

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.8447 of 2012

K.Karthikeyan

... Petitioner

Vs

1.The Secretary,
Housing and Urban Development,
Fort St.George, Chennai-9.

2.The Tamil Nadu Housing Board,
Rep by its Managing Director,
No.493, Anna Salai, Nandanam,
Chennai-35.

3.The Executive Engineer cum
Administrative Officer,
Nandanam Division,
The Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai-35.

... Respondents

PRAYER : 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 order of the first respondent's proceedings made in letter No.21529/Ni.A.4(1)/10-6 dated 12.03.2012 to quash the same and consequently, direct the respondents to transfer the allotment/lease in respect of C-5 Turn Bulls Road, 3rd Cross Street, Nandanam, Chennai-35, as legal heir of the original allottee.

For Petitioner : Mr.L.Chandrakumar

For Respondents: Mr.T.M.Pappiah,
Special Government Pleader for R1
: Mr.V.Anandamurthy, SC for RR2 and R3

O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the first respondent and Mr.V.Anandamurthy, learned counsel

appearing for the second and third respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent's proceedings made in letter No.21529/Ni.A.4 (1)/10-6 dated 12.03.2012 to quash the same and consequently, direct the respondents to transfer the allotment/lease in respect of C-5 Turn Bulls Road, 3rd Cross Street, Nandanam, Chennai-35, as legal heir of the original allottee. "

3. The case of the petitioner is as follows:-

The petitioner's father was allotted flat No.C-5 Turn Bulls Road, 3rd Cross Street, Nandanam, Chennai-35, by the respondent Board. Pursuant to the allotment, an agreement was executed, stating that the premises shall be used only for residential purpose. The allotment was made as early as in the year 1976. After the allotment of the flat, the petitioner's father, mother, sister and himself, were all living in the said premises and they have been in occupation of the same for the last 36 years.

4. On 04.02.2008, the petitioner's father died and therefore, the regular rents had been remitted by the mother of the petitioner who also died on 27.05.2011. When the petitioner's mother was alive, a notice was issued on 16.02.2010, by the Board, terming that the occupancy of the petitioner's mother was unauthorized occupation, in view of the demise of the original allottee viz., the petitioner's father. In response to the notice, it appears that an explanation was submitted by the petitioner's mother in 2001, when she was alive, stating that the family members were also entitled to allotment on the demise of the original allottee. However, it was pointed out by the Board resolution dated 21.07.1997, no such transfer taken place to the family members of the original allottee. Thereafter, the petitioner's mother was directed to hand over the possession by order dated 28.06.2010, by cancelling the allotment.

5. Thereafter, the mother of the petitioner approached this Court in W.P.No.18257 of 2010, challenging the said proceedings. This Court by its order dated 18.08.2010, directed maintenance of status quo till the disposal of the appeal preferred by the mother of the petitioner. However, the appeal finally came to be rejected on 12.03.2012, citing the Board resolution dated 21.07.1997, stating that once the original allottee dies, the allotment stands nullified and any member of the family in occupation of the flat would be termed as unauthorized occupant.

The said proceedings dated 12.03.2012, is put to challenge in the present writ petition.

6. Upon notice, learned Special Government Pleader appearing for the first respondent, entered appearance.

7. The learned counsel appearing for the respondent Board would submit that as per the Board resolution, the son of the original allottee is not entitled to any allotment and there is no vested right on the part of the petitioner to have the allotment transferred to his name. Therefore, his stay in the flat after the death of his father, was rightly termed as unauthorized occupation and therefore, he was directed to vacate the premises and hand over the same to the Board.

8. At this, learned counsel for the petitioner would submit that the petitioner cannot be asked suddenly to vacate the premises, since the family has been in occupation of the premises since 1976. The learned counsel would submit that he would require reasonable time to vacate and hand over the possession of the subject premises to the Board and in that regard, the learned counsel seeks six months time to vacate the premises. Although such request was resisted by the learned counsel for the respondent Board, saying that for several years after the death of the original allottee, the petitioner was in occupation of the subject premises.

9. Nevertheless, this Court is of the view that six months time sought by the petitioner appears to be reasonable and just. In the aforesaid circumstances, this Court directs the petitioner to vacate and hand over the flat No.C-5 Turn Bulls Road, 3rd Cross Street, Nandanam, Chennai-35, by 31st August, 2018. Since the petitioner on his own volition going to hand over the premises by 31st August, 2018, this Court is not inclined to go into the merits and demerits of inter se claims of the parties. This Court directs the petitioner to strictly comply with the undertaking given by the petitioner that the premises at all costs should be vacated and handed over to the respondent Board on or before 31st August, 2018.

10. With the above direction, the writ petition stands disposed of. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Secretary,
Housing and Urban Development,
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2.The Managing Director,
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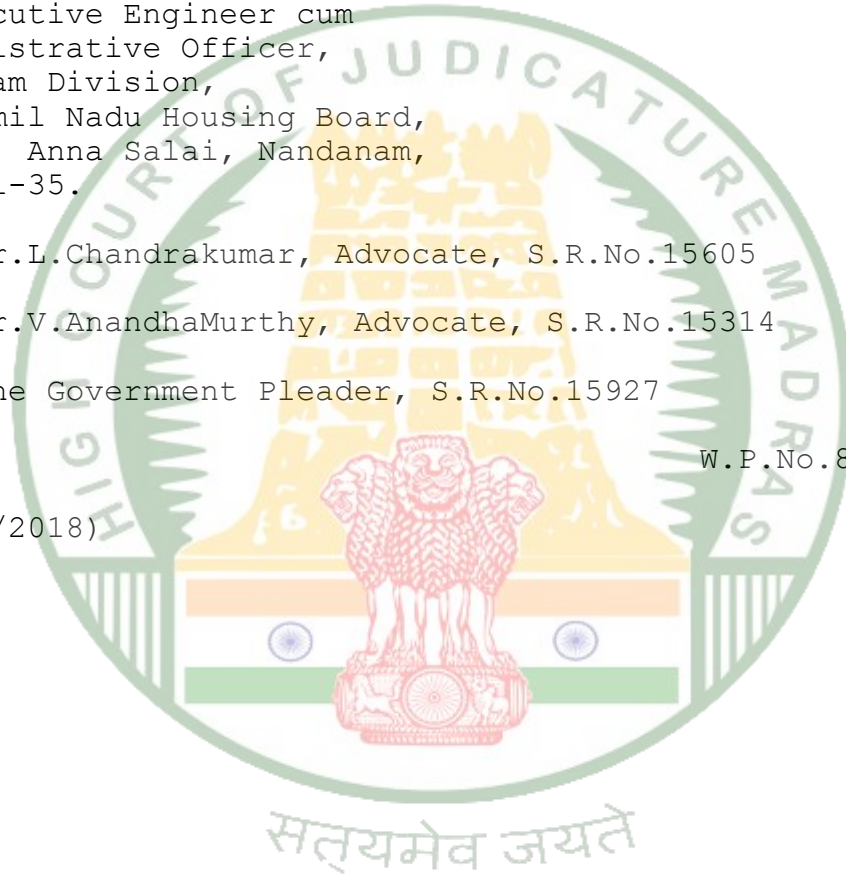
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.15605

+1cc to Mr.V.AnandhaMurthy, Advocate, S.R.No.15314

+1cc to the Government Pleader, S.R.No.15927

W.P.No.8447 of 2012

RRK(27/03/2018)



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