

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.12.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.30244 of 2011
and
M.P.Nos.1 & 2 of 2011

R.Gurumurthy

...Petitioner

Vs

1. The State of Tamil Nadu
rep.by The Secretary to Government
Housing Development & Urban
Development Department,
Fort St.George, Chennai-600 009.

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

3. The Superintending Engineer - cum-
Administrative Officer,
Tamil Nadu Housing Board,
Anna Nagar Division, Thirumangalam,
Chennai - 600 101.

....Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking for an issuance of a writ of Certiorarified Mandamus to call for the records relating to the order passed by the 3rd respondent herein vide his proceedings dated Ka.No. A.No. A.10/6575/81 dated 1.12.2011 and quash the same and thereby direct the respondents to fix the sale consideration and execute sale deed in favour of the petitioner for shop No.3, Plot No.1506-A, 16th Main Road, Anna Nagar, Chennai - 40 after demolition and reconstruction.

For Petitioner : Mr.A.R.Suresh

For Respondent : Mr.K.Ravi Kumar
No.1 Additional Govt.Pleader

For Respondent : Mr.R.Bharath Kumar
Nos.2 & 3

ORDER

The instant writ petition has been filed challenging the order dated 01.12.2011 passed by the third respondent cancelling the petitioner's allotment of shop bearing No.3 at 1506-A, 16th Main Road, Anna Nagar, Chennai - 40 and directing him to vacate the said shop.

2.It is the case of the petitioner that he is a lawful tenant under the second respondent under an allotment order dated 31.05.1996. According to him, he has been running the shop for the past 30 years and has been paying rent to the Tamil Nadu Housing Board without any default and he has also been paying the periodical increased rent. It is his case that the subject shop is in a dilapidated condition and in similar circumstances at K.K.Nagar, P.V.Rajamannar Road, the occupiers had requested the Tamil Nadu Housing Board to sell the respective shops to them by converting the lease to one that of sale. According to the petitioner, the Board had also acceded to their request and accordingly, sold the respective vacant shop to them.

3.According to the petitioner, he along with the other occupiers of the shops situated at 1505-A, 16th Main Road, Anna Nagar, Chennai - 40, made a representation to the Tamil Nadu Housing Board to give similar treatment as was done in K.K.Nagar and they were also ready and willing to pay the reasonable sale consideration as fixed by the Board to them. It is also the case of the petitioner that the Executive Engineer vide his proceedings dated 26.09.2009 had sent a communication to all the occupiers of the shops that their representation has been referred to the Head Office of the Tamil Nadu Housing Board and after the receipt of the reply from their head office, the decision of the Tamil Nadu Housing Board will be communicated to them. It is the case of the petitioner that despite the representation made by the petitioner as well as the others for sale of the shops to them after construction of a new building, so far no response has been received from the Tamil Nadu Housing Board.

4.According to the petitioner, without properly considering the representation, all of a sudden, the third respondent vide his proceedings dated 01.12.2011 issued the impugned order calling upon the petitioner to vacate the premises on or before 31.12.2011. Aggrieved by the impugned order, this writ petition has been filed.

5.A counter affidavit has been filed by all the respondents. According to them, the shopping complex in which the petitioner's shop is located, is structurally not in a good condition. It is their case that building is in a dilapidated condition. According to them, due to the unstable nature of the building, the Board has taken a decision in Board's resolution No.9.06 of 30.10.2009 to demolish and reconstruct and to re-allot the same to the tenant but not to the unauthorised occupiers. According to them, since the building is in a dilapidated condition and it may fall any time, they have issued eviction notice to all the occupiers of the building complex and have requested them to vacate their respective shops. In the counter affidavit, they have also stated that the Board has passed a resolution No.9.06 dated 30.10.2009 referred to above to demolish and reconstruct the dilapidated shop building with an assurance to the tenant that he will be given priority in allotment on rental basis in the newly constructed complex. The respondents have also stated that in a similar writ petition filed by another tenant in W.P.No.23755 of 2011, this Court by its Order dated 18.10.2011 passed the following order:

"4.In view of the fact that the said resolution has already been passed, the apprehension expressed by the petitioner is untenable. Hence, the writ petition is disposed of giving direction to the petitioner to vacate the shop No.1,14 Shopping Complex, H-Block, Anna Nagar East, Chennai - 600 040 and after completion of demolition and reconstruction of the shopping complex, the Board is directed to consider the petitioner's request in terms of the Board's resolution stated supra."

