

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On 19.02.2019 & 21.02.2019	Judgment Pronounced On 01.03.2019
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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal Nos.453 to 457, 492, 500, 524,
525, 530, 542, 544, 545 of 2019
and
C.M.P.Nos.4323, 4325, 4329, 4348, 4350, 4352,
4073 to 4089, 4091 to 4093, 4555, 4557, 4559, 4560, 4564, 4566,
4595, 4721, 4722, 4725 to 4731 of 2019

W.A.No.453 of 2019:-

1.T.Sornapandian
2.N.Rajeshkumar
3.J.Krithiga

-VS-

.. Appellants

1.The Principal Secretary to Government,
Housing & Urban Development
(HB(2) HB5(2)) Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.Tamil Nadu Housing Board,
Rep., by its Deputy Secretary (Revenue),
O/o Managing Director,
Nandanam, Chennai-600 035.

3.The Executive Engineer cum
Executive Officer,
Tamil Nadu Housing Board,
C.I.T.Nagar Division, Chennai-600 017.

.. Respondents

APPEAL under Clause 15 of the Letters Patent to set aside the order dated 28.09.2018 passed in W.P.No.16134 of 2018 filed to issue a Writ of Certiorari, calling for the records of the first respondent under G.O.Ms.No.21, dated 29.01.2013 together with the consequential notices issued to the petitioners by the second respondent under letter No.GRS3/13211/2018-78 (464-C-AL5 - 606- C-C78) GRS3/13211/2018-43 (46C-AI10- 606-C-C43) GRS3/13211/2018-51 (464-D-AC18 - 606-D-D51) GRS3/13211/2018-111 (464-D-AE41-606D-D111) GRS3/13211/2018-27 (464-D-AB-23-606-D-D27) GRS3/13211/2018-127 (464-D-AG-34-606-D-D127) and GRS3 (13211/2018-21 (464-C-AA4-606C-C21) dated 05.06.2018, to quash the same.

For Appellants : Mr.P.Willson, Senior Counsel
(In W.A.Nos.453 to for M/s.Wilson Associates &
457, 492 and 500,
524, 525, 542,
544 and 545 of 2019) : Mr.Richardson Wilson

For Appellants : Mr.B.Gnanadesikan,
(In W.A.No.530 of 2019) Senior Counsel
for M/s.Gnanadesikan Law Associates

For Respondent-1 : Mr.R.P.Prathapsingh,
(In W.A.Nos.453 to 457, Government Advocate
492, 500 & 530 of 2019)

For TNHB : Mr.S.R.Rajagopal,
(In all Appeals) Additional Advocate General
assisted by
Mr.V.Anandhamurthy, AGP

COMMON JUDGMENT**T.S.Sivagnanam, J.**

These appeals filed by the appellants/writ petitioners are directed against the common order dated 28.09.2018, by which, the writ petitions were dismissed. Subsequently, the matter was mentioned before the learned Writ Court and the case was listed under the caption "for being mentioned" and the contentions raised during such hearing were rejected by the learned Writ Court by order dated 07.02.2019.

2.Mr.S.R.Rajagopal, learned Additional Advocate General appearing for the respondent-Tamil Nadu Housing Board raised an objection stating that the appellants have not preferred any appeal against the substantive order passed in the writ petitions dated 28.09.2018 and the appeals have been preferred only against the order dated 07.02.2019 and therefore, the appellants cannot canvass the correctness of the order dated 28.09.2018 in these appeals.

3.Mr.Richardson Wilson, learned counsel appearing for the appellants submitted that the preliminary objection raised by the learned Additional Advocate General is incorrect, since the appellants have challenged both the orders. It is further submitted that whenever

the Court lists the matter under the caption 'for being mentioned' and a clarification is issued, that portion of the order will be incorporated in the substantive order initially passed and a certified copy would be given. However, in the appellants' case, the Registry had furnished a separate certified copy of the order dated 07.02.2019 and when the learned counsel for the appellants insisted for a certified copy of the original order dated 28.09.2018, incorporating the order dated 07.02.2019, they were informed that it will take substantial time and since there was threat of forcible dispossession from the housing accommodation, the appellants had to file these appeals challenging both the orders.

4. After hearing the learned counsels on the above objection, we perused the memorandum of grounds of writ appeals and we find that the appellants have challenged the findings rendered by the learned Writ Court in both the orders dated 28.09.2018 and 07.02.2019. Without going into the stand taken by the learned counsel for the appellants, as to under what circumstances, two certified copies were issued, since the appeals were not barred by limitation and the grounds raised cover the findings in both the orders, we hold that the appeals are maintainable and the appellants can canvass the correctness of the orders dated 28.09.2018 and 07.02.2019.

