

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.2.2015

CORAM :

The Honourable Mr. Justice V. RAMASUBRAMANIAN
and
The Honourable Mr. Justice P. R. SHIVAKUMAR

Writ Appeal No.1722 of 2012 and M.P.Nos.1 of 2012 and 1 of 2013

Ambrish Ashok Pathak

...Appellant

Vs

1. The Tamilnadu Housing Board, rep.
by its Chairman, Anna Salai, Chennai-2.

2. The Executive Engineer & Administrative
Officer, Coimbatore Housing Unit,
Tamilnadu Housing Board, Tatabad
Coimbatore-12.

3. The Commissioner of Police, Coimbatore-18.

...Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 31.7.2012 made in W.P.No.20276 of 2012. Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus Calling for the records on the file of the respondents relating to the order dated 09.07.2012 of the 2nd respondent in letter No.Othu.12/14419/04-Va.Va. (J6) and quash the same and consequently forbear the respondents from in any manner evicting the petitioner from the residential premises at J-6 LIG Colony, Punniyakoti Street, Baskyakarlu Road East R.S.Puram, Coimbatore-641 002 except other than by due process of law.

For Appellant : Mr.T.Sai Krishnan

for Mr.D.Bharatha Chakravarthi

For Respondents 1 & 2 : Mr.C.Kasirajan

For Respondent-3 : Mrs.A.Sri Jayanthi, SGP

JUDGMENT WAS DELIVERED BY V. RAMASUBRAMANIAN, J

The appeal arises out of the dismissal of a writ petition, challenging the proceedings initiated by respondent Board for the eviction of the appellant.

2. Heard Mr.T.Sai Krishnan, learned counsel for the appellant, Mr.C. Kasirajan, learned Standing Counsel for the respondents 1 and 2 and Mrs.A. Sri Jayanthi, learned Special Government Pleader appearing for the third respondent.

3. The appellant's father was allotted a Low Income Group house (flat) way back on 8.3.1966 by the Tamilnadu Housing Board, on monthly rental basis. It appears that the appellant's father died in Bombay on 31.1.2009.

4. On 1.8.2011, the Executive Engineer of the Housing Board addressed a letter to the father of the appellant, calling upon him to settle the rental arrears and also for renewal of the allotment in a stamped document.

5. But, after coming to know of the death of the appellant's father, the Executive Engineer sent another communication dated 15.2.2012 to the appellant, pointing out that the appellant was not entitled to have the benefit of continuing to occupy the premises. In response to the said letter, which was styled as a warning notice, the appellant appears to have sent a reply on 22.3.2012, seeking the transfer of allotment in his own name. He also enclosed copies of the receipts dated 29.3.2011, 13.10.2011, 23.11.2011 and 7.3.2012, for having paid the rents.

6. However, the respondent Board did not transfer the allotment in favour of the appellant on the ground that the Board had taken a decision way back in 1997, not to transfer allotments in favour of the legal heirs. Therefore, the appellant again sent a request dated 7.5.2012, seeking his recognition as a tenant. But, that was not accepted by the Housing Board.

7. By a fresh notice dated 18.5.2012, styled as the sixth warning notice, the Executive Engineer called upon the appellant as to why he should not be vacated from the premises on the ground that he was in unauthorized occupation, as per the resolution of the Board of the year 1997. In response to the said notice, the appellant submitted a reply on 2.6.2012.

8. However, the Executive Engineer addressed a communication to the Commissioner of Police on 9.7.2012, seeking his assistance to dispossess the appellant on 2.8.2012. As against the said communication, the appellant came up with a writ petition in W.P.No.20276 of 2012. The said writ petition was dismissed by a learned Judge, by an order dated 31.7.2012. As against the said order, the appellant is before this Court.

9. The main ground on which the appellant assails the action taken by the Housing Board and the order of the learned Judge is that under Section 84(1)(b) of the Tamil Nadu Housing Board Act, the Executive Engineer is obliged to pass an order directing a person, whom they consider to be in unauthorized occupation, to vacate within one month from the date of service of notice. According to the learned counsel for the appellant, no such order was passed in terms of Section 84(1)(b). It is his further contention that as and when an

order is passed in terms of Section 84(1)(b), a remedy of appeal is available under Section 84(6) to the Government. Since no order of eviction was passed, the remedy of appeal has also been rendered nugatory. Therefore, the learned counsel contends that the order of the learned Judge, which did not take into account these statutory provisions, cannot be sustained.

10. We have carefully considered the said submissions.

11. It is true that Section 84(1) deals with two types of persons. Clause (a) of Sub-Section (1) of Section 84 deals with persons, who are authorized to occupy any Board premises. Clause (b) deals with those, who are in unauthorized occupation. The said Clause (b) contemplates service of notice by registered post or by affixure on the outer door or in such manner directing the occupant to vacate within one month. What is contemplated by Clause (b) is only one notice. But, the Executive Engineer had issued six warning notices. Even in the proceeding dated 9.7.2012, the appellant was granted time upto 2.8.2012. Therefore, we do not find that this is a case where the spirit behind Sections 84(1)(b) and 84(2) had been violated. There is a substantial compliance of the statutory provisions.

12. The Board had already admittedly taken a decision in 1997 not to transfer allotments in favour of the legal heirs. The said resolution was not under challenge. As a matter of fact, the decision of the Housing Board came up for consideration before a Division Bench of this Court in W.A.No.1443 of 2008 in K.Saraswathi Vs. State of Tamilnadu. By a judgment dated 16.6.2010, the Division Bench held that the decision of the Housing Board not to transfer the allotments under the public rental category was with a specific purpose. It was a decision taken in larger public interest. Paragraph 13 may be usefully quoted as follows :

"The decision taken by the Housing Board not to transfer the allotment under the public rental category was with a specific purpose. It was a decision taken in larger public interest. There are many people in the queue, claiming such allotment. It is only when the houses are vacated, the Housing Board would be in a position to consider their request for allotment. In case existing allotments are transferred from the name of original allottee to the legal heirs and thereafter, to the next generation, the property would continue to be in the hands of chosen few and others would be denied of such accommodation. Therefore, an element of social objective was behind the decision taken by the Board not to permit transfers to the legal heirs. We do not find any illegality in the said policy decision warranting our interference. The application submitted by the appellant was rejected on valid

reasons, in the light of the prevailing policy of the Board. The matter was considered once again by the Government and the plea was again rejected. The issue was re-examined by the learned Single Judge and arrived at a correct conclusion that the order does not warrant interference. We do not find any justifiable reason to take a different view in the matter."

13. Therefore, we find no merit in the writ appeal. Accordingly, the writ appeal is dismissed. No costs. Consequently, the above MPs are also dismissed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Chairman, Tamilnadu Housing Board, Anna Salai, Chennai-2.
- 2.The Executive Engineer & Administrative Officer, Coimbatore Housing Unit, Tamilnadu Housing Board, Tatabad, Coimbatore-12.
- 3.The Commissioner of Police, Coimbatore-18.

- + 1 cc to the Government Pleader Sr.6126
- + 1 cc to M/s. C. Kasirajan, Advocate sR.5844
- + 1 cc to M/s. Sai Bharath & Ilan, Advocate Sr.

WA.No.1722 of 2012 and
MP.Nos.1/2012 & 1/2013

PPA(CO)
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