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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.NO.25423 OF 2017
AND
W.M.P.NO.26868 AND 26869 OF 2017

B.Kamala,
W/o Late Balasundar

.. Petitioner

Vs.

1. Tamil Nadu Housing Board,
Represented by its Chairman,
Nandanam,
Chennai-600 035.
2. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Tirumangalam,
Chennai-600 101.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondents in connection with the impugned communication, namely Letter No.A.N.K/Survey/9526/2006, dated 18.09.2017 and quash the same.

For petitioner : Mr.V.Prakash, Senior Counsel for
Mr.K.Sudali Kannu

For respondents : Mr.R.Bharathkumar



ORDER

(The Order of the Court was made by T.Raja, J)

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records of the respondents in connection with the impugned communication in Letter No.A.N.K/Survey/9526/2006, dated 18.09.2017 and quash the same.

2. It is the case of the petitioner that she is residing in the premises in question along with two daughters and two sons for more than ten years. It is the grievance of the petitioner that she has no place to go and stay. It is further stated that the impugned communication has been pasted on the door of the residence of the petitioner on 19.09.2017 stating that they are going to demolish the structure on 20.09.2017 with the Police assistance. The petitioner is mainly aggrieved by the above communication and states that she will be put to hardship and it will be difficult for her to eke out her livelihood, if she is vacated from the premises. Hence, the present Writ Petition is filed for the relief stated supra.

3. The second respondent has filed counter affidavit stating that the Government in G.O.Ms.No.177, Housing and Urban Development Department, dated 20.01.1989, had approved the proposal of the Tamil Nadu Housing Board to sell 225 grounds of lands at Padi Eri, Anna Nagar Western Extension, Chennai, at a cost of Rs.2.55 crores to the Life Insurance Corporation of India (LIC) on payment of the entire cost in one lump-sum. Based on the said G.O., the Tamil Nadu Housing Board (TNHB), in its letter dated A2/00975/89, dated 31.01.1989 issued allotment order in favour of the LIC of India and the LIC of India had also remitted a sum of Rs.2,55,00,000/- (cost of plot and expenses incurred by the TNHB for core units) and the lands were handed over to the LIC of India on 03.03.1989. Further, an extent of 57 grounds and 1968 Sq.Ft. was allotted to the LIC of India, and the same was also handed over on 18.10.1991. Totally, an extent of 282 grounds and 1895 Sq.Ft. was handed over to the LIC of India, out of 282 grounds and 1968 Sq.Ft., the land allotted to the LIC under Padi Eri Karai Scheme. Further, an extent of 278 grounds and 1164 Sq.Ft. of land had been handed over to the LIC. While handing over the land, a piece of land measuring 4 grounds 804 Sq.Ft. was not handed over. The sale deed was issued and the same was also registered on 21.07.1993. In the sale deed, the words, "Balance Rs.8,01,975/- which was already paid by LIC for the balance of 4 gds and 804 Sq.Ft. to be handed over to LIC later on", were incorporated.



4. It is further stated by the respondents/TNHB in the counter affidavit that it was informed by the TNHB to LIC that in case vacant possession of the land is not handed over within 60 days of the payment of full cost, the amount will carry a rate of interest @ 11.5% per annum till vacant possession of the lands is handed over to the LIC. In order to hand over the encroached portion to LIC, action was taken to evict the encroacher and at that time, the encroachers filed a Writ Petition before this Court in W.P.No.5637 of 2001 in the name of Pennurimai Iyakkam, represented by its President. This Court had disposed of the said Writ Petition on 28.04.2006 stating that each one of the persons whose names are mentioned in Page Nos.1 to 5 of the paper book, shall give a written representation to the TNHB supported by materials to show that they are in occupation of the said portions, and the period of their occupation, on or before 30.06.2006 and on receipt of each application on its own merits based on the materials to be produced by each one of those persons together with the materials which the TNHB may have and then, take a decision in accordance with law. In so deciding, a few of the options that may be available to the TNHB were indicated as follows:

(i) either to permit the persons claiming right to continue to occupy the same building, (or)

(ii) if exigencies warrant, to provide the said persons an alternative accommodation on a price to be fixed by it. Till such time the TNHB takes a decision on the representation to be made by each one of those persons, they shall not be dispossessed. In order words, taking an action against the persons whose names are mentioned in Page Nos.1 to 5 of the paper book, would depend upon the outcome of the decision to be taken by the TNHB as indicated above.

