

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2020

DATED : 30.11.2020

CORAM:

THE HON'BLE MR.JUSTICE DR. VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE M.S.RAMESH

W.A.No.1030 & W.A.SR.No.78401 of 2020
and C.M.P.Nos.12678 & 12591 of 2020

In W.A.No.1030 of 2020

V.Shanthi

Vs.

...Appellant

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 Ltd.,
No.923, 17th Main Road,
Anna Nagar, Chennai-600 040.

...Respondents

Prayer: Writ Appeal filed under Section 15 of the Letters Patent Act, praying to set aside the order of the learned Judge made in W.P.No.15814 of 2020 dated 05.11.2020 and thereby quash proceedings in letter No.P.Pa.Ko.Plan/033/2009 dated 15.09.2020 of the third respondent and proceedings of the first respondent in G.O.(2B) No.201 dated 30.09.2020 and as the same is contrary to the earlier Government Orders and consequentially scrap or cancel the agreement dated 16.07.2020 executed with the fourth respondent.

In W.A.SR.No.78401 of 2020

G.Ravichandran

...Appellant

Vs.

1.The State of Tamil Nadu
rep. by its Secretary to Government,
Housing & Urban Development
[HB5-2] Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Tamil Nadu Housing Board
rep. by its Executive Engineer,
Pattinampakkam Division, Anna Salai,
Nandanam, Chennai-600 035.

...Respondents

Prayer: Writ Appeal filed under Section 15 of Letters Patent Act, to set aside the order made in W.P.No.15822 of 2020 dated 05.11.2020.

W.P.No.15822 of 2020 PRAYER:

Writ Petition 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 First Respondent herein and quash the same in so far as serial No.26 & 1 (Petitioner's tenancy) are concerned.

For Appellant : Mr.Jayesh B.Dolia
in W.A.No.1030 of 2020 for Mr.S.Senthilnathan

For Appellant : Mr.N.G.R. Prasad
in W.A.SR.No.78401 of 2020 for Mr.S.Prem Anand

For Respondent : Mr.P.H.Arvinth Pandian, AAG
Nos.1 to 3 Assisted by Mr.R.Bharath Kumar
in W.A.1030 of 2020

For Respondent : Mr.P.H.Arvinth Pandian, AAG
Nos.1 & 2 Assisted by Mr.R.Bharath Kumar
in W.A.SR.No.78401 of 2020

COMMON JUDGMENT
[Judgment of the Court was made by
M.S.RAMESH, J.]

Both the Writ Appeals are directed against a common order dated 05.11.2020 of a learned Single Judge of this Court, whereby the petitioner's request to quash the Government Order in G.O. (2B) No.201, Housing and Urban Development [HB 2(2)]

Department, dated 30.09.2020, insofar as it relates to allotment of an alternate accommodation extended to them at Mahakavi Bharathi Nagar (MKB Nagar), Chennai, in lieu of their proposed eviction from Peters Road Colony, Royapettah, Chennai, was dismissed.

2. The brief facts of the case are as follows:-

a) In the year 1972, the Tamil Nadu Housing Board (TNHB) had constructed 346 residential units at Peters Road Colony, Royapettah, Chennai and allotted them to Government Employees, Journalists and General Public, on monthly rental basis. The appellants herein are two of such allottees under Public Quota. Owing to the age and dilapidated condition of all the quarters at Peters Road Colony, the Government of Tamil Nadu had passed an order in G.O.Ms. No.21, Housing and Urban Development [HB5 (2)] Department, dated 29.01.2013 to demolish the Tamil Nadu Government Servant Rental Housing Scheme (TNGRHS) at Peters Road Colony, Royapettah, along with 16 other similar projects in Chennai and for reconstruction of new residential units. Consequently, an eviction notice dated 03.01.2020 was issued to all the occupants of the 17 Tamil Nadu Government Servant Rental Housing Scheme Buildings, calling upon them to vacate their respective premises on or before 30.04.2020. It is stated that owing to the onset of the pandemic of COVID-19 and the consequential lock down declared by the State of Tamil Nadu, the eviction notice dated 03.01.2020 was not acted upon.

b) After lifting of the lock down, the second eviction notice dated 25.09.2020 was issued to the appellants as well as the other allottees, giving them 15 days time to evict their respective premises. The appellant in W.A.Sr.No.78401 of 2020 namely, Mr.G.Ravichandran had initially challenged this eviction notice before this Court in W.P.No.13694 of 2020, which came to be rejected on 01.10.2020 and directed him to vacate the flat, on or before 30.10.2020.