5. Having found that the appeals are maintainable, we now proceed to examine the merits of the matter. The appellants filed the writ petitions challenging the validity of G.O.Ms.No.21, dated 29.01.2013 and the consequential notice issued by the Executive Engineer cum Executive Officer of the Tamil Nadu Housing Board, Chennai dated 25.05.2018. The Government Order in G.O.Ms.No.21, dated 29.01.2013 is a policy decision taken by accepting the request made by the Managing Director of Tamil Nadu Housing Board for construction of 2522 units under the Tamil Nadu Government Rental Housing Scheme (TNGRHS); 1770 units under Self Financing Scheme (SFS) in Phase-I; 1124 units under TNGRHS; and 838 units under SFS in Phase-II; overall 6254 units in Chennai at an approximate estimated cost of Rs.1740 crores. The Government Order further states that the profit realised can be shared in the ratio 9:1 between the Government and Tamil Nadu Housing Board as approved for Anna Nagar Scheme and Coimbatore Re-development Scheme. As a consequence to the policy decision taken by the Government in G.O.Ms.No.21, the Tamil Nadu Housing Board issued notices to the appellants calling upon them to vacate and handover vacant possession of the tenements in which they were residing and if they fail to do so within 30 days, the allotment in their favour will be cancelled by invoking the provisions of Sections 84(1) and 84(5) of the

Tamil Nadu State Housing Board Act, 1961 (hereinafter referred to as "the Act") and they will be vacated from the respective premises.

6.Mr.P.Wilson, learned Senior Counsel appearing for the appellants submitted that G.O.Ms.No.21 is an outcome of total non-application of mind, the Government has not done any scientific study before the order was issued, the relevant Rules framed for town planning were not taken into consideration and the Government Order itself states that they are going to earn a profit by implementing the scheme, which is against the object of the Housing Board Act and the Government needs to be consistent in its policy and cannot change its policy from time to time, especially when earlier policy decision, more particularly, in G.O.(Ms).No.52, dated 05.03.2012 provided for re-accommodation of the existing occupants and that policy decision was upheld by the Hon'ble Supreme Court and the question of now denying re-accommodation to the appellants is arbitrary and illegal, and therefore, the impugned Government Order is illogical, fanciful and arbitrary.

7.It is further submitted that though several contentions were raised by the appellants in the writ petitions, the same were not taken into consideration, the distinction between the Government servants,

who were allotted accommodation and those under the public quota were not taken into consideration and an order has been passed as if the appellants have no right to stay in the property. It is submitted that the appellants have acquired the statutory right, since the appellants have entered into an agreement with the Housing Board and in such circumstances, they cannot be dispossessed as stated in the notice dated 25.05.2018 issued by the Housing Board.

8. It is further submitted that the Housing Board has referred to Section 84(1) of the Act and the said provision will apply only if the conditions stipulated in sub-Clause (a) of Section 84(1) are satisfied and in the notice dated 25.05.2018 issued by the Housing Board, there is nothing to indicate that the appellants have contravened any of the conditions mentioned in section 84(1)(a) and therefore, the said provision cannot be invoked. It is further submitted that the notice dated 25.05.2018 also refers to Section 84(5) and the said provision cannot be invoked without following the procedures under sub-Sections (2) to (4) of Section 84 of the Act. Therefore, it is submitted that the eviction notice dated 25.05.2018 is wholly illegal and liable to be set aside.

9.Further, it is submitted that the observations contained in paragraph 12 of the order passed in the writ petitions dated 28.09.2018 does not deal with the contentions advanced by the appellants and the Court extended the scope of the matter, when the case was listed under the caption 'for being mentioned' seeking liberty to delete a few writ petitions from the cause title and to consider the cases of Government servants and the Court without appreciating those aspects, had given separate reasons and rejected the plea. Therefore, it is submitted that both the orders passed in the writ petitions call for interference.

10.It is further submitted that 174 flats in Todhunter Nagar have been demolished and till date, no re-construction activity has commenced and the appellants, who were residing in Todhunter Nagar, were shifted to TH-464 and 48, and some of them to the Public Works Department quarters and now to deny them alternate accommodation and denying re-accommodation to the appellants, who were allotted under "public quota" is illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. Further, it is submitted that while the facts remain thus, the Government passed G.O.(Ms).No.118 dated 04.07.2017 enhancing the monthly rent, maintenance charges and water charges and based on the said Government order, demand notices

were issued to the appellants, which show that the respondents' intention is to augment the revenue and not for the purposes of carrying out the so-called policy decision to put up new construction. Thus, it is submitted that the facts clearly show that the appellants were justified in having a legitimate expectation to be given alternate accommodation till the new construction is put up and they are also entitled to re-accommodation in the new construction proposed.

11. Further, it is submitted that the second order passed in the writ petitions was on 07.02.2019 and even before the certified copy of the order could be received by the appellants, the officials of the respondent-Board came to the site with bulldozer, heavy equipments and attempted to demolish the building thereby causing threat to the life and liberty of the appellants.

