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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-12-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP NO.7577 OF 2012

AND

MP NO.1 OF 2012

R.Rajendran

...Petitioner

vs.

1.The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.

2.The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit,
Ayyanthirumaaligai,
Salem - 636 008.

3.The Assistant Revenue Officer,
Salem Housing Unit,
Ayyanthirumaaligai,
Salem - 636 008.

4.The Commissioner,
Salem City Municipal Corporation,
Salem.

(R-4 suo motu impleaded as per order
of the Court dated 06.12.2021
made in W.P.No.7577 of 2012)

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned communication of the third respondent in Letter No.7/8816/98 dated 07.03.2012, quash the same and consequently direct the respondents to execute the Sale Deed in favour of the petitioner in respect of the Housing Plot bearing Plot No.112/5H in A.S.S.F.No.112/63 in Annathanapatty Village, Salem District after determining the final cost in accordance with law.



For Petitioner : Mr.R.M.D.Nasurullah

For Respondents-1 to 3 : Mr.R.Bharath Kumar

O R D E R

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The order dated 07.03.2012 issued by the third respondent for the purpose of evicting the petitioner from the Housing Board allotted house, is under challenge in the present writ petition.

2. The facts in nutshell to be considered are that on 04.09.1998, the petitioner was allotted with House No.A-8 (2,400 sq. ft.) under the Government Discretionary Quota vide G.O.Ms. (2D) No.283. The tentative cost of the independent house at Plot No.112/5H in A.S.S.F.No.112/63 in Annanthanapatty Village, Salem District is Rs.5,99,300/-. The initial deposit to be made by the petitioner is Rs.2,39,800/-. The balance amount of Rs.1,99,300/- has to be paid in ten years i.e., in 120 instalments at Rs.3,547/- per month. The petitioner is a Government Servant. The Housing Board has issued Loan Eligibility Certificate to the petitioner for a sum of Rs.4 lakhs and the belated payment of instalments would attract interest at the rate of 20.50% per annum.

3. The Tamil Nadu Housing Board has executed Lease-cum-Sale Agreement in favour of the petitioner on 15.09.1998. The petitioner has paid a sum of Rs.26,870/- in six monthly instalments towards initial deposit in the year 1998. Accordingly, the respondent-Housing Board handed over the allotted house to the petitioner.

4. On 30.04.2002, one Mr.S.Muruganandham, vide his letter to the Director of Vigilance and Anti Corruption Department, has stated that the petitioner had created forged documents for the purpose of availing Housing Loan, which was sanctioned by the Government Department.

5. In view of the fact that the allegation against the petitioner was serious, the Executive Engineer locked the premises. The petitioner without any intimation broke open the lock and trespassed into the House and occupied the same.

6. On 16.05.2002, the Executive Engineer has taken steps to cancel the allotment. Thus, a show cause notice was issued under Sections 84(2) and 84(1) to the petitioner on 09.05.2002 and 22.05.2002 respectively for non-payment of loan amount and monthly instalments. The petitioner requested for extension of time for repayment of entire amount on 15.05.2002. However, the petitioner has not paid the instalments or the cost, which was determined at the time of allotment. Thus, on 19.06.2002, the



Tamil Nadu Housing Board had cancelled the allotment made in favour of the petitioner for the non-payment of loan amount and monthly instalments.

7. The petitioner without even settling the dues and without challenging the cancellation order dated 19.06.2002, continued his possession in the premises of the subject property. The petitioner filed a complaint before the District Consumer Disputes Redressal Forum, seeking damages. The District Consumer Disputes Redressal Forum dismissed the complaint on 28.03.2007. Thereafter, the petitioner filed Civil Suit in O.S.No.1224 of 2007 before the Civil Court and the said Civil Suit was also dismissed on 28.07.2009. Thereafter, the Executive Engineer in letter dated 29.03.2010, intimated the Final Cost to the petitioner. The outstanding dues to be paid by the petitioner was also intimated through notice dated 07.03.2012. The said notice is under challenge in the present writ petition.

