

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.11.2018

CORAM
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.8596 of 2012
and
M.P.Nos.1 and 2 of 2012

B.Chitra

..Petitioner

Versus

1.State of Tamil Nadu,
By its Secretary to Government,
Housing and Urban Development
(LA 4(1)) Department,
Fort St.George,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
Nandhanam, Chennai - 600 035.

..Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent relating to the impugned proceedings No.Va.Va.P.6/38338/2010 culminating in his order dated 19.03.2012 as confirmed by the order of the 1st respondent vide his letter No.31156/Ne.A4(1)/10-7 dated 02.03.2012, and quash the same and consequently direct the 2nd respondent to permit the petitioner to reside in the premises at No.63, Model Hutment Road, C.I.T.Nagar, Nandanam, Chennai - 600 035.

For Petitioner :: M/s.D.Sujatha

For R1 :: Mrs.Sri Jayanthi
Spl.Govt.Pleader

For R2 :: Mr.V.Anandhamurthy
Standing counsel for TNHB

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to proceedings in No.Va.Va.P.6/38338/2010 dated 19.03.2012 which had been confirmed by order of the second respondent dated 02.03.2012 and quash the same.

2. Heard both sides.

3. The petitioner claims to be a resident of House No.63, Model Hutment Road, CIT Nagar, Nandanam, Chennai, which has been allotted to her husband late P.Balasubramanian in the year 1973. Unfortunately, he died on 03.07.2007. But the petitioner had been continuing to occupy the said place and she had been paying the rent and also the electricity charges. She then applied for transfer of lease in her name. However, show cause notice was issued on 30.07.2010 under Section 84(2) of the Tamil Nadu State Housing Board Act. She has sought for the allotment which cannot be cancelled. She had given a reply on 15.09.2010. However, the second respondent had passed an order of eviction on 23.09.2010 and directed the petitioner to vacate and hand over the possession within a period of 30 days. This order has been confirmed by the first respondent before the petitioner had filed the early and that order is dated 02.03.2012.

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 original allottee died, 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 and the petitioner is not in possession of the property. 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 Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Housing and Urban Development
(LA 4(1)) Department,
Fort St.George,
Chennai - 600 009.

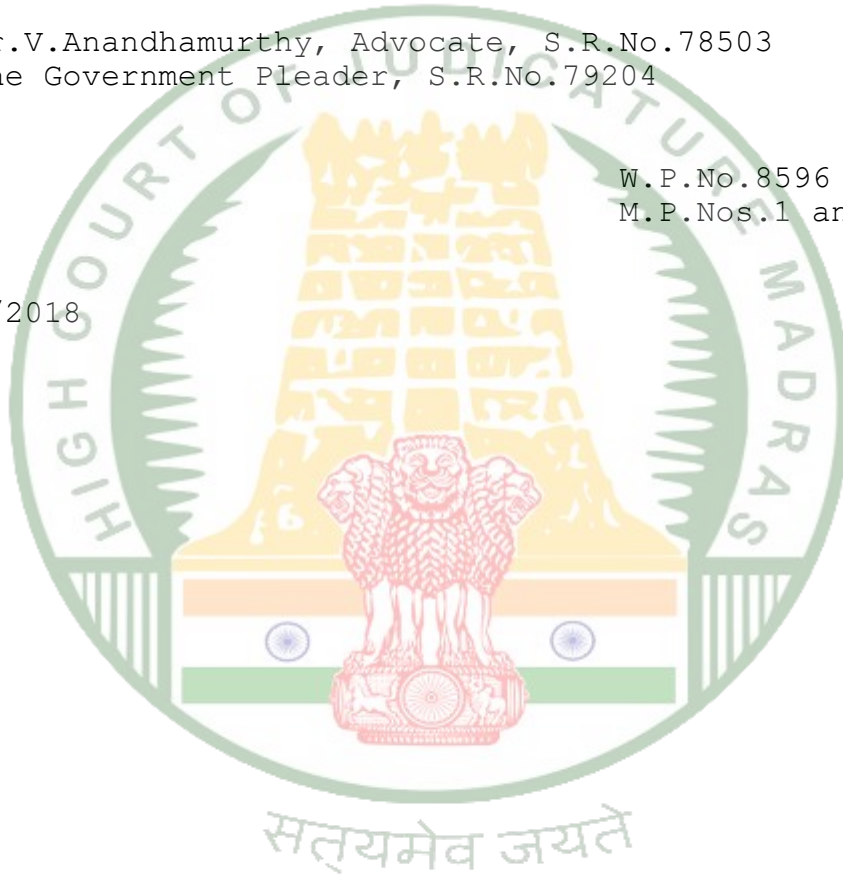
2.The Managing Director,
Tamil Nadu Housing Board,
Nandhanam, Chennai - 600 035.

+lcc to Mr.V.Anandhamurthy, Advocate, S.R.No.78503
+lcc to the Government Pleader, S.R.No.79204

W.P.No.8596 of 2012 and
M.P.Nos.1 and 2 of 2012

SAI (CO)

rrs 06/12/2018



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