a juristic person would be a separate question. The instant project is residential and not commercial. Suffice it to say that the allotment was made with the clear understanding that it was in the individual name of the third respondent, and it cannot be concluded that the third respondent played the mischief by making the application in his name.

11. On rejection of the said contention of the petitioner, the case would squarely fall within the purview of Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988 and the same is extracted hereunder for ready reference:-

“3. Prohibition of *benami* transactions.—(1) No person shall enter into any *benami* transaction.

[(2)] Whoever enters into any *benami* transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

[(3)] Whoever enters into any *benami* transaction on and after the date of commencement of the *Benami* Transactions (Prohibition) Amendment Act, 2016 (43 of 2016) shall, notwithstanding anything contained in sub-section (2), be



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punishable in accordance with the provisions contained in Chapter VII.]

4. Prohibition of the right to recover property held *benami*.—(1) No suit, claim or action to enforce any right in respect of any property held *benami* against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held *benami*, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.”

12. Therefore, if the petitioner company wanted a flat for itself, it ought to have approached the Government directly. Knowing well that it may not have been eligibility, it set up the third respondent. It cannot now claim the benefit given the clear prohibition under Section 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988. As such, the claim of the petitioner cannot be countenanced by this Court as it would be an illegal transaction. The first respondent board can never recognise nor can be a part of such dubious methods devised by dishonest individuals/corporates. Certainly, the Court cannot grant relief in exercise of its powers under Article 226 of the Constitution of India.



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13. At the same time, if it is the case of the petitioner that the third respondent had given a promise that he will ultimately return the flat to the petitioner. It is pleaded that he not only executed a power of attorney but never occupied the flat. The entire flat complex is now lying vacant as it has become dilapidated and is getting ready for demolition and reconstruction. Even a victim of an illegal transaction would be entitled to seek remedies for criminal breach of trust or such other remedies as between the parties who indulged in the transaction. That remedy in law would be available to the petitioner.

14. Leaving it open for the petitioner to invoke such remedies, prayer in the writ petition cannot be countenanced, and as such, this writ petition is dismissed. Consequently, the connected miscellaneous petition is also closed. No costs.

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Neutral Citation: Yes/No
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To

1. THE SECRETARY TO GOVERNMENT,
TAMIL NADU HOUSING BOARD,
NO. 100, SANTHOME HIGH ROAD,
MULLIMA NAGAR, MANDAVELIPAKKAM,
RAJA ANNAMALAI PURAM,
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2. THE CHAIRMAN AND MANAGING DIRECTOR,
BESANT NAGAR DIVISION,
TAMIL NADU HOUSING BOARD,
NO. 48, DR.MUTHULAKSHMI NAGAR,
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D.BHARATHA CHAKRAVARTHY, J.

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