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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.21702 of 2013

and

M.P.No.1 of 2013

M.A.Thajudeen

... Petitioner

Vs.

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

2.The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Madras - 600 035.

3.The Executive Engineer cum
Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Housing Unit,
HUDCO Colony,
Coimbatore.

4.S.Vijaylakshmi.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorarified Mandamus calling for the records pertaining to the proceedings of the 3rd respondent in Letter No.A2/14419/13 dated 03.04.2013 and quash the same as illegal, incompetent and ultravires and consequently allot the flat at M-13, L.I.G. Flats Punniyakodi Street, R.S.Puram, Coimbatore in petitioner favour.



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For Petitioner : Mr.MA.P.Thangavel
For Respondent 1 : Mr.M.Rajendran
Additional Government
Pleader
For Respondents 2 & 3 : R.Bharath Kumar
For Respondent 4 : Mr.P.Saravana Sowmiyan

O R D E R

As directed by this Court vide order dated 01.12.2021, Mr.Edwin Sunder Singh, Executing Engineer and Mr.Ganesh Kumar, Superintendent, Coimbatore Housing Board, Tamil Nadu Housing Board, are present and assisted the learned counsel for the Housing Board.

2. The Writ on hand has been instituted questioning the validity of the allotment order of a Housing Board rental flat at Coimbatore city in favour of the 4th respondent.

3. The petitioner states that he submitted an application to the 3rd respondent seeking for an allotment of rental house at M-13, L.I.G Flats, Punniyakodi Street, R.S.Puram, Coimbatore, in the year 2003. An order of allotment was issued to the Writ Petitioner in letter dated 05.05.2003. However, one Mr.Balasubramanian was in possession of the said rental flat at the time of grant of allotment order in favour of the petitioner. The Writ Petitioner thus filed a Writ Petition in W.P.No.10886 of 2006 to implement the allotment order. This Court passed an order directing the respondent to consider the representation of the Writ Petitioner.

4. The Petitioner states that he was waiting from the year 2003, with the allotment order hoping that the possession will be handed over to him. However, there was no progress in the matter of eviction of the said Mr.Balasubramanian and therefore, the petitioner made a submission that the Housing Board is committing serious irregularities in the matter of allotment of rental houses, more specifically, in urban areas.

5. The learned counsel for the petitioner across the bar expresses that such allotment and occupation are provided through some brokers, who have been paid a considerable sum of money. This fact was expressed by the petitioner even in his



representation dated 23.07.2006. The petitioner specifically states that one Mr.Kumar along with Chidambaram had involved in the matter of allotment of rental quarters by the Housing Board Authorities and they used to demand a sum of Rs.35,000/- for occupation of Housing Board Quarters. When the petitioner has made a specific allegation in his representation, this Court has to take serious note of such allegation and the manner in which the Housing Board is exercising the discretionary powers conferred for allotment of rental houses.

6. The learned counsel for the petitioner reiterated that though the allotment order was issued in favour of the petitioner in the year 2003, there was no progress and it took 10 years to vacate the the said Mr.Balasubramaniam from the house and thereafter a fresh allotment was made in favour of the 4th respondent, instead of allowing the petitioner to occupy the house allotted to him. Thus, the respondents 1 to 3 again committed an illegality of issuing order of allotment in favour of the 4th respondent.

7. The learned counsel appearing on behalf of the respondents 2 and 3 / Housing Board objected these contentions by stating that, no doubt an allotment order was issued in favour of the petitioner in the year 2003. However, as per the rules, once in 3 months, the petitioner has to submit an application for renewal of allotment, however, the petitioner has failed to do so.

8. The petitioner had not filed any renewal application nor the allotment was renewed. Thus, as per the rules the allotment became lapsed and therefore the petitioner was not eligible during the relevant point of time and it took 10 years to vacate the said Mr.Balasubramaniam and after vacating him, allotment was made as per seniority and the 4th respondent stood first in the seniority. Accordingly, the 4th respondent was allotted with the flat.

