

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.15814, 15822 and 15824 of 2020
and W.M.P.Nos.19658, 19659, 19666,
19667, 19669 and 19670 of 2020

V.Shanthi .. Petitioner in WP No.15814/2020
G.Ravichandran .. Petitioner in WP No.15822/2020
C.Elavarasi .. Petitioner in WP No.15824/2020

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Department of Housing & Urban Development,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Superintending Engineer,
Tamil Nadu Housing Board,
Foreshore Estate Division Anna Salai,
Nandanam, Chennai-600 035.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Foreshore Estate Division Anna Salai,
Nandanam, Chennai-600 035.
4. BNR Infrastructure Projects Private Limited,
No.923, 17th Main Road,
Anna Nagar,
Chennai-600 040. .. Respondents in W.P.No.15814/2020

1. State of Tamilnadu
rep. by the Secretary to Government,
Housing and Urban Development
(HB5-2) Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Tamilnadu Housing Board
rep. by its Executive Engineer,
Pattinampakkam Division,

Anna Salai, Nandanam,
Chennai-600 035.

.. Respondents in WP Nos.15822
and 15824/2020

Prayer in WP No.15814/2020 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent No.3 in his proceedings in letter No.P.Pa.Ko., plan/033/2009, dated 15.09.2020 and respondent No.1 in passing his proceedings in G.O.(2B)No.201, dated 30.09.2020 and quash the same as the same is contrary to the earlier Government orders and consequently scrap or cancel the agreement dated 16.07.2020 executed with respondent No.4.

Prayer in WP Nos.15822 & 15824/2020 : Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the G.O.(2b)No.201, dated 30.09.2020 passed by the first respondent herein and quash the same in so far as Serial Nos.26 and 21 (petitioners' tenancy) are concerned.

For Petitioner in : Mr.S.Senthilnathan
WP No.15814/2020

For Petitioners in: Mr.N.G.R.Prasad
WP Nos.15822 & for Mr.S.Prem Anand
15824/2020

For Respondents : Mr.P.H.Arvinth Pandian,
in all the WPs Additional Advocate General
assisted by Mr.V.Shanmugasundar,
Special Government Pleader for R1
and Mr.R.Bharathkumar for R2 & R3
in W.P. No. 15814/2020 and
R2 in W.P.No.15822 & 15824/2020

C O M M O N O R D E R

Mr.V.Shanmugasundar, learned Special Government Pleader accepts notice on behalf of the first respondent/Government and Mr.R.Bharath Kumar, learned Standing Counsel for the Tamil Nadu Housing Board accepts notice for the other official respondents. The notice to the fourth respondent in W.P.No.15814 of 2020 is dispensed with, with the consent of the learned counsel on either side and accordingly, these writ petitions are taken up for final disposal at the admission stage itself.

2. The above writ petitions are filed challenging the Government Order in G.O.(2B)No.201, Housing and Urban Development [HB.2(2)] Department, dated 30.09.2020 and quash the

same. In W.P.No.15814 of 2020, the petitioner is also seeking to quash the proceedings of the third respondent in his Letter No.P.Pa.Ko., plan/033/2009, dated 15.09.2020, in addition to the above prayer.

3. The petitioners in all the writ petitions are allottees of the housing unit in Door bearing Nos.18/5, 8/6, 7/7, Peters Road Colony, Royapettah, Chennai, having regard to the allotment under the General Public Quota Category issued by the first respondent on 16.02.2007, 01.02.2011 and 07.01.2016 respectively. Admittedly, all the housing units were constructed in the year 1972 and having periodically maintained by the official respondents / TNHB. The dwelling units were constructed as per the Floor Space Index (FSI) prevalent at the relevant point. Since the present FSI would certainly enhance the living space and would accommodate more units, the first respondent had found it necessary to examine the structural fitness of the building and it was suggested to develop the housing unit in 17 places, including the Peters Road Colony. In this connection, it would be relevant to state that the first respondent had passed the Government Order in G.O.Ms.No.21, Housing and Urban Development [HB5(2)] Department, dated 29.01.2013, as per which, it was decided to construct 2522 units under Tamil Nadu Government Servant Rental Housing Scheme (TNGRHS) and 1770 units under Self-Financing Scheme (SFS) in Phase I and 1124 units under TNGRHS and 838 units under SFS in Phase II (overall 6254 units) in Chennai. Thereafter, a separate Government Order in G.O.Ms.No.91, Housing and Urban Development [HB5-2] Department, dated 04.07.2018 was passed, wherein, a Technical Committee consists of Expert Panel Members to examine structural fitness was constituted and it was suggested to the Housing Board to accept their recommendation. The Committee so constituted under G.O.Ms.No.91 had opined that the buildings deserved to be demolished. Hence, the third respondent had issued a notice in Letter No.P.Pa.Ko., plan/033/2009, dated 15.09.2020, to each of the petitioners calling upon them to vacate the dwelling units within 15 days, i.e., on or before 30.09.2020, which is impugned in W.P.No.15814 of 2020.

