

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2016

CORAM

THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN

W.P.No.43008 of 2016
and W.M.P.No.36860 of 2016

R.M.Andiappan

...Petitioner

-Vs-

The Executive Engineer cum
Administrative Officer,
Nandanam Division,
Tamil Nadu Housing Board,
No.331, Anna Salai,
Nandanam,
Chennai - 600 035.

...Respondent

This petition is filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the proceedings in Letter No.C.I.T.A.1/1456/2016 dated 24.11.2016 and the consequential Letter No.C.I.T.A.1/ 1456/2016 dated 30.11.2016 both on the file of the respondent and quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.A.Venkataramani,
Additional Advocate General
assisted by Mr.V.Anandamoorthy

सत्यमेव जयते
O R D E R

By consent, the writ petition is taken up for final disposal.

2. Learned counsel for the petitioner would submit that the petitioner was allotted the commercial shop bearing No. 4/475, Anna Salai, Nandanam, Chennai- 600 035, in the year 1961 and was running an Auto Ware House and Spares and since it was not earning profit, he changed over the business and started running fruit juice and snacks shop and he was also granted permission for the same. For the purpose of running the said shop, he made some alteration without altering the basic structure. He further submitted that the petitioner, subsequently, started running a

tea stall and for that purpose, he took one Mr.T.K.Manoj as a partner and subsequently, obtained licence under Section 279 of Chennai City Municipal Corporation Act from the Commissioner of Greater Chennai and it is being renewed every year. The petitioner would further state that he is also paying the property tax to the Corporation of Chennai regularly and also paying the rent of Rs.2687/- per month without any default.

3. Learned counsel would further submit that to the shock and surprise, he was issued with an impugned notice dated 24.11.2016 by the respondent stating that the shop in question was sub-let in favour of one Manoj and informed that since he did not follow the terms and conditions of the allotment, he was called upon to vacate and deliver vacant possession of the said premises within seven days from the date of receipt of a copy of the notice. The petitioner, in response to the said notice, submitted an explanation dated 29.11.2016 stating that the said Manoj is only the Manager of the petitioner Shop and he has not sublet the premises in favour of anybody. It is the further submission of the learned counsel for the petitioner that without taking note of the explanation offered by the petitioner, the impugned order dated 30.11.2016 came to be passed calling upon the petitioner to vacate and deliver the vacant possession of the premises, failing which, action will be taken by the Board to resume possession of the Shop. Therefore, the petitioner is constrained to approach this Court by filing the writ petition.

4. Learned counsel for the petitioner has also drawn the attention of this Court to Section 84 of the Tamil Nadu Housing Board Act, 1961, and submitted that as per Sub-Section 2, a reasonable opportunity for tendering explanation and for producing evidence is to be accorded and since the petitioner has submitted his response to the notice dated 24.11.2016, it should be given disposal in accordance with law and until such time, further proceedings have to be deferred and prayed for appropriate orders.

5. Per contra, Mr.K.Venkataramani, learned Additional Advocate General, assisted by Mr.V.Anandamoorthy, submitted that on enquiry, it came to the knowledge of the respondent that the petitioner has unauthorisedly sublet the premises in favour of one Manoj for the purpose of running a Tea stall and he further submitted that the entire premises is under dilapidated condition and a fair decision has been taken by the Board to vacate all the tenants from the premises and prays for dismissal of the writ petition.

6. This Court heard the rival submissions on either side. It is relevant to extract Section 84 of the Tamil Nadu Housing Board Act, 1961, which reads as under:

"84. Power to Evict Certain Persons from Board Premises - (1) if the competent authority is satisfied -

(a) that the person authorized to occupy any Board premises has -

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months; or

(ii) sublet without permission of the Board, the whole or any Part of such premises; or

(iii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises; or

(b) that any person is in unauthorized occupation of any Board premises, the competent authority may, notwithstanding anything contained in any law for the time being in force, by notice served-

(i) by registered post or

(ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises or

(iii) in such other manner as may be prescribed,

order that the person authorised to occupy as well as any other person who may be in occupation of the whole or any part of the premises shall vacate them within one month of the the of service of the notice.

(2) Before an order under sub-section (1) is made against person, the competent authority shall inform the person, by notice in writing and served in the manner provided for service of notice under sub-section (1) of the grounds for which the proposed order is to be made and give him a reasonable opportunity for tendering an explanation and producing evidence, if any, and to show

cause why such order should not be made within a period to be specified in such notice.

(3) The competent authority may, on application, grant extension of the period specified in such notice on such terms as to payment and recovery of the amount claimed in the notice as he deems fit.

(4) Any written statement put in by such person and document produced in pursuance of such notice shall be filed with the records of the case, and such person shall be entitled to appear in the proceedings either in person or by pleader.

(5) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may evict that person from and take possession of the premises and may for that purpose use such force as may be necessary.

(6) If a person, who has been ordered to vacate any premises under sub-section (1), or (iii) of clause (a) of sub-section (1) within one month of the date of service of the notice or such longer time as the competent authority may allow, pays to the Board the rent in arrears or carries out or otherwise complies with the terms contravened by him to the satisfaction of the competent authority, as the case may be, the competent authority, shall, in lieu of eviction such person under sub-section (1), cancel its order made under sub-section (1) and thereupon such person shall hold the premises on the same terms and on which he held them immediately before such notice was served on him.

Explanation - For the purpose of this section and Section 85, the expression "unauthorized occupation" in relation to any person authorised to occupy any Board premises includes the continuance in occupation on by him or by any other person claiming through or under him of the premises after the authority under which he was allowed to occupy the premises has been duly determined."

7. This Court, taking into consideration the above facts and circumstances and in the light of the above stated provision, directs the respondent to consider and dispose of the petitioner's representation dated 29.11.2016 in accordance with law and pass orders within a period of two weeks from the date of receipt of a copy of this order and till such time, the respondent shall defer further decision in terms of the impugned notices dated 24.11.2016 and 30.11.2016.

8.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi
To

The Executive Engineer cumAdministrative Officer,
Nandanam Division,Tamil Nadu Housing Board,
No.331, Anna Salai,Nandanam,Chennai - 600 035.

+1cc to M/S.V.Anandha Murthy, Advocate Sr.72726
+1cc to M/S.S.Doraisamy, Advocate Sr.72904

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