

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2020

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.13463 and 23004 of 2013
and M.P.Nos.1, 1, 2 and 2 of 2013

M.Dhanasekaran ... Petitioner in both the W.Ps

Vs.

1. State of Tamil Nadu
Rep. By its Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai-600 009.

2. The Revenue Officer,
Tamilnadu Housing Board,
No.493, Anna Salai,
Nandanam Division,
Chennai-600 035.

... Respondents in both W.Ps

* * *

Prayer in W.P.No.13463 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the order in appeal filed by the petitioner in Letter No.2682/LA4-1/2012-4, dated 12.04.2013 on the file of the first respondent confirming the order of eviction passed in Proceedings No.Va.Va.2/24899/11, dated 12.01.2012 on the file of the second respondent quash the same.

Prayer in W.P.No.23004 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the order in appeal filed by the petitioner in Letter No.10182/NiA4-1/2013-9, dated 08.08.2013 on the file of the first respondent confirming the order of eviction passed in Proceedings No.Va.Va.2/24899/11, dated 12.01.2012 on the file of the second respondent quash the same.

* * *

For Petitioners in : Mr.S.Doraisamy
both WPs

For Respondents : Mr.V.Shanmugasundar,
in WPs Special Government Pleader for R1

Mr.R.Bharath Kumar for R 2

These writ petition are heard through Videoconferencing, on account of COVID-19 pandemic.

2. Since the parties and the issues involved in both the writ petitions are same, they are taken up together for hearing.

3. The petitioner was allotted with a Flat bearing No.H-1, Lloyds Colony on the rental basis under public quota by the Tamil Nadu Housing Board (in short, "TNHB") in the year 2005. He has been paying the rent to the Board regularly. While so, on 15.07.2011, the Revenue Officer of the TNHB/second respondent herein had issued a notice to the petitioner calling for explanation as to why the allotment should not be cancelled on the allegation that the premises was found locked. The petitioner had given his explanation on 26.07.2011 stating that he, being a Money Collection Agent attached to a Travel Agency, had to travel outside the city of Madras and necessarily he had to lock the house and go. However, he had stated that he continued to reside in the said premises only. Based on the explanation, a personal enquiry was also held on 22.09.2011, on which date, the petitioner had produced his telephone bill, LPG Supply receipt, electricity bill payment receipt, etc., in support of his contention. However, on 01.11.2011, the second respondent passed an order cancelling the allotment calling upon the petitioner to vacate the premises within 30 days. The order was not served on the petitioner, but was pasted on the door on 02.11.2011 and the second respondent also locked and sealed the premises.

4. In such backdrop, the petitioner filed W.P.No.28371 of 2011, which was disposed on 13.12.2011 directing the second respondent herein/the first respondent therein to handover the keys to the petitioner and further directing the said authority to consider the objection raised by the petitioner and pass appropriate orders.

5. Consequently, once again the petitioner had submitted his objections on 19.12.2011. Even during the enquiry, the petitioner had submitted his telephone connection details, LPG Supply details, Bank passbook etc.,. Again a personal enquiry was conducted on 09.01.2012 and an order of eviction was passed on 12.01.2012 directing the petitioner to vacate the premises, failing which, he will be forcibly evicted.

6. Aggrieved by the said order, an appeal under Section 84 of the Tamil Nadu Housing Board Act (in short, "the Act") was preferred on 06.02.2012 along with the application for stay of all further proceedings. Though the appeal was received by the first respondent on that date, no order was passed on the said stay application, which was filed along with the appeal. Therefore, the petitioner once again had to

move this Court in W.P.No.3501 of 2012 seeking for a direction to the first respondent to dispose of his appeal dated 06.02.2012. This Court vide order dated 14.02.2012 directed the first respondent to dispose of the stay application within a period of four weeks.

7. In spite of the said direction, the first respondent only on 12.04.2013 rejected the appeal itself stating that the house allotted to the petitioner had been under lock for more than 60 days, which is a violation of the Tamil Nadu Housing Board Rules and the Policy of the Board. Against the said order of rejection of the appeal, W.P.No.13463 of 2013 was filed.

8. When W.P.No.13463 of 2013 was taken up for admission, this Court granted an order of interim stay of all further proceedings, pursuant to the order dated 12.04.2013, on the ground that the said order was passed without giving an opportunity of personal hearing to the petitioner.

