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W.P.No.17562 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.17562 of 2021
and WMP.No.18665 of 2021

R.Shanmuganathan

... Petitioner

Vs

1.The Government of Tamil Nadu
Represented by the Secretary
Tamil Nadu Housing and Urban
Development Department
Fort St.George, Chennai - 600 009.

2.The Competent Authority /
Executive Engineer
Kalaighar Karunanidhi Division
Tamil Nadu State Housing Board
Ashok Nagar, Chennai - 600 040.

3.The Tahsildar
Guindy - Mambalam Taluk.

.... Respondents

[R3 suo motu impleaded vide order dated
16.08.2023 made in WP.17562/2021]



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of 1st respondent in Letter No.4929/HB3(2)/2019-6 dated 09.07.2021 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents to restore possession of shop number 7, 30 feet road, Sivan Koil Street, Vadapalani, Chennai - 600 026 and for consequential orders.

For Petitioner : Ms.Abirami
for Mrs.V.Srimathi

For Respondents : Mr.D.Veerasekaran
Standing Counsel for R1 & R2

Mr.M.Bindran
Additional Government Pleader for R3

ORDER

The petitioner herein is an alleged occupant / sub-tenant of a piece of property, under a certain K.P.Rangabashyam, the alleged original allottee in R.Sy.No.75/1 and 75/5 of Kodambakkam Village, correlated to Old Sy.No.37/34 (part) and 37/64 (part), where he has established a shop bearing No.7.



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2.1 The core contention of the counsel for the petitioner is that the petitioner was not given an opportunity of being heard at any time.

2.2 The case of the petitioner is that he has been in occupation of the aforementioned property since 2006. According to him, the said property was the private holding of a certain K.P.Rangabashyam. Even prior to his occupation, sometime in 2005, the State Highways Department with an intent to acquire the lands for the construction of 100 ft. Road has issued a notification dated 16.11.2005, in the name of Rangabashyam. Thereafter, on 24.01.2019, the second respondent issued a notice in the name of certain M.Durai, demanding arrears of rent to the tune of Rs.22,94,063/- for the property in which he is in occupation. While so, the petitioner's premises have been sealed by the second respondent presumably under Section 84 of the Tamil Nadu Housing Board Act, 1961. Hence, the petitioner and those who are similarly placed have joined to file W.P.No.18120/2020 seeking to de-seal the premises. The present petitioner, along with others, have filed separate appeal under Section 86 of the TNHB Act. In view of the same, the learned Single Judge of this Court has disposed of W.P.No.18120/2020 vide



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order dated 15.04.2021, with a direction to the petitioners therein to work out their remedy in the appeal that they have filed. By an elaborate order, the appellate authority has held that the property was acquired for the TNHB, and it approved the sealing of the property. This is now under challenge.

3. The learned Standing Counsel appearing for TNHB would submit that the property in Old Sy.No.37/34 (part) and 37/64 (part) along with adjacent lands were acquired in a land acquisition proceedings which was initiated in 1963, and Sec.6 declaration was made on 10.08.1964, and the award itself came to be passed on 27.02.1970. So far as the property in Sy.No.37/64 is concerned, it was registered in the name of one Rangabashyam, which he had obtained under a family partition. Thereafter, Rangabashyam died on 21.09.1966, leaving behind him surviving his widow Vedammal and six children. The compensation was also received by Vedammal. The property in Sy.No.37/34 was originally registered in the name of one Samarapuri Mudaliar. However, during the award enquiry under Section 11 of the Land Acquisition Act, 1894, it was found that Samarapuri Mudaliar was not entitled to the entire extent, and accordingly the



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compensation was paid to him proportionate to the extent over which, he is said to be the registered owner.

4. The grievance of the petitioner in the context is that he was not heard by the appellate authority under Section 86 of the Act.

5. While this is impressive to start with, this Court only wondered what is that better title which the petitioner might establish before the appellate authority if he were to be given an opportunity of being heard. Unless there is some right which law recognises is in favour of the petitioner, which is affected in a certain way, there is no real purpose in remitting the matter back to the appellate authority for *de novo* hearing. Here the petitioner does not claim any title in himself. He speaks about Rangabashyam, but that Rangabashyam's family has lost the property, as is already explained. The petitioner now says that he claims title under a certain M.Durai, an allottee of TNHB. According to TNHB, none of these allottees made the payment to TNHB, and hence TNHB has taken possession.

6. As already said, if someone has to defend the title of the petitioner, then it



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must be the alleged allottee. And the petitioner has not impleaded him. It is only he who can speak whether the petitioner was inducted in the property by him. So looking from whichever angle, it emerges as a preponderatingly probable inference that the petitioner would only be an unlawful occupier of the plot. Now what better title or a procedural right an unlawful occupant of a property can claim against the lawful owner of the property?

7. The jurisdiction under Article 226 is not fanciful which cannot be invoked unless, not just the right, but also equity supports the case of the petitioner. This Court finds neither in the petitioner, and therefore, even if the matter is remanded back to the appellate authority to give the petitioner an opportunity of being heard, no useful purpose would be served, and that would be a waste of time of the Tribunal, to which this Court is not keen to add any additional burden.

8. The learned counsel for the petitioner would now make a plea that the TNHB may consider assigning the said property to the petitioner. The petitioner is now free to approach the TNHB with his representation, and it is for the TNHB to take a call on the same. It is made clear that this is more



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like a mercy plea and in the eventuality of TNHB rejecting it, it is underscored that the petitioner might not be vested with anything since direction is given not based on any vested right in the petitioner.

9. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2023

Index : Yes / No
Speaking order / Non-speaking order
ds

To:

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N.SESHASAYEE.J.,

ds

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