

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.2936 of 2012

and

M.P.No.1 of 2012

1.P.Kannan (deceased)
2.Gunasundari
3.Stephen

Petitioners

(P2, P3 substituted as LRs of deceased sole petitioner as per order dated 20.12.2019 made in WMP No.36144 of 2019)

Vs.

1.The Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai - 15.

2.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Anna Nagar Division,
Thirumangalam, Chennai - 101.

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records in respect of the order No.Na.Ka.Aa.Na.Othu:1.3/6473-B/08 dated 13.12.2011 issued by the 2nd respondent and to quash the same and to direct the respondent to regularise the allotment of the open space land permanently in favour of the petitioner.

For Petitioner : Mr.N.A.Kareem
For Respondent : Mr.R.Bharath Kumar
Nos.1 & 2 TNHB

ORDER

This writ petition has been filed challenging the order dated 13.12.2011 directing the petitioner to vacate the premises owned by the Tamil Nadu Housing Board within a period of 30 days from the date of receipt of the impugned demand dated 13.12.2011.

2. According to the 2nd and 3rd petitioners, their father was allotted under the Tamil Nadu Housing Board Scheme, an open space of land in TNHB, 14 shop complex measuring 200 sq.ft for running a shop for commercial purpose with effect from 1988. According to them, the rent was fixed at Rs.100/- per month and an advance of Rs.500/- was received from the deceased first petitioner by the Tamil Nadu Housing Board. It is their case that their father constructed a permanent shop building structure at the cost of Rs.80,000/- and started running business and running a Cooldrinks Bar from the year 1987.

3. According to the 2nd and 3rd petitioners, their father has been paying the rent regularly to the Tamil Nadu Housing Board and the present rent paid by them is Rs.4,118/-. It is their case that their father has also obtained electricity service connection for his business in his name and the electricity charges are also being paid bimonthly. According to the 2nd and 3rd petitioners, their father has constructed a building out of his own funds and the building has been assessed to property tax by the Corporation of Chennai and water tax has also been paid by them. According to them, their father was the absolute owner of the super structure and after his death, they are now in undisturbed possession and enjoyment for more than 23 years.

4. According to the 2nd and 3rd petitioners, all of a sudden, their father was served with the impugned notice dated 13.12.2011 by the second respondent informing him that the open space land together with the shop occupied by them should be surrendered to the Tamil Nadu Housing Board within 30 days from the date of the receipt of the impugned demand, failing which, the allotment will stand automatically cancelled and eviction proceedings will be initiated. Aggrieved by the impugned demand dated 13.12.2011, this writ petition has been filed.

5. In a batch of writ petitions involving the same shopping complex at 3rd Avenue, Anna Nagar, Chennai - 40, counter affidavit has been filed by the Tamil Nadu Housing Board. In the counter affidavit, they have stated that the building complex is in a dilapidated condition and they have also stated that by a resolution dated 30.10.2009, they have decided to demolish the existing building and construct a new one and in the new construction, they have decided to re-allot to the original allottees on priority basis. According to them, the building complex may fall at any time and it is presently in a dangerous condition and therefore, according to them, all the occupants of the shopping complex are not entitled to retain possession of the same due to the dilapidated condition of the building.

6.Heard Mr.N.A.Kareem, learned counsel appearing for the petitioners and Mr.R.Bharath Kumar, learned counsel appearing for respondents 1 & 2 (TNHB).

7.The learned counsel appearing for the petitioners submits that the 2nd and 3rd petitioners' father case is different from the case of the remaining occupants. According to them, the 2nd and 3rd petitioners' father had only taken a vacant land measuring 200 sq.ft on lease from the Tamil Nadu Housing Board and the building was constructed by their father at his own cost. He further submitted that the building, which is presently occupied by the petitioners, will not cause any hindrance for the Tamil Nadu Housing Board to demolish the existing superstructure as well as for reconstruction of a new building. The learned counsel for the petitioners further drew the attention of this Court to the photographs of the shop, which the petitioners are presently occupying.

8.However, the learned standing counsel for the respondents drew the attention of this Court to the order dated 13.12.2019 passed by this Court in a batch of writ petitions involving the same shopping complex, wherein, this Court passed the following order:

"7.Since the Tamil Nadu Housing Board has given an undertaking as seen from the resolution dated 30.10.2009 that all the existing occupants will be given priority in allotment of shops in the newly constructed complex, the apprehension expressed by the petitioner is untenable. Accordingly, as per the direction dated 08.11.2011 issued by this Court in W.P.No.25586 of 2011 in an identical matter involving another tenant in the same shopping complex, this Court disposed of the writ petition by giving a direction to the petitioner to vacate the shop No.3, situated at 1506-A, 16th main road, Anna Nagar West, Chennai - 40, on or before 31, March, 2020 and the respondents, after completion of the demolition and reconstruction of the shopping complex, are directed to consider the petitioner's request in terms of the Board's resolution No.9.06 dated 30.10.2009."

9.Further, it is his contention that the petitioners are only a sub-tenant of the original allottee and are not

entitled for any protection. According to him, the petitioners cannot be differentiated from other occupants and if the petitioners' shop is allowed to be retained, it will cause hindrance for the development of the property.