9. While so, the petitioner met with an accident on 08.06.2013 and he was admitted in the Apollo Hospital. During his stay in the hospital the first respondent had issued notices on 10.06.2013 and 18.06.2013 calling upon the petitioner to appear for an enquiry. However, due to his health condition, the petitioner could not appear for the enquiry, but he had sent a request to postpone the enquiry for some other date. Finally, upon receipt of the notice dated 24.07.2013, the petitioner appeared for the enquiry on 07.08.2013 and submitted certain documents in support of his continuous stay in the premises. Not satisfied with the explanation and the documents filed by the petitioner, the first respondent passed the order dated 08.08.2013 rejecting the appeal on the very same ground, i.e., the premises was kept under lock and key for more than 60 days and the said order, though was passed on 08.08.2013, was received by the petitioner on 14.08.2013, which is under challenge in W.P.No.23004 of 2013.

10. The second respondent filed a detailed counter-affidavit in the month of September, 2013 in W.P.No.23004 of 2013 justifying the impugned order and sought for dismissal of this writ petition.

11. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the first respondent and the learned Standing Counsel for the second respondent.

12. The only question that arises for consideration is whether there is any violation of the conditions of lease or the rules of the TNHB by the petitioner ?

respondent brought to the notice of this Court the lease conditions, as per the lease deed entered into by the petitioner with the second respondent dated 15.03.2005. Clause (xiv) of the said lease deed is relevant for this case and the same reads as follows :

"(xiv) The lessee after occupying the flat/house/SPQ should not lock up the flat/house/SPQ for more than 60 days continuously without the prior written intimation to the Tamil Nadu Housing Board. The habitual non-use of the quarters for more than 60 days continuously without such permission will imply that the flat/house/SPQ is not required for the allottee and the allotment will be cancelled after observing the formalities prescribed in the rules."

14. The above said condition, which makes it clear that the lessee cannot keep the flat under lock up for more than 60 days continuously, will not be applicable in this case, because in the first notice that was issued on 15.07.2011 itself it was only alleged that the petitioner had locked the house continuously for more than 60 days, which was not permissible, without the permission of the Board. When the said condition specifically mentions that "the lessee should not lock up the flat for more than 60 days continuously", the second respondent ought to have mentioned the period during which the flat was locked in the said Show Cause Notice itself.

15. The learned Standing Counsel for the second respondent fairly conceded that in the notice dated 15.07.2011 ; in the eviction order dated 12.01.2012 and in the rejection order of the appeal dated 12.04.2013 and also in the order dated 08.08.2013, the so-called 60 days continuous locking up of the house was not mentioned specifically indicating the dates. Therefore, it appears that it is only a random exercise carried out by the second respondent in issuing the eviction notice and order. Even, in the order dated 12.01.2012, the reasoning seems to be only based on the meter reading and payment of minimum charges for electricity consumption and the telephone bill reading etc.

16. As indicated above, if the conditions mentioned in the lease deed specifically states that the lessee would be evicted from the premises, if continuously it is kept locked, then the authorities should have specified the date, from which the house was locked and whether it was continuously for a period of 60 days etc.,. Merely because the electricity consumption or telephone usage was not altered, that will not be the reason for presuming that the petitioner was away from the premises locking up the same. Unless the second respondent is able to establish that the petitioner was away from the allotted house for more than 60 days continuously, which has to be categorically established, the order of

eviction cannot be passed.

17. Despite the petitioner has been knocking the doors of this Court from the year 2011, the authorities have been passing orders without application of mind. It is also not stated anywhere by the authorities that there were enquiries made with the neighbours and field exercise has been undertaken by the authorities before passing the impugned order. The only reason for passing the order of eviction is as contained in Clause (xiv) of the Lease Deed and having failed to establish the same, the order of eviction passed by the second respondent is not sustainable and the same is liable to be set aside.

18. Accordingly, the order of rejection of the appeal dated 08.08.2013 is set aside. The earlier order dated 12.04.2013 rejecting the very same appeal now merges with the said order dated 08.08.2013 passed subsequently and as such, the said order is non est in the eye of law. Hence, no separate order is required to be passed in W.P.No.13463 of 2013.

19. In the result, W.P.No.23004 of 2013 is allowed and W.P.No.13463 of 2013 is closed. There will be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Revenue Officer,
Tamilnadu Housing Board,
No.493, Anna Salai,
Nandanam Division,
Chennai-600 035.

W.P.Nos.13463 & 23004 of 2013

A.SK(09/10/2020)

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