

WP(MD) No.22597 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON
19.11.2024

PRONOUNCED ON
28.01.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.22597 of 2016 &
WMP.(MD)No.16174 of 2016

N Chellam

... Petitioner

vs.

1.The Tamil Nadu Housing Board,
Rep., by its Managing Director,
493, Anna Salai, Nanthanam, Chennai – 600 035.

2.The Assistant Secretary (Allotment)
Tamil Nadu Housing Board,
493, Anna Salai, Nanthanam, Chennai – 600 035.

3.The Executive Engineer Cum Administrative Officer (In-Charge)
Tirunelveli Housing Unit,
Kamarajar Salai, Anbu Nagar, Tirunelveli – 627 011.

4.V.Jain Sairali

5.Varuvel

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records

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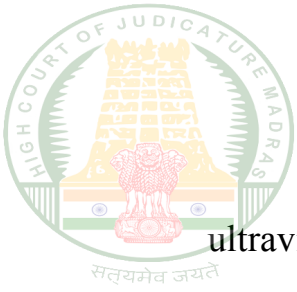
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pertaining to the impugned allotment letter No.45/6023/2006, dated 31.05.2006 and the consequential execution and registration of the sale deed dated 31.05.2006 bearing document No.1696/06 executed by third respondent in favour of the fourth respondent and quash the same as ultravires against law and principles of natural justice and direct the third respondent to either conduct fresh auction or to allot and execute the sale deed in respect of one plot which is kept vacant under the scheme in respect of vacant site for construction of house at konam Nagercoil Scheme in S.No.757 TS No.24/3 & 23/3 of Nagercoil village, Agastheeswaram Taluk, Kanniyakumari District in favour of the petitioner.

For Petitioner : Mr.D.Rajagopal Sr., Counsel for
Ms.P.Kalayarasi Bharathi

For Respondents : Mr.H.Mohammed Imran for
M/s.Ajmal Associates for RR4 & 5
Mr.S.Velmurugan for R3

ORDER

The challenge in this Writ Petition is to the sale deed executed by the third respondent in favour of the fourth respondent and to quash the same as



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ultravires against law and direct the respondent to conduct a fresh auction and to allot and execute a sale deed in respect of one plot which is vacant under the scheme.

2. Heard Mr.D.Rajagopal, learned Senior counsel appearing for Ms.P.Kalayarasi Bharathi, learned counsel appearing for the petitioner, Mr.H.Mohammed Imran, learned counsel appearing for the respondents 4 and 5 and Mr.S.Velmurugan, learned counsel appearing for the third respondent.

3.The case of the petitioner is that the third respondent had issued an advertisement for sale of plots at Konam under the Tirunelveli Housing Unit Scheme. The petitioner was prevented by the third respondent from in any manner participating in public tender cum auction inspite of the petitioner's presented herself with Demand Draft. The petitioner had sent a representation dated 13.06.2006 upon which she was directed to appear for enquiry on 30.10.2006. The complaint was enquired to by the Executive Engineer, Administrative officer against whom, the petitioner had made a complaint and therefore, there was a writ-large bias in the conduct of the



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authority concerned. As a said enquiry was not properly conducted, the petitioner had filed a Writ Petition in W.P.(MD).No.5567 of 2007, challenging the earlier order dated 12.12.2006. However, the same came to be rejected. Thereafter, the petitioner choosing to make appropriate enquiry before the various authorities concerned, she made a further representation. He would submit that after making a various further enquiry, the petitioner had found that the paper publication had not been properly made and similarly placed persons like that of the petitioner, were not permitted to participate in the tender. The tender was conducted on 31.05.2006 and the impugned sale deed was also executed on the very same day without waiting for the fourth respondent's successful bidder to make the full payment. He would submit that the provision of the tender Transparency Act had not been followed and hence, he would seek to set aside the sale deed and direct the respondents to conduct a fresh auction of the said property in a proper manner.

