

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.3.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1224 of 2010

R.Manimegalai

... Appellant

versus

1.The Government of Tamil Nadu,
rep. By its Secretary to Government,
Housing and Urban development Department,
Fort St.George, Chennai 9

2.The Tamil Nadu Housing Board,
rep. By its Executive cum administrative Officer,
493, Anna Salai, Nandanam,
Chennai 35

4.The Revenue Officer,
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai 35

... Respondents

Appeal filed against the order passed by this Court dated 25.2.2010 passed in W.P.No.1471 of 2010.

WP 1771/2010 Prayer : Petition filed under Article 236 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the G.O.(2D) No.247 Housing & Urban Development Department dated 30.12.2009 of the 1st respondent herein and quash the same and further direct the 1st respondent to consider the claim of the petitioner for transfer of lease hold rights of the premises bearing No.44 2nd Street Nandanam Colony Chennai-35 in favour of the petitioner as made in her appeal petition dated 12.06.2007.

For appellant : Mr.V.Suthakar

For Respondents : Mr.V.Anandamurthy,
Additional Government Pleader

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

Introductory :-

The Hon'ble Supreme Court in S.D.Bandi vs. Divisional Traffic Officer, Karnataka State Board Transport Corporation and ors., 2013(2) SCC 631, directed the Judges, Ministers, Legislators and public servants to vacate the official residence within a period of one month from the date of superannuation, and issued detailed guidelines for compliance. The failure on the part of the Government of Tamil Nadu to frame appropriate guidelines in tune with the directions given by the Supreme Court is taken advantage of by the allottees, and their legal heirs, to continue to occupy the official accommodation even after the date of retirement and in cases like the one on hand, even after the death of the original allottee. Time has come therefore to direct the State to show sensitivity to the issue relating to Government accommodation.

The facts:-

2. The rental house bearing D.No.44, II Street, Nandanam Colony, Chennai 35 was allotted by the Tamil Nadu Housing Board to Thiru.S.Rathinam on monthly rental basis under public quota. The allotment was made in the year 1966. The allottee died on 30 November 2003. Since the appellant, who is the daughter of the allottee, failed to vacate the residential house, the Housing Board initiated eviction proceedings. The Housing Board issued a show cause notice dated 4 January 2007 directing the appellant to show cause as to why the allotment should not be cancelled. The allotment was later cancelled by order dated 4 May 2007. The said order was challenged before the Government. The appeal was rejected by order dated 30 December 2009. It was the said order which was challenged before the writ court. The Writ Petition was dismissed.

Submissions:-

3. The learned counsel for the appellant contended that under similar circumstances, the legal representatives and other allottees are still occupying the Housing Board accommodation. According to the learned counsel, the Housing Board is adopting a pick and choose policy. Those who are having influence continue to occupy the residential accommodation. It is only the poor people who have to vacate. The learned counsel contended that the appellant is a spinster aged about 64 years and she should be given reasonable time to vacate the premises. The learned counsel by placing reliance on the names of few officers of the Indian Administrative Service, contended that in spite of their transfer and allotment of accommodation at the transferred place, those officers are still in occupation of the rental quarters at Taylor's Road, Chennai.

The issue:-

4. The core question is whether the appellant is entitled to continue her occupation even after the death of the original allottee.

Discussion:-

5. The Tamil Nadu Housing Board allotted a residential house at Nandanam Colony, Chennai to Thiru.Rathinam, who was then serving as a Superintendent in the office of the Accountant General, Chennai. The allotment on rental basis was made by order dated 21 October 1966. The rent was revised from Rs.76 to Rs.2460/-. The allottee died on 30 November 2003 and his wife pre-deceased him. The appellant continued to occupy the house.

6. The Tamil Nadu Housing Board initiated proceedings for eviction by issuing notice dated 4 January 2007. The appellant initiated Writ Petitions and writ appeal to keep in possession of the accommodation. The eviction order was finally upheld by the Government by order dated 30 December 2009.

7. The order dated 30 December 2009 was challenged by the appellant in W.P.No.1471 of 2010. Before the writ court, the appellant filed an undertaking affidavit, agreeing to vacate the premises within six months. The learned Single Judge granted four months and disposed of the Writ Petition by order dated 25 February 2010. The appellant notwithstanding her undertaking given to the Court, filed the appeal on multiple grounds.

8. The appellant took up a contention regarding discriminatory treatment in the matter of allotment and occupation. We therefore directed the Managing Director, Tamil Nadu Housing Board to file an affidavit with regard to the occupation of Government accommodation by the named officials, in spite of their transfer to the neighbouring districts.

9. The Managing Director, Tamil Nadu Housing Board in his affidavit dated 16 February 2018, submitted that Flat A-15, Tower Block, Taylor's Road, Chennai is under the occupation of Thiru.P.Ponniah, I.A.S. who is presently working as District Collector, Kanchipuram. The said officer was granted extension of time till 31 May 2018 for vacating the flat. Flat A-17, is in the occupation of R.Gajalakshmi I.A.S., who is presently working as Managing Director, SAGO. The Government was pleased to grant her time till 31 May 2018 to vacate the premises. Flat B-15 is in the possession of Thiru.K.Megaraj IAS who is now posted as the Assistant Collector (Training), Tiruvallur District. He has made a request to permit him to occupy the flat till 31 May 2018. Flat A-24 is in the possession of Thiru.R.Duraisami, former DIG, Prison Department, Chennai, and he is in unauthorized occupation of the flat even after his retirement.

