

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

C O R A M

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.16266 OF 2017

&

WMP.NO.17599 OF 2017

A.P.Shareefa

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.

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

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

4. Tamil Nadu Housing Board,
Rep. by its Executive Engineer-cum-Administrative Officer,
Nandanam Division,
No.493, Anna Salai,
Nandanam, Chennai - 600 035.

... Respondents

PRAYER:

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records in letter No.6055/LA3(1)/2017-3 dated 13.06.2017 on the file of the 1st respondent and quash the same and direct the respondents 2 and 3 to pass appropriate orders on the claim of the petitioner seeking transfer of allotment in the name of the petitioner name in respect of the residential flat bearing No.3-A, Old Tower Block, Nandanam Extension, Nandanam, Chennai - 600 035 as requested by the petitioner in her representation dated 04.02.2017.

For Petitioner : Mr.P.G.Santhosh Kumar
For Respondent 1 : Mr.R.S.Selvam,
Government Advocate
For Respondents 2 to 4 : Mr.R.Bharathkumar,
Standing Counsel

ORDER

This writ petition has been filed challenging the order of the first respondent dated 13.06.2017 dismissing the appeal filed by the petitioner as against the eviction notice issued by the fourth respondent dated 10.11.2016.

2. It is the case of the petitioner that her husband A.K.P.Ibrahim was the original allottee in respect of rental apartment bearing No. 3-A, Old Tower Block, Nandanam Extension, Nandanam, Chennai - 600 035. According to the petitioner, her husband died on 12.09.2015 and subsequent to his death, she has been in lawful possession and enjoyment of the aforesaid property. According to her, she has been paying the rent regularly to the Tamil Nadu Housing Board without committing any default. According to her, arbitrarily and illegally, the fourth respondent issued a notice dated 10.11.2016 calling upon the petitioner to vacate her apartment on the ground that she is an unauthorised occupant. Aggrieved by the eviction notice dated 10.11.2016 issued by the fourth respondent, the petitioner preferred the statutory appeal before the first respondent. The first respondent by the impugned order dated 13.06.2017 dismissed the appeal filed by the petitioner. Aggrieved by the same, this writ petition has been filed.

3. A counter affidavit has been filed by the respondents 2, 3 and 4 stating that the petitioner is an unauthorised occupant. According to them, as per the resolution No.11.04 dated 21.07.1997 and resolution No.3.01 dated 03.02.2012 of the Tamil Nadu Housing Board, once the original allottee dies, the property will have to be handed over to the Tamil Nadu Housing Board within six months from the date of his or her death. According to them, since the petitioner who is the wife of the original allottee has not handed over possession of the apartment to the Tamil Nadu Housing Board as per the aforesaid resolutions, she is an unauthorised occupant and hence, not entitled for any protection.

4. Heard Mr.P.G.Santhoshkumar, learned counsel for the petitioner, Mr.R.S.Selvam, learned Government Advocate for the first respondent and Mr.R.Bharathkumar, learned standing counsel

for the respondents 2 to 4.

5. The learned counsel for the Tamil Nadu Housing Board drew the attention of this court to the Division Bench Judgment of this Court dated 04.02.2015 passed in W.A.No.1722 of 2012 in the case of Ambrish Ashok Pathak vs. Tamil Nadu Housing Board and others and submitted that the resolutions passed by the Tamil Nadu Housing Board namely resolution No.11.04 dated 21.07.1997 and resolution No.3.01 dated 03.02.2012 have held to be valid resolutions. He referred to the following paragraph which was extracted in the aforesaid Division Bench Judgment:

"The decision taken by the Housing Board not to transfer the allotment under the public rental category was with a specific purpose. It was a decision taken in larger public interest. There are many people in the queue, claiming such allotment. It is only when the houses are vacated, the Housing Board would be in a position to consider their request for allotment. In case existing allotments are transferred from the name of original allottee to the legal heirs and thereafter, to the next generation, the property would continue to be in the hands of chosen few and others would be denied of such accommodation. Therefore, an element of social objective was behind the decision taken by the Board not to permit transfers to the legal heirs. We do not find any illegality in the said policy decision warranting our interference. The application submitted by the appellant was rejected on valid reasons, in the light of the prevailing policy of the Board. The matter was considered once again by the Government and the plea was again rejected. The issue was re-examined by the learned Single Judge and arrived at a correct conclusion that the order does not warrant interference. We do not find any justifiable reason to take a different view in the matter."

6. It is now settled law that the resolutions passed by the Tamil Nadu Housing Board that on the death of the original allottee, the possession of the property will have to be handed over to the Tamil Nadu Housing Board within a period of six months are valid.

7. In the case on hand, admittedly the petitioner's husband is the original allottee who died and after his death, the petitioner instead of handing over possession of the apartment to the Tamil Nadu Housing Board within a period of six months

from the date of his death in accordance with the resolutions passed by the Tamil Nadu Housing Board, has continued to remain in possession of the apartment. Since the petitioner is a widow, this Court is of the considered view that sufficient time will have to be given to the petitioner to vacate the apartment.

8. For the foregoing reasons, there is no merit in this writ petition. Accordingly, this writ petition is dismissed. However, this Court directs the petitioner to vacate the apartment and hand over the same to the Tamil Nadu Housing Board within four months from today (29.01.2020). 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 Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
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Tamil Nadu Housing Board,
Nandanam Division, No.493, Anna Salai,
Nandanam, Chennai - 600 035.

+1cc to Mr.R.Bharathkumar,, Advocate, S.R.No.7803
+1cc to the Government Pleader, S.R.No.7195

W.P.No.16266 of 2017

LN(CO)
CS/10/03/2020