



C.R.P.No1661 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P.No.1661 of 2019
and CMP No.10770 of 2019

1.A.Subramani

2.T.Ayyappan

.. Petitioners/Petitioners/Plaintiffs

.Vs.

1.Tamil Nadu Housing Board
Rep.by its Chairman
No.493, Anna Salai
Nandanam, Chennai 600 034.

2.The Inspector of Police
R10, Jaffarkhanpet Police Station

... Respondents/Respondents/Defendants

(since the 2nd respondent is already
set ex parte in the suit. Notice to the

Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records in I.A.No.14125 of 2018 in O.S.No.1205 of 2008, on the file of IV Assistant City Civil Court, Chennai and set aside the order dated 27.2.2019.

For Petitioners : Mr.G.A.Thiyagarajan

For Respondents : Mr.C.Kalaichelvan
Standing Counsel



C.R.P.No1661 of 2019

ORDER

WEB COPY

This Civil Revision Petition has been filed by the plaintiffs challenging the fair and final order passed in I.A.No.14125 of 2018 in O.S.No.1205 of 2018, by the IV Assistant City Civil Court, Chennai, dated 27.02.2019, dismissing the application filed by the petitioners under Order 13 Rule 3 of CPC., to declare the authorisation letter Ex.B.1 as illegal and consequently to eschew the evidence of DW-1, who deposed based on the authorisation letter.

2.The petitioners filed a suit against the Tamil Nadu Housing Board, seeking for the relief of permanent injunction. The grievance of the petitioners is that they are the owners of the suit property and that the officers belonging to the Tamil Nadu Housing Board were attempting to forcibly take over the possession of the suit property. Hence, the petitioners sought for the relief of permanent injunction.

3.The plaintiffs' side evidence was completed and the official belonging to the Tamil Nadu Housing Board was examined as DW-1. The officials deposed before the Court below based on a authorization letter which was marked as Ex.B-1. According to the petitioners, the so called authorization letter is illegal and it does not authorise the concerned official to depose on behalf of the Housing Board. On this ground, the



C.R.P.No1661 of 2019

petitioners sought for the rejection of the authorisation letter and for eschewing the evidence of DW-1 recorded in chief.

4.The Court below through order dated 27.02.2019, came to a conclusion that the officer, who deposed as DW-1 had proper authorization through Ex.B-1 authorization letter and the same cannot be declared as illegal or void and accordingly, the application filed by the petitioners was dismissed. Aggrieved by the same, the present Civil Revision Petition has been filed before this Court.

5.Heard Mr.G.A.Thiyagarajan, learned counsel for the petitioners and Mr.C.Kalaichelvan, learned Standing Counsel appearing on behalf of the respondents.

6.The short issue that arises for consideration is as to whether the evidence recorded before the Court can be eschewed on the ground that the person who deposed before the Court was not properly authorised in accordance with law.

7.The Tamil Nadu Housing Board took a stand before the Court below that as per Section 22(2) of the Tamil Nadu Housing Board Act, the Chairman and the Managing Director by way of General or Special order in writing can always delegate



C.R.P.No1661 of 2019

to any office of the board, the powers, duties or functions. Hence, a circular was issued in this regard whereby such a delegation was made for the second level officers to depose before the Court and give evidence. This stand taken by the Housing Board was taken into consideration by the Court below and the Court below held that the deposition of DW-1 based on Ex.B.1, authorisation letter cannot be declared as illegal and void.

8.In the considered view of this Court, where an evidence is recorded before the Court, there is no scope for eschewing such an evidence. The law on this issue was discussed by this Court in *Sundar .v. State of Tamil Nadu* reported in **2019 3 MLJ (Crl) P 211**. Admittedly, DW-1 had deposed before the Court below based on Ex.B.1 authorisation letter. If according to the petitioners, the authorisation letter is not in accordance with law and DW-1 does not have the locus to depose on behalf of the Housing Board, necessary questions can be put to the concerned official during the cross examination. Ultimately, this issue can always be argued finally and the same can be considered by the Court below on its own merits and in accordance with law.

9.In the light of the above discussion, it is made clear that the petitioners will be permitted to cross examine DW-1 on this issue and ultimately it can be raised at the



C.R.P.No1661 of 2019

time of final hearing. If such a protection is given to the petitioners, it will sufficiently take care of the interest of the petitioners. In view of the same, this Court is not inclined to interfere with the fair and final order passed by the Court below in I.A.No.14125 of 2018 in O.S.No.1205 of 2008 dated 27.02.2019. The Court below at the time of final hearing of the suit, shall independently deal with this issue without being influenced by the observations made while dismissing the application in I.A.No.14125 of 2018 in O.S.No.1205 of 2008 dated 27.02.2019.

10.In the result, this Civil Revision Petition is dismissed and there shall be a direction to the Court below to complete the proceedings in O.S.No.1205 of 2008, within a period of **three months** from the date of receipt of copy of this order and to report compliance. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2023

Internet: Yes
Index: Yes/No
Speaking Order: Yes/No
KP

To

1.The Chairman
Tamil Nadu Housing Board
No.493, Anna Salai
Nandanam, Chennai 600 034.



C.R.P.No1661 of 2019

2.The Inspector of Police
R10, Jaffarkhanpet Police Station.

N.ANAND VENKATESH. J.,

KP

C.R.P.No.1661 of 2019

06.01.2023