c) In the meantime, the Government of Tamil Nadu had issued G.O.Ms (2B).No.201, Housing and Urban Development [HB2(2)], Department dated 30.09.2020 providing alternate accommodation at MKB Nagar Housing Units to the allottees at Peters Road Colony. Both the appellants herein namely, V.Shanti and G.Ravichandran had challenged G.O.(2B).No.201, Housing and Urban Development [HB2(2)], Department dated 30.09.2020 before this Court in W.P.Nos.15814 & 15822 of 2020 respectively and by a common order dated 05.11.2020, both the Writ Petitions were dismissed and these appellants were granted time till 15.11.2020 to vacate and hand over vacant possession of their respective units to the Tamil Nadu Housing Board. The common order of the learned Single Judge are under challenge in these Writ Appeals.

d) Though the original proposal was for reconstruction of the residential units at Peters Road Colony, Royapettah, the State Government had changed its policy decision to construct multi-storied office cum commercial complex instead of residential units and during the pendency of the present Writ Appeals, the Government had issued G.O.Ms.No.173, Housing and Urban Development [HB3(2)] Department, dated 20.11.2020, according administrative sanction for construction of a multi-storied office cum commercial complex instead of residential units and sanctioned the estimated costs of Rs.458.23 Crores for the Commercial Complex Project.

3. Mr.N.G.R.Prasad and Mr.Jayesh B.Dolia, learned counsels representing the appellants submitted that the original purpose for the proposed demolition was not for re-construction of multi-storied office cum commercial complex at Peters Road Colony and that even as per the announcement made by the concerned Hon'ble Minister before the Assembly Floor, it was meant only for reconstruction of residential buildings and since the change of the proposal is not backed with appropriate Government Orders for conversion of proposal from residential to commercial complex, the eviction notice itself, cannot be sustained. They further submitted that the subsequent administrative ratification for conversion of the residential units into a commercial complex through G.O.Ms.No.173, Housing and Urban Development (HB3(2)) Department, dated 20.11.2020 was issued only after the eviction notices and since such a sanction for conversion of the residential units into a commercial complex through a Government Order was not available when the original eviction notices were issued, the consequential eviction itself is flawed. It is also their submission that the mandated soil test at the proposed construction site has not been conducted title date.

4. Per Contra, Mr.P.H.Arvinth Pandian, learned Additional Advocate General appearing on behalf of the State submitted that the residential units at Peters Road Colony and 17 similar Tamil Nadu Government Servant Rental Housing Schemes at Chennai were in a dilapidated conditions and therefore, the Government had decided to demolish the old buildings and redevelop the scheme through construction of 6254 units through Tamil Nadu Government Servant Rental Housing Scheme and Self Finance Scheme of residential and commercial units. Since the State Government had taken a policy decision to convert the originally proposed 694 housing units under Self Finance Scheme at Peters Road Colony into a multi-storied office cum commercial complex, the Tamil Nadu Housing Board, through its letter dated 21.01.2020 had addressed the State Government, seeking for the necessary amendment to G.O.Ms.No.21, Housing and Urban Development [HB5 (2)] Department, dated 29.01.2013. He further submitted that

owing to the pandemic condition resulting in lock down, the necessary amendment could not be made immediately, but however, the Government has now issued G.O.Ms.No.173 dated 20.11.2020, according sanction for construction of multi-storied office cum commercial complex. It is his further submission that these appellants are allottees under 'public quota' who have no vested right to challenge the eviction, as held by a Hon'ble Division Bench of this Court in the case of T.Sornapandian and 2 others V. The Principal Secretary to Government, Housing and Urban Development Department, Secretariat, Fort St. George, Chennai and 2 others reported in 2020 (2) CTC 369. He thus submitted that there are no procedural irregularities or infirmities in the eviction proceedings.

5. We have given careful consideration to the submissions made by the respective counsels.

6. The primary ground raised by the appellants is that the change of proposal in the reconstruction of residential units to commercial units was not backed by a Government Order, when the eviction notice was issued to the appellants.

7. The original proposal for demolition of the residential units at Peters Road Colony, Royapettah, Chennai was for reconstruction of residential units as provided under G.O.Ms.No.21, Housing and Urban Development [HB5(2)] Department, dated 29.01.2013. Pursuant to the policy decision of the State Government proposing to develop multi-storied office cum commercial complex in Peters Road Colony, Chennai, the Tamil Nadu Housing Board, through its letter dated 21.01.2020 had addressed the State Government seeking for amendment to G.O.Ms.No.21, Housing and Urban Development [HB5(2)] Department, dated 29.01.2013 for construction of multi-storied office cum commercial complex at Peters Road Colony, Chennai instead of residential units. In continuation of the request of the Tamil Nadu Housing Board dated 21.01.2020, the State Government had issued G.O.Ms.No.173, Housing and Urban Development (HB3(2)) Department, dated 20.11.2020, granting administrative sanction for construction of multi-storied office cum commercial complex at the existing Peters Road Colony, Chennai at an estimated costs of Rs.458.23 Crores.

