

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.3724 of 2011  
and M.P.No.1 of 2011

Dr.R.Ravindranath

... Petitioner

Vs

1.Tamil Nadu Housing Board  
Nandanam, Chennai-600 035

2.The Executive Engineer  
and Administrative Officer  
K.K.Nagar Division  
Tamil Nadu Housing Board  
Ashok Nagar Shopping Centre  
Chennai-600 083

3.A.Srinivasan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the communication of the 2nd respondent dated 11.02.2011, bearing No.A4/1144/98 and quash the same and forbear the respondents, their men and agents from in anyway interfering with the running of the clinic of the Petitioner at H-2, M.I.G., Turnbolls Road, Nandanam, Chennai-600 035.

For Petitioner : Mr.Niranjan Rajagopal  
for M/S.G.R.Associates

For Respondents: Mr.V.Anandamoorthy, Standing counsel  
for TNHB for R1 and R2.  
No appearance for R3.

ORDER

The Prayer in the Writ Petition is to issue a Writ of Certiorarified Mandamus, to call for the records relating to the communication of the 2nd respondent dated 11.02.2011, bearing No.A4/1144/98 and quash the same and forbear the respondents, their men and agents from in anyway interfering with the running of the clinic of the Petitioner at H-2, M.I.G., Turnbolls Road, Nandanam, Chennai-600 035.

2. The Petitioner is a reputed Doctor and he purchased a flat No.H-2, M.I.G., Turnbulls Road, Nandanam, Chennai-600 035. According to the Petitioner, the said Housing Board flat was originally allotted to one Mrs.Rajam Murthi, W/o.R.K.Murthi in the year 1969 by the Tamil Nadu Housing Board. The Petitioner, by sale deed dated 16.03.2001, purchased the said flat and he has been running a clinic in the said flat between 8.00 a.m., to 1.00 p.m., and 5.00 p.m, to 09.00 p.m., without any disturbance to the other flat owners or anybody in that area. It is further stated that no clinical laboratory operations are carried out in the premises and the premises is used only for clinically examining the patients, using blood pressure machine, E.C.G.equipment etc. It is stated that on 20.06.2002, the Petitioner was served with communication dated 18.06.2002 of the 2nd respondent pointing out that certain persons have given a petition to the Board stating that the flat is being used as a hospital and the flat could be used only for residential purposes. Again on 05.08.2002, another communication was received by the Petitioner wherein the respondents referred to the earlier communication dated 18.06.2002 asking the Petitioner to vacate the flat premises. Therefore, the Petitioner has filed this Writ Petition with the above said prayer.

3. The learned counsel for the Petitioner submits that the subject matter of the flat was purchased by the Writ Petitioner by sale deed dated 16.03.2011 from one Mrs.Rajam Murthi and the Petitioner being the subsequent purchaser from the original allottee, used the said flat for running a clinic, as such, the respondent Board has no power to interfere with the running of the clinic in the said flat. The learned counsel further submitted that once the subject matter of the flat was sold by the original allottee by way of execution of sale deed, the petitioner being the subsequent purchaser, the respondent has no power for issuing the eviction notice to the Writ Petitioner. Therefore, the impugned order is not sustainable and same may be quashed.

4. The learned counsel for the respondent - Board would submit that the Petitioner used the aforesaid subject matter of the flat for running a hospital. On the basis of the complaint made by inmates of the other flats, the respondent Board has sent a communication to the Petitioner by letter dated 18.06.2002 followed by another communication dated 05.08.2002 directing the Petitioner to vacate the clinic from the said flat. It is pointed out that the said flat was allotted to the original allottee for residential purpose. Therefore, the impugned communication sent by the respondent Board is perfectly valid.

5. The points for consideration in this Writ Petition is as to Whether the respondent Board has power to issue notice to the Petitioner directing him to vacate the clinic from the said flat premises, consequent to the sale deed executed in favour of the Petitioner, viz., the subsequent purchaser, by the original allottee.