9. The learned counsel for the respondents 2 and 3 reiterated that mere allotment would not confer any right on the petitioner to seek possession. Allotment orders are issued based on seniority and once in 3 months, the said allotment order has to be renewed, otherwise it will be considered as lapsed allotment and accordingly the case of the petitioner was treated as expired. Therefore, the petitioner's case was not considered at the time of granting allotment of rental house. Therefore, the respondents 2 and 3 have not committed any irregularity.



10. The learned Additional Government Advocate Pleader contended that the Government has issued an order withdrawing the discretionary quota in G.O.MS No.6, Housing and Urban Development Department dated 07.01.2011. Thus, after the year 2011, no allotment was made under the discretionary quota and all allotments are to be made strictly in accordance with rules in force and by following seniority. In respect of the other contentions, the learned Additional Government Pleader supported the learned counsel for the Housing Board by stating that the allotment granted in favour of the petitioner expired and he has failed to renew the same. Therefore, petitioner is not entitled to any relief.

11. Considering the arguments as advanced by the respective counsels appearing on behalf of the parties to the lis on hand, this Court is of the opinion that the whole affairs with reference to the facts and circumstances established in the present case has to be considered by this Court. Certain lapses and corrupt activities cannot be brushed aside or this Court cannot close its eyes. The petitioner has raised specific allegation of corruption in the matter of allotment of rental houses by exercising the power of discretionary quota and handing over of possession. However, the respondents could not able to rebut the said contention with concrete proof and evidence. Contrarily, they said they have followed the rules.

13. This Court has raised a question on what basis the allottees under the discretionary quota have been allowed to continue for an indefinite period, without any conditions except enhancement of rent, depriving all other eligible persons from getting an opportunity to occupy the Housing Board rental houses. Further, question was asked by this Court about the condition for allotment of Housing Board quarters as per the rules.

14. It is pertinent to note that every allottees must give a letter of undertaking that he / she do not possess any property and that he / she is falling within the income ceiling for an allotment of a particular house and ordinarily residing within the territorial jurisdiction of the State of Tamil Nadu. Only based on this undertaking, allotment was made by the Housing Board. While so, a question was raised by this Court, whether the said undertaking is periodically checked with reference to the allotment made in favour of the allottees.

15. The learned counsel appearing on behalf of the respondents 2 and 3 / Housing Board is unable to provide clear answer. Contrarily, it is submitted that the allottees are



allowed to continue in the rental houses till their death.

16. This Court is of the considered opinion that such an unfortunate situation deprives the opportunity to all other eligible persons who are all waiting and longing to get Housing Board quarters. It is needless to state that no other person will get the allotment opportunity, if a person is allowed to occupy the quarters for more than 50 or 60 years. More so, the allegations of corruption in the matter of allotment is also not looked into by the Tamil Nadu Housing Board.

17. A perusal of the lease deed reveals that "the lease shall be for a period of 11 months initially subject to renewal for a maximum 3 years only. At the expiry of the lease the lessee agrees to deliver vacant possession of the demised property to the lessor".

18. When the lease deed categorically stipulates that initially lease period shall be for 11 months and the renewal may be granted for a maximum period of 3 years, then it is the duty of the authorities of the Housing Board to re-visit the entire particulars regarding the undertaking given by the allottees and take a decision on renewal. However, such things are not happening. Thus, it has to be construed as illegality and more so, lapse, negligence and dereliction on the part of the Housing Board authorities.

19. Once a rental house has been leased out for a maximum period of 3 years, on expiry of the lease period, the authorities must verify the particulars of the allottees and the in the event of possessing any property or income ceiling, then such allotment are to be cancelled or it should not be renewed at all. However, the allottees are allowed to continue in possession for indefinite period / till their death, which can never be approved by this Court. Exercise of power of discretion is not only abused but the corrupt practices are allowed to go on while granting renewal of such case.

20. When the terms and conditions of the lease deed unambiguously stipulates that the lease period must be for a maximum period of 3 years, it should be renewed only on complying with the conditions and can never be in a routine manner at any circumstances. Thus, all the lease must be renewed and the authorities must find out, "whether the allottees or their family members possess any property or otherwise" and thereafter take a decision for renewal of lease. In case, the allottees or their family members possess any property, then lease shall not be



extended and thus allottees must be evicted from the quarters for the purpose of allotment of the flat to the deserving persons, in accordance with the seniority.