8. The Government Order in G.O.Ms.No.173, Housing and Urban Development (HB3(2)) Department, dated 20.11.2020 is a continuation of the policy decision of the State Government, as proposed by the Tamil Nadu Housing Board in its letter dated 21.01.2020. As such, the entire decision to construct multi-storied office cum residential commercial complex at Peters Road Colony, Chennai after demolition of the existing residential units, has been ratified by the Government through

G.O.Ms.No.173, Housing and Urban Development (HB3(2)) Department, dated 20.11.2020 and hence, the very foundation of the appellants' claim stands negatived.

9. The appellants have no right to challenge the change of decision of Housing Board and State Government and undertake the construction of commercial complex in larger public interest as it would yield more revenue to them, simply because they had no right to change even the earlier proposed construction of residential units at Peters Road Colony. The requirement of proposed residential units is being fully satisfied by undertaking construction of such residential units at other projects. We do not see any merit in the claim of the appellants that such a Government order granting administrative sanction in G.O.Ms.No.173, Housing and Urban Development (HB3 (2)) Department, dated 20.11.2020 was not available at the time when the eviction notice dated 25.09.2020.

10. As earlier observed, the administrative sanction through the Government Order was the outcome of the earlier decision of the Government, for which the Tamil Nadu Housing Board had also sought for an amendment to G.O.Ms.No.21, Housing and Urban Development [HB5(2)] Department, dated 29.01.2013 through its letter dated 21.01.2020. The learned Additional Advocate General, relied upon the statements made in the counter affidavit filed by the respondents 2 and 3 and submitted that the Tamil Nadu Housing Board had also passed a resolution dated 18.02.2020 resolving to construct multi-storied office cum commercial complex at Peters Road Colony land which belongs to the Tamil Nadu Housing Board and the amendment to G.O.Ms.No.21, Housing and Urban Development [HB5(2)] Department, dated 29.01.2013 was consequently carried out under G.O.Ms.No.173, Housing and Urban Development (HB3(2)) Department, dated 20.11.2020. When the Housing Board had already resolved to change their proposal to convert the reconstruction from residential units to commercial complex and had also communicated the same to the Government on 21.01.2020, the issuance of a Government order G.O.Ms.No.173, Housing and Urban Development (HB3(2)) Department, dated 20.11.2020 after the eviction notice, which is a continuing process of decision-making, cannot be claimed to be an illegality that could vitiate the entire eviction proceedings.

11. The learned counsel for the appellants had also made a faint attempt to submit that the procedure for obtaining a proper sanction for reconstruction has not been scrupulously followed since the soil test has not been done in the proposed site. The Tamil Nadu Housing Board, in paragraph 14 of their counter affidavit dated 19.11.2020 have stated that the soil test has now been conducted and the delay in conducting the soil

test was due to the unfair agitation and protest made by the occupants under Public Quota. Since the soil test has now been conducted, the claim of the appellants in this regard, has become infructuous.

12. As observed earlier, both the appellants herein are allottees under Public Quota. A Co-ordinate Bench of this Court in T.Sornapandian's case (supra) was of the view that reservation for Public Quota in TNGRHS is a misuse of power which perpetuates illegality and that the allottees under Public Quota have no vested rights to either seek allotment at first instance or claim for alternate accommodation or re-accommodation. The learned Single Judge in the impugned order had also placed reliance on the following paragraphs of the decision of T.Sornapandian (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."

13. While applying the ratio laid down in the aforesaid decision, we are also of the view that the appellants, being public allottees, have no vested right to question the eviction proceedings. However, since their allotment or the subsequent proposed re-allotment are not the issues before us, we consciously refrain from making any further remarks, in this regard.

14. For all the foregoing reasons, we do not find any infirmity or illegality to assail from the findings and decision of the learned Single Judge in the impugned common order dated 05.11.2020. Accordingly, both the Writ Appeal and Writ Appeal in SR Stage stands dismissed. The respondents herein are at liberty to evict the appellants forthwith. Consequently, connected Miscellaneous Petitions are closed. There are no orders as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

DP

To

- 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.The Executive Engineer,
The Tamilnadu Housing Board,
Pattinampakkam Division,
Annasali|ai, Nandanam,
Chennai - 600035

+1cc to Mr.S.Premanand, Advocate, S.R.No.38097
+1cc to Mr.S.Senthilnathan, Advocate, S.R.No.38149
+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.38758

Judgment made in
W.A.No.1030 & W.A.SR.No.78401 of 2020
and
C.M.P.Nos.12678 & 12591 of 2020

LN (CO)
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