

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.11.2018

CORAM
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
W.P.No.3520 of 2011

Tmt. Vittta Bai

...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,
493, Anna Salai,
Nandhanam, Chennai - 600 035.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in G.O. (D) No.17, Housing and Urban Development (LA4(1)Department dated 02.02.2011 on the file of the first respondent confirming the proceedings in vide proceeding Memo No.Va.Va.B1/11456/2010 dated 31.05.2010 on the file of the second respondent and direct the respondents to permit the petitioner to reside in the rental flat Ku.No.70-C, Nandanam Colony, Nandanam, Chennai.

For Petitioner : Mr.S.Doraisamy

For Respondent 1 : Mr. A. Zakir Hussain
Government Advocate

For Respondent 2 : Mr. V.Anandhamoorthy
Standing Counsel for TNHB

O R D E R

The writ petition has been filed for issuance of Writ of Certiorarified Mandamus by calling for the records relating to the proceedings in G.O. (D) No.17, Housing and Urban Development (LA4(1)Department dated 02.02.2011 on the file of the first respondent, confirming the proceeding IN Memo No.Va.Va.B1/11456/2010 dated 31.05.2010 on the file of the second respondent and direct the respondents to permit the petitioner to reside in the rental flat Ku.No.70-C, Nandanam Colony, Nandanam, Chennai.

2. The learned Counsel for the petitioner would submit that the petitioner's husband V.P. Muthukrishnan was a original allottee of a rental flat bearing Ku.No.70-C, Nandanam Colony, Nandanam, Chennai- 600 035 on monthly rental basis under the public quota. The petitioner's husband V.P. Muthukrishnan died in the year 2006. After his death, the petitioner and her son occupied the same flat and also paying regularly monthly rent and maintenance charges as fixed by the second respondent Board and there is no arrears of rent. Since the said flat was locked for a long period, on 11.02.2010, the second respondent Board issued a show cause notice to the petitioner under Section 84(2) of the Tamil Nadu Housing Board Act, 1961 as to why the allotment should not be cancelled. In reply to the notice, the petitioner in her letter dated nil, has stated that in view of death of her husband, her son has gone out of station for job purpose and she used to go to her daughter's house for staying there. Hence, the flat was locked for some times and due to death of her husband, she has also requested the second respondent Board to allot the said rental flat in the name of the petitioner. The second respondent Board without conducting any enquiry as provided under Section 84 of the Tamil Nadu Housing Board Act, 1961, passed an order dated 31.05.2010 directing the petitioner to vacate the said flat within a period of Thirty days time by stating that the petitioner is an unauthorized occupant after death of her husband. In this regard, the petitioner has preferred an appeal before the first respondent along with stay application on 23.06.2010. In the meanwhile, the Junior Engineer of the second respondent Board visited the petitioner's premises and directed the petitioner to vacate the flat within one week failing which the petitioner will be forcibly evicted with the help of police. The petitioner has filed writ petition in W.P.No.15467 of 2010 before this Court wherein this Court, by order dated 16.07.2010 directed the respondents to consider the appeal filed by the petitioner on 23.06.2010, in accordance with law and on merits after affording an opportunity of hearing to the petitioner and pass appropriate orders within a period of four weeks from the date of receipt of copy of this order and the respondents are directed to maintain status qua till such time. However, the first respondent has rejected the petitioner's appeal by its G.O. (D) No.17, Housing and Urban Development (LA4(1)Department dated 02.02.2011 and confirmed the proceeding Memo No.Va.Va.B1/11456/2010 dated 31.05.2010 on the file of the second respondent. Being aggrieved by the aforesaid impugned order, the petitioner has filed the present writ petition.

4. According to the petitioner, in similar cases, the second respondent Board has transferred the lease hold-rights to the wife of the deceased original allottee and in the same manner, the petitioner's case may be considered for transferring the lease hold-right in her favour in view of death of her

husband who was a original allottee of the said rental flat.

5. On the other hand, the learned counsel for the respondents would submit that the respondent Board has taken a policy decision vide Board Resolution No.11.04 dated 21.07.1997 not to transfer the lease hold rights to the legal heirs after the death of the original allottees. Based on the aforesaid proceedings, the lease hold-right cannot be transferred in favour of the petitioner and the petitioner cannot be permitted to reside in the rental flat since the flat was originally allotted to late V.P. Muthukrishnan, husband of the petitioner expired long back. Hence, the petitioner has no right to claim the rental flat till her life time in the light of the policy decision taken by the the Housing Board. In view of the above, the petitioner is directed to vacate the aforesaid rental flat which was originally allotted to her husband under Section 84 of the Tamil Nadu Housing Board Act, 1961.

6. According to the respondent, the petitioner and son of the petitioner are not residing in the said rental flat and third party is now occupying in the said flat. It is further stated that the petitioner has granted sub-lease illegally in favour of the third party for occupying the aforesaid flat without prior permission from the respondents. Therefore, the second respondent passed the impugned order to vacate the premises.

