

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
and
THE HON'BLE Mrs. JUSTICE S.RAMATHILAGAM

W.P.No.24166 of 2018 and
W.M.P.No.28165 of 2018

S.Balasubramanian

.. Petitioner

Vs

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

2.The Executive Engineer & ADO,
K.K.Nagar Division, Tamil Nadu Housing Board,
Ashok Nagar Shopping Complex,
Ashok Nagar, Chennai - 600 083.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF MANDAMUS to call for the records pertaining to the notice dated 12.07.2018 issued by the 2nd Respondent under Section 84/2 of the Tamil Nadu Housing Board Act, quash the same and direct the respondents not to interfere with the petitioner's peaceful possession and enjoyment of the property comprised in survey No.9/2G bearing Plot No.4, Previously Murali Krishna Nagar, Now Gopal Avenue, Velan Nagar Annexe, situated at Valasaravakkam Village, Ambattur Taluk, Thiruvallur District, to an extent of 1248 sq. ft. of land with building thereon either by demolishing the same or by any other means.

For Petitioner : Mr.S.Sathish Rajan

For Respondents : Mr.V.Anandamurthy

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard both sides.

2.No counter is filed on behalf of the Respondents.

3.According to the Petitioner, he is the absolute owner of the property comprised in Survey No.9/2G bearing Plot No.4, previously Murali Krishna Nagar, now Gopal Avenue, Velan Nagar Annexe situated at Valasaravakkam Village, Ambattur Taluk, Thiruvallur District to an extent of 1248 sq. ft. of building thereon, having purchased the vacant land from N.K.Balaji by means of Sale Deed dated 07.07.2010 (vide Document No.3616 of 2010) on the file of Sub Registrar, Virugambakkam). Later he had obtained approval for the construction of building vide Planning Permit No.174 of 2010 dated 17.08.2010 from the Commissioner/ Executive Officer, Valasaravakkam Third Grade Municipality, Chennai - 600 087 and constructed a ground floor and first floor residential building and residing there with his family members for the past 8 years.

4.The Petitioner is in absolute possession and enjoyment of the subject property ever since from the date of his purchase. As a matter fact, the property is assessed to property tax in his name and E.B. connection also stand in his name. He had availed loan from the State Bank of Mysore and created an Equitable Mortgage in favour of the Bank and the Memorandum of Deposit of Title Deeds dated 15.03.2011 was registered (vide Document No.1504 of 2011 on the file of S.R.O. Virugambakkam) and the mortgage is still subsisting.

5.The version of the Petitioner is that the aforestated land originally was owned by one Mary Lelinal Das, who sold the property to one Janagaraj and Meenambal vide registered Sale Deed dated 08.12.2003 and that the said Janagaraj and Meenambal sold the same in favour of Petitioner's Vendor N.K.Balaji by means of a Sale Deed dated 04.07.2005 and the said Balaji sold the property viz., Vancant Land in his favour as stated supra.

6.While that being so, the 2nd Respondent/Executive Engineer & ADO, K.K.Nagar Division, Tamil Nadu Housing Board, Ashok Nagar, Chennai had issued a notice dated 12.07.2018 (received on 11.08.2018) to one Balaji Subramanian under Section 84/2 of the Tamil Nadu Housing Board Act, 1961 alleging that the property which is now in Petitioner's possession said to be the property belongs to the Tamil Nadu Housing Board which was said to have

been acquired under Award No.13 of 1986 dated 23.09.1986 and further that, the possession was taken on 23.01.1987. In short, the Petitioner was purported to have encroached by putting up a Pucca Constructed Building and therefore, he was directed to remove the Building within 15 days failing which it was informed that he will be evicted under the provisions of the Tamil Nadu Housing Board Act, 1961.

7.The grievance of the Petitioner is that the 2nd Respondent received his representation/reply dated 16.08.2018 narrating the entire facts and also informing the Respondents that the property was purchased by him from one N.K.Balaji and construction was made after obtaining necessary planning permission etc. When his representation/reply is pending, the 2nd Respondent along with his staff came to the Petitioner's property on 28.08.2018 and informed that they are going to demolish the building constructed by him.

8.At this stage, the Learned Counsel for the Petitioner submits that the 2nd Respondent having issued a notice under Section 84(2) of the Tamil Nadu Housing Board Act, 1961 to a wrong person and without considering the Petitioner's reply/representation dated 16.08.2018, the present act of the 2nd Respondent is arbitrary, illegal one, besides the same being against the Principles of Natural Justice. Since the Respondents will at any time demolish his building, for which, they are taking all earnest endeavours, the Petitioner has preferred the instant Writ Petition.

9.Per contra, it is the submission of the Learned Counsel for the Respondents 1 and 2 that the 3rd Respondent will consider the detailed explanation of the Petitioner dated 16.08.2018 (for the notice dated 12.07.2018) if reasonable time is determined by this Court.

