



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2019

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*Judgment Reserved
on:20.11.2019*

*Judgment delivered on:
28.11.2019*

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.A.(MD) No.1295 of 2019
and
C.M.P.(MD) No.11026 of 2019
Against
W.P.(MD)No.22292 of 2019**

S.Poochiammal

... Appellant/Writ Petitioner

-vs-

1.The Chairman,
The Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai - 600 035.

2.The Superintending Engineer,
Madurai Division,
Madurai Housing Unit,
Tamil Nadu Housing Board, Ellis Nagar,
Madurai - 16.

3.The Executive Engineer & Administrative Officer,
Madurai Housing Unit,
Tamil Nadu Housing Board, Ellis Nagar,
Madurai -16.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 22.10.2019, made in W.P.(MD) No.22292 of 2019, on the file of this Court.



Prayer in WP(MD) . 22292/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus Calling for the records pertaining to the impugned order made in Lr.No.A3/5493/2000 dated 27.09.2019 passed by the 3rd respondent and quash the same as illegal.

For Appellant : Mr.D.Sadiq Raja
For Respondents : Mr.Mahaboob Athif
Standing Counsel

J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

The appeal by the Writ Petitioner is directed against the order dated 22.10.2019, made in W.P.(MD) No.22292 of 2019, in and by which, the prayer sought for by the appellant to quash the eviction order passed by the third respondent dated 27.09.2019 was rejected.

2.Mr.D.Sadiq Raja, learned counsel appearing for the appellant submitted that after receipt of Show Cause Notice dated 27.09.2019, the appellant expressed her willingness to appear for an enquiry and produce relevant documents, but without reference to such request, the eviction order has been passed and hence, it is in violation of principles of natural justice. It is further submitted that in terms of Section 84 of the Tamil Nadu Housing Board Act, 1961, the power to initiate action under Section 84 vests with the competent authority as defined under Section 2(6) of the Act and in terms of the notification issued therein, the Assistant Revenue Officer is the competent authority and the third respondent does not have jurisdiction to issue notice under Section 84 of the Act. Further, it is submitted that till date, the appellant continuous to be in possession and enjoyment of the land and no compensation has been paid to the appellant in terms of the Land Acquisition Act, 1894 and in terms of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 the entire acquisition proceedings stands lapsed. Further it is submitted that the appellant is cultivating the said property and has been in physical possession for more that 19 years and she is sought to be dispossessed arbitrarily that too pursuant to the order passed by the authority, who lacks jurisdiction. On the above grounds, the learned counsel seeks to challenge the order passed in the Writ Petition.



3. We have heard Mr. Mahaboob Athiff, learned Standing Counsel appearing for the Tamil Nadu Housing Board on the above submissions.

4. The arguments of the learned counsel appearing for the appellant are liable to be outrightly and summarily rejected. We support such conclusion with the following reasons:-

(i) The lands in question were acquired by the Government for a project of the Tamil Nadu Housing Board and the notification under Section 6 of the Land Acquisition Act, 1894 was issued on 02.07.1980. Pursuant to such declaration, the land vested with the State free from all encumbrances. The erstwhile land owners challenged the acquisition proceedings by filing Writ Petitions before the High Court, which were dismissed. The Government has handed over the land to the respondent Board on 04.12.1982. The appellant raised a plea that she is a cultivating tenant, which plea was rejected as unsustainable.

(ii) The learned counsel appearing for the appellant while candidly admitting that his client has lost her alleged claim that she is a cultivating tenant would submit *de hors* the said fact, he would contest the correctness of the action taken by the Housing Board.

(iii) Further, the appellant has filed a suit in the year 1999 and it was renumbered as O.S.No.142 of 2004, on the file of the District Munsif, Madurai for a decree of permanent injunction and had obtained an ex-parte decree. Copy of the decree has been filed in the typed set of papers, from which, we find that the learned District Munsif has not assigned any reason for coming to the conclusion that the plaintiff has made a case for granting injunction. The judgment of the civil Court reads as follows:

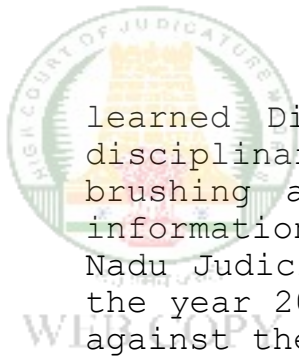
"Suit for permanent injunction and for cost.

Today when the suit is taken up, the defendant called absent, set exparte, P.W.1 chief proof affidavit filed and examined. Ex.A.1 to A.3, C1, C2 marked perused. Claim proved. Hence, the suit is decreed with cost as prayed for.

Pronounced by me in Open Court, this the 18th day of December, 2007.

Sd/- S.Srinivasan,
District Munsif,
Madurai Taluk."

Repeatedly the Hon'ble Supreme Court has deprecated the practise of the Trial Court in passing such exparte decrees. In fact, the judicial officers have been trained in the Tamil Nadu State Judicial Academy not to deliver such judgments. In our considered view, the



learned District Munsif, who passed the judgment is liable for disciplinary action for having ignored the settled legal principles, brushing aside the directions issued by the High Court and the information which was conveyed to the Judicial Officer by the Tamil Nadu Judicial Academy. However, since this decision was rendered in the year 2007, we are refrain from recommending disciplinary action against the said District Munsif.

