

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.33144 of 2016 & WMP.No.28663/2016

N. Balasubramanian

..Petitioner

Vs

1. The State of Tamil Nadu
Rep. By its Secretary to Government,
Housing & Urban Development Department,
Fort St.George, Chennai-600 009.
2. The Managing Director Cum Chairman,
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai-600 035.
3. The Deputy Secretary (Revenue)
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai-600 035.
4. The Executive Engineer,
CIT Nagar Renovation plan,
Tamil Nadu Housing Board
493, Anna Salai, Nandanam,
Chennai-600 035.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records connected with the passing of the impugned order of the 3rd respondent made in Executive Order No.VA.VA.B.1/17519/2015 dated 23.08.2016 and to quash the same, holding the same to be unsustainable in law.

For Petitioner : Mr.N.Viswanathan
For R1 : Mr.P.Chinnadurai, GA
For R2 : Mr.K.Venkataramani -AAG, assisted by
Mr.V.Ananthamurthy

ORDER

Heard Mr.N.Viswanathan, learned counsel appearing for the petitioner ; Mr.P.Chinnadurai, learned Government Advocate accepting notice for the first respondent and Mr.K.Venkataramani, learned Additional Advocate General assisted by Mr.V.Ananthamurthy, learned counsel accepting notice for the respondents 2 to 4.

2 The petitioner seeks for quashing the order of the 3rd respondent dated 23.08.2016 which is an Eviction Order passed under section 84[2] of the Tamil Nadu Housing Board Act.

3 Admittedly, the petitioner was not a licensee/allottee of the house in question ; but it was his mother. The petitioner's mother is no more. It appears that the petitioner filed an application for transfer of allotment in his favour. This request has been rejected and it appears that the said order was served by affixture as it is alleged in the impugned notice that the premises has been kept locked for three months and intended to be used for commercial purpose. After the impugned notice, the petitioner's brother made a representation for cancellation of the same. But, nevertheless, the Board did not accede to the request for cancellation of the Eviction Notice, but granted six months time to vacate the premises. This has been followed by a representation by the petitioner's brother who is an advocate, addressed to the Deputy Secretary [Revenue], Tamil Nadu Housing Board on 01.09.2016.

4 The learned Additional Advocate General appearing for the respondents 2 to 4, submitted that all issues which are now raised by the petitioner before this Court in this writ petition, were considered by the Hon'ble Division Bench of this Court in WA.No.1722/2012 [Ambrish Ashok Pathak Vs. The Tamil Nadu Housing Board, rep.by its Chairman, Anna Salai, Chennai-2 and another] dated 04.02.2015, wherein the Hon'ble Division Bench considered the same issue and dismissed the appeal. The operative portion of the judgment reads as follows:-

"....

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 WA.No.1443/2008 in K.Saraswathi V. The State of Tamil Nadu. By a judgment dated 16.06.2010, 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:-

"13.The decision taken by the Housing Board not to transfer the allotment under the public rental decision taken in larger public interest. There are many people in the queue claiming such allotments. 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."

5 Be that as it may, the petitioner would state that for several years his mother and himself were residing in the premises and all of a sudden, if they have to be vacated, that to without issuing any prior show cause notice, prior to the rejection of his request for transfer of allotment, the petitioner would be put to irreparable hardship.

6 In the light of the above facts, taking into consideration that a representation has been given on 01.09.2016 to the Deputy Secretary [Revenue], Tamil Nadu Housing Board, there will be a direction to the petitioner or his authorised representative to appear before the 3rd respondent on 26.09.2016 at 3.30 p.m. and the 3rd respondent is directed to consider the representation dated 01.09.2016 sent through the petitioner's brother, Thiru N.Viswanathan, Advocate and after considering the same and hearing the oral submissions, orders shall be passed within a period of one week from 26.09.2016. Until then, status quo with regard to the possession, shall be maintained since according to the respondent / Board, the premises has been kept locked.

7 The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

AP

To

1. The Secretary to Government
State of Tamil Nadu
Housing & Urban Development Department,
Fort St.George, Chennai-600 009.
2. The Managing Director Cum Chairman,
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Tamil Nadu Housing Board
493, Anna Salai, Nandanam,
Chennai-600 035.

+1 CC to M/s. N. Viswanathan, Advocate Sr.No.53932
+1 CC to M/s. V. Anantha Moorthy, Advocate, Sr.No.53971
+1 Cc to the Govt., Pleader, Sr.NO.54033

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ALA (CO)
MD : 22/09/2016



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