



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.(MD) No. 1155 of 2017

and

M.P.(MD) Nos.967 and 968 of 2017

1. A.NIRMALA JAYA RANI

... Petitioner

-Vs-

1.The Executive Engineer/Administrative Officer,
Madurai Housing Unit,
Ellis Nagar Madurai 625010

2.The Superintending Engineer,
Madurai Housing Unit,
Ellis Nagar Madurai 625010

3.The Managing Director,
Tamil Nadu Housing Board Nandanam
Chennai 600035

...Respondents

Prayer : This Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st Respondent in his proceedings in B1/2424/2015 dated 27.12.2016, quash the same and consequently to give relieving order acknowledging the surrender of key form May 2015 with regards to the house allotted to the Petitioner bearing No.A17/4 DRO Colony Madurai and to repay the excess amount collected from the Petitioner.

For Petitioner

: Mr.T.Arul.

For Respondents

: S.Nagarajan

O R D E R

This writ petition is filed challenging the order passed by the first respondent, dated 27.12.2016, and consequently for a direction to the respondents to give relieving order and acknowledgement to surrender of key from May 2015 in respect of the house allotted to the petitioner bearing No.A17/4 DRO Colony, Madurai, and to repay the excess amount collected from the Petitioner.



2.The case of the petitioner, in short, is as follows:-

While the petitioner employed as Pharmacist in Government Industrial Training Institute, Madurai, she was allotted a flat bearing No.A17/4 at D.R.O. Colony, Madurai, on a monthly rent of Rs.1524/- through an allotment order dated 22.03.2005 issued by the first respondent. The petitioner was promoted as Chief Pharmacist and transferred to Government Hospital, Uthamapalayam, Theni District, in the month of March 2012. However, her family continued to reside in the rented flat since her husband was undergoing medical treatment for cancer. After completion of the medical treatment successfully, the petitioner gave one month prior notice on 23.04.2015 informing the vacating of the rented flat to the first respondent. The said communication sent by the petitioner was duly received by the first respondent. However, the petitioner was informed that arrears of Rs.87,050/- should be remitted by her from March 2012 to May 2015, which includes penal rent also. Accordingly, the petitioner paid the said sum of Rs.87,050/- on 23.04.2015 itself. Even thereafter, the respondent did not receive the key from the petitioner by issuing appropriate order, relieving her from occupation of the said flat. However, the first respondent passed the impugned order on 27.12.2016 calling upon her to remit a sum of Rs.2,50,681/- being the differential rental amount for the purpose of taking over possession of the flat from the petitioner. Challenging the said proceedings, the petitioner filed the present writ petition.

3.The first respondent filed a counter affidavit, wherein it is stated that the petitioner has given a letter dated 06.05.2015 surrendering the house and however, on verification, it was found that the petitioner was transferred to Uthamapalayam on 01.03.2012 and suppressing the said fact, she occupied the quarters. Therefore, it is contended by the first respondent that the petitioner has to pay the penal rent at the rate of Rs.4,400/- per month and to hand over key. Though the first respondent sent several communications to the petitioner to pay the differential rental amount, the petitioner did not pay the same. Accordingly, the impugned order came to be passed.

4.The learned counsel for the petitioner pointed out that once the petitioner has given one month notice as required under Clause 12 of the allotment order, the liability to pay the rent ceased to exist after the expiry of that one month and therefore, the respondents are not justified in seeking rental amount from June 2015 onwards. He also pointed out that even as per the calculation memo filed by the respondents, they have collected the penal rental upto the month of May 2015 at the rate of Rs.4,392/- and therefore, the balance amount payable by the petitioner as per the calculation memo as on 23.06.2015 is only Rs.1514/- which alone the petitioner is liable to pay and not the amount as referred to in the impugned proceedings.



5. On the other hand, the learned counsel for the respondent Housing Board submitted that when the petitioner has not paid the entire rental amount as on 23.06.2015 and on the other hand, a sum of Rs.1514/- is still due, she cannot be permitted to say that the respondents are not entitled to collect the rent for the subsequent period. Therefore, the learned counsel contended that the amount referred to in the impugned proceedings is a just and proper calculation with which, the petitioner cannot have any grievance.

6. Heard both sides.

7. The petitioner was an allottee of a flat on a rental basis at the rate of Rs.1524/- by an order of allotment dated 02.03.2015. It is seen that though the petitioner was transferred from Madurai to Uthamapalayam by way of promotion in the month of March 2012, his family continued to reside in the said flat, as her husband was undergoing medical treatment for cancer. The petitioner did not dispute such occupation. However, on completion of the medical treatment given to her husband, the petitioner gave a notice on 23.04.2015 as required under Clause 12 of the allotment order dated 02.03.2005, which reads as follows:-

"12. The allottee should give one month clear notice in writing vacating the apartment wherever the reasons for vacation otherwise the allottee is liable to pay rent for the period of one month from the date of receipt of notice in this office or till the date of occupation by the subsequent allottee whichever is earlier. The allottee should send the vacation notice by registered post acknowledgement due so as to avoid the non receipt of vacation notice."

The receipt of such notice is not disputed by the respondents. On the other hand, in the counter affidavit, they admit that on 06.03.2015, the petitioner gave a letter surrendering the house. Once the petitioner has given one month notice as required under Clause 12 and said notice was also received by the respondents, the liability to pay rent thereafter, does not arise on the part of the petitioner. In fact, for the period from March 2012 to May 2015, the respondents collected the penal rent from the petitioner at the rate of Rs.4,392/- and the petitioner has also paid a lumpsum of Rs.87,050/- on 23.06.2015. According to the respondents, still a sum of Rs.1,514/- was due as on 23.06.2015. But the fact remains that the respondents have not issued any communication to the petitioner calling upon her to pay the balance amount of Rs.1514/-. It is also not in dispute that after receiving the notice from the petitioner on 23.04.2015, the respondents have not issued any communication to the petitioner as to how much is the rental arrears including the penal rent payable by the petitioner.



8. On the other hand, it is stated by the petitioner that she had paid the sum of Rs.87,050/- only on the oral instruction given by the respondents stating that the said amount alone is payable by the petitioner including penal rent.

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9. Considering the above stated facts and circumstances and considering the fact that only a sum of Rs.1514/- was the balance payable by the petitioner as on 23.06.2015, even according to the calculation memo by the respondents, I am of the view that the respondents are not entitled to collect the rent from the petitioner from the month of June 2015 onwards, especially, when the petitioner has already issued a notice of surrender on 23.04.2015 itself. Therefore, I find every justification in allowing this writ petition.

10. Accordingly, this writ petition is allowed and the impugned order is set aside. The petitioner is directed to pay the balance amount of Rs.1,514/- and hand over the key to the first respondent within a period of seven days from the date of receipt of a copy of this order. The first respondent is directed to receive the amount and also key from the petitioner and issue relieving order within a period of two weeks, thereafter. No costs.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To:

1. The Executive Engineer/Administrative Officer,
Madurai Housing Unit,
Ellis Nagar Madurai 625010
2. The Superintending Engineer,
Madurai Housing Unit,
Ellis Nagar Madurai 625010
3. The Managing Director,
Tamil Nadu Housing Board Nandanam
Chennai 600035

+1cc to Mr.S.Nagarajan, Advocate SR.No.10676

+1cc to Mr.J.Arul, Advocate SR.No.10589

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