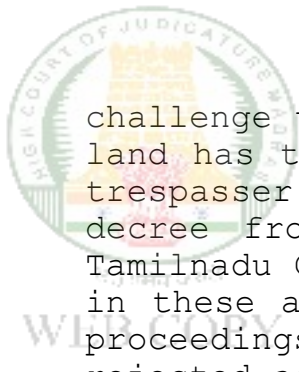
(iv) The learned counsel appearing for the appellant seeks to assail the correctness of the order impugned in the Writ Petition on the ground that it has been issued by an incompetent authority, therefore, the order suffers from the vice of lack of jurisdiction. This argument is advanced on the pretext that the provisions of the Housing Board Act would apply to the appellant. If that is so, the suit in O.S.No.142 of 2004 is not maintainable and was liable to be dismissed on the said ground and the plaint itself ought not to have been entertained by the learned District Munsif.

(v) Next we take up the contention of the learned counsel appearing for the appellant that an incompetent person has issued the order of eviction. In our considered view, the appellant has no *locus standi* to raise any such contention. He is neither an authorised occupant or a person, who was permitted to occupy the land in question. On and after the vesting of the property with the Government after the land acquisition proceedings had concluded, even the erstwhile owner has no semblance of right over the property in question.

(vi) The appellant claims a right under the original owner S.M.Kamala and another stating that she is a cultivating tenant and entitled to the protection under the Tamil Nadu Cultivating Tenants Protection Act, 1969. This claim of the appellant also failed as the Record of Tenancy Officer by order dated 23.10.2015 in T.R.No.232/2015 dismissed such claim. Therefore, the appellant is a rank trespasser into Government property liable to be summarily evicted.

(vii) We are unable to understand as to why the respondent Housing Board had resorted to issue notice under Section 84(1) of the Act, when the said provision would have no application to the appellant's case. The appellant deserves no indulgence. Therefore, the argument of the learned counsel for the appellant that the procedure required under Housing Board Act is not followed is not a valid argument and it has to be outrightly rejected.

(viii) The next argument of the learned counsel appearing for the appellant is that the land acquisition proceedings have lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This argument is absolutely devoid of merits and deserves no consideration. The landowners failed in their attempt to



challenge the land acquisition proceedings and on and after 1980 the land has to be vested with the State. The appellant, who is a rank trespasser some how entered into the land managed to obtain exparte decree from the Civil Court and initiated proceedings under the Tamilnadu Cultivating Tenants Protection Act and after having failed in these attempts, now seeks to raise a plea that land acquisition proceedings have lapsed. Such a frivolous plea is liable to be rejected as totally devoid of merit.

(ix) It is not known as to how the respondent Board did not take effective steps to defend the suit though we are informed that some steps are taken to set aside the exparte decree. It appears, the respondent Board did not take effective action, immediately which may lead us to presume that some of the erstwhile officials were colluding with the appellant. It is no doubt this presumption is rebuttable but the conduct of the then officials of the Housing Board prompt us to made such observation. We have made the above observation because the petition to set aside the exparte decree was filed only in the year 2017 with a delay of 2992 days in filing the petition to set aside the exparte decree, which was dismissed by the District Court by order dated 23.01.2019.

(x) Another argument advanced by the learned counsel appearing for the appellant is that the appellant has sent a reply to the Show Cause Notice expressing her willingness to appear for an enquiry and produce documents. The said reply has been sent by registered post on 27.09.2019. The impugned order has been passed on the very same day. Therefore, the authority cannot be expected to act on the said representation. The Show Cause Notice is dated 06.09.2019. Inspite of lapse of 7 days time, the appellant neither gave any explanation nor any request was made for extension of time. Be that as it may, the question of providing an opportunity to the appellant, does not arise because the appellant is a rank trespasser. In fact criminal prosecution ought to have been initiated against the appellant. Even assuming that the appellant has to be issued a Show Cause Notice, it is an useless formality because nothing more can be said by the appellant having failed before the Civil Court, Cultivating Tenants Protection Authority and also having been failed before the learned Single Judge.

(xi) That apart Section 84 of the Housing Board Act will have no application to the appellant and therefore, the appellant cannot state that the third respondent cannot initiate action against her. As observed by us earlier, the appellant being a rank trespasser has to be summarily evicted and no indulgence can be shown to her.

5. For the above reasons, the Writ Appeal is dismissed and the respondents are directed to evict the petitioner from the land in question within 48 hours from the date of receipt of a copy of this order. Considering the past events, we direct the third respondent to request to the Commissioner of Police, Madurai City to



give sufficient Police protection and if such request is made, the Commissioner of Police shall issue necessary orders for affording Police protection to the third respondent to evict the appellant from the property in question. Consequently, connected Civil Miscellaneous Petition is also dismissed. No costs.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Chairman,
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493, Anna Salai, Nandanam,
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+1 CC to M/s.D. SADIQ RAJA, Advocate (SR-102074[F] 28/11/2019)
+1 CC to M/s.M. MAHABOOB ATHIFF, Advocate (SR-102651[F] 29/11/2019)

Judgment in
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and C.M.P.(MD) No.11026 of 2019
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sj
SDS (16.12.2019) 6P 6C