10. Admittedly, even as per the petitioners' own statement found in the affidavit filed in support of the writ petition, the building, which is in occupation, was constructed in the year 1987, as the property tax assessment for the shop was assessed. Almost, 32 years has elapsed, since the date of the construction even according to the petitioner's own admission. Therefore, it can be inferred that the petitioners' shop is a very old building. It is the case of the petitioners that the shop is a very old building and the shop was constructed out of the 2nd and 3rd petitioners' father's own funds and only the land was taken on lease from the Tamil Nadu Housing Board. However, this is disputed by the learned standing counsel for the Tamil Nadu Housing Board. Further, it is the case of the Tamil Nadu Housing Board that the petitioners are not the original allottee and they are only a sub-tenant. The petitioners' claim that their shop will not cause any hindrance for the development of the property will have to be established as it has been disputed by the Tamil Nadu Housing Board. There is no report from any Engineer/competent authority available in the typed set of papers filed by the petitioners to show that the petitioners' shop will not cause any hindrance for the development of the property by the Tamil Nadu Housing Board. Considering the fact that the building, even according to the petitioners, is more than 32 years old, it can be inferred that the building must be in a dilapidated condition. This Court has also perused the photographs submitted by the petitioners. As seen from the photographs, there are lot of algae found in the building and the building seems to be very old. The petitioners' right to retain the shop has also been protected by the resolution of the Tamil Nadu Housing Board. As per the resolution dated 30.10.2009, they have decided to demolish and reconstruct the building and allot shops to the original allottees on priority basis. If the petitioners are the original allottee, their rights have been protected by the aforesaid resolution. Further, all the remaining occupants in the same shopping complex are also in the same position as that of the petitioners and the petitioners cannot be given a special privilege without any basis.

11. For the foregoing reasons, it is clear that the petitioners are also similarly placed as that of the other occupants of the same building complex in respect of whom orders were passed by this Court on 13.12.2019 in various writ petitions. Hence, the writ petition is disposed of by giving a direction to the petitioners to vacate H1, 14 shop complex, Tamil Nadu Housing Board, 3rd Avenue, Anna Nagar, Chennai - 102

on or before 31, March, 2020 and the respondents, after completion of the demolition and reconstruction of the shopping complex, are directed to consider the petitioners' request in terms of the Board's resolution No.9.06 dated 30.10.2009. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

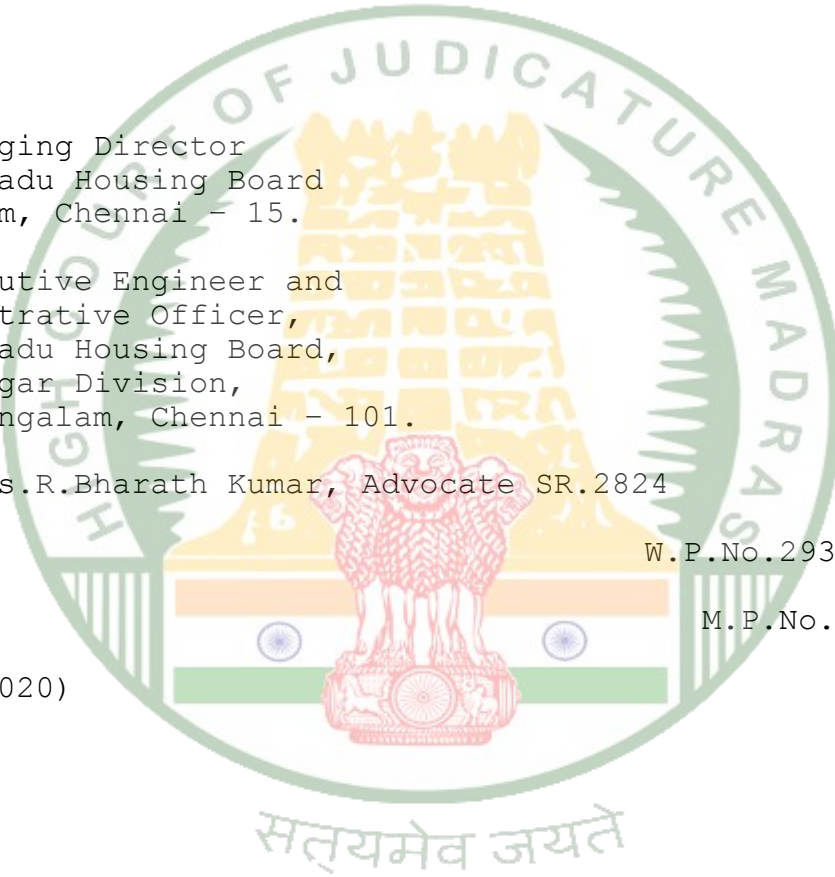
To

- 1.The Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai - 15.
- 2.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Anna Nagar Division,
Thirumangalam, Chennai - 101.

+1cc to M/s.R.Bharath Kumar, Advocate SR.2824

W.P.No.2936 of 2012
and
M.P.No.1 of 2012

RJI (CO)
CB(20/02/2020)



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