6. In this connection, it is relevant to place reliance on the provisions under Section 11 of Transfer of Property Act, which reads as follows:-

"11. Restriction repugnant to interest created -  
Where, on a transfer of property, an interest therein is created absolutely in favour of the any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction."

A reading of the above provision under the Transfer of Property Act makes it clear that the Housing Board has executed the sale deed in favour of the allottees not only in respect of the land but also the building therein. Therefore, Section 11 of the Transfer of Property Act, will come into play which will be in support of the Allottees.

7. Further, similar issue has been considered by the Full Bench of this Court reported in 2013 (3) CTC 129 [Tamil Nadu Housing Board, rep. by its Managing Director, Anna Salai, Nandanam, Chennai-600 035 Vs. Mary Rani Immanuel and others]. In the said Judgment, the Full Bench of this Court has elaborately considered the rights of the Housing Board to interfere with the property enjoyed by the allottees. In paragraph Nos.15 and Reference II and Answer, it is held as follows:-

" 15. Thus the reading of the various provisions of The Tamil Nadu Apartment Ownership Act, 1994, the covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of the allottees will amply establish that the Tamil Nadu Housing Board having not retained any right over the land appurtenant to the flats or common area, the question of obtaining No Objection Certificate from the Tamil Nadu Housing Board will not arise. In such circumstances, the allottees of the flats, after execution of the sale deed in their favour have got every right to demolish the existing building and construct new apartment blocks.

Even if additional dwelling units are constructed and sold to the third parties, the Tamil Nadu Housing Board cannot lay any claim over such additional construction. As long as the construction are within the parameters of the rules of the CMDA, in our considered view, the Tamil Nadu Housing Board have got not say, even if additional dwelling units are constructed after demolishing the existing flats. As stated already, the Tamil Nadu Housing Board loses its rights as soon as it executes sale deed in respect of the flats, appurtenant land and even in the areas earmarked for the common enjoyment of the flat owners. The common area has to be enjoyed in common by the flat owners. If a consensus is arrived at by all the flat owners, they can utilize the common land also to put up construction without No Objection Certificate from the Tamil Nadu Housing Board. As stated already, the construction shall comply with the requirements of the rules and regulations of the CMDA. Even assuming that there are restrictive covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of the allottees, the violation of the same cannot be questioned by the Tamil Nadu Housing Board, since as stated already, as soon as the Tamil Nadu Housing Board executes sale deed in favour of the allottees, it loses all its rights on the property and it cannot any more question the action of the allottees by saying that the allottees have violated the conditions enumerated in the sale deed. "

Reference ii: सत्यमेव जयते

Whether the restrictive covenants contained in the deed of sale executed by the Housing Board in favour of the allottee would bind the allottee or his successor in interest and by virtue of which whether the allottee shall be required to keep the common areas as such without claiming any exclusive right over the same.

Answer:

The restrictive covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of the allottees will not prevent

the allottees or the subsequent purchasers from the allottees, in utilising the common areas, so long as the Society or Association which have been formed by the allottees gives consent for the same and no doubt, that the construction are within the parameters of the rules and regulations of the CMDA"

8. In the light of the aforesaid Ruling of the Full Bench of this Court, this court has no hesitation to hold that the impugned order passed by the 2nd respondent is illegal and without any jurisdiction. It is for the concerned authority to take necessary action against the Petitioner, if found that the Petitioner is running the clinic contrary to the terms and conditions of the original allotment or the relevant Rules, or any other provisions of law. In view of the above discussion, the impugned order is liable to be quashed.

9. In fine, the Writ Petition is allowed. The impugned order passed by the 2nd respondent dated 11.02.2011 is quashed. No costs. Consequently, connected MP is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri  
To

1.Tamil Nadu Housing Board  
Nandanam, Chennai-600 035.

2.The Executive Engineer and Administrative Officer  
K.K.Nagar Division, Tamil Nadu Housing Board  
Ashok Nagar Shopping Centre, Chennai-600 083.

+1cc to M/S.G.R.Associates Sr.84249  
+1cc to Mr.V.Anandamurthy, Advocate Sr.84236

W.P.No.3724 of 2011

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srg 12/02/2019