4. The petitioners were also directed to pay the water and electricity charges upto date and the rent payable without any arrears. All the occupants in the Peters Road Colony were issued with such notices. The petitioner in W.P.No.15822 of 2020 had challenged the same in W.P.No.13964 of 2020 and this Court passed an order on 01.10.2020 extending the time granted till 30.10.2020. The said order was passed based on G.O.(2B)No.201, dated 30.09.2020 (which is impugned in all the writ petitions) providing alternative accommodation to the petitioners as well as other persons at Mahakavi Bharathi Nagar (M.K.B. Nagar),

Chennai. Recording that the petitioners are granted the alternative accommodation by the official respondents, this Court had granted the time for vacating the premises as stated above, i.e., till 30.10.2020. However, all the petitioners have moved this Court challenging the said G.O.(2B)No.201, dated 30.09.2020 in these writ petitions.

5. The petitioners and other residents of Peters Road Colony had also addressed a letter to the Principal Secretary to the Government, Housing and Urban Development Department, who is the first respondent herein, seeking further time for vacating the subject premises. The said request was rejected by the first respondent on 19.10.2020 in Letter No.12539/HB2(2)/2020-1.

6. The learned Additional Advocate General submitted that the Housing Board had constructed Ground + 3 floors containing 20 Blocks of 346 rental quarters to Government Employees, Journalists and General Public in its own land during 1972 at Peters Road Colony. As the buildings are fairly old in a dilapidated condition and not worthy of renovating and maintaining, the Government had decided to demolish the buildings and develop the scheme with present Development Control Regulations (DCR). Accordingly, G.O.Ms.No.21, Housing and Urban Development [HB5(2)] Department, dated 29.01.2013, was issued to demolish the dwelling units in dilapidated condition located in 17 places under TNGHRS and the Peters Road Colony is listed as Sl.No.1, in the above Government Order. Subsequently, the notices for vacating the premises were handed over to the occupants/allottees on 06.04.2018 to vacate and handover the same within 30 days. Originally, the Government had also come forward to sanction a loan to an amount of Rs.25,000/- without interest for the purpose of transit. However, the occupants were not willing to accept the same.

7. In the meanwhile, as per G.O.Ms.No.91, HUDD, dated 04.07.2018, the Technical Committee was constituted, which had recommended to demolish the existing building and plan for a Multi-storied Office-cum-Commercial Complex in Peters Road Colony. Therefore, once again the notices were issued on 24.12.2019, asking the allottees to vacate the premises. The said notices were challenged by different allottees at different point of time.

8. In the meanwhile, as the Government had declared the State lockdown on 24.03.2020, the vacating of the flats were temporarily abandoned. After the lifting of the lockdown, another eviction notices were issued on 15.09.2020, which are now under challenge.

9. Admittedly, the petitioners were given the allotment under the 'public quota'. A Division Bench of this Court had discussed as to what are the rights of the allottees under the public quota in T.Sornapandian V. Principal Secretary to Government, reported in 2020 (2) CTC 369, and held that the issuance of G.O.Ms.No.21 was a policy decision of the Government. Thus, as G.O.Ms.No.21 was already upheld, the petitioners cannot have any claim to continue to reside in the said property. Merely because the Housing Board has given allotment under the public quota, the petitioners cannot have any special treatment, other than, only having a landlord and tenant relationship. Incidentally, the Hon'ble Division Bench has also held that 20% reservation for public quota in the TNGRHS itself leads to misuse of power, perpetuates illegality and extends the benefit to a chosen few resulting in violation of Article 14 of the Constitution of India. It is relevant to reproduce the following paragraphs from T.Sornapandian's case (supra) :

