

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.4106 of 2012
& MP.No.1 of 2012

Grace Xavier

.. Petitioner

Vs.

1.The Secretary to Government
Housing Urban
Development Department,
State of Tamilnadu,
Chennai-600 009.

2.The Tamil Nadu Housing Board,
rep. by its Chairman and
Managing Director,
493, Anna Salai,
Chennai- 600 035.

3.The Revenue Officer(G),
The Tamil Nadu Housing Board,
493, Anna Salai,
Chennai-600 035.

... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to the first respondent's proceedings in Letter No.27273/NIEA4(1)/10-7 dated 30.12.2011 by confirming the third respondent's proceeding in Letter No.Va.Va.P.1/64058/06 dated 24.09.2010 and quash the same.

For Petitioner .. Mr.M.Muthappan

For R1 .. Mr.S.V.Duraisolaimalai, AGP

For R2& 3 .. MR.V.Yuvakumar

ORDER

The petitioner has approached this Court seeking the following relief:

'To issue a writ of certiorari to call for the records relating to the first respondent's proceedings in Letter No.27273/NIEA4(1)/10-7 dated 30.12.2011 by confirming the third respondent's proceeding in Letter No.Va.Va.P.1/64058/06 dated 24.09.2010 and quash the same'.

2. The case of the petitioner is as follows:

The petitioner was allotted a Housing Board Flat at No.67-A, Nandanam Colony, Nandanam, Chennai-35 on a monthly rental basis in the year 1984. According to her, she has been in occupation of the said flat from the date of allotment to till date. The petitioner is a Cancer patient and undergoing treatment at Cancer Institute, Adyar, Chennai. In order to help her at home, the petitioner has accommodated her sister's daughter Ms.Thara in the said flat.

3. According to the petitioner, she is having a Savings Bank Account and the income tax assessment which denote that the petitioner was living in the said flat. The petitioner claims that at times she would go to Tanjore, where her son was living and stay with him for some time and return to the city. It appears, as per the claim of the petitioner that during her absence, an inspection was conducted on behalf of the Tamilnadu Housing Board, in which, it was found that the petitioner was not living in the said flat and one Thara was living there. Therefore, a show cause notice dated 01.02.2010 was issued stating that the petitioner had sub-let the property to the third party. In response to the notice, a reply was submitted by the petitioner on 22.02.2010 stating that she was only staying in the premises and only accommodated Thara to help her, who was none other than her own sister's daughter. In support of her claim, she had appeared and submitted all the documents as a proof of her stay in the said premises.

4. However, the third respondent, who was a competent authority without considering the legitimate explanation submitted by the petitioner, passed an order on 24.09.2010 cancelling the allotment and directed the petitioner to hand over the flat within 30 days from the date of receipt of the order. Aggrieved by the said order, the petitioner filed an appeal to the first respondent under Section 86 of the Tamilnadu State Housing Board Act 1961. Since no orders were passed in the appeal, apprehending eviction, the petitioner had approached this Court earlier in W.P.No.24211 of 2010 for quashing the

cancellation order dated 24.09.2010. However, this Court by order dated 26.10.2010 passed final orders, directing the first respondent to consider the appeal preferred by the petitioner within a period of three months and the Court while disposing of the writ petition had also granted stay of the impugned cancellation order.

5. Thereafter, the first respondent passed an order dated 30.12.2011 rejecting the petitioner's appeal, which rejection order is impugned in the present writ petition.

6. Mr.M.Muthappan, the learned counsel for the petitioner strongly contended that the orders passed by the third respondent dated 24.09.2010 and the first respondent dated 30.12.2011 cannot be countenanced both in law or on facts and the same are required to be interfered with. According to the learned counsel that there was no proper consideration of the representation submitted by the petitioner particularly with reference to the fact that the said Thara, who is living in the said flat was none other than the petitioner's own sister's daughter. Moreover, the authorities concerned were guided by the sole fact that the Ration Card or the Voters I.D were not produced by the petitioner in order to support her claim that she was in occupation of the flat in question. In fact for this explanation of the petitioner it was found that since her son was living in Tanjore, her name was found in the ration card in respect of the address, where her son was residing. That cannot be a reason for holding that the petitioner was not in occupation of the flat allotted by the Tamilnadu Housing Board.

