

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019.

CORAM

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No. 6823 of 2019
and
W.M.P No. 7598 of 2019

M. Chitra

... Petitioner

-vs-

1. The Principal Secretary,
Housing & Urban Development Department
Government of Tamil Nadu,
Fort.St.George, Chennai - 600 009.

2. The Managing Director,
Tamil Nadu Housing Board,
Foreshore Estate Division Anna Salai,
Nandanam, Chennai - 600 035.

...Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records relating to the respondent No.1 in his proceedings No.15927/VeVa(2)/2018-3, dated 30.01.2019 and quash the same and consequentially direct the respondent No.1 to pass order of re-allotment of housing units at Foreshore Estate itself as per the representation dated 17.07.2018 of the petitioner.

For Petitioner : Mr. S. Senthil Nathan

For Respondents : Mr. R. Venkatesh,
Government Advocate (for R1)

Mr. R. Bharath Kumar (for R2)

O R D E R

The Petitioner was allotted Flat No. RM-6 under the Government Rental Housing Scheme at Foreshore Estate belonging to the Second Respondent, viz., the Tamil Nadu Housing Board, on rental basis. It had been decided to demolish some of the blocks of the Second Respondent at Foreshore Estate that had become dilapidated and the allottees, who were occupying the flats in those blocks, were required to vacate as they were provided with

alternative accommodation by the Second Respondent at its new buildings constructed at Anna Nagar Western Extension (Padikuppam), and the Petitioner is one such person.

2. The Petitioner had made a representation dated 17.07.2018 to the First Respondent to provide her alternative accommodation in Foreshore Estate itself in one of the blocks of the Second Respondent, where there is no decision to immediately demolish the same and she has mentioned that Flat Nos. H-5, H-6 and I-5 are remaining vacant. It is highlighted that the Petitioner had specifically mentioned that she could not shift to the new location at Anna Nagar Western Extension (Padikuppam) because her children were studying in the nearby School at Chettinad Vidyashram at M.R.C. Nagar and that her mother-in-law, who is living with her, requires frequent medical treatment at the hospital in that locality. The said representation of the Petitioner was rejected by the First Respondent by Order No. 15927/ VeVa2(2)/2018-3 dated 30.01.2019, which is challenged in this Writ Petition.

3. Learned Counsel for the Petitioner has referred to orders dated 20.03.2018, 07.06.2018 and 13.07.2018 made by the First Respondent in respect of three other allottees in which their representations for alternative accommodation at Foreshore Estate instead of Anna Nagar Western Extension (Padikuppam) has been accepted and they had been allotted Flat Nos. L-5, P-3 and P-6. In particular, it is emphasized that in the said orders, the reasons assigned by the First Respondent for accepting their request was the education of the children of the said allottees in the nearby school and their health condition. It is complained that in the case of the Petitioner, though she had not attended the enquiry, discrimination has been meted out to her alone as the First Respondent has not considered the same reasons which was accepted in the case of the aforesaid persons.

4. It was contented by the Respondents that the Flat Nos. H-5, H-6 and I-5, which are claimed by the Petitioner as vacant, are situated in blocks that have also been ordered to be demolished, but the correctness of the same is questioned by the Petitioner. As this aspect of the matter are factual disputes which require to be verified, this Court by order dated 19.06.2019 had appointed an Advocate Commissioner to visit the said blocks in order to ascertain whether other flats in those blocks are occupied by any persons and if so, to find out the details of those persons with photographs of their occupation and file a report in that regard.

5. In pursuance thereof, the Advocate Commissioner had filed a report dated 24.06.2019 with the following factual findings:-

(i) Flat Nos. H-1, H-2, H-3 and H-4, in H block and Flat Nos.

I-1, I-2, I-3 and I-6 in I block are occupied.

- (ii) Flat Nos. H-5 and H-6 in H block and Flat Nos. I-4 and I-5 in I block are remaining vacant.
- (iii) Flat Nos. H-6 and I-4, which are vacant cannot be occupied as it is damaged.
- (iv) Flat Nos. H-5 and I-5, are habitable.
- (v) Though the officials of the Tamil Nadu Housing Board had furnished copies of notice No. Pa.Paa.Ko/388/2009 dated 22.07.2019 requesting the occupants to hand over their allotted premises, on enquiry with the existing occupants, it has been revealed that no steps have been taken thereafter to evict them from the premises till date and some of the residents continue to occupy those flats as per the particulars stated earlier.

6. In pursuance of the order dated 27.06.2019 passed by this Court, the First Respondent has filed additional Counter Affidavit dated 10.07.2019, in which it has been contented inter alia as follows:-

- (i) The initial allotment of Flat No. RM-6 made in favour of the Petitioner was under "Public Quota", while the aforesaid three persons who have been temporarily accommodated in Flat Nos. L-5, P-3 and P6 were Government Servants and the said benefit of permitting them to continue in the buildings at Foreshore Estate Division was taken considering the location of schools in which their children were studying and on health grounds.
- (ii) Flat Nos. H-5 and I-5 are in dilapidated condition for which permission for demolition has also been obtained besides an expert opinion from the Anna University with regard to the stability of structure taking note of the corrosion to the steel rods of reinforced cement concrete, as these flats are located in close proximity to the sea-shore.