8. The petitioner filed A.S.No.124 of 2012 against the judgment and decree passed in O.S.No.1224 of 2007 and the Appeal Suit was also dismissed by confirming the judgment and decree passed in the Civil Suit on 28.02.2014.

9. The learned counsel for the Tamil Nadu Housing Board produced photographs of the building, wherein the petitioner has illegally constructed additional two floors without obtaining any Planning Permission or otherwise from the Competent Authorities.

10. As on today, the petitioner has paid only Rs.71,660/- and he is in illegal possession of the Housing Board property for the past about 23 years. Thus, the respondents have stated that the petitioner, as of now, has to pay a sum of Rs.55,10,239/- in one instalment.

11. Perusal of the facts and circumstances would reveal that the petitioner has not only committed default in repayment of loan and instalments, but he is in illegal possession of the Housing Board property for the past about 23 years and without paying any further instalments or the Final Cost intimated to the petitioner by the Executive Engineer.

12. The petitioner is in continuous enjoyment of the subject property for the past about 23 years by just paying a sum of Rs.71,660/-. The petitioner, admittedly, is the Government Servant. There was an allegation of fraud in obtaining the Government loan and the actions taken by the Department is also not informed to this Court. Beyond all these irregularities, the petitioner has gone to the extent of constructing two additional floors without obtaining any Building Plan Approval or Planning



Permission from the Competent Authorities of Salem City Municipal Corporation. The subject property falls within the territorial jurisdiction of the Salem City Municipal Corporation and necessary Building Plan Approval was not obtained by the petitioner.

13. The serious irregularities and illegalities, being committed by the petitioner, cannot be condoned by this Court. The petitioner, who has occupied the Housing Board House in the year 1998 and continue to be in possession in the said premises for the past about 23 years, without paying the instalments and the Final Cost and further by constructing two additional floors, as he is liable to be prosecuted in view of the fact that the petitioner is the Public Servant and committed such an illegality, which cannot be condoned.

14. The learned counsel for the petitioner reiterated that there was deficiency in the matter of construction with reference to the house allotted and during the relevant point of time, the petitioner was willing to settle the amount. However, the fact remains that the petitioner approached the District Consumer Disputes Redressal Forum and the said Forum dismissed the complaint and thereafter, the petitioner filed the Civil Suit and the Appeal Suit and both the Civil and Appeal suits were also dismissed. Thus, the petitioner had adopted the litigative tactics for the purpose of continuing in possession of the subject property.

15. It is apparently clear that the suit was instituted in the year 2007 and disposed of in the year 2009 and the Appeal Suit was filed in the year 2012, which was disposed of on 28.02.2014 and by keeping those litigations pending, the petitioner continue to be in possession of the subject property without paying any amount to the Housing Board, even the monthly instalments. This being the serious irregularity committed by the petitioner, the petitioner is not entitled to get any relief from this Court. Thus, this Court is of an opinion that further actions are also to be initiated against the petitioner.

16. The respondent-Housing Board produced photographs to establish that the petitioner constructed additional two floors without any Building Plan Approval from the Competent Authorities. In view of the said fact, it is necessary to initiate further action against the petitioner. Thus, the Commissioner, Salem City Municipal Corporation, Salem has been suo motu impleaded as fourth respondent in the present writ petition to conduct inspection in the subject property.

17. Accordingly, the fourth respondent-The Commissioner, Salem City Municipal Corporation, Salem is directed to conduct



an inspection of the subject property, within a period of two weeks from the date of receipt of a copy of this order and in the event of any illegality, violations or otherwise, initiation of further actions, including demolition of illegal constructions, within a period of four weeks thereafter.

18. The respondents 1 to 3 are directed to evict the petitioner by following the procedures and recover the arrears of dues from the petitioner by following the procedures as contemplated.

19. With the abovesaid directions, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar

Svn

To

1.The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

2.The Executive Engineer and Administrative Officer,
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4.The Commissioner,
Salem City Municipal Corporation,
Salem.

+1cc to M/s.R.Bharath Kumar, Advocate Sr.No.65076
+1cc to M/s.C.Kanagaraj Associates, Advocate Sr.No.64240

W.P.No.7577 of 2012

BP (CO)
RVM(08/02/2022)