5. It is the further averment of the TNHB in the counter affidavit that as per the Court's direction, none of the members residing at Radial House, has submitted any written representation to the TNHB. Further, one Mrs.Gowri and 27 others filed W.P.No.12616 of 2004 for allotment of Radial House to the petitioners therein and further to direct not to evict the petitioners. This Writ Petition was dismissed by this Court on 02.04.2009.

6. It is further stated in the counter affidavit that the petitioner herein, in her letter dated 08.09.2017, informed that she is residing in the Radial House for 20 years and she is the member of Pennurimai Iyakkam and her house is in damaged condition due to rain and flood and she has no other place to reside and her husband had expired and she requested permission



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to construct the house with asbestos. This request of the petitioner was rejected by the TNHB, vide impugned Letter No.ANK/Survey/9526/2006, dated 18.09.2017, informing that she is an encroacher and she shall remove the encroachment by herself, otherwise, the TNHB will remove the encroachment on 20.09.2017.

7. It is the further averment of the TNHB in the counter that neither the petitioner, nor her husband had contested W.P.No.5637 of 2001 and W.P.No.12616 of 2004 and their names were not found in the paper book submitted to the Court. Hence, it is ascertained that they are the subsequent encroachers. After eviction of the encroachers, the vacant possession shall be handed over to the LIC or otherwise, the TNHB has to pay interest @ 11.5% per annum for Rs.8,01,975/- till the handing over of the vacant possession to the LIC of India. Since at the time of service of notice/impugned communication through a messenger, she was not present in her residence in order to stop the ongoing work immediately, the said letter was pasted on the door of the residence. The respondents-TNHB pray for dismissing the present Writ Petition, as the same is not maintainable and she has no locus-stand to file the same.

8. Learned Senior Counsel appearing for the petitioner mainly submitted that the impugned communication is unreasonable and violative of Article 21 of the Constitution of India, inasmuch as the demolition of the premises is less than one day notice, as she finds it difficult to make both ends meet, coupled with the fact that now she had been asked to vacate.

9. Learned Senior Counsel appearing for the petitioner also contended that the petitioner hails from poor and downtrodden community and is living in below poverty line and her occupation is a small tenement, that too, it is in a dilapidated condition. No opportunity whatsoever had been given to the petitioner to put forth her case before issuance of the impugned communication.

10. Learned Standing Counsel appearing for the respondents submitted that even as per the own admission of the petitioner, the premises in which the petitioner along with her family claims to be in occupation, is in a dilapidated condition and is likely to fall down at any moment and in the light of the monsoon, steps were taken to remove the persons who are in occupation of such kind of dilapidated buildings and action was taken strictly only in accordance with law.

11. Heard both sides and perused the materials available on record.



12. In the light of the submissions made by the learned Standing Counsel appearing for the respondents/TNHB that the building in question is in a poor condition even as admitted by the petitioner, it is incumbent on the part of the respondents to take necessary action to demolish the building and hence, the petitioner/encroacher was directed to remove the encroachment by herself, else, it is stated in the impugned communication that it would be removed with the assistance of the Police.

13. Hence, taking into consideration the facts and circumstances of the case, and the submissions made on either side, it is clear that the petitioner is an encroacher and she has to vacate the premises in question of her own, else, the respondents-TNHB may take steps to evict her in accordance with law. Accordingly, as requested by the learned Senior Counsel appearing for the petitioner, this Court grants six weeks' time to the petitioner to vacate and move out from the place, from the date of receipt of a copy of this order, failing which, it is open for the respondents/TNHB to take necessary steps in accordance with law.

14. With the above observations, the Writ Petition is disposed of. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. Tamil Nadu Housing Board,
Represented by its Chairman,
Nandanam, Chennai-600 035.
2. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Tirumangalam,
Chennai-600 101.

+1cc to M/s.R.Bharathkumar, Advocate, S.R.No.17389

W.P.No.25423 of 2017

MT (CO)

RLP (21/04/2022)