7. In the light of the resolution No.11.04 dated 21.07.1997 passed by the second respondent Board, the petitioner has no right to seek transfer of lease hold right in favour of the petitioner. In the above context, the learned counsel for the respondents relying upon the decision of the Division Bench of this Court in "Writ Appeal No.1443 of 2008 and M.P. No.1 of 2009 in the case of "K. Saraswathi Vs. The State of Tamil Nadu and others decided on 16.06.2010 wherein it is stated in paragraph No.12 & 13 that:

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12. The claim of the appellant was based on the earlier orders passed by the Government permitting transfer of allotment as well as sale of leasehold premises to the allottees or their legal heirs as found in the typed set of documents. When those orders were passed, the policy decision taken by the Housing Board was very much in operation. Therefore, such orders were against the prevailing policy of the Housing Board. Since those residential units were earmarked for allotment under public rental quota, neither the Housing Board nor the Government got powers to effect transfer of ownership. Public property cannot be given in such an arbitrary manner. In case such dwelling units are sold to those, who

were in possession of its as tenants, the available units at the command of the Housing Board for allotment to the public would be reduced considerably. In any case, the legality or correctness of such allotments are not the subject matter of this appeal. The appellant makes a claim for sale of the units in her favour or in the alternative, transfer of allotment on the ground that similar permission was given to others. It is trite that Article 14 of the Constitution of India cannot be invoked to perpetuate illegality. The equality clause enshrined under Article 14 of the Constitution is a positive concept. Illegal orders cannot be basis for claiming equal treatment.

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 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.

and in "Writ Appeal No.1722 of 2012 and M.P.Nos.1 of 2012 and 1 of 2013 in the case of Ambrish Ashok Pathak vs. The Tamilnadu Housing Board and others decided on 04.02.2015 wherein it is stated that

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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 Tamilnadu. By a Judgment dtd 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:

"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 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 the light of the aforesaid judgments of this Court and having considered the facts and circumstances of the case, the writ petition fails and the same is hereby dismissed. There shall be no order as to costs.

9. It is open to the second respondent Board to proceed eviction process to vacate the petitioner from the said flat by giving two months time for vacating the said premises.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1.The Secretary to Government,
Government of Tamilnadu
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.

2.The Revenue Officer,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandhanam, Chennai - 600 035.

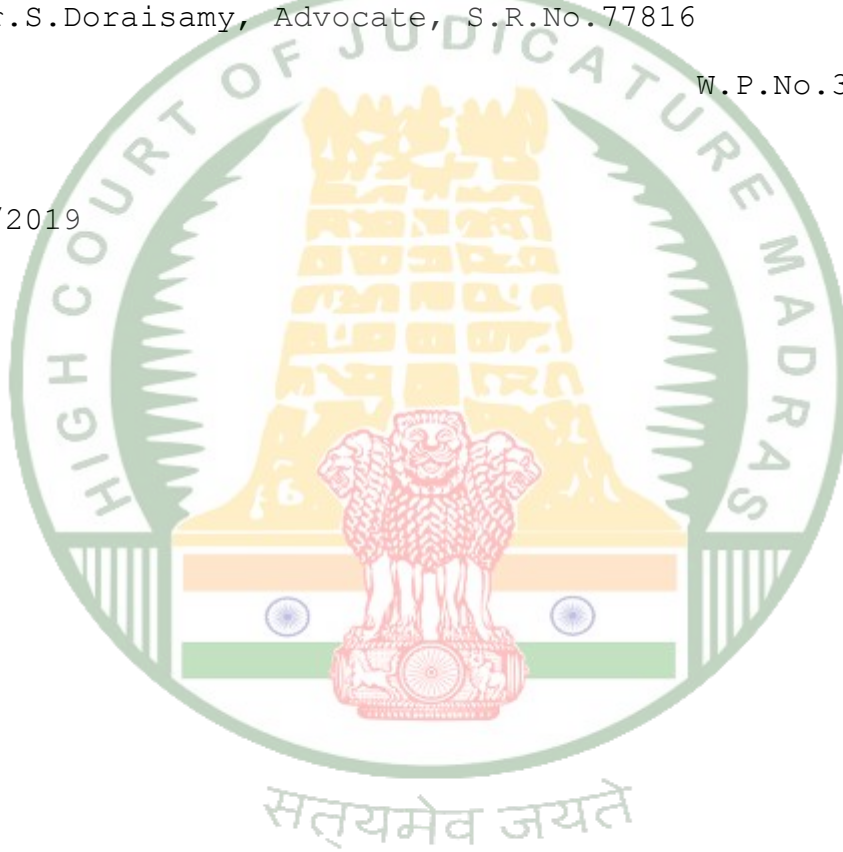
+lcc to Mr.V.Anandhamurthy, Advocate, S.R.No.77765

+lcc to Mr.S.Doraisamy, Advocate, S.R.No.77816

W.P.No.3520 of 2011

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