12. Mr. B.S. Gnanadesikan, learned Senior Counsel appearing for the other set of appellants submitted that Section 84 of the Act is a self-contained code and it specifies that opportunity should be afforded to the appellants and the procedure required to be followed under Section 84 of the Act was not followed, as the notice dated 25.05.2018 is not a show cause notice, but an order of eviction by itself and liable to be set

aside for not following the mandatory procedure required to be complied with in terms of Sections 84(2), 84(3) and 84(4) of the Act.

13. By relying upon the decision of the Hon'ble Supreme Court in ***Navjyoti Coop. Group Housing Society and others vs. Union of India and others [(1992) 4 SCC 477]***, it is submitted that the appellants are justified in legitimately expecting that they will be provided re-accommodation in the proposed new construction. Further, it is submitted that the Government orders, which were issued in the year 2012, viz., G.O.(Ms).Nos.51 and 52 provided for re-accommodation as well as the alternate accommodation and there is no reason to discriminate the appellants at this juncture by taking a different decision, since they are all similarly placed persons.

14. Further, it is submitted that the proposal to construct new flats was mooted out in the year 2012 and as of now, the cost of construction has escalated and revised proposal has to be sent and there is no urgency to throw the appellants out of the accommodation. The learned Senior Counsel also reiterated that on 15.02.2019, there was threat of forcible dispossession and the officials of the respondents attempted to remove the doors and windows in the vacant flats which will definitely

endanger the life of the appellants, who are staying in the same housing complex. Therefore, it is submitted that the appellants may be granted alternate accommodation and after construction is over, they may be re-accommodated in the newly put up construction by considering the fact that they were allotted houses under the "public quota".

15.Mr.S.R.Rajagopal, learned Additional Advocate General brought about the distinction with regard to the categories/quota, which were formulated by the Government. It is submitted that the "public quota" is a quota where discretion is exercised by the Government, but as of now, because of various Court orders, which have faulted the exercise of discretion, the new policy is being formulated and as of now, there is no "public quota". So far as the Government quota is concerned, those appellants, who were Government servants and were residing in Todhunter Nagar were given alternate accommodation at Thirumangalam and some of the appellants did not accept it and for over one year, the flats could not be allotted to any other Government servants, who are in the waiting list and therefore, those allotments were cancelled.

16.It is submitted that as per the policy evolved by the Government, the Tamil Nadu Housing Board has two types of rental accommodations; one is popularly known as "Board Rental" where the Housing Board owns the land, puts up construction and collects rent and maintains the buildings. The second category is under the TNGRHS where the land belongs to the Government, the construction is put up by the Housing Board for the Government, allotment is made by the Government, rent is collected by the Government from the House Rent Allowance (HRA) of the Government servants and the building is maintained by the Housing Board. From and out of the TNGRHS, 20% of the accommodation is carved out for "public quota".

17.So far as the Todhunter Nagar scheme is concerned, the Government owns the land, construction is by Housing Board and the rent is received by the Government. So far as the existing apartment building in Saidapet is concerned, the building is allotted to the Public Works Department for providing accommodation to its employees and as of now, there is no vacancy in the Public Words Department Block.

18.The learned Additional Advocate General referred to certain paragraphs of the counter affidavit filed in support of the writ petitions

and submitted that 10 of the appellants though granted alternate accommodation at Thirumangalam, stated that they may be accommodated in TH-464 till the demolition commences and this was a specific condition of allotment and now they are seeking for alternate accommodation at Thirumangalam, which cannot be given because, they are the ones, who opted to shift to TH-464.

19.It is further submitted that considering the nature of allotment, the provisions of Section 84 of the Act are wholly inapplicable to the cases on hand and such view was taken by the Hon'ble Division bench in ***K.A.M.Gunalan vs. The Government of Tamil Nadu And Another [W.A.Nos.1247 of 2012 and etc., batch: dated 25.07.2014]***. So far as the Government Order in G.O.(Ms).No.118, dated 04.07.2017 is concerned, it is submitted that the said Government Order applies to all accommodations coming under TNGRHS in the State of Tamil Nadu and merely because demand for higher rent was made, it will in no manner dilute the policy decision taken by the Government to demolish the existing building and put up new construction. It is submitted that when the demand notices were sent directing the appellants to pay enhanced rent, they filed writ petitions stating that the building is in dilapidated condition and there is no justification for payment of enhanced rent. On

the contrary, in the present proceedings, they contend that the building is stable and sound and does not require demolition. Further, it is submitted that the doctrine of legitimate expectation is wholly inapplicable to the facts of the case and such a plea deserves to be rejected. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Sethi Atuo Service Station and another vs. Delhi Development Authority and others [(2009) 1 SCC 180]**.

20. So far as the increase in rent is concerned, it is submitted that it has been uniformly implemented in respect of the accommodation given under TNGRHS in Saidapet, Peters Road, Llyods Colony, Thirumangalam, Madurai and Coimbatore and this increase has been done after a period of eight years, as the previous revision was in the year 2009. Further, it is submitted that when the writ petitions were heard, the Tamil Nadu Housing Board was directed to file an affidavit as to within what time, the construction would be commenced and completed and accordingly, the Managing Director filed an affidavit stating that it will be completed within 12 months time from the date of issue of the work order and so far as TH-174 is concerned, work order has already been issued.