6.Admittedly, the Shopping complex at 1506-A, 16th Main Road, Anna Nagar, Chennai - 40, in which the petitioner's shop is located, is in a dilapidated condition. A resolution has also been passed by the Tamil Nadu Housing Board in resolution No.9.06 dated 30.10.2009. As per the Board's resolution, the Tamil Nadu Housing Board has decided to demolish the shopping complex and after reconstruction, give priority to the existing occupants of the shopping complex, while making allotment of shops on rent. In a similar case, as seen from the counter affidavit filed by the respondents, this Court, after recording the Board's resolution passed by the Tamil Nadu Housing Board, has observed the following:

"4.In view of the fact that the said resolution has already been passed, the apprehension expressed by the petitioner is untenable. Hence, the writ petition is

disposed of giving direction to the petitioner to vacate the shop No.1,14 Shopping Complex, H-Block, Anna Nagar East, Chennai - 600 040 and after completion of demolition and reconstruction of the shopping complex, the Board is directed to consider the petitioner's request in terms of the Board's resolution stated supra."

7.Since the Tamil Nadu Housing Board has given an undertaking as seen from the resolution dated 30.10.2009 that all the existing occupants will be given priority in allotment of shops in the newly constructed complex, the apprehension expressed by the petitioner is untenable. Accordingly, as per the direction dated 08.11.2011 issued by this Court in W.P.No.25586 of 2011 in an identical matter involving another tenant in the same shopping complex, this Court disposed of the writ petition by giving a direction to the petitioner to vacate the shop No.3, situated at 1506-A, 16th main road, Anna Nagar West, Chennai - 40, on or before 31, March, 2020 and the respondents, after completion of the demolition and reconstruction of the shopping complex, are directed to consider the petitioner's request in terms of the Board's resolution No.9.06 dated 30.10.2009.

8.With the aforesaid direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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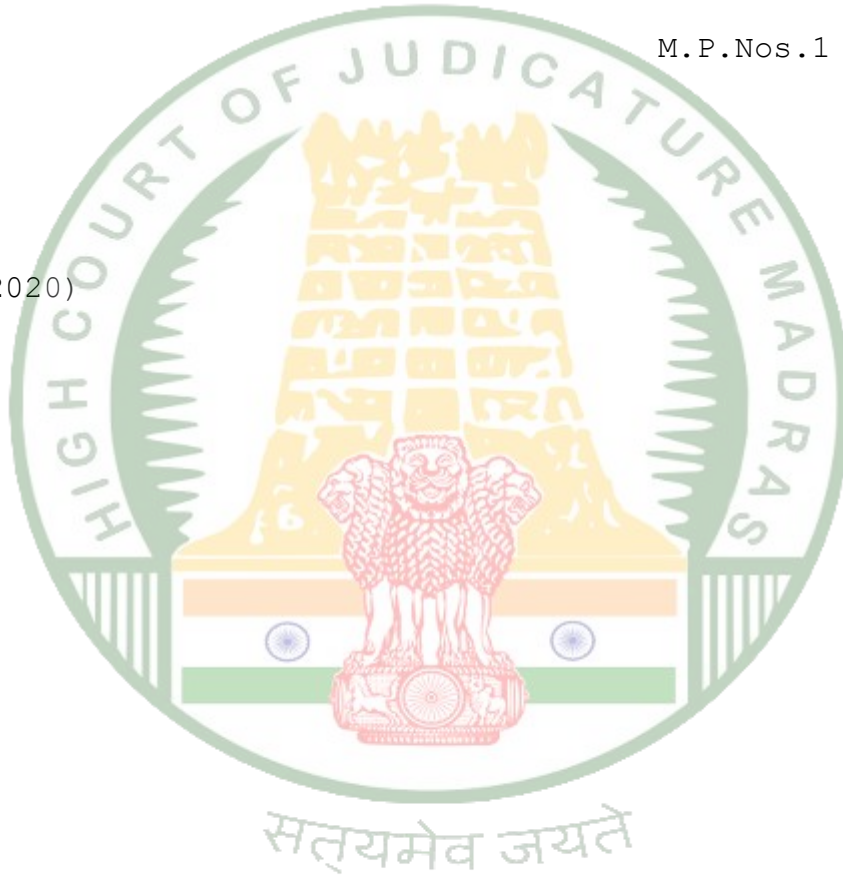
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+1 CC to Govt. Pleader sr 104550.
+1 CC to Mr.A.R.Suresh, Advocate sr 104157
+2 CC to Mr.R.Bharath Kumar, Advocate sr 104931 & 106550.

W.P.No.30244 of 2011
and
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PA (CO)
SP (04/02/2020)



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