

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.13764 of 2017
and
WMP Nos.14945 and 14946 of 2017
and
WMP No.35772 of 2019

K. Chelladurai Petitioner

Vs

1. The Secretary to Government,
Housing and Urban Development,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Tamil Nadu Housing Board,
Rep. By its Managing Director,
No.493, Anna Salai,
Chennai - 600 035.

3. The Tamil Nadu Housing Board,
Rep. By its Deputy Secretary (Revenue),
No.493, Anna Salai,
Chennai - 600 035.

4. The Executive Engineer and
Administrative Officer,
Nandanam Division,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the proceedings of the 3rd respondent dated 31.10.2016 in Va.Va.P1/25666/2014 and consequential order passed by the 1st respondent dated 25.05.2017 in bearing letter No.24397/LA3(1)/2016-6, quash the same.

For petitioner : Mr.R. Bharanidaran
for
Mr.M.Sureshkumar
in W.P.13764 of 2017
Mr.S.Manoharan Sundaram
(in WMP No.35772 of 2019)

For respondents : Ms.K.Bhuvaneswari
Additional Govt. Pleader
for R1
Mr.R.Bharathkumar
for R2 to R4

ORDER

This writ petition has been filed challenging the order dated 25.05.2017 passed by the first respondent confirming the order dated 31.10.2016 passed by the third respondent cancelling the allotment dated 24.03.2009 issued in favour of the petitioner in respect of the property at N-Block No.5 Lloyds Colony Royapettah, Chennai - 600 014.

2. It is the case of the petitioner that he was allotted the aforementioned property by the Tamil Nadu Housing Board on 24.03.2009 on lease basis and he has been paying the rent regularly to Tamil Nadu Housing Board, without committing any default. According to him, he has been residing in the aforementioned premises along with his junior ever since the date of allotment, i.e. 24.03.2009. However, all of a sudden, the third respondent issued a show notice dated 15.09.2014 to the petitioner calling upon him to vacate his apartment on the ground that he has sublet the premises to one Jalander Rao and therefore, he has violated the terms and conditions of the allotment. According to the petitioner, he sent a reply to the show cause notice on 30.10.2014, wherein he has categorically stated that he has been residing in his apartment along with his junior, ever since the allotment made by the Tamil Nadu Housing Board and there is no subletting. Further, the petitioner in the said reply requested, the Tamil Nadu Housing Board to give the details of the inspection, which they allege to have made to come to the conclusion that the petitioner has sublet the property. Subsequent to the reply dated 30.10.2014, another reminder was also sent by the petitioner on 13.07.2016 seeking for the details as sought for in his earlier reply dated 30.10.2014.

3. By order dated 31.10.2016, the third respondent reiterated the contents of the show cause notice dated

15.09.2014 and held that the petitioner has violated the terms and conditions of the lease and is liable for eviction and called upon the petitioner to immediately vacate his apartment.

4. Aggrieved by the order dated 31.10.2016 passed under Section 84(1) of the Tamil Nadu Housing Board Act, the petitioner preferred a statutory appeal under Section 86 of the Tamil Nadu Housing Board Act before the first respondent. By order dated 25.05.2017, the first respondent confirmed the order dated 31.10.2016 passed by the third respondent and dismissed the appeal filed by the petitioner. Aggrieved by the order, dated 25.05.2017 passed by the first respondent, this writ petition has been filed.

5. Heard Mr. Mr.R.Bharanidaran, learned counsel for the petitioner and Ms.K.Bhuvaneswari, learned Additional Government Pleader appearing for R1 and Mr.R.Bharathkumar, learned counsel for respondents 2 to 4 .

6. The learned counsel for the petitioner drew the attention of this Court to Section 84(1) of Tamil Nadu Housing Board Act. According to him, as per the aforesaid provision, it is mandatory on the part of the competent authority to inform the allottee in writing about the proposed eviction and the allottee must also be given a reasonable opportunity for tendering an explanation by producing evidence with regard to his occupation of the premises. According to him, the petitioner was not afforded any opportunity to produce evidence to show that he has been in occupation of the apartment, ever since the allotment order.

