

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.20696 of 2011
MP Nos.1&2 of 2011

K.Kennedy Kumar

..Petitioner

Vs.

1. The Revenue Officer,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai - 35
2. The Chairman,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai - 35
3. The Executive Engineer cum Administrative Officer,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai - 35
4. The Assistant Revenue Officer,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai - 35
5. The Junior Engineer,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai - 35

...Respondents

PRAYER.: This 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 proceedings of the first respondent in Letter No.Va.Va. P1/7267/2010 dated 4.8.2010 and quash the same and direct the respondents to transfer the allotment pertaining to Flat No.C-7, Transit Flats Lotus Colony Chamiers Road, Nandanam, Chennai from that of the petitioner Father Late Kuppusamy to the petitioner name.

For Petitioner : Mrs.C.P.Palanichamy

For Respondents : Mr.D.Veerasekaran
Standing Counsel

O R D E R

This writ petition has been filed challenging the impugned letter dated 04.08.2010 issued by the 1st respondent and for a direction to the respondents to transfer the allotment pertaining to Flat No.C7 in favour of the petitioner.

2.The case of the petitioner is that his father was originally allotted premise No.31 at Nandanam colony through an allotment order dated 27.04.1968. Thereafter, through proceedings dated 25.08.1973, the father of the petitioner was shifted to the transit flats at Nandanam. This arrangement was made as an interim adjustment for the purpose of demolition of the original property that was allotted, until the new flats are constructed.

3.The father of the petitioner passed away on 27.01.2000 and thereafter, the petitioner was in occupation of the property. He made a representation to the Housing Board for transfer of allotment in his name from the name of his father. While so, a show cause notice was issued to the petitioner calling upon the petitioner to show cause as to why the allotment of the transit flat should not be cancelled on the ground that the original allottee had expired. The petitioner gave his reply for the show cause notice and the same was considered and ultimately, the impugned letter dated 04.08.2010 was sent to the petitioner calling upon the petitioner to vacate and hand over the premises within a period of 30 days. Aggrieved by the same, the present writ petition has been filed before this Court.

4.Mrs.A.Madhumathi, learned counsel for the petitioner and Mr.D.Veerasekaran, learned Standing counsel for respondents.

5.On carefully going through the impugned letter dated 04.08.2010, it is seen that the father of the petitioner was permitted to occupy a transit flat and he was expected to make an application for allotment of MIG flats in the same colony. As per the resolution passed by TNHB on 21.07.1997, a decision was taken to the effect that once the original allottee of a transit flat dies, the occupant of the property must hand over possession of the property and cannot claim for any right from the Housing Board. It was in implementation of this resolution dated 21.07.1997, the request made by the petitioner was rejected and it was made clear that there is no question of the

family continuing to occupy the property for decades in case of transit flat.

6.This Court does not find any illegality or infirmity in the impugned letter dated 04.08.2010 issued by the Housing Board. If ultimately family members are allowed to occupy a transit flat endlessly that will affect the very purpose of a transit flat endlessly, which is allotted only for an interregnum period to enable the allottee to apply for a fresh allotment of MIG or HIG flats constructed by the Housing Board. Therefore, the Housing Board was perfectly right in rejecting the claim made by the petitioner.

7.The impugned letter issued by the Housing Board was only a consequence of the resolution dated 21.07.1997 and this resolution has not been put to challenge by the petitioner.

8.The learned counsel for the petitioner pointing out to the affidavit filed in support of the writ petition submitted that in a similar case occupants of a transit flat in Flat No.C2 & 3 were permitted to occupy the flats inspite of the demise of the original allottee. Therefore, it was contended that the petitioner must also be given the same treatment.

9.It is now too well settled that there cannot be equality in illegality and no one can claim as a matter of right that he must be given the same treatment like that of an other person who has been illegally allowed to occupy the flats in contravention of the resolution passed by the Housing Board. Such negative equality can never be implemented by issuing a writ of Mandamus in exercise of jurisdiction under Article 226 of Constitution of India. Therefore, the contention raised by the learned counsel for the petitioner in this regard is unsustainable.

10.In view of the above discussion, this Court does not find any ground to interfere with the impugned letter issued by the 1st respondent and in the result, this writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.D.Veerasekaran, Advocate, S.R.No.43010

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BR(CO)
RGA(27/07/2022)