



Crl.O.P.No.28654 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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I.Periyasamy

.. Petitioner

..Vs..

1. The Deputy Superintendent of Police
Vigilance and Anti-Corruption
Chennai City-I Dept, Chennai – 600 028.

2. The Directorate of Vigilance and
Anti-Corruption,
Rep. by the Addl. Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-I Department,
Chennai.

3.A.Shankar

.. Respondents

Prayer : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records of the impugned final report of the 1st respondent in C.C.No.14 of 2019 on the file of the Court of the Assistant Sessions Judge Additional Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, concerned in Crime No.7/AC/2011 on the file of Deputy Superintendent of Police, Vigilance & Anti Corruption, Chennai City-I Dept, Chennai 600 0028, quash the same as illegal.

For Petitioner : Mr.John Sathiyam, Senior Counsel



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for K.Muthu Ganesa Pandian
For R1 & R2 : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)
For R3 : Mrs.R.Selvakodi

ORDER

The petitioner who is arrayed as A6 before the Court below in the proceedings pending in C.C.No.14 of 2019 before the Special Court for Trial of Cases of M.P. and M.L.A. of Tamil Nadu at Chennai has filed this Criminal Original Petition praying for quashing the proceedings pending against him.

2. The case of the prosecution is that a former employee belonging to the Tamil Nadu Housing Board gave a complaint to Directorate of Vigilance and Anti Corruption (DVAC) to the effect that there was large scale illegality in the allotment of housing plots by the Tamil Nadu Housing Board. Based on this complaint, an F.I.R., was registered in Crime No.7 of 2011 for offences under Sections 120B, 409 of IPC and Section 13(2) r/w 13(1)(5) & (d) of the Prevention of Corruption Act, 1988 and 109 of IPC.

3. The sum and substance of the allegation is that during the period between



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2008 and 2010, A1 to A7 have entered into a criminal conspiracy and abet one another in the commission of the offence pertaining to allotment of housing plots under the Government discretionary quota. Pursuant to the same, A1 is said to have given an application for allotment of plot and the plot was allotted in his favour. Similarly, the wife of A1 (A2) also applied for a vacant plot and she was also allotted a plot. The said A2 is also said to have entered into a joint venture agreement with A7 even before the execution of the sale deed in favour of A2 and the plot was handed over to A7 and in this transaction, A2 is said to have unlawfully gained / enriched herself. The further case of the prosecution is that A5 also made an application for allotment of plot on the guise that he is a social worker and he is said to be the son of A4 who was holding an important position during the relevant point of time and he had influenced the allotment of plot in favour of the A5 and accordingly the plot was also allotted in favour of A5. A5 also entered into a joint venture agreement with A7 even before the execution of the sale deed. The plot was handed over to A7 and A5 had unjustly gained / enriched himself in this transaction. A3 and A4 are Government officials who are said to have misused their official position and abetted / aided the other accused persons to commit the offence. Thus, the crux of the case of the prosecution is that A1, A2 and A5 were helped by the other accused persons for allotment of plots and A2 and A5 entered into a joint



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venture agreement with A7 even before the sale deed was executed in their favour and the accused persons obtained wrongful gain and wrongful loss was caused to the Government. It is based on these facts, the F.I.R. came to be registered against A1 to A7.

4. The investigation was completed and final report was filed before the Court below and it was taken on file in C.C.No.14 of 2019 against seven accused persons. The proceedings have already been quashed against A1, A3 and A4. A2 filed a discharge petition before the trial Court and it was dismissed, and as against the same A2 has filed a Criminal Revision Case before this Court and the same is pending.

5. The petitioner has been arrayed as A6. The specific allegation as against the petitioner, who is arrayed as A6 is that, he, on the request of A1 has advised LW-7, former Joint Secretary, Housing and Urban Development Department, Chennai to allot the subject plots to the A2, and that A6 has approved the allotment on 04.04.2008 by GO Ms.No.370, Housing and Urban Development Department.

6. Heard the learned counsel appearing on either side and perused the



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सत्य materials available on record.

