



WEB COPY



W.P.No.29529 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.29529 of 2023
and W.M.P.No.29149 of 2023

P.Mogana Sundaram

.. Petitioner

VS

1.The Secretary,
Housing and Urban Development Dept.,
Ft.St. George, Secretariate,
Chennai.

2.The Executive Engineer cum
Administrative Officer,
Kalaingar Karunanidhi Nagar Division,
Tamilnad Housing Board,
No.C-48, 2nd Avenue, III Floor,
Anna Nagar, Chennai District – 600 040.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus forbearing the respondents, their men, agents, or representatives from taking possession of the shop pertaining to open space shop no. A-1, Arumbakkam, Chennai from the petitioner till the disposal of the writ petition.

For Petitioner : Mr.K.Sathyabal

For Respondents : Mr.J.C.Durairaj,
Additional Government Pleader
for R1
Mr.D.Veerasekaran,
Standing Counsel for R2



W.P.No.29529 of 2023

ORDER

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The petitioner is an individual, who has instituted this writ petition seeking a mandamus forbearing the respondents, being, the Secretary and the Executive Engineer cum Administrative Officer of the Housing Board, R1 and R2 respectively, from taking possession of shop bearing no. A-1, Arumbakkam, Chennai (premises / premises in question) from his possession.

2. According to the petitioner, the premises in question has been allotted to his late father / Mr.Paneer Selvam, by letter of the Tamil Nadu Housing Board bearing No.A54/3941/80 dated 08.08.1980 and possession was given on the same day. After his father's demise, he is in possession of the shop.

3. Per contra, the stand of the respondents as conveyed to the Court orally, is that the shop is under lease. There have been several attempts taken in the intervening years to collect the arrears of rent but to no avail. In fact, the petitioner has himself placed on record communications / demands from the respondents, calling for payment of arrears, and the replies of the petitioner to the same.



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WEB COPY

4. Ultimately, an order came to be passed by R2 on quantifying the total arrears as Rs.15,46,666/-. As against the aforesaid order, the petitioner has filed an appeal under Section 86 of the Tamil Nadu State Housing Board Act, 1961 (in short, 'Act'). The appeal has been instituted on 18.05.2023 and is yet pending before R1.

5. Section 86(3) of the Act stipulates that upon preferment of appeal under Section 86(1), the Government may stay the execution of the order of competent authority for such period and on such conditions as it thinks fit. Learned counsel appearing for the respondents would concur on the pendency of the appeal before R1.

6. In the above circumstances, it would be appropriate that the power vesting in the authority under Section 86(3) of the Act be exercised and R1 consider interim protection to the petitioner pending appeal. Though the petitioner has not made an application for interim relief before R1, under Section 86(3) of the Act vests discretion in the competent authority to consider interim relief simply upon preferment of the appeal, obviating the necessity for the appellant to seek such interim relief.



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WEB COPY

7. In the present case, the writ petitioner is aggrieved by the action of the respondents to dispossess him from the premises in question pending appeal. Thus, status quo shall be maintained till 17.11.2023. The petitioner will appear before R1 on 18.10.2023 at 10.30 a.m. without anticipating any further notice in this regard. Upon hearing the petitioner and considering evidences, if any, filed. R1 will pass a speaking order on or before 17.11.2023 in accordance with law. R1 may, in line with Section 86(3), impose conditions at his discretion and limit the period of his stay, as appropriate.

8. Writ petition stands disposed in the above terms. No costs. Connected miscellaneous petition is closed.

12.10.2023

Index:Yes/No
Neutral Citation:Yes
ssm

Note to Registry : Issue copy on 16.10.2023



W.P.No.29529 of 2023

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To

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DR. ANITA SUMANTH,J.

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