The allotment was cancelled on 8 August 2017. The Tamil Nadu Housing Board is in the process of taking action for his eviction. Flat B-12 is stated to be in the possession of Thiru.S.Parameswaran, former Additional Director, Industrial Cooperation, Chennai and he requested originally time till 31 December 2017 for vacating the premises. His request for further time is pending before the Government. Flat B-13 is in the possession of T.N..Palanivelu, Director of Animal Husbandry, Chennai, who is presently under suspension. According to the Managing Director, action is taken to evict him from the premises. There are several other officers whose names are found in the affidavit who are still in occupation of the Government bungalow in spite of their posting elsewhere.

10. Thiru.P.Ponniah IAS, who is in possession of flat A-15 filed an affidavit stating that he is presently functioning as District Collector, Kanchipuram and he would vacate the accommodation on or before 31 May 2018. Thiru.R.Gajalakshmi, I.A.S., M.D.SAGO, filed an affidavit indicating that after passing the order by this Court calling for particulars, she has surrendered the flat on 10 March 2018.

11. The Tamil Nadu Housing Board is a State within the meaning of Article 12 of the Constitution of India. The Board constructed residential houses and residential apartments in larger public interest. The Government officers and judicial officers were given residential accommodation taking into account their services in the respective towns. The officers must vacate the premises immediately after their transfer or retirement. The Government and the Tamil Nadu Housing Board must consider the case of others for allotment taking into account the seniority position in the waiting list. There is no question of permitting retired and transferred officials to occupy the official accommodation to the detriment of others who are eagerly waiting for fresh allotment.

12 (a) The occupation of Government accommodation by the members of the Legislature, executives and Judges beyond the period for which the same was allotted came up for consideration before the Supreme Court in S.D.Bandi vs. Divisional Traffic Officer, Karnataka State Board Transport Corporation and ors., 2013(2) SCC 631.

(b) The Hon'ble Supreme Court while directing the allottees including the Judges to vacate the official residence within a period of one month from the date of retirement / superannuation, with a grace period of another one month for justifiable reasons, and restraining the Government from permitting conversion of Government accommodation as memorials, made the following observation.

34. It is unfortunate that the employees, officers, representatives of people and other high dignitaries continue to stay in the residential accommodation provided by the Government of India though they are no longer entitled to such accommodation. Many of such persons continue to occupy residential accommodation commensurate with the office(s) held by them earlier and which are beyond their present entitlement. The unauthorised occupants must recollect that rights and duties are correlative as the rights of one person entail the duties of another person similarly the duty of one person entails the rights of another person. Observing this, the unauthorised occupants must appreciate that their act of overstaying in the premise directly infringes the right of another. No law or directions can entirely control this act of disobedience but for the self-realisation among the unauthorised occupants.

13. The Government of Tamil Nadu in spite of the direction given by the Supreme Court, failed to frame guidelines in the matter of Government accommodation.

14. The officers are well aware of their date of retirement. They should plan for their retirement life including accommodation, well in advance. A retired employee cannot be heard to say that even after retirement, he should be permitted to occupy the Government bungalow or apartment. The allotment is given taking into account the fact that employee is in Government service. There is no vested right to an employee to claim that even after his retirement, he should be permitted to occupy the Government bungalow. This attitude must undergo a sea change. The bungalow should be vacated immediately after the transfer or retirement. It is open to the Government to give reasonable time to vacate the premises taking into account the circumstances of a given case, in the light of the judgment of the Supreme Court in S.D.Bandi.

15. We direct the Government of Tamil Nadu to frame appropriate regulations regarding the allotment and surrender of Government accommodation in the light of the direction and guidelines given by the Hon'ble Supreme Court in S.D.Bandi. Since there are very many officers still occupying Government Bungalows, and residential apartments even after their retirement and transfer, every effort should be taken by the Government to issue guidelines as expeditiously as possible and in any case, within a period of three months.

16. The appellant is given time till 31 July 2018 to vacate the residential house and handover vacant possession to the Tamil Nadu Housing Board. In case of default, it is open to the Tamil Nadu Housing Board to evict the appellant summarily.

17. The intra court appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary to Government,
Housing and Urban development Department,
Fort St.George, Chennai 9

2. The Executive cum administrative Officer,
The Tamil Nadu Housing Board,
493, Anna Salai, Nandanam, Chennai 35

4.The Revenue Officer,
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam, Chennai 35

+1cc to Mr.U.Suthakar, Advocate, sr.no.18900

+1cc to Mr.V.Anandha Murthy, Advocate, sr.no.18371

+1cc to the Government Pleader, sr.no.18821

W.A.No.1224 of 2010

MP (CO)

RRK (31/05/18)

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