21.It is further submitted that so far as the alternate accommodation granted to the appellants, who are Government servants is concerned, they have not availed the opportunity and for over one year, the flats in Thirumangalam were lying vacant and the appellants were refusing to vacate from Todhunter Nagar, as a result, the deserving Government employees, who are languishing for several years without accommodation, submitted representations stating that the action of the respondents to keep the accommodation vacant was not justified. Considering all the factors, the Housing Board had taken a decision to cancel those allotments and as on date, the alternate accommodations to the Government servants residing in Todhunter Nagar have been cancelled.

22.Mr.B.S.Gnanadesikan, learned Senior Counsel submitted that the decision in the case of **K.A.M.Gunalan** (supra) is not applicable to the facts of the present case, as it was a case where they claimed that the property should be sold in their favour. Further, it is submitted that even assuming there is a policy in place which has been framed by the Government, such policy can only take prospective effect and cannot be retrospective. It is further submitted that if in the event, the Court comes to a different conclusion, the appellants should be granted

sufficient time, since they have been residing for several years and at this juncture, to find any other accommodation will be virtually next to impossible.

23.Mr.Richardson Wilson, learned counsel appearing for the other appellants, in reply, submitted that no undertaking was given by the appellants agreeing to shift to TH-464 and vacate from the said premises when the demolition is to take place and this is an incorrect statement made by the respondents. It is further reiterated that in other public quota allotments, alternate accommodation has been given and to avoid embarrassment, the names of such persons have not been mentioned, but it is clear that the respondents have discriminated the appellants. To impress upon the Court as to what is the effect of Section 84 of the Act, the learned counsel placed reliance on the decision in the case of **Mandavelipakkam T.N.Housing Board Allotment Residents Welfare Asson. vs. Government of Tamil Nadu [(2012) 2 CTC 194]**.

24.It is further submitted that even assuming the writ petitions are dismissed, the respondents have to take re-course to section 48 of the Act and they cannot demolish the building, as they intended to do

during the previous week. It is further submitted that the decision in **K.A.M.Gunalan** (supra) is distinguishable for more than one reason; firstly, it is not a binding precedent; secondly, the case pertains to the houses in C.I.T. Colony where they wanted sale deeds to be executed in their favour, as they are not ordinary tenants. However, in the instant case, the appellants are tenants. Further, it is submitted that the allotments are done in a whimsical manner without following any seniority and to illustrate the arbitrary exercise of power, the learned counsel referred to the name of one Mr.Ravi working in the Finance Department, whose name finds place in wait list no.1 and it is alleged that 84 people have superseded him. The name of one Mr.Sakthivel working in the Police Department was referred and it is alleged that 100 people have superseded him and he is yet to get an allotment.

25.It is submitted that the respondents in an arbitrary manner cancelled the alternate accommodation, vide order dated 11.02.2019, and insofar as the Government servants are concerned, they are not only entitled to alternate accommodation, but also re-accommodation in the new building and the same treatment should be extended to the allottees under the "public quota" and there can be no discrimination.

26. We have elaborately heard the learned counsels for the parties.

27. Before we venture into the correctness of the stand taken by the appellants and the respondents, we should first be clear on the factual aspect as to the nature of the allotment made by the respondents. As submitted by the learned Additional Advocate General, not disputed by the appellants, there are two categories under which the Government allots rental accommodation. One among the two categories is called as "Public Quota" and the other category is known as "Government Quota". Though 'public quota' is shown as a distinct quota, it essentially forms part of the Government quota, as 20% of the accommodation made available by the Government is carved out to be allotted under the 'public quota'.

28. The question is what is "public quota"? The respondents have not placed any material as to what would constitute 'public quota'. Going by the meaning of the word 'public', we may be right in assuming that this quota is meant for the general public. If this is the liberal meaning to be assigned to the word 'public quota', who are the general public who will be entitled to this accommodation. Admittedly, the number of houses/tenements available under this quota are limited and

available only in three cities, viz., Chennai, Madurai and Coimbatore. Therefore, how does the Government distribute this largess to the public. Are there any Rules framed by the Government to regulate the allotment? To our knowledge, there is nothing in place in the form of a statutory rule or an executive instruction. Consequently, who would fall within the definition of "public". Is there an income criteria? Is it based on social status? or is it based on any outstanding or sterling performances of an individual for the cause of public and the welfare of the State or to a meritorious person, who has put service above self etc. All these questions remain unanswered.

