

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.30373 OF 2011

AND

MP NOS.1 AND 2 OF 2011

P.Seithalavi

...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

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.10/5415/98, dated 9.12.2011 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.4, situated at 5072-A, 5th Avenue, Anna Nagar, Chennai - 101 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 09.12.2011 passed by the third respondent cancelling the existing allotment of shop bearing No.4, situated at 5072-A, 5th Avenue, Anna Nagar, Chennai - 101 and directing the petitioner to vacate the said shop.

2.It is the case of the petitioner that he is a lawful tenant under the second respondent and 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 shops to them.

3.According to the petitioner, he along with the other occupiers of the shops situated at 5072-A, 5th Avenue, Anna Nagar, Chennai - 101 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 his proceedings dated 09.12.2011 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.Heard the learned counsel for the petitioner and Mr.Ansar, learned Government Advocate appearing for the 1st respondent and Mr.R.Bharathkumar, learned counsel appearing 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, is structurally not in a good condition. It is the case of the Tamil Nadu Housing Board that the building is in a dilapidated condition. According to them, due to the unstable nature of the building, 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 tenant but not to unauthorised occupiers. According to them, since the building is in a dilapidated condition and it may fall at any time, they have issued eviction notices to all the occupiers of the building complex and have requested them to vacate their respective shops. The learned counsel further submitted that the Tamil Nadu Housing Board has passed a resolution No.9.06 dated 30.10.2009 and by the said resolution have decided to demolish and reconstruct the dilapidated shop building and re-allot to the original allottees on rental basis. However, the unauthorised subtenants are not entitled for re-allotment. 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."

Discussion:

7. Admittedly, the Shopping complex at shop bearing No.4, situated at 5072-A, 5th Avenue, Anna Nagar, Chennai - 101, in which the petitioner's shop is located, is in a dilapidated condition. A resolution dated 30.10.2009 has also been passed by the Tamil Nadu Housing Board 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 subject building is in a dilapidated condition, the Tamil Nadu Housing Board cannot be prevented from demolishing the existing building and constructing a new one. Only to protect the interest of all the original tenants, 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 01.12.2011 calling upon the petitioner to vacate the shop to enable the Tamil Nadu Housing Board to demolish the existing building and reconstruct a new one. However, only the lawful tenants 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 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 bearing No.4, situated at 5072-A, 5th Avenue, Anna Nagar, Chennai - 101, 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 lawful tenants 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.

Sd/-

Assistant Registrar(JJ Act)

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Sub Assistant Registrar

vsi2

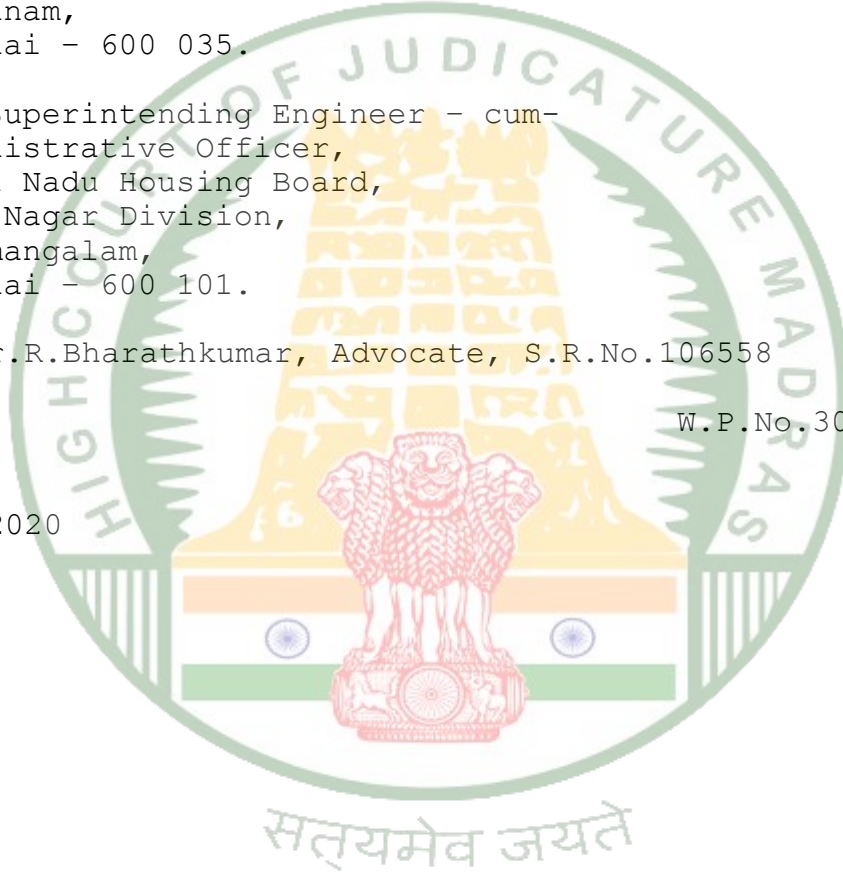
To

1. The Secretary to Government,
State of Tamil Nadu
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Development Department,
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+1cc to Mr.R.Bharathkumar, Advocate, S.R.No.106558

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NRL (CO)
CS/11/02/2020



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