

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.13934 of 2012

and

M.P.No.1 of 2012

S.Ramanathan

Petitioner

Versus

- 1.The Tamil Nadu Housing Board,
Rep.by its Secretary,
Nandanam,
Chennai - 600 035.
2. The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
Nandanam Division,
Chennai - 600 035.
3. The Revenue Office/Authorized Officer,
Tamil Nadu Housing Board,
Nandanam Division,
Chennai - 600 035.

..Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, order of direction in the nature of a Writ, forbearing the respondents, their men, agents and subordinates from treating the petitioner herein as subtenant or encroacher under his father Mr.S.Sethuraman and consequently evicting him from his possession and occupation of Door No.73, 3rd street, Nandanam Colony, Chennai - 35.

For Petitioner:: Mr.Kandhan Duraisami
For R1 :: Mrs.Sri Jayanthi
Spl.Govt.Pleader
For R2&R3 :: Mr.V.Anandhamurthy
Standing counsel for TNHB

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, forbearing the respondents, their men, agents and subordinates from treating the petitioner herein as subtenant or encroacher under his father Mr.S.Sethuraman and consequently evicting him from his possession and occupation of Door No.73, 3rd street, Nandanam Colony, Chennai - 35.

2. Heard both sides.

3. The petitioner's father is an allottee of Door No.73, 3rd Street, Nandanam Colony, Nandanam Division of the Tamil Nadu Housing Board. The petitioner's father died. As a matter of fact, the petitioner was not able to enlighten the correct date of the death of his own father. The Tamil Nadu Housing Board sent a communication dated 04.01.2007 addressed to the petitioner's brother, in which, it was wrongly mentioned that at that time, his father, who was the original allottee died and that the petitioner's brother was in occupation of the house. Thereafter, the father of the petitioner submitted a letter to the Housing Board on 12.02.2007 stating that he was alive and was taking treatment. The Revenue Officer of the Tamil Nadu Housing Board sent a communication dated 11.02.2010 calling upon the father of the petitioner to appear before him on 22.02.2010 to prove that he is alive. The documentary evidence like family card, gas cylinder card, etc., were produced. After the appearance of his father before the Revenue Officer on 15.03.2010, the proceedings of eviction were dropped. Once again, the Board sent a communication dated 12.03.2012 stating that their occupation in the house is only in the capacity as sub-tenant under their father and therefore, the allotment was cancelled. Appeal was filed on 14.05.2012 against the said communication. No order was passed thereon subsequently and also even on the representation, dated 14.05.2012 to the Honourable Housing Minister. The Revenue Officer of the Board proposed to evict them on 25.05.2012 since the 30 days time granted by the said proceedings dated 12.03.2012, got expired. After the death of his father, the petitioner and his brother are entitled to continue the occupation of the house. It is claimed that in respect of several houses in Nandanam Colony, the legal heirs have been allowed to become the allottees. Hence, the action of the respondent-Board is not sustainable. Hence, the present Writ Petition.

4. The learned counsel for the petitioner had relied on a Division Bench Judgment of this Court in W.A.No.1443 of 2008, dated 16.06.2010 [K.Saraswathi Vs.The State of Tamil Nadu, rep.by its Secretary to Government, Housing Department, Secretariat, Chennai - 600 009 (Tamil Nadu) and The Managing

Director, Tamil Nadu Housing Board, Nandanam, Chennai - 35]. In the said Writ Appeal, the Division Bench was concerned that seeking of renewal of lease once the allottee passes away. It had been stated as follows:-

"10. Section 84 of the Tamil Nadu State Housing Board Act, 1961 gives powers to the competent authority to evict persons from the premises of the Board. Explanation added to Section 84 makes the position clear that continuance of occupation either by the allottee or any person claiming through or under him of the premises after the authority under which he was allowed to occupy the premises has been determined, would amount to "unauthorised occupation" making the occupier liable for eviction. Therefore the Housing Board was justified in passing the order of eviction against the appellant treating her as one who is in "unauthorised occupation".

5. After examining the facts which are quite similar to the present facts, the Division Bench held as follows:

"13. The decision taken by the Housing Board not to transfer the allotment under the public rental category was with a specific purpose. It was a decision taken in larger public interest. There are many people in the queue, claiming such allotment. 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."

6. This judgment of the Division Bench had been followed by yet another Division Bench of this Court in W.A.No.1722 of 2012, dated 04.02.2015 (Ambrish Ashok Pathak Vs. The Tamil Nadu Housing Board, rep. by its Chairman, Anna Salai, Chennai-2 and two others). Again, on similar facts and circumstances where there is original allotment, the Division Bench observed with respect to the facts as follows:-

"9. The main ground on which the appellant assails the action taken by the Housing Board and the order of the learned Judge is that under Section 84(1)(b) of the Tamil Nadu Housing Board Act, the Executive Engineer is obliged to pass an order directing a person, whom they consider to be in unauthorised occupation, to vacate within one month from the date of service of notice. According to the learned counsel for the appellant, no such order was passed in terms of Section 84(1)(b). It is his further contention that as and when an order is passed in terms of Section 84(1)(b), a remedy of appeal is available under Section 84(6) to the Government. Since no order of eviction was passed, the remedy of appeal has also been rendered nugatory. Therefore, the learned counsel contends that the order of the learned Judge, which did not take into account these statutory provisions, cannot be sustained."

7. The above Division Bench held as follows by following the ratio in the earlier Writ Appeal:

"11. It is true that Section 84(1) deals with two types of persons. Clause (a) of Sub-Section (1) of Section 84 deals with persons, who are authorised to occupy any Board premises. Clause (b) deals with those, who are in unauthorised occupation. The said Clause (b) contemplates service of notice by registered post or by affixure on the outer door or in such manner directing the occupant to vacate within one month. What is contemplated by Clause (b) is only one notice. But, the Executive Engineer had issued six warning notices. Even in the proceeding dated 09.07.2012, the appellant was granted time upto 2.8.2012. Therefore,

we do not find that this is a case where the spirit behind Sections 84(1)(b) and 84(2) had been violated. There is a substantial compliance of the statutory provisions.

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 W.A.No.1443 of 2008 in K.Saraswathi Vs. 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 category was with a specific purpose. It was a decision taken in larger public interest. There are many people in the queue, claiming such allotment. 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."

8. In view of the above decisions, in the present case also, the original allottee died. In view of the binding proceedings of this Court, I have no other option except to follow the same. Consequently, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Tamil Nadu Housing Board,
Rep. by its Secretary,
Nandanam,
Chennai - 600 035.
 2. The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
Nandanam Division,
Chennai - 600 035.
 3. The Revenue Office/Authorized Officer,
Tamil Nadu Housing Board,
Nandanam Division,
Chennai - 600 035.
- +1 CC to Govt. Pleader sr 79206.
+1 cc to Mr. Muthumani Doraisamy, Advocate sr 78245.
+1 CC to Mr. V. Anandhamurthy, advocate sr 78504.

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SP(06/12/2018)