29. Thus, we can safely conclude that the allotments under "public quota" are made for the reasons best known to the authority allotting the same. The corollary would be arbitrariness in exercise of power, decisions taken as per the will and pleasure of the persons exercising the power, ultimately, leading to accord preferential treatment to those people close to power. Therefore, Courts have held that allotment under 'public quota' otherwise known as 'discretionary quota' is arbitrary and illegal. Probably, the Government has now learnt a lesson from various judgments and seeks to mend its ways and put an end to the arbitrariness and nepotism with which they were functioning in the

matter of allotment of those houses. How does a person stand to benefit by securing such an allotment. The benefits may be many, but what is manifest is the location of the accommodation, the low rent payable, no cost incurred for maintenance, no supervision done by the Government or the Housing Board and at times, change of users and sub-tenancy is also not interfered. The appellants, who have come under this quota, are now before this Court claiming as if they have a vested right over the property. Unfortunately, those appellants who secured allotment under the "public quota", had got the benefit on account of an arbitrary exercise of power. There may be very rare cases where the Government would have examined all facts and found the person to be of eminence to be given preferential treatment. To our mind, nothing is there to indicate any such sterling qualities in that of the appellants to be shown the privilege of such allotment by exercising discretion.

30. We reiterate that the discretion exercised at the first instance suffers from arbitrariness, it is an unguided exercise of power vested with the Government. Admittedly, there was no standard operating procedure as to how this quota has to be distributed. The respondents cannot deny the fact that many at times, the original allottee is not

residing in the premises or he is not alive, yet the rents are remitted in the name of the non-existing person and often officials though being aware of the same, turn a blind eye. Therefore, in our considered view, the set of appellants, who have secured accommodation under the "public quota" should be satisfied that they were permitted to reside in the complex for such long periods paying very meagre rent without no other responsibility. The accommodation has been in the heart of the city and in all probabilities, they would have the necessary amenities because, their neighbours and other occupants of the same apartment complex were Government servants.

31. Thus, we are of the clear view that there is no vested right with the allottees who were granted allotment under the "public quota". Consequently, the plea of legitimate expectation stands outrightly rejected. An argument was advanced that even assuming that the appeals were dismissed, yet the respondents should resort to Section 84 of the Act. Section 84 of the Act deals with the power to evict persons from the Board premises and it contemplates a procedure and eviction to be done in cases where the allottee has violated the conditions of allotment, etc., as mentioned under Section 84(1) of the Act.

32.To be noted that the appellants have not challenged the notices issued by the Board, but have questioned the policy decision of the Government in G.O.Ms.No.21. Thus, if the policy decision of the Government is held to be valid, then the appellants can have no claim to continue to reside in the property. Identical policy which was taken by the Government in respect of other similar projects have been upheld by the Hon'ble Supreme Court. The appellants have not been able to point out any legally sustainable ground to fault the policy of the Government as conceived in G.O.Ms.No.21. If we draw a parallel with that of a private owner of a property, in which there is a building, let out to various tenants, the owner of the property, to augment his income is entitled to demolish the property and re-construct. Merely because the owner of the property in the instant case is the Government, the appellants cannot contend that the Government should act as per their dictates. In fact, it should be the other way. The Government in its wisdom and to provide accommodation at reasonable rates, had constructed houses. In terms of the planning laws which are in vogue at present and the technological advancement, with the same extent of land additional houses could be constructed. Therefore, the policy decision taken in G.O.Ms.No.21 is for the welfare of the Government servants to whom rental accommodation will be allotted. As pointed out

by us earlier, 20% reservation as “public quota” in the TNGRHS itself leads to misuse of power, perpetuates illegality, extends benefit to a chosen few and resultantly violates Article 14 of the Constitution of India. The appellants have laid a claim that it does not matter whether it is a building under the control of the Housing Board or the Public Works Department, accommodation should be given because these are all done under the business rules of the Government for administrative purposes.

33. We wonder as to whether at all it would lie in the mouth of the appellants to say so when they had no vested right to get an allotment of the rental accommodation. Having found that the policy evolved by the Government in G.O.Ms.No.21 suffers from no infirmity but rather sub-serves the object for which it was issued, no more right remains with the appellants to contend that they are entitled to continue to reside in the premises.

34. The Hon'ble Supreme Court in the case of **Sethi Auto Service Station** (supra) while considering the case of applicability of Doctrine of Legitimate Expectation observed that it arises when an administrative body by raising of a representation or by past practice or conduct

aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. It was further pointed out that a person who bases his claim on the Doctrine of Legitimate Expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked out to his detriment. It was further observed that the Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. A claim based on mere legitimate expectation without anything more cannot *ipso facto* give a right to invoke these principles and the concept of legitimate expectation has no role to play where the State action is as a public policy or in public interest unless the action taken amounts to abuse of power. The above decision is a straight answer to the unsustainable claim of the legitimate expectation made by the appellants.

35. Having held that the allottees under the "public quota" had no vested right even to secure such allotment at the first instance can never plead that they have to be now given alternate accommodation and re-accommodation in the new building. All these contentions raised

by the appellants deserve to be outrightly rejected and accordingly rejected.

