

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 19.03.2019

Delivered on 22.03.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.5533 of 2019

and

W.M.P.Nos.6296 & 6297 of 2019

- 1.T.S.G.Rangaswamy
2. G.Palanisamy
3. N.Prabakaran
4. N.L.Balaji
5. G.Mohan
6. T.Sheela
7. S.Ganesan
8. J.Mahalingam

... Petitioners

vs.

1. The Government of Tamil Nadu,
rep. By its Secretary to Government,
Department of Housing and Urban Development,
Secretariat,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
No.331, Anna Salai, Nandanam,
Chennai - 600 035.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the respondents to follow the procedure contemplated under section 84 of the Tamil Nadu State Housing Board Act and also to comply with the undertaking given before this Court in writing in the counter affidavit filed in the earlier litigation as promised by the Government in G.O.Ms.No.52 issued by Housing and Urban development Department dated 05.03.2012 to re-accommodate the petitioners after demolition and reconstruction the existing structures and if the respondents are having a plan and fund for demolition and reconstruction, then time may be granted to the

petitioners to vacate the premises on or before 30.04.2019.

For Petitioners: Mr.C.Manishankhar,
Senior Counsel for
Mr.K.Krishnamoorthy

For Respondents: Mr.S.N.Parthasarathy,
Government Advocate for R1
Mr.S.R.Rajagopal,
Additional Advocate General
assisted by
Mr.R.Bharath Kumar,
Standing Counsel for R2.

O R D E R

The petitioners in this writ petition seek for Mandamus directing the respondents to follow the procedure contemplated under Section 84 of the Tamil Nadu State Housing Board Act and also to comply with the undertaking given before this Court in writing in the counter affidavit filed in the earlier litigation, to re-accommodate the petitioners after demolition and reconstruction the existing structures and if the respondents are having a plan and fund for demolition and reconstruction, then time may be granted to the petitioners to vacate the premises on or before 30.04.2019.

2. In short, these petitioners seek for a direction to the respondents to follow the procedure contemplated under section 84 of the Tamil Nadu Housing Board Act, seek for re-accommodation to them after demolition and reconstruction and time to vacate the premises till 30.04.2019.

3. Mr.C.Manishankhar, learned Senior Counsel appearing for the petitioners submitted as follows:

These petitioners were not issued with any notice of eviction or demolition of the area in occupation. The subject matter before the Apex Court in the earlier round of litigation is in respect of Pocket No.2 and not in respect of the portions, in which, the petitioners are in occupation. Even as per the order of the Division Bench, the respondents have to accommodate these petitioners after demolition and reconstruction. Till date, no planning approval was obtained for reconstruction and therefore, the petitioners cannot be evicted. There are other similarly situated persons, against whom, no action is taken and only these petitioners are targeted. Therefore, the action of the respondents in seeking to evict the petitioners is tainted with malafide. The impugned action is not in true spirit of the order passed by the Writ Court in W.P.No.24679/2011 and the

Division Bench order dated 21.04.2015 passed in Review Application Nos.316 to 319/2014.

4. Per contra, Mr.S.R.Rajagopal, learned Additional Advocate General appearing for the Housing Board submitted as follows:

In view of the categorical finding rendered by the Division Bench in a common order passed in Writ Appeal No.1247/2012 etc. dated 25.07.2014, the petitioners are not entitled to seek for application of Section 84 of the Tamil Nadu Housing Board Act to their case. The said order of the Division Bench got merged with the order of the Supreme Court. The petitioners themselves have requested time before the Division Bench of this Court at the time of hearing the Review Application Nos.177/2014 etc. till 30.04.2015 and when such time was granted and utilised by the petitioners, they cannot seek further time as sought for in the writ petition, that too, after a period of nearly four years. There is no picking and choosing of the persons in occupation to evict them. On the other hand, the Housing Board is taking action against all the persons to vacate. The subject matter premises in the present Writ Petition as well as the earlier round of litigation are one and the same and when these petitioners are already parties in the earlier writ proceedings, they are estopped from raising the present claim once again.

5. Heard both sides.

6. It is seen that these petitioners have filed Writ Petition No.13963/2012 and W.P.No.69038/2012 and challenged G.O.Ms.No.52 Housing and Urban Development Department dated 05.03.2012 and consequently, for a direction to the respondents to pass appropriate orders on the basis of their representation to convert the rental quarters into outright purchase scheme, so as to enable them to own the same by collecting reasonable market value. It is seen that those writ petitions along with other connected writ petitions as well as Writ Appeal No.1247/2012 etc. were heard by the Division Bench of this Court and a common order was passed on 25.07.2014, wherein and whereby, all the Writ Appeals and the Writ Petitions were dismissed. The Division Bench at paragraph No.8.2 and 8.3 of its order has observed as follows:

8.2. A perusal of the order passed in W.P.No.24649 of 2011, dated 30.11.2011, would show that the tenants were asked to vacate even as early as in the year 2011. Therefore, we are of the view that Section 84 of the Tamil Nadu Housing Board Act does not have any application to the cases before us. Such a power can only be exercised when a person authorised to occupy the premises has not paid the rent lawfully due, sublet

without permission, otherwise acted in contravention of the terms of authorisation and has been in unauthorised occupation. Therefore, we are of the considered view that the said provision does not have any application to the present cases.

8.3. Further, the respondents have also protected the interest of the existing tenants by proposing to accommodate them. Therefore, beyond the said measure taken by the respondents, the petitioners cannot seek anything more. The documents produced by the petitioners on the structural stability of the buildings cannot be gone into by this Court. As discussed above, the petitioners have not been discriminated after the policy has been evolved and implemented. Therefore, they cannot seek a legal right based upon a decision made when the earlier policy was in vogue. Accordingly, we do not find any mala fides, arbitrariness and unreasonableness in the action of the respondents. Even otherwise a wrong decision made contrary to the policy would not give any right to similarly placed persons.

