

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13..11..2019
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.25772 of 2015
and
M.P.Nos.1 and 2 of 2015

N.Durairajan

... Petitioner

-Versus-

- 1.The Secretary to Government,
Housing & Rural Development Department,
Fort St. George,
Chennai 600009.
- 2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
- 3.The Chief Revenue Officer/
District Revenue Officer,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
- 4.The Assistant Director of Survey and Land Records/
Personal Assistant to the District Collector (Survey),
District Survey Office,
Collectorate, Chennai 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the impugned letter issued by the 3rd respondent in Letter No.Va Va P 9/6880/2011 dated 24.07.2015 and to quash the above same.

For Petitioner : Mr.R.Baskaradoss
For Respondent(s) : Mr.K.K.Ramesh, GA R1

Mr.R.Bharath Kumar R2 & R3

ORDER

This writ petition challenges the proceedings dated 24.07.2015 in Letter No.Va Pa P 9/6880/2011 issued by the 3rd

respondent directing the petitioner to pay the penal rent for overstay period in the rented accommodation provided on a concessional rate of rent provided to the petitioner while he was in Government service.

2. The petitioner is a retired Deputy Inspector of Survey. He was provided with an accommodation at Plot No.G-8, TNHB Quarters, Tod Hunter Nagar, Saidapet, Chennai by the Tamil Nadu Housing Board (hereinafter called as "the respondent Board") while he was in service on a concessional rate of rent. The petitioner retired from service on 31.07.2009. As he lost his vision totally and required to take treatment and his son was studying X standard then in a private school at Nungambakkam, he could not vacate the quarters immediately after his retirement. Though he sent a representation for extension of time to vacate the quarters, there was no response from the Government. He, however, vacated the premises on 29.01.2011 and handed over the key to the respondent. There was no rent due. While so, by way of impugned order the 4th respondent was required to deduct the penal rent of Rs.2,21,949/- from 01.08.2009 to 09.11.2011 for the overstayed period and to deposit the same into the Government account. Challenging the above said letter, the petitioner is before this court with this writ petition.

3. The learned counsel appearing for the petitioner would submit that after the retirement though a representation was given to the Government as well as to the respondent board seeking extension of time to vacate the premises, no order has been passed on the same. The petitioner was constrained to remain in the premises due to health reasons and also for the education of his son who was then studying X Standard. However, he had vacated the premises himself voluntarily in January 2011. Therefore, the petitioner is not liable to pay any penal rent. The learned counsel for the petitioner would further submit that at any rate the penal rent calculated by the respondent board is exorbitant and there is no established procedure or rule to charge penal rent and Government Orders referred to by the respondents cannot be considered as rule.

4. Per contra, the learned counsel appearing for the board would contend that the petitioner was provided with an accommodation in the quarters of the respondent board on a concessional rate of rent with a condition that he should vacate the premises immediately after his retirement and handover the possession to the respondent board failure of which he would be liable for eviction and also pay penal rent for the period of overstay. Though the petitioner retired from service as early as on 31.07.2009, he had handed over the possession of the flat to the respondent board only on 29.01.2011. Therefore, the

petitioner was required to pay penal rent as per Government Orders.

5. The learned for the respondent would further submit that a calculation sheet was filed earlier, as directed by the court on the previous hearing but, there was an error found in the calculation. The learned counsel today across the bar submitted a fresh calculation sheet. The learned counsel for the petitioner has also been supplied a copy of the same. According to the learned counsel for the respondent board, as per the fresh calculation, the petitioner is liable to pay only a sum of Rs.1,45,553/- as penal rent.

6. I have considered the rival submissions carefully.

7. From a careful perusal of the order of allotment it could be seen that the petitioner was bound to vacate the premises immediate after his retirement, otherwise he would be charged penal rent after the date of retirement till date of handing over possession of the premises at the rate as may be prescribed by the Government. Subsequent to the order of allotment, an agreement was also entered into between the petitioner and the respondent board wherein it was clearly stated that for unauthorized occupation, the petitioner is liable to pay concession rent or economic rent whichever is higher plus three times of such higher rent as penal rent. Clause 26 of the Letter of Agreement reads as follows:-

"26. I agree to pay the concession rent (or) economic rent, fixed for the apt, whichever is higher plus 3 times of such higher as penal rent, in case I unauthorizably occupy the apt. Overstay without permission transfer, retirement, resignation, etc."

8. In the instant case, admittedly, the petitioner retired from service on 31.07.2009, but, he had vacated the premises only on 29.01.2011. Though the petitioner contended that he had sent a representation for extension of time to vacate the premises, no permission was granted to him to occupy the premises after the date of retirement. Thus, the possession of the petitioner after the date of retirement is unauthorized. Therefore, as per the order of allotment and the agreement, the petitioner is liable to pay concessional rent plus three times of the concessional rent. Thus, contention that he is not liable to pay any penal rent cannot be accepted.

9. Even though the respondent had earlier demanded a sum of Rs.2,21,949/- as penal rent for the period from 01.08.2009 to 09.11.2011, now, it is conceded by the respondent board that the petitioner sent a key of the premises by post on 29.01.2011 itself. Thus, it is clear that the petitioner vacated the

premises on 29.01.2011. There was an error found in the earlier calculation made by the respondent board and therefore, this court had directed the respondent board to submit fresh calculation from 01.08.2009 to 28.01.2011 instead of 09.11.2011. Accordingly, a calculation sheet was filed by the respondent board wherein a demand has been reduced to a sum of Rs.1,45,553/- which the petitioner is legally bound to pay to the respondent board as per the order of allotment and letter of agreement and the petitioner cannot say that the Government Orders have no statutory force and he is not legally liable to pay penal rent. Thus, this court does not find any merit in the writ petition and the writ petition deserves only to be dismissed.

10. At this juncture the learned counsel for the petitioner has brought to the notice of this court that the respondents had already withheld / deducted a sum of Rs.2,21,949/- from the Death cum Retirement Gratuity amount payable to the petitioner and deposited the same into the Government account. The learned counsel for the respondent board has also accepted the same.

11. In view of the conclusion arrived at in this order, the petitioner is liable to pay only a sum of Rs.1,45,553/- towards penal rent for the period of overstay and therefore, the respondents concerned are directed to return the excess amount deducted from the DCRG amount which was payable to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

In the result, this writ petition is dismissed, however, with a direction to the respondents as indicated above. Consequently, connected MPs are closed. No costs.

Sd/-

Assistant Registrar (JJ Act)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Secretary to Government,
Housing & Rural Development
Department, Fort St. George,
Chennai 600009.

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

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4.The Assistant Director of Survey and Land Records/
Personal Assistant to the District Collector (Survey),
District Survey Office,
Collectorate, Chennai 600 001.

+1cc to Mr.R.Baskaradoss, Advocate, S.R.No. 94164

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No. 94560

Writ Petition No.25772 of 2015

NRL(CO)
GN(21/02/2020)



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