"32. To be noted that the appellants have not challenged the notices issued by the Board, but have questioned the policy decision of the Government in G.O.Ms.No.21. Thus, if the policy decision of the Government is held to be valid, then the appellants can have no claim to continue to reside in the property. Identical policy which was taken by the Government in respect of other similar projects have been upheld by the Hon'ble Supreme Court. The appellants have not been able to point out any legally sustainable ground to fault the policy of the Government as conceived in G.O.Ms.No.21. If we draw a parallel with that of a private owner of a property, in which there is a building, let out to various tenants, the owner of the property, to augment his income is entitled to demolish the property and re-construct. Merely because the owner of the property in the instant case is the Government, the appellants cannot contend that the Government should act as per their dictates. In fact, it should be the other way. The Government in its wisdom and to provide accommodation at reasonable rates, had constructed houses. In terms of the planning laws which are in vogue at present and the technological advancement, with the same extent of land additional houses could be constructed. Therefore, the policy decision taken in G.O.Ms.No.21 is for the welfare of the Government servants to whom rental accommodation will be allotted. As pointed out by us earlier, 20% reservation as "public quota" in the TNGRHS itself leads to misuse of power, perpetuates illegality,

extends benefit to a chosen few and resultantly violates Article 14 of the Constitution of India. The appellants have laid a claim that it does not matter whether it is a building under the control of the Housing Board or the Public Works Department, accommodation should be given because these are all done under the business rules of the Government for administrative purposes.

33. We wonder as to whether at all it would lie in the mouth of the appellants to say so when they had no vested right to get an allotment of the rental accommodation. Having found that the policy evolved by the Government in G.O.Ms.No.21 suffers from no infirmity but rather subserves the object for which it was issued, no more right remains with the appellants to contend that they are entitled to continue to reside in the premises.

34. The Hon'ble Supreme Court in the case of Sethi Auto Service Station (supra) while considering the case of applicability of Doctrine of Legitimate Expectation observed that it arises when an administrative body by raising of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. It was further pointed out that a person who bases his claim on the Doctrine of Legitimate Expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked out to his detriment. It was further observed that the Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. A claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles and the concept of legitimate expectation has no role to play where the State action is as a public policy or in public interest unless the action taken amounts to abuse of power. The above decision is a straight answer to the unsustainable claim of the legitimate expectation made by the appellants.

35. Having held that the allottees under the "public quota" had no vested right even to secure such allotment at the first instance can never plead that they have to be now given alternate accommodation and re-accommodation in the new building. All these contentions raised by the

appellants deserve to be outrightly rejected and accordingly rejected."

10. In view of the above judgment of the Division Bench of this Court, wherein, it is specifically held that there is no vested right to get an allotment of a rental accommodation for the public quota allottees, it is not open to the petitioners to challenge the policy decision of the Government.

11. The learned counsel for the petitioner in W.P.No.15814 of 2020 contended that in G.O.Ms.No.21, it was mentioned that 2522 units of TNGRHS in Phase-I and 1124 units of TNGRHS in Phase II, in addition to SFS, were to be constructed. However, the official respondents planned to raise a Multi-storied Office-cum-Commercial Complex in Peters Road Colony, which is violative of their own Government Order passed in G.O.Ms.No.21.

12. The learned Additional Advocate General would point out that the above G.O. was issued based on the announcement made on the Floor of the Assembly that old flats at 17 places in Chennai would be demolished and 4691 new flats would be constructed in a phased manner at an estimated cost of Rs.679.30 Crores. Accordingly, 17 places were identified for the purpose of TNGRHS and SFS. The Peters Road Colony is in Sl.No.1 in the said list. The housing units, that were mentioned in the above Government Order, are spread over in all the 17 places. Therefore, the argument of the learned counsel for the petitioner that the Peters Road Colony should have only a residential units and cannot be made as a Commercial Complex is unacceptable.

13. There was also an objection regarding the structural stability of the building. It was contended that without the said certificate from the authorities, the official respondents cannot proceed with the demolition proposal. The learned Additional Advocate General pointed out that G.O.Ms.No.91, dated 04.07.2018, was issued for the purpose of constitution of the Technical Committee to find out the structural soundness of the dilapidated TNGRHS flats maintained by the Housing Board in Chennai and other Districts. As the Committee had recommended for demolition of the existing building and plan for a new development as per the new revised Codes and CDR, the estimate was placed before the Board for Administrative approval and the Board had approved the same in its resolution in B.R.No.4.02, dated 18.02.2020 and the technical sanction was given by the Board on 25.02.2020. It is also stated that after getting the Structural Stability Certificate from the authorities, the proposal for demolishing the dilapidated buildings was sent to the Greater Chennai Corporation and the order was obtained on 21.07.2020 in DA/WDCN09/00130/2020. The CMDA had also accorded Planning Permission in Letter No.121, HUDD, (UDI) dated

17.08.2020. The Airport Authority of India had also issued NOC for raising High raised building by way of construction on 24.08.2020, The Fire and Rescue Services Department also issued NOC on 26.08.2020. The CMWSSB had scrutinized the proposal and granted its nod on 15.09.2020.