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7. The allotment of 15% of plots was provided under GDQ (Government Discretionary Quota) as per G.O.Ms.No.88/H & UD Department dated 20.05.2003, as per which, the plots were to be allotted to special workers and responsible persons in the Society who have done excellent job in the field of arts / science / literature / economic / public administration / sports etc., However, the allotment was made in favour of the A2 through a Government Order dated 05.06.2009 Similarly, a plot was allotted in favour of A5 through a Government Order dated 03.04.2008.

8. It is at this point of time, a complaint came to be given and there was a lot of hue and cry on the allotment made by the Government under the discretionary quota. Hence, a legal opinion was obtained from the Advocate General of Tamil Nadu and the Advocate General on considering the entire materials, gave an opinion to the effect that there is no legal infirmity in the allotment of plots and that such a discretionary quota is clearly permissible provided that the discretion is exercised within the guidelines prescribed in a transparent manner. The Government Advocate has also opined that there is no illegality in the allottees entering into a joint venture agreement to put up construction and what has to be seen is as to



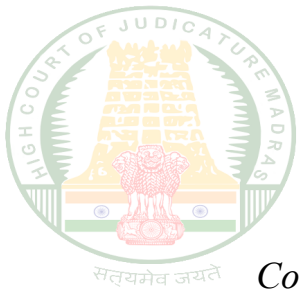
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whether the allotted area has been used for the purpose for which it was given.
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9. It must also be borne in mind that the allotment of plots in favour of A2 and A5 was alleged to have been done due to the undue influence exerted by the petitioner (A6). The facts of the case clearly discloses that the entire case grounds on the alleged allotment made in favour of A2, wife of A1. It is brought to the notice of this Court by the learned Senior Counsel that by the order passed by this Court in Crl.O.P.No.13711 of 2019 with respect to A1, the proceedings were quashed on the ground of non-obtaining of sanction before filing the final report. Considering the said factor, this Court by order dated 10.08.2023 in Crl.O.P.No.7274 of 2023, has quashed the proceedings as against A4.

10. Insofar as A2 is concerned, the Crl.O.P.No.30357 of 2019 filed by A2 was dismissed by this Court by order dated 11.11.2022, as against which A2 preferred an appeal before the Hon'ble Supreme Court of India in Special Leave Petition in S.L.P.Crl.No.13304 of 2023, and the Hon'ble Apex Court has held as follows:

“The appellant is accused no.2. A case bearing CC No.14/2019 arises out of an offence was registered against the appellant under Section 120B and Section 409 of the Indian Penal



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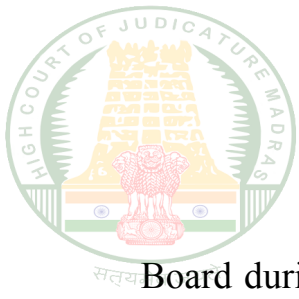
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Code, 1860 along with Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. As far as the role played by the appellant is concerned, it is an admitted position that she is the allottee of a plot and the allotment was made on 5th June, 2009. At this stage, our attention is invited to the judgment and order dated 29th August, 2023 passed by the High Court on a petition filed by the accused no.5 praying for quashing the proceedings in CC No.14 of 2019. By the said judgment, the High Court has quashed the same as against the accused no.5. When we made a query to the learned Senior Counsel representing the respondent whether the state has challenged the said decisions, on instructions, he stated that the State has not challenged the said decision.

A perusal of the findings records in paragraph nos.10, 11 and 12 of the said judgment shows that the case of the present appellant is on par with the case of the accused no.5 and there is no material factual distinction between the allegations against these two accused. Therefore, even the case of the appellant will be governed by the said judgment of the High Court.

Accordingly, the Appeal is allowed. The proceedings against the appellant in CC No.14/2019 on the file of the Special Court for Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly at Chennai, is hereby quashed.”

11. Similarly, A3 had filed a quash petition before this Court in Crl.O.P.No.6824 of 2017. A3 is the Executive Engineer in the Tamil Nadu Housing



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Board during the relevant point of time and he is said to have been instrumental in the allotment in favour of the accused persons. While considering his quash petition, this Court after dealing with the entire materials on record came to the following conclusion.

