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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NOS.22150 OF 2004 AND 8555 OF 2006

AND

M.P.NOS.26809 OF 2004 AND 9504 OF 2006

Dr.A.R.Abdul Rafeek

... Petitioner in
both W.P's

.Vs.

1. The Chairman,
Tamil Nadu Slum Clearance Board,
Chennai - 600 005.

2. The Revenue Officer (Central),
The Tamil Nadu Clearance Board & Estate Officer,
Thirumangalam Commercial Complex,
Chennai - 600 040.

... Respondents 1 & 2
in W.P.No.22150 of 2004

1. The State of Tamil Nadu,
Rep. by the Secretary Housing & Urban
Development Department,
Fort St. George,
Chennai - 600 009.

2. The Chairman,
The Tamil Nadu Slum Clearance Board,
Chennai - 600 005.

3. The Revenue Officer (Central),
The Tamil Nadu Clearance Board & Estate Officer,
Thirumangalam Commercial Complex,
Chennai - 600 040.

... Respondents 1 to 3
in W.P.No.8555 of 2006

PRAYER IN W.P.NO.22150 OF 2004:-

The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents relating to



the order dated 07.07.2004 issued by the first respondent in Rc.No.2730/98/B2, which has culminated in the proceedings dated 20.07.2004 bearing Ref.No.m/v.m3/160/97 issued by the second respondent and quash the entire proceedings.

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PRAYER IN W.P.NO.8555 OF 2006:-

The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents relating to the order dated 20.05.2005 issued by the second respondent bearing R.C.No.17204/00/B2 and quash para 5 of the same insofar as it imposes the pre-condition of withdrawal of cases and payment of dues on that basis for considering sale on out right basis for considering and to call for the consequential order of the second respondent dated 01.02.2006 bearing Ref.No.Na.Ka.N/14878/2005 and quash the same and consequently direct the second respondent to sell the shop No.60 in the Thirumangalam Commercial Complex to the petitioner @ Rs.2,300/- per sq.ft by executing Sale Deed on receipt of the sale amount from the petitioner.

(Prayer amended as per order dated 19/04/2013 in W.M.P.No.110 of 2013 in W.P.No.8555 of 2006)

For Petitioner : M/s.T.Sai Krishnan
in both W.P's.

For Respondents : M/s.D.Latha
in both W.P's. Standing Counsel

C O M M O N O R D E R

The case of the petitioner is that vide order dated 03.10.1991 passed by the Secretary Housing & Urban Development Department, the petitioner was allotted Shop No.60, which is used by the petitioner for his clinic purpose, on a monthly rent of Rs.3,591/- with certain terms and conditions that on expiry of initial period of two years, the extension was granted for a further period of two years each from 1992, on the condition that there will be an enhancement of rent after the first two years and the area allotted should not be used for any gambling or antisocial purpose and should be used exclusively for commercial purposes and not for residential use.

2. The petitioner would further submit that he has been in occupation and possession of the said premises and using the



same from 1992. The petitioner indicated his willingness to continue for a further period of two years.

3. The Revenue Officer, Tamil Nadu Slum Clearance Board, vide Proceedings dated 03.06.1996, extended the occupation for a further period of two years from 03.04.1996 to 02.04.1998 and arbitrarily and unilaterally increased the ratio of rent to 30%, which is contrary to the original terms of allotment. Aggrieved by the same, the petitioner and others had filed Writ Petitions in W.P.Nos.16751 of 1997 etc., batch, which were disposed of on 25.11.1997, wherein, this Court directed that appeal be preferred under Section 59 of the Tamil Nadu Slum Areas (Improvement & Clearance Act, 1972) and further directed that the appeals shall be disposed of within six months from the date of presentation of such appeal. In addition thereto, there was a direction that during the pendency of the appeal, the petitioner will remit one-half of the enhanced rate as revised by the then impugned proceedings dated 31.10.1996 in addition to the agreed rent. The Writ Petition filed by the petitioner in W.P.No.19353 of 1997 was also disposed of in the same line as stated supra by order dated 06.01.1998.

4. The petitioner would further submit that as per the direction of this Court dated 25.11.1997, appeal was preferred by the petitioner before the first respondent and the first respondent vide order dated 07.07.2004, rejected the appeal and subsequently, vide order dated 20.07.2004, the Revenue Officer/Estate Officer, demanded arrears of rent to the tune of Rs.1,72,163/-.

5. The petitioner would further state that the tenants who had represented that they were allottees under the Board for nearly 10 years under rental basis has requested that they may be given the shops already occupied and allotted to them by fixation of upset price by the Board without bringing the same and had decided to fix the upset price at Rs.2,300/- per sq.ft. and had informed the allottees that the acceptance should be submitted within 15 days of receipt of the said intimation, failing which, the said shops would be brought under the tender-cum-auction basis. The payment was to be made before 30.06.2005.

6. The petitioner would further state that there was a rider attached to the intimation in paragraph No.5, which states that the allottees should clear all the dues in respect of the shops occupied by them and also to withdraw the cases or appeal filed by the allottees which may be pending against the Board in respect of the shops and only then their request to get the shops on outright basis will be considered. This is the issue which is under challenge in these writ petitions.



7. Heard the arguments advanced on either side.

8. The learned counsel appearing for the respondents 2 and 3 submitted that as on date, the petitioner has to pay a sum of Rs.18,06,017/- towards arrears of rent. Unless the petitioner deposits the due amount, the petitioner is not entitled to outright purchase.

9. In a similar circumstance, this Court dismissed the writ petition in W.P.No.5200 of 2004, on 11.04.2012 and the relevant paragraphs of the said judgment reads as under:

"14. As rightly stated in the impugned order, the Board's resolution No.91 dated 28.05.1993, has been implemented for reducing the rent for shops allotted both in basement and first floor, consequently, the upward revision of enhancement by 25% of the rent, after the expiry of two years period also has to be given effect.

15. The contention of the petitioner that had he been informed of the above said resolution, he would not have participated in the auction for the shop in Thirumangalam Commercial Complex, cannot be countenanced, for the reasons that it is for the participant to have made sufficient enquiries as regards the revision in the rent, pursuant to the resolution.

16. Merely because, the Tamilnadu Slum Clearance Board, has omitted to indicate the Board's resolution in the allotment order, that would not confer a right on the petitioner to contend that the Tamilnadu Slum Clearance Board cannot insist for payment on the basis of the resolution No.91 dated 28.05.1993, at the time of renewal of the period of lease, and which has been applied uniformly to all other allottees. The petitioner cannot take advantage of an inadvertent mistake."

10. In view of the above, this writ petition is dismissed. However, if the petitioner pays the entire due of Rs.18,06,017/-, within a period of six (6) weeks from the date of receipt of a copy of this order, the petitioner is entitled to participate in the outright purchase, in accordance with law. If the petitioner fails to pay the dues within the stipulated time, the respondents are at liberty to proceed with the eviction proceedings in accordance with law.



These Writ Petitions are dismissed with the above observations. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
The Tamil Nadu Slum Clearance Board,
Chennai - 600 005.
2. The Revenue Officer (Central),
The Tamil Nadu Clearance Board & Estate Officer,
Thirumangalam Commercial Complex,
Chennai - 600 040.
3. The Secretary Housing & Urban
Development Department,
Fort St. George,
Chennai - 600 009.

+1cc to M/s.D.Latha, Advocate, S.R.No.26630

W.P.NOS.22150 OF 2004 AND
8555 OF 2006 AND M.P.NOS.26809
OF 2004 AND 9504 OF 2006

KJ (CO)
PBS/31/05/2022