7. The learned counsel for the petitioner drew the attention of this Court to the reply dated 30.10.2014 sent by the petitioner to the show cause notice dated 15.09.2014 issued by the Tamil Nadu Housing Board. Referring to the reply dated 30.10.2014, the learned counsel for the petitioner would submit that in the said reply, he had sought for details from the Tamil Nadu Housing Board with regard to a) the inspection that they allege to have made in the petitioner's apartment and b) the names of the officials, who had visited the site for the said inspection. He also pointed out that in the same reply, the petitioner has categorically denied that he has sublet the apartment to one Jalander Rao and he has also stated that he is a practising Advocate and residing with his junior in the said leased apartment.

8. The learned counsel for the petitioner also drew the attention of this Court to the Voters ID card, Bar council of Tamil Nadu Identity card, Telephone bill and Indian Bank statement and submitted that in all the documents, the address

of the petitioner is the same as that of the apartment, which was allotted to the petitioner by the Tamil Nadu Housing Board.

9. The learned counsel for the petitioner also drew the attention of this Court to the guidelines issued by the Tamil Nadu Housing Board with regard to the cancellation and eviction of allottees and in particular he referred to Chapter XIV Clause 4 as well as Chapter XIV, Rule 2 (4) and submitted that personal hearing must be afforded to the petitioner in the enquiry proceedings and the allottee is also permitted to produce an evidence in support of his contention.

10. According to the learned counsel for the petitioner, the Tamil Nadu Housing Board has not followed the due procedure as contemplated under the aforesaid provisions of the Tamil Nadu Housing Board Act.

11. Per contra, the learned counsel for the Tamil Nadu Housing Board would submit that the petitioner has sublet the apartment to one Jalander Rao and that he has been afforded sufficient opportunity in the appeal filed by the petitioner before the first respondent. According to him, the inspection report is also available with regard to the inspection made by the officials of Tamil Nadu Housing Board and only based on the said report, the Tamil Nadu Housing Board found that the petitioner has sublet his apartment to one Jalander Rao. According to him, since the petitioner has violated the terms and conditions of the allotment order, the Tamil Nadu Housing Board has rightly passed the impugned eviction order.

Discussion :-

12. This Court has perused and examined the impugned order, dated 31.10.2016 passed under Section 84 (1) of the Tamil Nadu Housing Board Act. It is not in dispute that the petitioner had sent a reply dated 30.10.2014 to the show cause notice dated 15.09.2014. In the reply dated 30.10.2014, the petitioner has categorically denied the allegations made by the Tamil Nadu Housing Board that he had sublet the apartment to one Jalander Rao. In the reply, he has categorically stated that he and his junior are residing in the apartment. In the same reply, he has also requested the Tamil Nadu Housing Board to produce the details of inspection, which they allege to have carried out for coming to the conclusion that the petitioner has sublet the apartment to one Jalander Rao. Another reminder was also sent by the petitioner on 13.07.2016 to the respondents calling upon them to produce the documents as sought for in his reply dated 30.10.2014. The reminder letter dated 13.07.2016 has also been duly acknowledged by the respondents, as seen from the acknowledgement cards produced by the petitioner before this Court. However, under the impugned order dated 31.10.2016

passed by the third respondent, excepting for making a reference to the reply dated 30.10.2014 sent by the petitioner, a) there is no explanation given as regards the categorical statement made by the petitioner in his reply dated 30.10.2014 that he has not sublet the premises to Jalander Rao, b) no explanation has also been given as to why the documents sought for by the petitioner in his reply dated 30.10.2014 has not been furnished to the petitioner, c) whether any notice of enquiry was issued to the petitioner before passing of the impugned order.

13. Section 84 (2) of the Tamil Nadu Housing Board Act reads as follows :-

Power to go Evict Certain Persons from Board Premises :-

(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 evidence, if any, and to show cause why such order should not be made within a period to be specified in such notice.

14. The guidelines issued by the Tamil Nadu Housing Board with regard to cancellation and eviction of allotment are mentioned in Chapter XIV, Rule 1(4) and Chapter XIV, Rule 2(4) of the said guidelines .