10.A mere running of the eye over the contents of notice dated 12.07.2018 issued under Section 84(2) of the Tamil Nadu Housing Board Act, 1961 exhibits that the same was issued by the 2nd Respondent addressed to one Balaji Subramanian, Plot No.4A. Gopal Avenue Velan Nagar 9th Street, Valasaravakkam, for which, the Writ Petitioner had submitted his detailed explanation/representation/reply dated 16.08.2018 with necessary qualitative and quantitative details. In the said reply, the Petitioner had also mentioned that the notice in question was issued to a wrong person viz., Balaji Subramanian instead of Balasubramanian (himself).

11.In the reply dated 16.08.2018, the Petitioner had sought for the copy of the Award and other connected particulars which were made mention of in the impugned notice. He had also taken a

prime plea that 'Subject Land' was never treated as a Housing Board Land and the same was not taken over by the Housing Board as alleged in the notice and the reply. Be it noted that the identity of the property is not in doubt.

12.Considering the fact that the Petitioner's explanation dated 16.08.2018 (for the notice dated 12.07.2018 issued by the 2nd Respondent) is pending as on date and till date, no final orders have been passed by the 2nd Respondent, at this stage, this Court, without delving deep into the merits of the matter, simpliciter, deems it fit and proper, in directing the 2nd Respondent/Executive Engineer & ADO, K.K.Nagar Division, Tamil Nadu Housing Board, Ashok Nagar, Chennai to look into the representation of the Petitioner dated 16.08.2018 within one week from the date of receipt of copy of this order. Thereafter, the 2nd Respondent shall pass a reasoned speaking order based on the representation of the Petitioner dated 16.08.2018 for the impugned notice dated 12.07.2018 by providing necessary opportunity to the Petitioner by adhering to the Principles of Natural Justice within a period of six weeks. It is open to the Petitioner to raise all factual and legal pleas before the 2nd Respondent and the 2nd Respondent at the time of passing final orders is to advert each and every fact/plea raised by the Petitioner in a qualitative and quantitative fashion. The said final orders shall be passed by the 2nd Respondent in a fair, free, just, unbiased and dispassionate manner and that too uninfluenced and untrammelled with any of the observations made by this Court in the present Writ Petition. In case, the 2nd Respondent desires that the officials of the Tamil Nadu Housing Board or any other officials are to be examined or summoned with necessary records, he is at liberty to do the same, of course, in the manner known to Law and in accordance with Law. Till final orders are passed in the subject matter in issue, the possession of the Petitioner shall not be disturbed/displaced.

13.With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Sgl

To

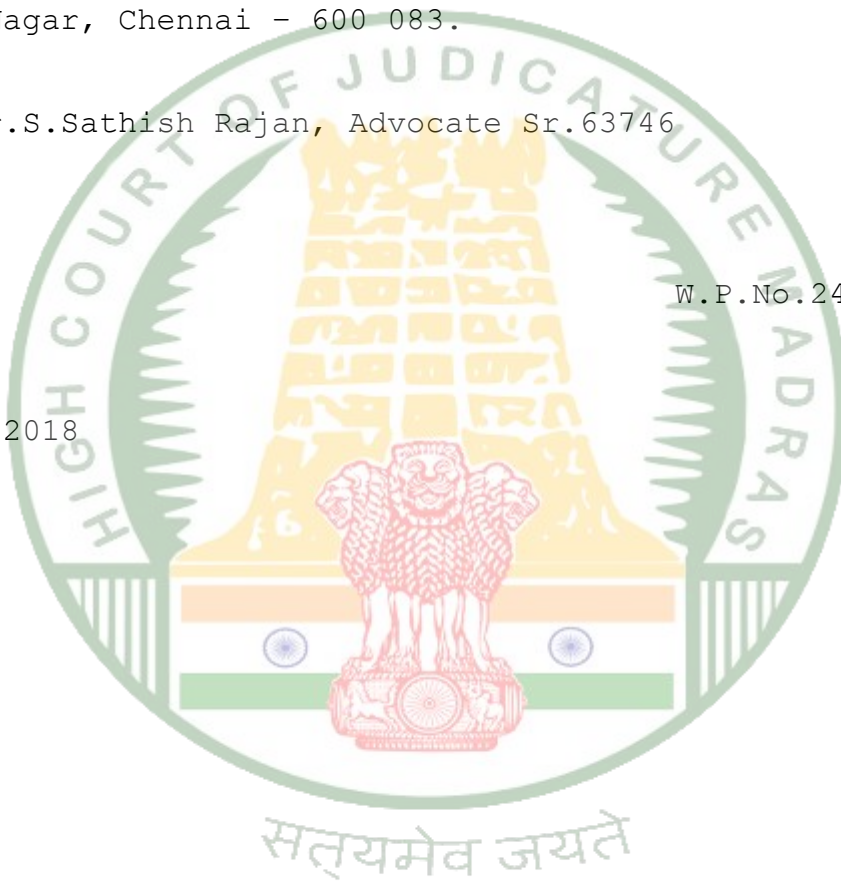
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+1cc to Mr.S.Sathish Rajan, Advocate Sr.63746

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srg 23/10/2018



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