

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.06.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.10701 of 2012

Mrs.Valsa Shyam Sundar

... Petitioner

Vs

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

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

3.The Revenue Officer,
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 Certiorari, to call for the records relating to the order of the third respondent's proceedings made in Va.Va.Pi.1/7266/2010 dated 20.03.2012 signed on 29.03.2012 to quash the same.

For Petitioner : Mr.S.Venugopal Raj

For Respondents : Mr.V.Anandhamurthy,
Special Government Pleader

ORDER

Heard Mr.S.Venugopal Raj, learned counsel for the petitioner and Mr.V.Anandhamurthy, learned counsel appearing for the respondents.

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

"To issue a Writ of Certiorari, to call for the records relating to the order of the third respondent's

proceedings made in Va.Va.Pi.1/7266/2010 dated 20.03.2012 signed on 29.03.2012 to quash the same."

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

The petitioner was allotted the flat No.D/6, MIG Block, Turnbolls Road, Nandanam, Chennai - 35, by the respondent Board in 1972. The allotment was made against the quota meant for public. In pursuance of the allotment, an agreement was also entered into and the agreement contains a number of conditions to be complied with by the allottee.

4. According to the petitioner, ever since the allotment was made, she has been paying the rents regularly without any default on her side. It appears that in 2010, a notice was served as to why the allotment should not be cancelled, in view of the information made available to the Board that the allottee had died. However, subsequently, it was found that the information furnished by the respondents that the petitioner was not alive, was incorrect. However, in 2011, an inspection was carried out by the officials of the Board and found that the flat was kept continuously locked for more than two months and it was found that the allottee was not living in the flat and rented out to some third party. In this regard, a notice was sent to direct the petitioner to establish that she was in occupation of the flat, on 26.12.2011 and personal hearing was also fixed on 06.01.2012. But, the letter was returned with an endorsement as "Door locked". In fact, in the earlier proceedings initiated in 2010, when registered post was sent by the Board, the said notice was also returned by the postal authority with an endorsement "unclaimed".

5. According to the circular and resolution of the Board, if the allotted premises kept in lock for two months continuously, the allotment would be cancelled under the provisions of the Tamil Nadu Housing Board Act. In the present case, the Door was kept continuously locked when the inspection was made by the authorities of the Board and there was no response to the notice also by the petitioner and therefore, by proceedings dated 20.03.2012, the allotment was cancelled under Section 84(1) of the Tamil Nadu Housing Board Act and directed the petitioner to vacate and hand over the premises within 30 days. The said cancellation is put to challenge in the present writ petition.

6. According to the petitioner, she has been living in the allotted flat ever since the allotment was made in 1972. No proper opportunity has been given to her for establishing the said fact. According to her, she had to be away on certain urgent domestic reasons and only for that reason, the flat was kept door locked and merely by keeping the flat locked cannot be the ground for eviction.

7. According to the learned counsel for the petitioner, he would submit that Section 84(1) is attracted only when the flat is sublet and in this case, such reasons had not been stated in the impugned proceedings and therefore, the eviction order stands vitiated.

8. Upon notice, learned standing counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is clearly stated that the petitioner's premises had been kept locked continuously for more than two months and it is also stated in the counter affidavit that on behalf of the petitioner, an advertisement has been made in the website "www.airbnb.in" with photos inviting interested persons to hire the flat for rental. In the advertisement, the flat address was given and the photos of interiors of the flat has also been enclosed. Therefore, there is a clear case where the petitioner was not using the flat for which she was allotted originally and the flat has not been in occupation at all.

9. At this, the learned counsel for the petitioner would object that such reason has not been stated in the impugned proceedings and therefore, the same cannot be the basis for the eviction of the petitioner. The averments made in the counter affidavit cannot improve the case of the respondent Board, in the absence of such reasons found in the impugned proceedings dated 20.03.2012.

10. This Court is unable to appreciate the arguments made on behalf of the petitioner that no proper opportunity has been given to the petitioner, for the reason that when notice was sent calling for personal hearing, the same was returned with an endorsement "Door locked". This would categorically establish the fact that the petitioner was not using the flat at all. Moreover, the pendency of this litigation before this Court did not preclude the petitioner from establishing her credential as being an allottee in continuous occupation of the flat. Mere assertion by the petitioner that she has been in occupation of the flat without any material support, cannot be given any credence. On the other hand, from the advertisement issued on behalf of the petitioner, it is very clear that the petitioner has been letting out the flat to third party and the flat has not been under her occupation.

11. The objections that put forth in the counter affidavit filed by the respondent, have not been stated in the impugned proceedings dated 20.03.2012 and therefore, the eviction cannot be premised on those reasons, are not valid piece of arguments. When the fact of the matter is that on behalf of the petitioner,

an advertisement was issued online site calling for interested persons for occupying the flat, this Court cannot turn a blind eye to such unimpeachable fact and merely stick to the rule of technicality stating the reason of advertisement made on behalf of the petitioner, was not a part of the reasoning found in the impugned proceedings dated 20.03.2012. What is required to be decided in this case is that whether the allottee has violated any of the conditions of allotment. In this case, it is unequivocally established that the allottee has violated the conditions that the flat has been kept locked for more than two months and an attempt has been made to sublet the flat to third parties.

12. It is also to be seen that no efforts had been taken by the petitioner to rebut the contentions of the respondent Board and the averments contained in the counter affidavit. In the absence of contra materials, it is very clear that the petitioner has violated the conditions of allotment and not entitled to continue to occupy the allotted flat. Despite the same, an attempt has been made on behalf of the petitioner to advance arguments sidestepping the bare facts which are starring at the petitioner. The petitioner cannot be allowed to indulge in hyper-technicality in order to surmount the facts which are against her.

13. For the above said reasons, this Court does not find any merit in the writ petition and in view of what is stated above, the writ petition stands dismissed and the petitioner is directed to pay a cost of Rs.10,000/- to the Tamil Nadu State Legal Services Authority. The cost shall be paid by the petitioner within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that respondent Board shall take immediate steps to vacate the petitioner and take a possession of the subject flat and give effect to the cancellation order immediately on receipt of the copy of this order.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Tamil Nadu Housing Board,
Rep by its Managing Director,
No.493, Anna Salai, Nandanam,
Chennai-35.
- 2.The Executive Engineer cum
Administrative Officer,
Nandanam Division, Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam, Chennai-35.
- 3.The Revenue Officer,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai-35.
- 4.The Secretary,
TamilNadu State Legal Services Authority,
High Court, Chennai-104.

+1cc to Mr.S.Venugopal Raj, Advocate Sr.36737
+1cc to Mr.V.Anandha murthy, Advocate Sr.36021

W.P.No.10701 of 2012

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srg 18/07/2018

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