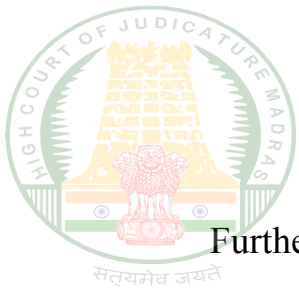
4.Countering his arguments, the learned counsel appearing for the respondents 1 to 3 would submit that the property was sold in a public auction after following the necessary formalities that are prescribed with



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regard to the sale of the property by the Housing Board. He would further submit that the sale of property took place as early as in the year 2006 and the petitioner had in the earlier round challenging the order rejecting her representation for conducting of a fresh enquiry in the manner known to law. He had not at any point of time challenged the execution of the sale deed by the third respondent in favour of the fourth respondent. He challenged the rejection of his complaint in the Writ Petition in W.P. (MD).No.5567 of 2007 and this Court by its order dated 15.02.2012 finding that the petitioner had not challenged the sale deed that had been executed in favour of the fourth respondent, had dismissed the Writ Petition, but liberty was given to him to challenge the sale of the plot in favour of the fourth respondent. After a period of four years, the petitioner had now approached this Court in the instant Writ Petition challenging the said sale deed which was executed in the year 2006. He would draw attention of this Court to the Limitation Act, which only prescribes three years period from the date of execution of the sale for challenging a sale deed. In the present case, he would submit that the sale deed was executed as early as in the year 2006, i.e., 31.05.2006 and the Writ Petition filed by the petitioner wherein the sale itself was challenged came to be disposed of on 15.02.2012.



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Further, the present Writ Petition was filed only in the year 2017 i.e., was more than 11 years of the execution of the sale deed which would normally be hit by the bar of limitation prescribed in the Limitation Act, as only a sale deed that had been executed could be challenged within a period of three years. Therefore, he would submit that the Writ Petition is hit by law of limitation, but also would be hit by law of acquiescence and waiver.

5.The learned counsel appearing for the fourth respondent would reiterate the statements made by the learned Standing counsel appearing for the respondents 1 to 3 and also contend that after the execution of sale deed in favour of the fourth respondent, the fourth respondent had also taken loan from various banks and had also put up construction and is in occupation the same right from the year 2007 and the present Writ Petition had been filed after nearly a decade challenging the sale deed. Hence he would seek dismissal of the Writ Petition.

6.I have heard the rival submissions made by the learned counsels appearing on either side and perused the materials on record and also the files relating to the property.



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7. Various contentions have been raised as regards to the sale of the property by the third respondent under the Tirunelveli Housing Scheme at Konam. A perusal of the files would indicate that nothing is well with regard to the scheme. The Housing Board scheme envisages that the property cannot be sold to the same family members, who are already in possession of the property sold by the Housing Board. It is also seen from the files that the persons, who participated in the said auction sale all belong to a single family. The auction had taken place in the year 2006 and the property was also sold to the fourth respondent on 31.05.2006. The petitioner seems to have made a complaint and the same was also disposed of by giving no relief to the petitioner. The petitioner had unsuccessfully challenged the said rejection and also her request for a fresh enquiry was rejected with liberty to the petitioner to challenge the same in the manner known to law. This order was passed by this Court on 15.02.2012. Thereafter, further two representations of the petitioner came to be rejected on 14.06.2012 and 30.12.2013. The petitioner had been repeatedly approaching the respondents and only thereafter, the petitioner in the month of November 2016 had initiated this Writ Petition challenging the sale deed that had been executed on 31.05.2006.



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8. As per the limitation Act, a challenge to the sale deed executed in favour of a person should be made within a period of three years from the date of execution unless or until, the aggrieved person had been languishing in the Court of improper jurisdiction. Even assuming that the petitioner had been litigating the sale deed in the earlier round of litigation, it could be seen that the Writ Petition came to be disposed of on 15.02.2012. Even calculating the period of start from the said date, the petitioner had not filed the Writ Petition within the said period of three years as envisaged under the Limitation Act to substantiate her right. The petitioner therefore had allowed the fourth respondent to perfect his title in spite of a doubtful sale. This Court refrains itself for making a detailed enquiry into the sale, as the petitioner had approached this court much beyond the period of limitation, even applying the benefit of Section 14 of the Limitation Act to the facts of the present case.

9. In such circumstances, I do not find any necessity to interfere with the sale deed that had been executed by the third respondent in favour of the fourth respondent only on the ground of limitation.



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10. In fine, the Writ Petition is dismissed. However, there shall be no

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order as to costs. Consequently connected Miscellaneous Petition is closed.

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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K.KUMARESH BABU.,J.

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A Pre-delivery order made in
W.P.(MD)No.22597 of 2016 &
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