

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 14.06.2018****CORAM****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****W.P.No.8549 of 2006**

S.M.Nair

... Petitioner

Vs.

- 1.State of Tamil Nadu
rep. by the Secretary Housing & Urban
Development Department,
Fort St.George, Chennai – 600 009.
- 2.The Chairman
Tamil Nadu Slum Clearance Board,
Chennai – 600 005.
- 3.The Revenue Officer,
Tamil Nadu Slum Clearance Board,
Thirumangalam Commercial Complex,
Chennai – 600 040. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondents relating to the order dated 20.05.2005 issued by the second respondent, bearing R.C.No.17204/00/B2 and quash para 5 of the same in so far as it imposes the pre-condition of withdrawal of cases and payment of dues on that basis for considering sale of shop on outright basis to the petitioner and consequently direct the second

respondent to sell the Shop No.33 in the Thirumangalam Commercial Complex to the petitioner @ Rs.2300/- per Sq.Ft. by executing sale deed on receipt of the sale amount from the petitioner.

(Prayer amended as per order dated 19.04.2013 by STJ in WPMP 109/13 in WP 8549/06)

For Petitioner : Mr.K.S.Natarajan

For Respondents : Mr.K.Ravikumar for R1
Additional Government Pleader
Mr.D.Latha for R2 and R3

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records of the respondents relating to the order dated 20.05.2005 issued by the second respondent, bearing R.C.No.17204/00/B2 and to quash para 5 of the same in so far as it imposes the pre-condition of withdrawal of cases and payment of dues on that basis for considering sale of shop on outright basis to the petitioner and to consequently direct the second respondent to sell the Shop No.33 in the Thirumangalam Commercial Complex to the petitioner at the rate of Rs.2300/- per sq.ft. by executing sale deed on receipt of the sale amount from the petitioner.

2.The case of the petitioner is that vide proceedings of the second respondent dated 23.03.1994, the petitioner was allotted shop no.33, which is used by the petitioner for his office purpose, on monthly rent of Rs.5,148/- with specific condition that on expiry of initial period of two years, the extension will be granted for further period of two years with enhancement of rent by an increase of 15% and thereafter, second extension of two years by an increase of 20% and next extension of two years by 20% and next extension of two years by 25% and next extension of two years by 30% and on further condition that the allotted shop should not be used for gambling or anti-social purpose. The area allotted should be used exclusively for office purpose and not for residential use.

3.The petitioner would further state that he has been in occupation and possession of the shop premises and was using the same from 1994-1996. The petitioner indicated his willingness to continue for a further period of two years by letter dated 05.08.1996 and also confirmed that he will act in accordance with the terms and conditions of the proceedings dated 23.04.1994.

4.The petitioner would further state that the second respondent

vide proceedings dated 31.10.1996 extended the period of occupation for further period of two years and arbitrarily and unilaterally increased the ratio of rent from 15% to 25% which is contrary to the original terms of the allotment. Since the petitioner has not paid the enhanced amount, Form A notice dated 09.10.1997 was issued by the third respondent claiming the additional payment of Rs.39,753/-. Challenging the above said additional demand, the petitioner filed writ petition before this Court in W.P.No.16751 of 1997 and this Court vide order dated 25.11.1997 disposed of the said writ petition by directing to prefer appeal under Section 59 of the Tamil Nadu slum Area (Improvement & Clearance) Act, 1972.

5.The petitioner would further state that as per the direction of this Court dated 25.11.1997, appeal was preferred before the first respondent and the first respondent vide order dated 18.04.2000, rejected the appeal. Aggrieved by the same, the petitioner filed another writ petition in W.P.No.14321 of 2000 before this Court and this Court vide order dated 23.11.2000 disposed of the said writ petition by quashing the impugned order therein and remitting the matter back to the first respondent for fresh disposal. Pursuant to the order of this Court dated 23.11.2000, the appeal was restored by the

first respondent and thereafter vide order dated 09.12.2003, the appeal was rejected by the first respondent.

6.The petitioner would further state that the arbitrary enhancement with retrospective approach by the second respondent was challenged by the petitioner in W.P.No.5200 of 2004 before this Court and vide order dated 05.03.2004 in W.P.M.P.No.6039 of 2004, the retrospective enhancement was completely stayed by this Court. Whiles, the second respondent issued the communication dated 20.05.2005 stating that on a representation of the Association of the allottees in the Thirumangalam Shopping – cum – Office Complex, the Government had decided to sell the shops in the ground and first floor through public auction on an outright basis under tender-cum-auction basis.

7.The petitioner would further state that the tenants who had represented that they were allottees under the Board for nearly 10 years under rental basis had requested that they may be given the shops already occupied and allotted to them by fixation of the upset price by the board without bringing the said shops under open auction basis. The Board had considered the same and had decided to fix the

upset price at Rs.2,3000/- per sq.ft. and had informed the allottees that the acceptance should be submitted within 15 days of receipt of the said intimation, failing which, the said shops would be brought under the tender-cum-auction basis. The payment was to be made before 30.06.2005.

8.The petitioner would further state that there was a rider attached to the intimation in paragraph no.5, which states that the allottees should clear all the dues in respect of the shops occupied by them and also to withdraw the cases or appeal filed by the allottees which may be pending against the Board in respect of the shops and only then their request to get the shops on outright basis will be considered. This is the issue which is under challenge in this writ petition.

9.Heard the arguments advanced on either side.

10.The learned counsel appearing for the respondents 2 and 3 produced a letter from the Tamil Nadu Slum Clearance Board in Na.Ka.No.B2/29611/97 dated 07.06.2018 addressed to her. Perusal of the said letter discloses that as on date the petitioner has to pay a

sum of Rs.17,18,186/- towards arrears of rent. Unless the petitioner deposits the due amount, the petitioner is not entitled to outright purchase.

11. Admittedly, challenging the enhancement rent, the petitioner has filed the writ petition in W.P.No.5200 of 2004 before this Court and this Court vide order dated 11.04.2012 dismissed the said writ petition. The relevant portion of the order dated 11.04.2012 reads as follows:

"14. As rightly stated in the impugned order, the Board's resolution No.91 dated 28.05.1993, has been implemented for reducing the rent for shops allotted both in basement and first floor, consequently, the upward revision of enhancement by 25% of the rent, after the expiry of two years period also has to be given effect."

15. The contention of the petitioner that had he been informed of the above said resolution, he would not have participated in the auction for the shop in Thirumangalam Commercial Complex, cannot be countenanced, for the reasons that it is for the participant to have made

sufficient enquiries as regards the revision in the rent, pursuant to the resolution.

16. Merely because, the Tamilnadu Slum Clearance Board, has omitted to indicate the Board's resolution in the allotment order, that would not confer a right on the petitioner to contend that the Tamilnadu Slum Clearance Board cannot insist for payment on the basis of the resolution No.91 dated 28.05.1993, at the time of renewal of the period of lease, and which has been applied uniformly to all other allottees. The petitioner cannot take advantage of an inadvertent mistake."

12. In view of the above, this writ petition is dismissed. However, if the petitioner pays the entire due of Rs.17,18,186/-, within a period of six weeks from the date of receipt of a copy of this order, the petitioner is entitled to participate in the outright purchase, in accordance with law. If the petitioner fails to pay the dues within the stipulated time, the respondents are at liberty to proceed with the eviction proceedings in accordance with law.

13.The writ petition is dismissed with the above observations. No costs. Consequently, the connected miscellaneous petition, if any, is also closed.

14.06.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

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M.DHANDAPANI,J.
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W.P.No.8549 of 2006

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