7. Moreover, the learned counsel for the petitioner would submit that the Bank Account number and the income tax assessment for several years in which it was shown that the petitioner is having residence in the said flat. Such documents have not been taken into consideration both by the original as well as the appellate authority while passing the impugned orders.

8. Upon notice, Mr.S.V.Duraisolaimalai, learned Additional Government Pleader takes notice for the first respondent and Mr.V.Yuvakumar, learned counsel takes notice for the respondents 2 and 3 and filed a detailed counter affidavit. In the counter affidavit, it was mentioned that when the inspection was carried out, one Ms.Thara was residing in the apartment and the gas connection was standing in her name. According to the learned counsel for the Housing Board that as per the conditions of allotment, only the allottee should reside in the apartment and cannot let out the apartment to any person. According to the learned counsel that the petitioner was unable to establish by producing any unquestionable

documents in order to prove her claim that she has been in occupation of the apartment and not Thara, who according to the Housing Board is a stranger and sub-tenant. Therefore, the authorities have rightly initiated action for cancellation of allotment as the petitioner had violated the conditions of allotment and therefore liable to vacate. Therefore, the proceedings of the third and first respondents are in order and the same do not call for any interference from this Court.

9. This Court has given its anxious consideration to the rival submissions of the learned counsel and perused the relevant materials and pleadings placed on record and finds that the impugned orders passed by both the third and first respondents did not address the explanation offered by the petitioner in a proper perspective. Particularly, the order passed by the third respondent is bereft of any reasons except stating that one Thara was living there and therefore, the petitioner was no more entitled to the accommodation. Even the appellate authority who passed an order rejecting the appeal has not considered the explanation submitted by the petitioner. The said Thara was none other than the petitioner's own sister's daughter and in the absence of ration card etc was only due to the fact that the petitioner's son was living away in Tanjore and her name was found in the ration card as given by her son in Tanjore. Mere non production of ration card indicating the address of the flat allotted to the petitioner cannot be the sole basis for taking a stringent action against the petitioner, who is particularly about 70 years old and taking treatment for cancer. Moreover, the appellate authority's order did not refer to the explanation given by the petitioner specifically in regard to the income tax assessment papers and the claim of the petitioner that she was taking treatment from the Cancer hospital, Adyar periodically and Ms.Thara was none other than her own sister's daughter, who was accommodated only to help the petitioner in her old age. In the above circumstances, this Court considering the old age of the petitioner and also considering the fact that her explanation has not been properly appreciated by the authorities concerned has no hesitation in allowing the writ petition by giving the benefit of doubt to the petitioner. In view of the above, the impugned proceedings passed by the first respondent in Letter No.27273/NIEA4(1)/10-7 dated 30.12.2011 and the proceedings of the third respondent in Letter No.Va.Va.P.1/64058/06 dated 24.09.2010 are set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

10. It is made clear that in case the authorities still want to pursue the matter as against the petitioner, the petitioner shall be given adequate opportunity of personal hearing and also to produce what ever documents in support of

her claim that she is the resident of the allotted flat by the Tamilnadu Housing Board and the respondents shall take further action in the matter if they are so advised in the matter.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
Housing Urban
Development Department,
State of Tamilnadu,
Chennai-600 009.
- 2.The Tamil Nadu Housing Board,
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Managing Director,
493, Anna Salai,
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- 3.The Revenue Officer (G),
The Tamil Nadu Housing Board,
493, Anna Salai,
Chennai-600 035.

+1cc to Mr.V.YUVAKUMAR Advocate, S.R.No. 76071

+1cc to the Government Pleader, S.R.No. 76365

+1cc to Mr.M.MUTHUPPAN Advocate, S.R.No. 76141

W.P.No.4106 of 2012

TR(27/11/2017)

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