Chapter XIV Rule 1 (4)

The allottee sublet / or part with the possession of the whole or any part of the Flat / House without prior written permission of Tamil Nadu Housing Board except in case the allottee does not reside in the city / place.

Chapter XIV Rule 2(4)

The date and time for enquiry shall be fixed after receipt of explanation from the allottee / person in possession of the flat/house. The allottee / person in possession of the flat / house or his / her counsel or persons representing them shall appear in person at the time of enquiry and produce their evidence.

15. As seen from the above, it is clear that the Tamil Nadu Housing Board has not followed the procedure contemplated under Section 84(2) of Tamil Nadu Housing Board Act as well as the

Tamil Nadu Housing Board guidelines referred to supra. It is clear that it is mandatory on the part of the Tamil Nadu Housing Board to give a reasonable opportunity to the allottee for tendering an explanation to the show cause notice by producing evidence before passing eviction orders under Section 84(1) of the Tamil Nadu Housing Board Act. The Tamil Nadu Housing Board guidelines as found in Chapter XIV, Rule 2(4) referred to supra also makes it clear that the date of hearing should be fixed and personal hearing should be afforded to the allottee before cancellation of the allotments.

16. In the case on hand, admittedly, the third respondent before passing the impugned order has not given any personal hearing to the petitioner and has neither furnished copies of the documents sought for by the petitioner nor given any explanation as to why those documents cannot be furnished to the petitioner. No notice has also been issued to Jalander Rao, the alleged sub tenant by the Tamil Nadu Housing Board before passing of the impugned order.

17. For the foregoing reasons, it is clear that the respondents have not followed the due procedure of law as contemplated under Section 84(2) of the Tamil Nadu Housing Board Act as well as the guidelines of the Tamil Nadu Housing Board found in Chapter XIV, Rule (4) and Chapter XIV, Rule 2(4). Therefore, this Court is also of the considered view that principles of natural justice have been violated by the third respondent before passing the order against the petitioner.

18. The first respondent, which is the appellate authority under Section 86 of the Tamil Nadu Housing Board has confirmed the order dated 31.10.2016 passed by the third respondent. They have reiterated that the petitioner has sublet the premises to Jalander Rao. Even before the appellate authority viz., the first respondent herein, the Tamil Nadu Housing Board has not produced any documentary evidence to prove that the petitioner has sublet the premises to one Jalander Rao. Without any evidence whatsoever, the first respondent has also concluded that the petitioner has violated the terms and conditions of allotment by subletting his apartment to one Jalander Rao.

19. For the foregoing reasons, this Court is of the considered view that the third respondent as well as the first respondent have not followed the due procedure of law as provided for under the Tamil Nadu Housing Board Act and they have also violated the principles of natural justice by not affording sufficient opportunity to the petitioner to place evidence in support of his contention. Hence, the impugned order dated 31.10.2016 passed by the 3rd respondent as well as

the order dated 25.05.2017 passed by the first respondent are hereby quashed and the matter is remanded back to the 3rd respondent /Tamil Nadu Housing Board for fresh consideration and the third respondent shall pass final orders after following the due procedure as contemplated under Section 84(2) as well as the guidelines found in Chapter XIV of the Tamil Nadu Housing Board Act and pass final orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of the order.

20. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

21. The proposed petitioner in WMP No.35772 of 2019 has no locus standi to file the impleading petition as the dispute is only between the petitioner in WP No.13764 of 2017 and the respondents. Accordingly, he has also made an endorsement to that effect in the case bundle. Accordingly, the WMP is dismissed as withdrawn.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Secretary to Government,
Housing and Urban Development,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Chennai - 600 035.

3. The Deputy Secretary (Revenue),
Tamil Nadu Housing Board,
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Chennai - 600 035.

4. The Executive Engineer and
Administrative Officer,
Nandanam Division,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.

+1cc to the Government Pleader Sr.8606
+1cc to Mr.S.Manoharan Sundaram, Advocate Sr.8299
+1cc to M/s.R.Bharath Kumar, Advocate Sr.8153
+2cc to M/s.E.Veda Bagath Singh, Advocate Sr.7900

W.P. No.13764 of 2017

gmr[col]
srg 03/03/2020



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