“ 9.Considering the rival submissions and on perusal of the materials produced, it is not in dispute that the 6 housing plots were approved in the year 1995. The petitioner as Executive Engineer of Tamil Nadu Housing Board, Besant Nagar Division by conversion of 6 plots to 7 plots and thereafter reversion to 6 plots have all been as processed by him as Executive Engineer and it is the procedure to be followed in Tamil Nadu Housing Board that submission of plans and revised plans to CMDA is by the Executive Engineer of the concerned Division. The petitioner had informed his superior officers namely Superintending Engineer and Chief Engineer of Tamil Nadu Housing Board about the proposal of conversion and reversion and that his superior officers were in knowledge and known of the conversion and reconversion. The CMDA have also informed the Secretary/Personnel Officer and Chief Engineer, Tamil Nadu Housing Board about granting directions for the conversion and re-conversion of the plots. Pursuant to the approval, the Pricing Committee consisting of Senior Officers of Tamil Nadu Housing Board including its Chairman and Managing Director had fixed the price for these plots.



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10. From the documents, it is seen that 6 plots in Survey No.76 Part, Kamarajar Nagar has been specifically mentioned that the area and dimension. The learned State Public Prosecutor is not in dispute to the letters of the petitioner. The petitioner on 23.03.2008 had addressed a communication to the Chief Engineer, Tamil Nadu Housing Board, Chennai to revise the proposal of conversion into 6 plots into 7 plots for Kamarajar Nagar and for 11 plots in Thiruvalluvar Nagar. The Superintending Engineer in Memo No.TPI 13132 A/08 dated 24.03.2008 had directed the petitioner to get statutory approval from CMDA. Thereafter, communication has been sent on 25.03.2008 to the CMDA. The CMDA in Letter No.L.2/6043/08 dated 28.03.2008 had approved the proposal received. All these communication copies had been marked to the Secretary/Personnel Officer, Tamil Nadu Housing Board and Chief Engineer of Tamil Nadu Housing Board. Thereafter for approval of CMDA the 7 plots plan was reverted back to 6 plots layout and for approval it was sent to CMDA on 21.04.2008. The CMDA by letter No.L.2/6043/08 had approved the revised plan. Thereafter the same was communicated by the petitioner to the Chairman and Managing Director, Tamil Nadu Housing Board. The Chairman has sent communication letter No.A.1.7/9456-B/08 to the Secretary to Government, Housing and Urban Department about the approved revised proposal and to take appropriate action to bring these plots under Government Discretionary Quota. Thus, from these communications, it is seen that the converting and revising of the layout plots from 6 to 7 and



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thereafter to 6 again are all with the approval and concurrence of the superiors and Board. Further to it the Board has approved the same and the Chairman and Managing Director of Tamil Nadu Housing Board had communicated the same to the Secretary to Government, Housing and Urban Development Department. 6 plots have been allotted by Government Order under Government Discretionary Quota which are as follows:

S.No	Plot No.	G.O. Ref.:	Date	Board's Ref.:	Date
1	538	(2D)427Hg&UD.D ept.	23.04.2008	AL1.7/58 998/06	24.04.2008
2	539	(2D)428Hg&UD.D ept	23.04.2008	AL1.7/58 998/06	08.05.2008
3	540	(2D)143Hg&UD.D ept.	05.06.2009	AL1.7/58 998/06	19.06.2009
4	541	(2D)707Hg&UD.D ept.	08.07.2008	AL1.7/58 998/06	17.07.2008
5	542	(2D)1101Hg&UD. Dept.	05.09.2008	AL1.7/58 998/06	16.09.2008
6	543	(2D)432Hg&UD.D ept.	23.04.2008	AL1.7/58 998/06	15.05.2008

11.The petitioner being the Executive Engineer had issued the allotment order in pursuance to the Government Order. The Tamil Nadu Housing Board has not sustained any loss in allotment of the 6 plots. In view of no loss sustained by the Tamil Nadu Housing Board and the allotment are of Government's Discretionary Quota made through Government Orders and the petitioner being an Executive Engineer has to execute the sale deed to the allottees as per the Government Order and the



