

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.30255 of 2011

and

MP Nos.1 and 2 of 2011

S.Jayajothi

...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,
Tirumangalam,
Chennai - 600 101.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 3rd respondent herein vide his proceedings Ka.No.A.No.Oo. Thu I.3/2295/86, dated 13.12.2011 and quash the same and thereby direct the respondents to fix the sale consideration and execute sale deed in favour of the petitioner for open space at shop No.13, Plot No.1506-A, 16th Main Road, Anna Nagar, Chennai - 40 after demolition and reconstruction.

For petitioner : Mr.A.R.Suresh

For respondents : Mr.Ansar
Government Advocate for R1
Mr.R.Bharathkumar
TNHB for RR2 and 3

ORDER

The instant writ petition has been filed challenging the order dated 13.12.2011 passed by the third respondent cancelling the existing allotment of open space for shop at 13, Plot No.1506-A, 16th Main Road, Anna Nagar, Chennai - 40 and directing the petitioner to vacate the said shop.

2.It is the case of the petitioner that she is a tenant under the original allottee to whom the open space at plot No.1506A, 16th Main Road, Anna Nagar, Chennai - 600 040 was allotted by the second respondent and she has been using the said open space for running her business for the past 30 years and has been paying rent to the Tamil Nadu Housing Board without any default and she has also been paying the periodical increased rent. It is her case that the building complex adjoining the open space 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 after demolition and reconstruction by converting the lease to one that of sale. According to the petitioner, the Board had also acceded to the request made by the occupiers at K.K.Nagar project and accordingly, sold the respective shops to them after reconstruction.

3.According to the petitioner, she along with other occupiers of the shops situated at 1506-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 26.09.2011 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 others for sale of the shops to them after construction of a new building, 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

their impugned proceedings dated 13.12.2011 called 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. Heard Mr.A.R.Suresh, the learned counsel for the petitioner, Mr.Ansar, learned Government Advocate for the 1st respondent and Mr.R.Bharathkumar, learned standing counsel for the 2nd and 3rd respondents / Tamil Nadu Housing Board.

6. It is represented by the learned counsel appearing for the 2nd and 3rd respondents / Tamil Nadu Housing Board that the shopping complex in which the petitioner's shop is located, was allotted to the original allottee and not to the petitioner who is an unauthorised occupant. It is the case of the Tamil Nadu Housing Board that the building complex is in a dilapidated condition and may collapse at any time. According to him, the Board has taken a decision in its resolution No.9.06 dated 30.10.2009 to demolish and reconstruct and to re-allot the same to the original allottees. According to him, since the building is in a dilapidated condition, the Tamil Nadu Housing Board has issued eviction notices to all the occupiers. However according to him, the board resolution does not permit reallocation to unauthorised occupants. The learned standing counsel also submitted that in a similar writ petition filed by another tenant in W.P.No.23755 of 2011, this Court passed the following order on 18.10.2011 :

"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."

Hence, the learned standing counsel requested this court to pass a similar order in this matter also.

Discussion:

7. Admittedly, the Open Space belonging to the Tamil Nadu Housing Board in which the petitioner shop is located is part of the dilapidated building complex at Plot No.1506-A, 16th Main Road, Anna Nagar, Chennai - 40. A resolution dated 30.10.2009 has also been passed by the Tamil Nadu Housing to demolish the

dilapidated building and construct a new one and allot shops to the lawful tenants who were occupying the shops earlier prior to the demolition of the dilapidated building. Since the open space owned by the Tamil Nadu Housing Board in which the petitioner's shop is located is situated adjoined the building complex and is in the same plot bearing No. 1506-A, the Tamil Nadu Housing Board cannot be prevented from evicting the petitioner and constructing a new one. The open spaces are also required for free ingress and egress of the vehicles, equipments, men and materials for the construction of the new building. Only to protect the interest of all the original allottees, the Tamil Nadu Housing Board has by its resolution decided to re-allot shops to them on priority basis. This Court does not find any infirmity in the resolution dated 30.10.2009 passed by the Tamil Nadu Housing Board and the impugned order dated 13.12.2011 calling upon the petitioner to vacate the shop to enable the Tamil Nadu Housing Board to demolish the existing building and construct a new one and re-allot shops/open spaces to the original allottees. However, only the lawful allottees are entitled for re-allotment and the unauthorised occupiers are not entitled for any protection.

8. For the foregoing reasons, this Court permits the Tamil Nadu Housing Board to proceed with the demolition of the existing super structure and thereafter put up a new construction. However, it is made clear that after completing the new construction, while allotting shops in the building complex, the Tamil Nadu Housing Board shall give preference to the original allottees prior to the demolition of the existing building. However, this Court makes it clear that unauthorised occupants of the shops prior to demolition are not entitled for any protection while making re-allotments in the building complex.

9. In the result, this Court as was done in an earlier order dated 08.11.2011 passed in W.P.No.25586 of 2011 involving an identical matter concerning another tenant in the same shopping complex, directs the petitioner in this writ petition also to vacate the Shop No.13, Plot No.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 for re-allotment in terms of the Board's resolution No.9.06 dated 30.10.2009. However, it is made clear that only the original allottees who were in occupation prior to demolition are entitled for re-allotment on priority basis subject to the fulfilment of other terms and conditions as may be prescribed by the Tamil Nadu Housing Board.

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

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

vsi2

To

1. The Secretary to Government,
State of Tamil Nadu
Housing Development & Urban
Development Department,
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2. The Managing Director,
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+1 CC to Mr.R.Bharathkumar, Advocate sr 106533.

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SP(13/02/2020)