

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.17899 of 2011

&

M.P.No.2 of 2011

Sathya Bham

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Petitioner

Vs.

- 1.The Principal Secretary to the Government of Tamilnadu,
Housing and Urban Development Department,
Secretariat,
Fort St. George,
Chennai - 9.
- 2.The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai - 600 035.
- 3.The Executive Engineer & Administrative Officer,
TamilNadu Housing Board,
Nandanam Division,
Chennai - 600 035.
- 4.The Assistant Engineer,
Tamil Nadu Housing Board,
Pattinnapakam,
Nandanam Division,
Chennai - 600 0035.
- 5.Jothimani & Co.,
No.39,Thiruvalluvar Street,
C Block No.1, Rajendra Chola,
Nesapakkam, West K.K.Nagar,
Chennai - 600 078.
- 6.The Revenue Officer,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam,
Chennai - 600 035.

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Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records in relates to the order passed by the first respondent in Letter No.28305/HB2-2/2010-2, dated 12.05.2011, and subsequent eviction order passed by the 6th respondent in Letter No.Vaa.Vaa.Bi.2/41385/2009 dated 25.05.2011 communicated on 28.06.2011 and to quash the same.

For Petitioner :Mr.S.Senthilnathan

For Respondent 1 :Mr.K.Ravikumar,
Additional Government Pleader

For Respondents 2 to 4 & 6: Mr.R.Bharath Kumar,
Standing counsel

For Respondent 5 : No appearance

ORDER

This writ petition has been filed challenging the letter No.28305/HB2-2/2010-2 dated 12.05.2011 passed by the first respondent and subsequent eviction order passed by the sixth respondent in letter No.Vaa.Vaa.Bi.2/41385/2009 dated 25.05.2011 which was communicated to the petitioner on 28.06.2011.

2. It is the case of the petitioner that the first respondent allotted a flat bearing No.D5, MIG Block, Tamil Nadu Housing Board, Pattinapakkam, Chennai - 600 028 to the petitioner by an allotment order dated 04.12.2006. According to the petitioner, pursuant to the allotment order of the first respondent, she occupied the flat on 11.12.2006. According to her, she has been paying the monthly rent and other charges regularly to the Tamil Nadu Housing Board, without committing any default. According to her, in the year 2009, some repairs were required to be made in her flat which was communicated to the Tamil Nadu Housing Board. According to her, Tamil Nadu Housing Board estimated the value of the repairs that will have to be carried out in the petitioner's flat at Rs.43,175/-.

3. It is the case of the petitioner that the entire sum of Rs.43,175/- allotted by the Tamil Nadu Housing Board was not utilised by the engineer namely the fifth respondent appointed by them for carrying out the repairs in the petitioner's flat. According to the petitioner, in view of the complaint lodged by the petitioner's husband against the fifth respondent, in a vindictive manner the first respondent at the instance of Tamil Nadu Housing Board cancelled the allotment of flat bearing No.D5, MIG, Tamil Nadu Housing Board, Pattinapakkam, Chennai - 600 028 without any notice to the petitioner by the impugned letter dated 12.05.2011 and

subsequently, the sixth respondent has also passed the eviction order dated 25.05.2011 based on the impugned letter of the first respondent dated 12.05.2011. Aggrieved by the same, this writ petition has been filed.

4. A counter affidavit has been filed by the second respondent Tamil Nadu Housing Board which has been adopted by the first respondent. As seen from the counter affidavit, the main grievance of the respondents is that the allottee's husband Thiru R.Murugesan has made false allegations against the fifth respondent and has used unparliamentary words to the staffs of the Tamil Nadu Housing board and has also threatened the staffs of the Tamil Nadu Housing Board with dire consequences for the misuse of the funds by the fifth respondent.

5. Heard Mr.S.Senthilkumar, learned counsel for the petitioner, Mr.K.Ravikumar, learned Additional Government Pleader for the first respondent and Mr.R.Bharathkumar, learned standing counsel for the respondents 2 to 4 & 6. Despite service of notice on the fifth respondent and their name having been printed in the causelist today, no one has entered appearance on their behalf.

6. The learned counsel for the petitioner drew the attention of this Court to Section 84 of the Tamil Nadu Housing Board Act. According to him, since no notice was issued to the petitioner by the first respondent prior to the issuance of impugned letter dated 12.05.2011 cancelling the allotment, the first respondent has not followed the procedure as contemplated under Section 84 (2) of the Tamil Nadu Housing Board Act.

7. Section 84(2) of the Act reads as follows:

84. Power to evict certain persons from Board premises

(1)

(2) Before an order under sub-section (1) is made against any person, the competent authority shall inform the person, by notice in writing and served in the manner provided for service of notice under sub-section (1) of the grounds for which the proposed order is to be made and give him a reasonable opportunity for tendering an explanation and producing evident, if any, and to show cause why such order should not be made within a period to be specified in such notice."

8. Admittedly in the case on hand, as seen from the counter affidavit filed by the respondents, no notice has been issued to the petitioner before issuing the impugned letter dated 12.05.2011 and subsequent eviction order dated 25.05.2011. Section 84 (2) makes it clear that before an

eviction order is issued, the competent authority shall inform the person by notice in writing and serve in the manner provided for service of notice under Sub Section (1) of the ground on which the proposed order is to be made and give him a reasonable opportunity for tendering an explanation by producing evidence if any and to show cause why such order should not be made within a period to be specified in such notice. When this mandatory requirement has not been followed, it is clear that the respondents have violated the provisions of Section 84(2) of the Tamil Nadu Housing Board Act.

9. The only ground for evicting the petitioner as seen from the counter affidavit filed by the respondents is that the petitioner's husband had used unparliamentary language and had lodged a false complaint against the fifth respondent who was the engineer appointed by the Tamil Nadu Housing Board to carry out the repairs in the petitioner's flat. Excepting for the said ground, the respondents have not stated in their counter affidavit as to whether they have followed the statutory requirement as required under Section 84 of the Tamil Nadu Housing Board Act. Since the respondents have not followed the mandatory requirements as contemplated under section 84 of the Tamil Nadu Housing Board Act, the impugned letter dated 12.05.2011 of the first respondent and the subsequent eviction order passed by the sixth respondent dated 25.05.2011 is illegal and not in accordance with the procedure established under law.

10. For the foregoing reasons, the impugned letter No.28305/HB2-2/2010-2, dated 12.05.2011 issued by the first respondent and the subsequent eviction order No.Vaa.Vaa.Bi.2/41385/2009 dated 25.05.2011 passed by the sixth respondent are hereby quashed and the writ petition is allowed. It is however open to the respondents to initiate fresh action against the petitioner with regard to the cancellation of her allotment if she has violated any of the terms and conditions of the allotment order dated 04.12.2006 by following the due procedure established under law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Principal Secretary to the Government of Tamilnadu,
Housing and Urban Development Department,
Secretariat,
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Chennai - 600 035.

+1cc to Mr.R.Bharath Kumar , Advocate SR.No.1435

+1cc to Government Pleader SR.No.1940

W.P.No.17899 of 2011

NMI (CO)
GMY (11/02/2020)

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