36. With regard to the decision in the case of **K.A.M. Gunalan** (supra), on a closer reading of the said decision we find that the Court took note of the fact that the tenants were asked to vacate as early as in the year 2011 and therefore, Section 84 of the Act would not have any application. Even assuming that the respondents have mentioned Section 84 of the Act in the notices dated 25.05.2018 that by itself will not confer any right on the appellants to say that even if they are unsuccessful before us, yet our order cannot be implemented because the respondents have to follow Section 84 of the Act, issue notice, afford opportunity of hearing and then take a decision. This plea is wholly unsustainable. Assuming Section 84 of the Act is applicable to the cases on hand, it has to be seen as what is the stand that the appellants would take before the authority having thrashed all issues before the learned Single Bench of this Court and before us. The clear answer to this question is that they have no defence to be raised in response to a notice that may be issued under Section 84 of the Act. Thus, assuming the provision is applicable, it would be an empty formality especially when the appellants came before this Court for a larger relief

challenging the policy decision of the Government. The appellants having failed in the said challenge, have no right to continue further in the premises.

37.The learned Single Bench of this Court in the case of **Mandavelipakkam T.N. Housing Board Allotment Residents** (supra) held that the notice issued under Section 84 of the Act was done without terminating the lease deed and only after cancellation of the lease deed or after the expiry of the lease, the Housing Board can treat them as unauthorized occupants of the premises and order eviction and not prior thereto.

38.We are of the view that the said decision does not lay down the correct legal principle for more than one reason. Firstly, the rental agreement entered into between the Housing Board and the allottee, or the Government and the allottee is not a statutory contract. The right to occupy the premises flows from the allotment order which precedes the rental agreement. The rental agreement stipulates the conditions which the allottee has to follow. In fact, it is not a rental agreement in the true sense, but an agreement form executed by the allottee of the Government quarters under the TNGRHS for employees of the State

Government irrevocably agreeing to abide by the conditions of allotment.

39. So far as the lease deed executed by the Housing Board for building/flats/shops/garages/servant quarters is concerned, the same is only for a period of 11 months and the conditions are clear that the tenancy can be terminated without assigning any reasons after giving one month notice. Therefore, to contend that a statutory right flows from these agreements is a submission which is unsustainable. In fact, the agreement under the TNGRHS empowers the Government to recover the arrears of rent from the Death cum Retirement Gratuity and Dearness Allowance of pension of a retired employee. A perusal of the condition show that it is stringent and it is in fact a declaration filed by the allottee that he shall abide by whatever conditions imposed on him by the Government. A Government servant who was allotted a quarters under TNGRHS has absolutely no right to reside in the same upon transfer or retirement. Assuming the protesting Government servants, who were refusing even to accept the alternate accommodation were transferred out of Chennai, their entitlement to the quarters is lost. When such is the situation, we find that there is absolutely no right vested with the appellants to come before this Court and seek to impose

conditions on the Government in respect of the accommodation granted to them. In spite of the conditions being thus, we found the Government to be reasonable, insofar as the Government servants are concerned. They offered them alternate accommodation but the appellants did not want to accept the same. Therefore, there can be no error attributed to the Government/Housing Board for having cancelled the allotments of alternate flat to the Government servants after having waited for close to a year keeping the accommodation vacant when several thousands of Government employees are waiting without quarters.

40. Thus, we feel that the appellants have forgotten their status as allottees of a Government quarters and presumed to be the owners of the premises by dictating terms to the Government and the Housing Board. Such attitude of the Government servants needs to be deprecated. The appellants seek to rely upon the policy decision taken by the Government in G.O.Ms.51 and G.O.Ms.No.52 and state that re-accommodation should be granted. Both the Government Orders are under the Housing Board Rental Scheme. Therefore, the same cannot be treated on par with the quarters under the TNGRHS. We do not agree with the submission of the learned counsel for the appellants that

it is immaterial whether the accommodation belongs to the PWD, Government or Housing Board, the Government should allot the same to the appellants, more particularly the appellants who secured allotment under "public quota". The appellants cannot dictate terms to the respondents as to how they have to administer the properties. Having availed the benefit under a particular Scheme, they are estopped from challenging the terms and conditions thereof. Therefore, to draw a parallel with regard to the Housing Board Rental Scheme is impermissible. Thus, for all the above reasons we find that there are absolutely no ground made out by the appellants to set aside the policy decision taken by the Government in G.O.Ms.No.21 and the consequential notices issued by the respondents dated 25.05.2018.

41. We had heard W.A.Nos.492 of 2019 etc., batch and reserved orders on 19.02.2019. Subsequently, W.A.Nos.524, 525, 542, 544, 545 & 530 of 2019, which were filed against the very same common order in the batch of Writ Petitions, were numbered and listed before us on 21.02.2019.

42. Mr.P.Wilson, learned Senior counsel appearing for the appellants submitted that in these appeals, he has raised additional

grounds and has filed certain documents which in his opinion would be germane to take a decision as to the correctness of the orders passed in the Writ Petition.