7. Review Applications were filed in Review Application No.177/2014 etc. to review the order passed by the Division Bench dated 25.07.2014. The said review application was dismissed by an order dated 31.03.2015, however, permitting the petitioners to continue in the premises till 30.04.2015. It was made clear therein that no further extension of time for vacating the premises shall be granted. In fact, the said time was granted based on the request made by the learned Senior Counsel appearing for the review petitioners therein for granting some time to vacate the premises. The operative portion of the said order made in the review applications reads as follows:

9. For the fore-going reasons, the review applications are dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

usk

This matter having been listed on 01/04/2015 for being mentioned in pursuance of the order dated 31/3./015 and made herein and in the presence of the aforesaid counsel on either side, the court made the following order:

These matters are taken up today under the caption "for being mentioned".

2. Learned Senior Counsel appearing for the review petitioners submits that having regard to the ensuing examination of the children, the review petitioners may be granted some time to vacate the premises under an undertaking to vacate it within the specified time.

3. Having considered the facts of the cases, we are of the considered view that the petitioners be permitted to continue in the premises till 30.4.2015. We further make it clear that no further extension of time for vacating the premises shall be granted.

8. Further review applications were filed in Review Application No.316/2014 etc. wherein the Division Bench, by order dated 21.04.2015 dismissed those revisions, however, by granting time to vacate the premises till 30.04.2015. The Special Leave Petitions were filed before the Apex Court against the order made by the Division Bench. The Apex Court dismissed those Special Leave Petitions as withdrawn, by order dated 05.02.2019. The said order reads as follows:

Having heard the learned counsel appearing on both sides at some length, we are inclined to dismiss the Petitions.

At this stage, permission is sought to withdraw the Petitions.

Permission granted.

The Special Leave Petitions are dismissed as withdrawn.

9. Perusal of the above stated facts and circumstances would show that these petitioners, having approached this Court earlier and failed to succeed in their attempt to retain possession, are not entitled to file the present writ petition with the relief as stated supra, which in my considered view, is nothing but an attempt to reopen the whole issue once again, which was already considered and decided against the petitioners by the Division Bench of this Court as stated supra. In fact, a specific finding rendered by the Division Bench in the order dated 25.07.2014 made at paragraph No.8.7 would show that the petitioners herein are totally estopped from raising any ground to challenge the eviction by way of the present writ petitions. Paragraph No.8.7. of the order of the Division Bench reads as follows:

8.7. The learned counsels appearing for the petitioners submitted that taking note of the fact that the petitioners are living with their families, a further period of six months will have to be given for vacating their flats. The learned Advocate General submitted that giving six months time would further delay the process of demolition. It is submitted that the demolition would be carried out within a period of four weeks from the date of taking over possession and thereafter, the undertaking given in the additional counter affidavits would be complied with. Considering the submissions made, we are inclined to grant a further period of three months from the date of receipt of a copy of this judgment to all the tenants to vacate their respective flats and hand over possession to the Tamil Nadu Housing Board. After taking over the possession of the buildings concerned, the respondents will have to carry out the demolition within a further period of four weeks. Thereafter they have to comply with the undertaking given in the additional counter affidavits filed by the respondent-Tamil Nadu Housing Board.

10. It is further to be noted that when the matter was taken to the Apex Court by way of Special Leave Petitions, the petitioners have withdrawn the Special Leave Petitions, without seeking any liberty to agitate the matter before this Court, or by getting extension of time to vacate. Therefore, it is evident that the time granted by the Division Bench upto 30.04.2015 having been expired long ago, the petitioners are not justified in filing the present writ petition and contest the matter on merits. There is no dispute to the fact that the petitioners are agitating in respect of their respective premises which is one and the same in the present proceedings as well as the earlier proceedings. Therefore, there is no purpose in saying that the subject matter before the Apex Court is in respect of Pocket No.2 and not in respect of the portion in which the petitioners are in occupation. Moreover, it is submitted by the learned Additional Advocate General Mr.S.R.Rajagopal, appearing for the Housing Board that action is being taken against all the tenants to vacate them without there being any act of pick and choose. The learned Additional Advocate General further pointed out that the Division Bench of this Court has granted time till 30.04.2015, that too, only at the request of the learned senior counsel appearing for the petitioners and when the petitioners

have not complied with such undertaking to vacate the premises within the stipulated time, they are not entitled for any indulgence from this Court to get extension of further time. I find much force in the above said submission for two reasons. Firstly, the time granted by the Division Bench was not extended by the Apex Court while dismissing the Special Leave Petitions as withdrawn. Therefore, I am of the firm view that this Court, at this stage, that too, in a fresh proceedings initiated by the petitioners by way of the present writ petition, cannot grant the relief to the petitioners. However, if any undertaking is given by the Housing Board, in the earlier round of litigation, to re-accommodate the petitioners after demolition and reconstruction, it is for the parties to work out such remedy at the appropriate time.

11. Accordingly, I find no merits in this writ petition and consequently, the same is dismissed. However, for the purpose of giving a breathing time to these petitioners to vacate the premises, the respondent Housing Board is directed not to take any action to evict the petitioners forcefully till 31st March, 2019. No costs. The connected miscellaneous petitions are dismissed.
vsi

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Department of Housing and Urban Development,
Secretariat,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
No.331, Anna Salai, Nandanam,
Chennai - 600 035.

+1cc to M/s.R.Bharath Kumar, Advocate, S.R.No.27414

W.P.No.5533 of 2019

Kak(22/03/2019)