14. It is also stated that out of 346 flats in Peters Road Colony, 258 flats were occupied by the allottees, of which, 144 are Government servants, 70 are public quota allottees, 41 are Journalists and 3 are TNHB allottees. Though the petitioners were aware of the eviction drive moved by the official respondents even prior to the declaration of the lockdown, they had not taken any steps to get out of the place. After the lockdown was lifted, the official respondents have issued the notice on 15.09.2020 directing them to vacate the premises on or before 30.09.2020. As assured before this Court on 01.10.2020 in W.P.No.13964 of 2020, the official respondents herein agreed to accommodate the allottees by providing them alternative accommodation, which was extended even to the 'public quota allottees', even though they are not entitled to the same as a matter of right.

15. The impugned Government Order in G.O.(2B).No.201 is the order, in which, the petitioners herein are given alternative accommodation. A perusal of the annexure to the said Government Order containing the list of allottees shows that the name of the petitioner in W.P.No.15814 of 2020 is shown as Sl.No.48 ; the name of the petitioner in W.P.No.15822 of 2020 is found at Sl.No.26 ; and the name of the petitioner in W.P.No.15824 of 2020 is shown in Sl.No.21. Further, a perusal of the above list also shows that all the three petitioners are given a larger accommodation, which are at least 100 sq.ft. more than the flat even presently occupied in Peters Colony Road. Though re-accommodation is not permissible for the public quota allottees as per the judgment of the Supreme Court dated 22.04.2019, in SLP No.10031 of 2019, the petitioners, who are the public quota allottees are considered for alternate accommodation as a special case.

16. Mr.N.G.R.Prasad, learned counsel for the petitioners in W.P.Nos.15822 and 15824 of 2020 tried to impress upon the Court stating that the petitioner in W.P.No.15822 of 2020 is a differently-abled person with 45% disability and it would be difficult for him to relocate and for the petitioner in W.P.No.15824 of 2020, the alternative accommodation has been given in M.K.B. Nagar, which is 13 kms from the present place of residence, though there were housing units available at Barracka Road, which is hardly 5 kms from the Peters Road Colony. However, the learned counsel pleaded time till 31.03.2021 for vacating.

17. Similarly, it is stated by the learned counsel for the petitioner in W.P.No.15814 of 2020 that the petitioner has two college going sons and it is difficult for her to shift the house in the middle of the academic year, and sought time till 31.03.2021 for vacating the flat.

18. The request of all the petitioners was not heeded to by the learned Additional Advocate General as the petitioners are aware of the whole project and their obligation to vacate their respective premises and filing of the writ petitions by the petitioners is deliberate and only an exercise of procrastination.

19. The question of shifting of the residence in the middle of the academic year does not arise during this new normal life, because till today, the Government has not permitted the conducting the physical classes in all the educational institutions and the education is being imparted virtually right from Kinder Garden children to Professional College students and everybody is working from home. Hence, the ground of difficulty in shifting in the middle of the academic year does not arise.

20. So far as the petitioner in W.P.No.15822 of 2020 is concerned, the physical challenge that he is facing would be the same, be it in Peters Road Colony or M.K.B. Nagar. So far as the petitioner in W.P.No.15824 of 2020 is concerned, she is aged only 27 years and it is not fair on her part to quote the distance for the purpose of vacating the premises. Similarly, the petitioner in W.P.No.15814 cannot claim that since she has college going sons, she finds it difficult to shift.

21. Above all, G.O.(2B) No.201, dated 30.09.2020, which is now under challenge was issued on 30.09.2020 to specifically accommodate those who are sought to be vacated from the Peters Road Colony to M.K.B. Nagar Scheme, for a period of three years. Now the prayer in these writ petitions is to quash the said Government Order insofar as the petitioners, namely, V.Shanthi, G.Ravichandran and C.Elavarasi at Sl.Nos.48, 26 and 21 are concerned. Even presuming that these writ petitions are allowed, that would deprive the petitioners even of the alternative accommodation, which the respondent had provided to them. It is always open to the petitioners either to accept or to decline the offer that has been made under the above Government Order and shift to any place of their choice.

22. In the result, all these writ petitions are dismissed as devoid of merits and the petitioners are granted time till 15.11.2020 to vacate and handover the possession to the official

respondents/TNHB. No costs. Consequently, connected
miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

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

3. The Executive Engineer,
Tamil Nadu Housing Board,
Foreshore Estate Division Anna Salai,
Nandanam, Chennai-600 035.

+1 CC to Mr.S. Senthilnathan, Advocate sr 35802.

+3 Ccs to Mr.R.Bharathkumar, advocate sr 35912.

W.P.Nos.15814, 15822
& 15824 of 2020

PP(CO)
SP(20/11/2020)

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