21. Surprisingly, the learned counsel for the respondents 2 and 3 made a submission that almost in all cases, across the State of Tamil Nadu, the allottees are permitted to be in occupation of the Housing Board quarters till their death and even in some cases the legal heirs are continuing in occupation for 6 months and illegal possession of the Housing Board flats are also continuing and it is taking longer time for the Housing Board to evict such occupants.

22. In many cases, the rent is not being collected regularly and the arrears of rents is also huge. It is the duty of the authorities to ensure that the public money is not dealt in this manner. It is also the prime duty of the authorities to ensure that allotments are made in accordance with rules and the rents are being collected regularly and defaulters are dealt with in accordance with law.

23. The way in which illegalities crept in, in the matter of allotment of Housing Board houses and collection of rent, this Court is of the considered opinion that considerable actions are imminent and all corrective measures are to be initiated for the purpose of eradicating irregularities and illegalities and the Housing Board should initiate stern action against the persons, who all are involved in corrupt practices in the matter of allotment or otherwise.

24. As far as the petitioner is concerned, no doubt, an allotment order was made in the year 2003. However, the respondents 2 and 3 made a submission that it was not renewed by the petitioner. The fact remains that the occupant of the house one Mr. Balasubramaniam was continuing in possession and it took 10 years to evict the said Balasubramaniam. Thus, the petitioner could not able to occupy the flat allotted in his favour. After 10 years, the authorities verified the records and found that the petitioner has not renewed the application and therefore allotted the flat in favour of the 4th respondent. In this regard the petitioner has raised an allegation by stating that many brokers have been involved in the matter of allotment.

25. In view of the above, the 3rd respondent has to conduct an elaborate inquiry and initiate all appropriate action against the officials and the other persons who are involved in such illegalities or corrupt activities.



26. At the outset, it is necessary to issue direction to the respondents to initiate all measures to ensure that the rule of law is followed in the matter of allotment of Housing Board quarters, collection of rents and eviction of illegal occupants etc. Accordingly, this Court is inclined to pass the following orders:-

I. The relief as it sought for in the present Writ Petition stands rejected.

II. The 3rd respondent is directed to conduct an enquiry in respect of allegations set out by the petitioner in his representation regarding corrupt activities in the matter of allotment of Housing Board quarters in Coimbatore and initiate all appropriate actions including disciplinary actions and prosecution as the case may be, by following the procedures as contemplated under law.

III. The 2nd respondent is directed to review all allotments granted under discretionary quota across the State of Tamil Nadu and initiate steps to review the cases and wherever the occupation is not in compliance with the lease deed, cancellation of the lease or decline to grant extension of lease or otherwise, shall be done by initiating all consequential actions including eviction of the occupants. It is made clear that renewal of lease must be granted strictly in accordance with terms and conditions of the lease deed and by verifying the undertaking given by the allottees.

IV. The 2nd respondent is directed to publish the particulars and details of the allottees including the houses allotted to them in the Housing Board property in the official website. Every renewal on completion of 3 years is also to be uploaded in the official website, in order to develop transparency and to ensure appropriate action against the illegal occupancy in the Tamil Nadu Housing Board.

V. All allotments and renewal of lease and all other proceedings must be uploaded in the official website enabling the public to know the status and information regarding allotment, cancellation, eviction etc, .



27. The said exercise is directed to be done within a period of 4 months from the date of receipt of a copy of this order.

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28. With these directions, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

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To

1.The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Fort St. George,
Madras - 600009.

2.The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nndanam,
Madras - 600035.

3.The Executive Engineer cum
Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Housing Unit,
HUDCO Colony,
Coimbatore.

+1cc to Mr.R.Bharathkumar, Advocate SR.No.65077
+1cc to the Government Pleader, SR.No.65811

W.P.No.21702 of 2013
and
M.P.No.1 of 2013

CP(CO)
CB(20/12/2021)