IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.6239 of 2011

N.Sekar
Power Agent of H.C. Khatar,
Shop No.3, Anna Salai,
Nandanam, Chennai 600 035. ... Petitioner

vs.

1. State of Tamil Nadu,
rep. By its Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.

2. Tamil Nadu Housing Board,
rep. By its Executive-cum-
Administrative Officer,
Nandanam Division,
Chennai – 600 035. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records relating to the proceedings in G.O.(D) No.13, Housing and Urban Development, LA4 (1) Department, dated 24.01.2011 on the file of the 1st respondent confirming the order passed by the 2nd respondent in Letter No.N.T.R.10/1641/10, dated 12.07.2010, quash the same and direct the respondents to permit the petitioner to run the Mess and Hotel in Shop No.3 in the Commercial Complex, Nandanam, opposite to Tamil Nadu Housing Board Office.

For Petitioner : M/s.Vaiyapuri,
for Mr.S.Doraisamy

For 1st Respondent : Mr.Akhil Akbar Ali,
Government Advocate

For 2nd Respondent : Mr.K.Venkataramani,
Addl. Advocate General
assisted by Mr.Yuvakumar

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O R D E R

The petitioner has come up with this Writ Petition challenging the proceedings dated 24.01.2011 passed by the 1st respondent, confirming the order dated 12.07.2010 passed by the 2nd respondent and for a direction to the respondents to permit him to run the Mess and Hotel in Shop No.3 in the Commercial Complex, Nandanam, opposite to Tamil Nadu Housing Board Office.

2. According to the petitioner, Shop No.3 in the Commercial Complex, Nandanam, opposite to the Tamil Nadu Housing Board Office was leased out to one H.C.Khatar for running Mess and Hotel. The said H.C.Khatar entered into a partnership deed with the petitioner on 20.06.1998 for running a Hotel business in the above said premises in the name and style of 'Khatar Mess and Hotel'. The petitioner is said to have obtained Power of Attorney from the said Khatar on 03.07.2001 in his favour, to carry on the said business.

3. While so, the 2nd respondent wrote a letter to the said Khatar asking him to appear before their Office on 25.06.2010 and produce ration card, identity card and the original allotment order. Accordingly, on behalf of the said H.C.Khatar, the petitioner appeared before the 2nd respondent with all the required documents. Thereafter, on 01.07.2010, the 2nd respondent issued a show cause notice under Section 84(2) of the Tamil Nadu Housing Board Act calling upon the said H.C.Khatar to show cause as to why the allotment issued in his favour in respect of the premises in question should not be cancelled, on the ground that the shop was sublet to some other persons.

4. To the said Show Cause notice, the petitioner submitted an explanation on behalf of the said Khatar, on 11.07.2010, stating that the Shop was not sublet, however, the Shop is run by him along with Khatar as a partnership firm, as the said Khatar has shifted his residence to Maharashtra. The grievance of the petitioner is that despite the said explanation, the 2nd respondent passed an order of eviction against the petitioner without conducting an enquiry. Aggrieved by the same, the petitioner preferred an appeal before the 1st respondent. As there was a threat of eviction through police by the 2nd respondent, the petitioner filed a Writ Petition in W.P.No.20593 of 2010 and this Court directed the 1st respondent to consider the petitioner's appeal dated 02.09.2010. However, without giving the petitioner an opportunity of hearing, the 1st respondent, rejected the petitioner's appeal on 24.01.2011. Hence, the petitioner is once again before this Court by way of the present Writ Petition.

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5. Learned counsel for the 2nd respondent/Tamil Nadu Housing Board submitted that out of six shops situated in that area, five shops have been taken over by them, which were demolished and only the shop pertaining to the said H.C. Khatar is left out. According to the 2nd respondent, the said H.C.Khatar is no more and that the Writ Petition itself is not maintainable.

6. Heard the learned counsel for the parties and perused the material documents available on record.

7. The fact that H.C.Khatar is no more is not in dispute. The partnership between two persons, i.e the petitioner and the said Khatar comes to an end on the demise of Khatar. The Power of Attorney ceased to operate on the demise of H.C. Khatar. Apart from this, there is no evidence to show that the partnership was registered and the Power of Attorney was atleast notarized. In order to weed out the situation and continue the business in the shop, which was sublet by the original lessee, the document is said to have been procured and produced before the Government.

8. The contention that the petitioner was not given any opportunity of hearing, cannot be accepted, as in the light of the above discussion, more particularly, when the partnership deed and Power of Attorney no longer exist on the demise of H.C.Khatar and that the petitioner being a sub-tenant of the original lessee, no relief can be granted to the petitioner.

9. Accordingly, this Writ Petition is dismissed. The petitioner is directed to remove his belongings in the premises in question on or before 30.07.2017, failing which, the petitioner is deemed to have vacated the premises and the 2nd respondent shall enter the premises and take possession. No costs.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS IV)

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//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary,
   Government of Tamil Nadu,
   Housing and Urban Development Department,
   Fort St. George, Chennai 600 009.

2. The Executive-cum-Administrative Officer,
   Tamil Nadu Housing Board,
   Nandanam Division, Chennai - 600 035.

+ 1 cc to Mr. Yuvakumar, Advocate SR.,53195
+ 1 cc to Mr.D. Dorai Samy, Advocate Sr.53407
+ 1 cc to Government Pleader Sr.54363

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