7. During the hearing on 12.07.2019, it was represented that the Petitioner has already handed over Flat No. RM-6 that was originally allotted to her in Foreshore Estate, which has been accepted by the Respondents, without prejudice to their mutual rights. It has been informed during the hearing on 22.07.2019 that the Petitioner has also remitted the entire arrears of rent amounting to Rs.2,51,270/- as demanded by the Second Respondent.

8. The question that now remains for consideration is whether the First Respondent was justified in rejecting the claim of the Petitioner for accommodating her in the vacant Flat Nos. H-5 and I-5 in Foreshore Estate belonging to the Second Respondent.

9. The first objection raised by the Respondents is that the initial allotment of Flat No. RM-6 made in favour of the Petitioner was under "Public Quota", while the aforesaid three persons who have been temporarily accommodated in Flat Nos. L-5, P-3 and P6 were Government Servants and the said benefit of permitting them to continue in the building at Foreshore Estate Division was permitted taking into account, the location of schools in which the children were studying and on health grounds. Reliance in this regard was placed by the Respondents on the order dated 28.11.2018 in W.A. No. 2583 of 2018 and the order dated 01.03.2019 in W.A. No. 453 of 2019 etc., batch passed by the Division Benches of this Court, in which it has been held that allottees under "Public Quota" had no vested or legal right, even to secure the allotment at the first instance and as such, they cannot plead that they have to be provided alternative accommodation as of right.

10. Though there cannot be any quarrel to that binding legal proposition, it requires to be noticed from the factual matrix of the present case that there is no dispute that the Respondents have themselves granted alternative accommodation to the Petitioner at their new buildings constructed at Anna Nagar Western Extension (Padikuppam) and the Petitioner only seeks that she may be accommodated in the vacant flats at Foreshore Estate itself till a decision is taken for its eventual demolition. In such circumstances, the distinction between allotment made under "Public Quota" and those for Government Servants would not apply as the nexus with such dichotomy does not exist to deny relief to the Petitioner on that ground.

11. Coming to the next objection raised by the Respondents that the Flat Nos. H-5 and I-5 are in dilapidated condition for which sanction for demolition has been obtained besides obtaining expert opinion from the Anna University with regard to the stability of structure taking note of the corrosion occurred to the steel rods of reinforced cement concrete as these flats are located in close proximity to the sea-shore, it has been found by the Advocate Commissioner that the said flats, viz., H-5 and I-5 are in habitable condition and that there are other occupants in Flat Nos. H-1, H-2, H-3, H-4, I-1, I-2, I-3 and I-6 of the same blocks. As such, the excuse given by the Respondents does not bear any credence.

12. Since the objections raised by the Respondents cannot be sustained, the impugned order No. 15927/VeeVaa2(2)2018-3, dated 30.01.2019 passed by the First Respondent is set aside, and the matter has to be remitted to the First Respondent to re-examine the claim of the Petitioner as made in the representation dated 17.07.2018 and after giving full opportunity of hearing, pass reasoned order on merits in accordance with law and communicate the decision taken to her by 15.10.2019.

13. Learned Counsel for the Petitioner, on instructions, states that if the Petitioner is allotted either Flat Nos. H-5 or I-5, she would vacate whenever the Respondents require all the occupants in the flats of those blocks also to vacate for the purpose of demolition, apart from indemnifying the Respondents from any consequences that may arise due to the dilapidated condition of the building as claimed by them. It is also agreed that the Petitioner would immediately give up the alternative allotment given to her in the new building at Anna Nagar Western Extension (Padikuppam) so that the same could be made available for other persons waiting for allotment. It is needless to reiterate here that it is incumbent upon the Petitioner to perform all her legal obligations including payment of rent on the due dates and comply with the directions issued by the concerned authorities including maintenance of the premises, failing which necessary action for enforcement of the same may be taken against the Petitioner in accordance with law.

14. In the upshot, the Writ Petition is allowed on the aforesaid terms. Consequently, connected Miscellaneous Petition is closed. No costs.

kv

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
Housing & Urban Development Department
Government of Tamil Nadu,
Fort.St.George, Chennai - 600 009.

2. The Managing Director,
Tamil Nadu Housing Board,
Foreshore Estate Division Anna Salai,
Nandanam, Chennai - 600 035.

+1cc to Mr.R.Bharath Kumar, Advocate, SR.No.75432
+1cc to the Govt.Pleader, Vide Sr.No.74648
+1cc to Mr.S.Senthilnathan, Advocate, SR.No.73865

W.P.No. 6823 of 2019

Kak(12/09/2019)