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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM

THE HON'BLE MR. JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.3133 of 2021
and C.M.P.No.21680 of 2021

R.Rajendran

..Appellant

Vs

1.The Chairman & Managing Director,
Tamilnadu Housing Board,
Nandhanam, Chennai - 600 035.

2.The Executive Engineer & Administrative Officer,
Tamilnadu Housing Board,
Salem Housing Limit,
Ayyam Thirumana Maaligai,
Salem - 636 008.

3.The Assistant Revenue Officer,
Salem Housing Unit,
Ayyam Thirumana Maaligai,
Salem - 636 008.

4.The Commissioner,
Salem Municipal Corporation,
Salem.

..Respondents

Appeal preferred under Clause XV of Letters Patent against the order dated 06.12.2021 made in W.P.No.7577 of 2012.

Prayer in W.P.No.7577 of 2012:

Writ Petition filed Under Article 226 of the Constitution of India, to issue 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 7.3.2012, 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 Annathanpatty Village, Salem District after determining the final cost.

For Appellant .. Mr.C.Kanagaraju

For Respondents.. Mr.R.Bharath Kumar, for R2
(Caveator)



JUDGMENT
(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 6 December 2021 passed by learned single Judge recorded on W.P.No.7577 of 2012. This appeal is by the original writ petitioner.

2. The prayer clause in the writ petition reads as under:-

"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."

3. Learned single Judge has not accepted any of these two prayers and has held that no interference is required in the order of the respondents - Housing Board ordering eviction of the original writ petitioner from the property.

4. Learned advocate for the appellant has submitted that the appellant had invested huge amount of about Rs.30 lakhs for repairing/ constructing the property in the plot, which he had received from his father. The appellant has retired from Government service as Record Clerk. It is submitted that mistakes were committed by the appellant, however, the order impugned in the writ petition was also not legal. It is submitted that even after the order passed by the respondent-authorities ordering eviction, the further statement by them shows exorbitant interest is asked for from the original writ petitioner which he may not be able to meet with. Reference in this regard is made to the statement dated 10.11.2021. It is submitted that some accommodation be granted by the Court for making payment. It is submitted that this appeal be entertained.

5. Learned Advocate for the Housing Board has submitted that after paying initial amount of few thousand rupees at the time of allotment, no payment is made by the writ petitioner. Attention of the Court is also invited to the finding recorded by learned single Judge that though there was lock and seal by the Housing Board, the writ petitioner not only broke open it and encroached it, he made further constructions and inducted other tenants to earn from that property. It is submitted that on the face of these facts, no interference be



made and this appeal be dismissed. Attention of the Court is also invited to the contents of counter filed in the writ petition, which inter alia indicates that the writ petitioner was a Government servant and he was allotted the property in question under the Government Discretionary Quota. The appellant, except paying few thousand rupees, not even paid a rupee and approached different legal forums not to get final declaration in his favour but to keep the litigation alive, at some stage, and to allow / get it suspended/ dismissed.

6. Having heard the learned advocates for the respective parties and having considered the material on record, this Court finds as under:

6.1 The point at issue before this Court is whether the relief sought for by the writ petitioner can be granted. So far, the order of the year 2012 ordering eviction is concerned, it is noted that the allotment itself was cancelled by the Housing Board, which is not the subject matter of the writ petition. The said cancellation is not even challenged before appropriate forum, instead the petitioner approached the District Consumer Disputes Redressal Forum, which is mere eye wash and going before a Civil Court is only to earn dismissal for non prosecution. Even the suit filed was only to get the relief to make a show that the matter is pending. Such a conduct of the appellant could not be countenanced.

6.2 The eviction ordered in the year 2012, was not for the first time. Earlier also the property in question was sealed and locked, which was again encroached by the petitioner.

7. The impugned order is quoted hereunder, with concurrence that the appellant could not be granted any relief. :-

"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.3,317/- per month. The petitioner is a



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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



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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



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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



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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."

8. Learned single Judge has recorded above findings on the basis of the material on record, which we find that, can not be termed to be erroneous in any manner. The satisfaction recorded by the learned single Judge in these facts and consequences thereof does not call for any interference. Further, since the cancellation of allotment of the writ petitioner has attained finality, there is no question of giving any direction to the Housing Board to execute sale deed and dismissal of petition qua that part is also confirmed. The occupation of the property by a third party, which is otherwise a public property, can not be continued even indirectly. Other direction by learned single Judge would also not call for any interference.

9. This writ appeal is dismissed. No costs. Consequently, C.M.P.No.21680 of 2021 would not survive and is disposed of accordingly.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

raa/25

To

- 1.The Chairman & Managing Director,
Tamilnadu Housing Board,
Nandhanam, Chennai - 600 035.
- 2.The Executive Engineer & Administrative Officer,
Tamilnadu Housing Board,
Salem Housing Limit,
Ayyam Thirumana Maaligai,
Salem - 636 008.
- 3.The Assistant Revenue Officer,
Salem Housing Unit,
Ayyam Thirumana Maaligai,
Salem - 636 008.



4.The Commissioner,
Salem Municipal Corporation,
Salem.

+1 cc to Mr.C.Kanagaraju, Advocate Sr.NO.64

+1 cc to Mr.R.Bharath Kumar, Advocate Sr.NO. 766

W.A.No.3133 of 2021

KSM(CO)

A.SK(21.01.2022)