43. Therefore, we elaborately heard Mr.P.Wilson learned Senior counsel and the learned Additional Advocate General for the respondent Housing Board. It is the submission of the learned counsel that the Government vide letter dated 03.03.2014, addressed to the Managing Director, Tamil Nadu Housing Board drew the attention of the Managing Director that the Secretary to Government, Public Works Department on the request of the allottees of TNGRHS at Todd Hunter Nagar, Peters colony and Lloyds colony for allotment of alternative accommodation in Public Works Department quarters at Todd Hunter Nagar was considered and a decision was taken to the effect that the Government servants living in Todd Hunter Nagar, Housing Board quarters can be accommodated in the newly constructed public works department quarters those who are staying in public quota are not eligible to get public works department quarters; high court staff staying in Todd Hunter Nagar housing board quarters can also be accommodated in public works department quarters and the public works department will not be able to provide for those who are staying in Peters colony and

Lloyds colony as already there is a waiting list with the public works department for allotment of Todd Hunter Nagar quarters. Therefore, the Managing Director was requested to take necessary further action in the matter and send a report to the public works department. It is submitted by the learned counsel that this Government letter dated 03.03.2014, has not been given effect to. Further, by referring to G.O.Ms.No.76, Public works department, dated 19.12.2016, it is submitted that it is the Government which had directed for alternate accommodation and the said Government order should not be put against the appellants at this juncture so as to deny them alternate accommodation. Further, it is submitted that the public works department has passed several government orders in G.O.Ms.Nos.209, 211, 212, 213, 214, 215, 226 & 236, all of which were passed during August 2018, by allotting quarters to various persons by relaxing the Rules. It is submitted that in the common additional affidavit filed in W.P.No.14350 of 2018, etc., the appellants had specifically mentioned the names of such of those allottees and as to why they were given such allotment by relaxing the Rules, since they were influential persons and working under persons highly placed in the Government.

44. The learned Senior counsel referred to the counter affidavit filed by the Chief Revenue Officer of the TNHB in W.P.Nos.13846 of 2018 etc., wherein there is a clear averment that alternate accommodation has been granted to Government servants, who are occupying the quarters. Further, by referring to the interim order passed in the Writ Petitions dated 01.08.2018, it is submitted that direction was issued to the respondents to give option to the appellants either to stay at Thirumangalam or to come back to Todd Hunter Nagar and there was also a direction to accommodate some of the allottees in Todd Hunter Nagar itself considering the exigency of circumstances, however said order did not form part of the final order in the Writ Petition. Nevertheless the 34th petitioner in W.P.No.14350 of 2018, who was working as Assistant Accounts Officer in the Tamil Nadu Government Press had been granted accommodation in Todd Hunter Nagar itself. Therefore, it is submitted that there is a discrimination and that the same treatment has not been given to other 11 persons, though they were the persons, who were selected to be accommodated in Todd Hunter Nagar, when the Writ Petitions were heard. In the earlier part of this order, we have held that a Government servant, who was allotted a quarters under TNGRHS has absolutely no right to continue to reside in the same on the alleged ground that statutory rights flow from the

agreement entered into between the allottees and the housing board. We have held that no such statutory right flows in favour of the allottees. The observations made by the learned Writ Court in the interim order can have no effect after the Writ Petitions have been finally disposed of. In fact, this contention was urged before the learned Writ Court after the Writ Petitions were dismissed by mentioning the matter for clarification and the said contention was threadbare analysed by the learned Writ Court and rejected. We find that there are no valid grounds to upset the order passed by the learned Writ Court dated 07.02.2019, when the cases were listed for clarification. Thus, by placing reliance on various Government orders, which were issued from time to time and other inter departmental communication will in no manner put the appellants in a different pedestal. The appellants are bound by the terms and conditions and cannot resile from the same, having accepted the terms and conditions and entered into the quarters allotted to them.

45. As noticed above, the accommodation under the TNGRHS is available only in three cities, namely, Chennai, Madurai and Coimbatore. Thus, it is clear that it has not been the policy of the Government or that of the housing board to construct residential quarters for all

Government servants throughout the State. The decision taken to construct such quarters in three of the cities as mentioned above appears to have been taken as a policy decision by the Government, when there was no statutory duty cast upon the Government to provide such quarters. It cannot be disputed that all the Government servants who have been granted allotment are being paid house rent allowance. Thus, it appears that the appellants before us consider themselves as a privileged set of persons and with this in mind they have commenced this litigation. The plea raised by the appellants is thoroughly misconceived.

46. Having held so, we are conscious of the fact that though the conduct of the appellants did not convince us to extend any sympathy, yet we are concerned about the family of the appellants and the minor children. While we deprecate the attitude of the Government servants who refused to accept the alternate accommodation offered to them at Thirumangalam and while holding that the Government/TNHB cannot be faulted for having cancelled the same on 11.02.2019 after having waited for one year, we feel that if they are not extended the benefit of alternate accommodation, they will be put to prejudice. It may be true that there is a waiting list maintained where several Government

employees are waiting without accommodation, yet those Government servants are at present residing elsewhere in other private rental accommodation. Further, the Government servants who are appellants before us will have to secure an accommodation.

