

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.14466 of 2013 &
M.P.No.1 of 2013

S.Priya

Vs.

.. Petitioner

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

2.The Executive Engineer &
Administrative Officer,
Coimbatore Housing Board,
Tatabad, Coimbatore - 641 012.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the proceedings in Letter No.A20/14419/04-Va.Va, dated 26.04.2013 (served only on 03.05.2013) on the file of the second respondent and quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.MA.P.Thangavel
For Respondents : Mr.V.Anandamoorthy
Standing Counsel

O R D E R

Heard Mr.MA.P.Thangavel, learned counsel for the petitioner; Mr.V.Anandamoorthy, learned Standing Counsel for the respondents and perused the materials available on record.

2. It seems that the petitioner was an allottee of a Flat at C-13 LIG Colony, R.S.Puram, Coimbatore in the year 2004 on lease basis. The respondents having come to the conclusion that the petitioner sub-let the premises, had passed the impugned order, seeking help of the Police to take possession from the petitioner.

3. The learned counsel for the petitioner would submit that the order impugned in this Writ Petition is liable to be quashed on the sole ground that it came to be passed in violation of Section 84 of the Tamil Nadu Housing Board Act.

4. The learned Standing Counsel for the respondents submitted that in Coimbatore area, there is a large scale subletting of the housing board premises and one of those persons, who has sublet the housing board premises, is the petitioner. Aggrieved by the order, the petitioner would have resorted appeal remedy provided under the Tamil Nadu Housing Board Act.

5. Section 84 of the Act, reads as follows:-

" 84. Power to evict certain persons from Board premises: (1) If competent authority is satisfied:-

(a) that the person authorized to occupy any Board premises has;

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months;

(ii) sub-let without the permission of the Board, the whole or any Part of such premises; or

(iii) otherwise acted in contravention of any of the terms express or implied, under which he is authorized to occupy such premises; or

(b) that any person is in unauthorized occupation of any Board premises, the competent authority may, notwithstanding anything contained in any law for the time being in force, by notice served (i) by registered post or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises or (iii) in such other manner as may be prescribed, order that the person authorized to occupy as well as any other person who may be in occupation of the whole or any part of the premises shall vacate them within one month of the date of service of the notice.

(2) Before an order of sub-section (1) is made against any person, the competent authority shall inform the person, by notice in writing and served in the manner provided for service of notice under sub-section (1) of the grounds for which the proposed order is to be made and give him a reasonable opportunity for tendering an explanation and producing evidence, if any, and to show cause why such order should not be made within a period to be specified in such notice.

(3) The competent authority may, on application, grant extension of the period specified in such notice on such terms as to payment and recovery of the amount claimed in the notice as he deems fit.

(4) Any written statement put in by such person and document produced in pursuance of such notice shall be filed with the records of the case, and such person shall be entitled to appear in the proceedings either in person or by pleader.

(5) If any person refused or fails to comply with an order made under sub section (1), the competent authority may evict that person from and take possession of the premises and may for that purpose use such force as may be necessary.

(6) If a person, who has been ordered to vacate any premises under sub-section (1) or (iii) of clause (a) of sub-section (1) within one month from the date of service of the notice or such longer time as the competent authority may allow, pays to the Board the rent in arrears of carries out or otherwise complies with the terms contravened by him to the satisfaction of the competent authority, as the case may be, the competent authority, shall in lieu of evicting such person under sub-section (1), cancel its order made under sub-section (1) and thereupon such person shall hold the premises on the same terms and on which he held them immediately before such notice was served on him."

A perusal of the section would reveal that the respondent-Board has an authority to pass an order of eviction of lessees on certain grounds only after putting the lessees on notice.

6. In the case on hand, no materials have been produced to show that an opportunity of hearing was given to the petitioner and in my considered opinion that the order impugned ought to have been passed after giving a reasonable opportunity to the petitioner.

7. Taking note of the above facts, the petitioner is entitled to succeed in the Writ Petition. In that view, the order impugned in this Writ Petition is set aside and the matter is remanded back to the second respondent to pass orders afresh after providing an opportunity to the petitioner, on merits and in accordance with law.

8. In the result, the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

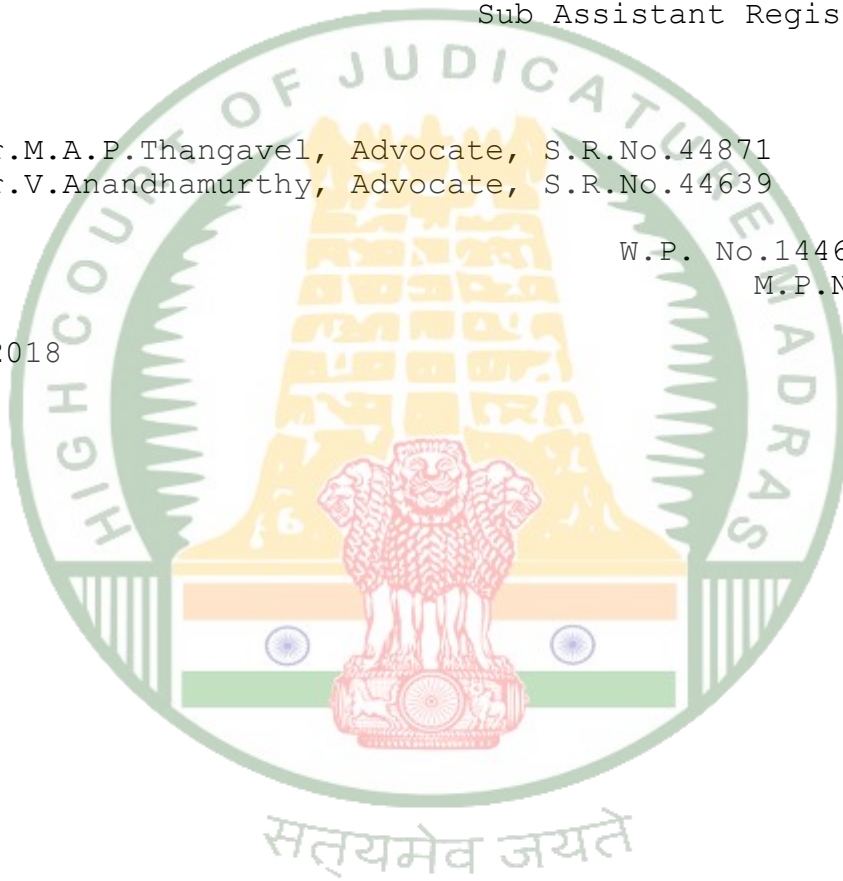
r n s

+1cc to Mr.M.A.P.Thangavel, Advocate, S.R.No.44871

+1cc to Mr.V.Anandhamurthy, Advocate, S.R.No.44639

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BM 26/07/2018



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