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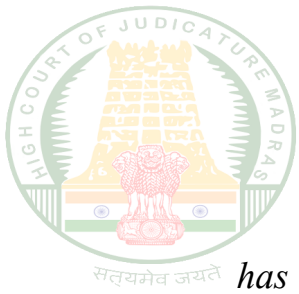
petitioner is not the reason for the other accused entering into joint venture agreement with the builders and further all the communication and correspondences are with the knowledge of the superior officers.

12. Therefore, the very crux of the allegation that the accused persons have obtained a wrongful gain and caused a wrongful loss to the Government was set at naught by this Court. This order was further confirmed by the Apex Court while dismissing S.L.P.No.8255 of 2021 by order dated 01.10.2021.

13. Insofar as the petitioner (A6) in this Crl.O.P., is concerned, he was the Minister for Housing between 2007 and 2011 and was instrumental in making the allotments out of the way to A2 and A5, as alleged by the prosecution. The proceedings insofar as the other accused were quashed except the present petitioner viz., A6.

14. This Court in the quash petition filed by the Co-accused viz., A5 and A7 in Crl.OP Nos.7273 and 12843 of 2023, in the order dated 29.08.2023 has held as follows:

“ 12. The plot that was allotted in favour of A2 was not cancelled at any point of time and A2 continues to be the absolute owner of the plot. The petitioner (A7) is only a developer who had entered into a joint venture agreement with A2 and A5. This Court



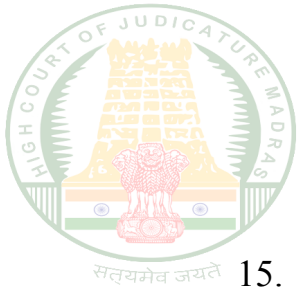
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has already held that the Tamil Nadu Housing Board did not sustain any loss by allotment of plots. Therefore, as a consequence, there was no unlawful or wrongful gain obtained by A2 and A5 and A7 who had entered into a joint agreement with A2 and A5 also cannot be faulted with for having entered into an agreement and obviously he has not caused any loss to the Housing Board or to the Government. That apart, there is no bar in law or in any of the guidelines, restraining the allottees from entering into a joint venture agreement with a builder. In fact A7 was not even cited as an accused in the initial stage and he was brought in subsequently only on the ground that he entered into an agreement with A2 and A5. This Court is not able to find any ground to sustain the prosecution as against A7 and no offence has been made out against him.

13. In the light of the above discussion, this Court finds that no offence has been made out against A5 and A7 and the continuation of criminal proceedings against them will only result in abuse process of Court which warrants the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. Ex consequenti, the proceedings against the petitioners (A5 and A7) in C.C.No.14 of 2019 on the file of Special Court for Trial of Cases of M.Ps. and M.L.As. Of Tamil Nadu at Chennai, is hereby quashed.

14. In the result, both the Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petitions are closed.”



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15. Resultantly, it is clear that the proceedings as against A2 is quashed by the orders of the Hon'ble Supreme Court and as against the other accused the proceedings have been quashed by this Court. Therefore, the impugned proceedings in C.C.No.14 of 2019 as against the petitioner, who was arrayed as A6 on the file of Special Court for Trial of Cases of M.Ps and M.L.As of Tamil Nadu at Chennai is hereby quashed. Accordingly, this Criminal Original Petition is allowed.

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Index : Yes/No
Internet : Yes/No
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To

1. Special Court for Trial of Criminal Cases Related to
Elected Members of Parliament and Members of
Legislative Assembly, Chennai

2. The Deputy Superintendent of Police
Vigilance and Anti-Corruption
Chennai City-I Dept, Chennai – 600 028.

3. The Directorate of Vigilance and
Anti-Corruption,
Rep. by the Addl. Superintendent of Police,
Vigilance and Anti-Corruption,
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4. The Public Prosecutor,
High Court, Madras.



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