47. We are conscious of the fact that the proceedings of the Executive Engineer, Tamil Nadu Housing Board, dated 11.02.2019, is not impugned before us. Nevertheless, these orders having been passed during the pendency of these proceedings, we would be justified in considering whether such orders cancelling the alternate accommodation was just and proper. In view of the reasons, which we have assigned in the preceding lines, we are of the view that the alternate accommodation should not have been cancelled especially when the parties are before this Court and the matter is hotly contested.

48. Therefore, considering the peculiar facts and circumstances of the case, we set aside the order of cancellation of alternate accommodation vide order dated 11.02.2019 and other similar orders granting alternate accommodation to the Government servants who were granted allotment under the TNGRHS and permit them to occupy the flats at Thirumangalam. The appellants/Government servants are

granted time till 30.04.2019 to shift to Thirumangalam and if they fail to do so, the benefit of this order will not enure in their favour and the cancellation of allotment of alternate accommodation dated 11.02.2019 and other similar orders will automatically stand revived and the Government/TNHB shall forthwith allot the same to other Government servants who are wait listed for accommodation. Insofar as the appellants who secured allotment under the "Public Quota" are concerned, we grant them time to vacate and hand vacant possession by 30.04.2019. If those appellants fail to do so, the respondents are entitled to dispossess them and if necessary with police aid.

49. Before parting we would like to comment upon the various Government orders issued during August 2018 in G.O.Ms.No.209, Public Works Department, etc. Eight such Government orders have been filed by the appellants and we have perused those orders. All orders are identical except for the name of the allottee and the house number. It is stated in the Government orders that the allotments have been made in relaxation of the rules. If relaxation of the rule has been made in favour of a person, the Government should justify such relaxation. No policy or rule or conditions of allotment have been placed before us nor it has been shown to us that the Government under any such rule, regulation

or executive instruction has power to relax the conditions. Even assuming such power vests with the Government, the exercise of such power should be shown to be just and reasonable and the order should explicitly state as to what weighed in the minds of the Government to grant relaxation and issue orders of allotment.

50. The argument of the learned Additional Advocate General is that those are all allotments made by the public works department. Be that as it may, when relaxation is done by the Government, it should be able to justify such relaxation by clearly stating in the order as to why the said person is entitled for a preferential treatment. No such reasons have been mentioned in the Government order. Thus, it is clear that there has been arbitrary exercise of power in favour of those allottees, who appeared to be a chosen few and the reasons are best known to the authority who granted such relaxation. Since these Government orders are not subject matter of challenge before us, we can only express our displeasure by observing that if such power is continued to be retained by the Government and be exercised in such fashion, it will not only be arbitrary, but it will be illegal. Therefore, it is high time that the Government stops such practice of favouring a few individuals at its *whims and fancies* and allot Government quarters to a chosen few

without assigning any reasons as to why they should be given a preferential treatment. We hope that this observation should be an eye opener for the Government to revise its policy to ensure transparency in the matter of allotment of Government property.

51. In the result, Writ Appeals are dismissed with the following directions:

(i) The orders passed by the Executive Engineer and ADO, CIT Nagar, Redevelopment Works Division, Tamil Nadu Housing Board, Chennai, all dated 11.02.2019, are set aside for the reasons set out by us above.

(ii) The appellants/Government servants, who have been granted alternate accommodation at Thirumangalam are granted time till 30.04.2019 to shift to Thirumangalam and if they fail to do so, the benefit of this order will not enure in their favour and the cancellation of allotment of alternate accommodation, dated 11.02.2019 and other similar orders will automatically stand reviewed and the Government/Tamil Nadu Housing Board shall forthwith allot the same to other Government servants, who are wait listed for accommodation.

(iii) The appellants who secured allotment under public quota are granted time to vacate and hand over vacant possession of the respective accommodation on or before 30.04.2019. If the appellants fail to do so, the respondents are entitled to dispossess them and if necessary with the police aid.

(iv) Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

(T.S.S., J.) (V.B.S., J.)
01.03.2019

Index : Yes
Speaking
cse/abr/pbn

To

1.The Principal Secretary to Government,
Housing & Urban Development
(HB(2) HB5(2)) Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Deputy Secretary (Revenue),
Tamil Nadu Housing Board,
O/o Managing Director,
Nandanam, Chennai-600 035.

3.The Executive Engineer cum
Executive Officer,
Tamil Nadu Housing Board,
C.I.T.Nagar Division, Chennai-600 017.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

cse/abr/pbn



Pre-delivery Judgment made in
Writ Appeal Nos.453 to 457, 492, 500, 524,
525, 530, 542, 544, 545 of 2019

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