



W.P.(MD)Nos.15421, 15374 & 15185 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)Nos.15421, 15374 & 15185 of 2020

and

W.M.P.(MD).Nos.12790, 12956 & 12912 of 2020

W.P.(MD).No.15421 of 2020

Chinnu

... Petitioner

Vs

1.The Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Fort St.George, Chennai-600 009.

2.The Principal Secretary/the Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.

3.The Executive Engineer/
Administrative Officer,
Madurai Housing Board Unit,
Ellis Nagar,
Madurai-625 010.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the third respondent from evicting the petitioner in shop no.4, situating in TNHB Colony, Ellis Nagar, Madurai, till the conclusion of the petitioner's appeal dated 29.09.2020 pending adjudication before the 1st respondent and consequently to direct the 3rd respondent to provide the details of the arrears of rent amount and rent tariff of the petitioner's shop forthwith so as to enable the petitioner to ascertain his shops appropriate rent and so as to settle the accrued rent of his shop.



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2.The Principal Secretary/the Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.

3.The Executive Engineer/
Administrative Officer,
Madurai Housing Board Unit,
Ellis Nagar,
Madurai-625 010.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the third respondent from evicting the petitioner in shop no.6, situating in TNHB Colony, Ellis Nagar, Madurai, till the conclusion of the petitioner's appeal dated 29.09.2020 pending adjudication before the 1st respondent and consequently to direct the 3rd respondent to provide the details of the arrears of rent amount and rent tariff of the petitioner's shop forthwith so as to enable the petitioner to ascertain his shops appropriate rent and so as to settle the accrued rent of his shop.

For Petitioners : Mr.N.Mohideen Basha,
Senior Counsel

For R-1 : Mr.K.S.Selva Ganesan,
Additional Government Pleader

For R-2 & R-3 : Mr.R.Sivakumar,
Standing Counsel
(In all Cases)

COMMON ORDER

The issue involved in all the three Writ Petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2. These writ petitions were filed to forbear the third respondent, viz., the Executive Engineer of the Housing Board from evicting the petitioners



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from their respective shops till the conclusion of the appeal that was filed by them which was pending adjudication before the first respondent.

3. Heard the learned counsel on either side.

4. These writ petitions were entertained and an interim order was passed by this Court directing the petitioners to deposit 25% of the amount that was demanded by the Housing Board and subject to this condition, the Housing Board was enjoined from evicting the petitioners from their respective shops.

5. The above interim order was complied with by the petitioners and they had also deposited 25% of the impugned demand made by the Housing Board. When the matter came up for hearing on earlier occasions, the Housing Board was directed to provide the particulars of the total arrears that is due and payable by the petitioners. Accordingly, the respondents have filed the particulars regarding the petitioners and have calculated the total arrears that is due and payable by the petitioners.

6. When the matter was taken up for hearing today, the learned counsel for the petitioners submitted that insofar as W.P.(MD).No.15185 of 2020 is concerned, Jeyapandi is none other than the son of the original lessee Rajendran and that there is no sub-lease made by Rajendran as claimed by the



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Housing Board. The learned counsel fairly submitted that the petitioners will have to clear the arrears of rent that has been calculated by the Housing Board and submitted by way of chart and that some time is required for the petitioners to clear the arrears. The learned counsel requested that the petitioners may be permitted to clear the arrears by paying the same in instalments within a time frame fixed by this Court.

7. In the considered view of this Court, there is no dispute with regard to the fact that the arrears of rent will have to be paid by the petitioners as per the calculation made by the Housing Board and it has been submitted before this Court by way of a chart. Insofar as the petitioner in W.P.(MD).No. 15421 of 2020 is concerned, the total arrears as of September 2023 has been arrived at Rs.21,83,170/- (Rupees Twenty One Lakhs Eighty Three Thousand One Hundred and Seventy only). Insofar as the petitioner in W.P.(MD).No. 15374 of 2020 is concerned, the arrears has been arrived at Rs.15,34,400/- (Rupees Fifteen Lakhs Thirty Four Thousand and Four Hundred only). With regard to the petitioner in W.P.(MD).No.15185 of 2020 is concerned, the arrears has been arrived at Rs.15,03,943/- (Rupees Fifteen Lakhs Three Thousand Nine Hundred and Forty Three only). If the petitioners are to continue in possession of the respective shops, they have to necessarily clear these arrears. The appeal that has been filed by the petitioners and which is pending before the first respondent, will not really give to the aid of the petitioners, since ultimately the



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petitioners are legally bound to pay the arrears of rent even to continue the occupation in the respective shops. Considering the fervent plea made by the learned counsel appearing for the petitioners, this Court is inclined to grant some time to the petitioners to clear the arrears of rent. This is in view of the fact that the petitioners are eking their livelihood from the income earned from the shops. However, this Court must also not forget the fact that the Housing Board cannot be deprived of the income and their rights must also be safeguarded. In view of the same, some balancing act must be done to balance the right of both the parties.

8. The learned counsel for the petitioners submitted that there is no clarity in the rent that has been fixed and the petitioners are not very sure about the rent that is being fixed per Square Feet. The learned counsel further submitted that the officials of the Housing Board did not demand for the rent as and when it fell due and after the accumulation of huge arrears, they have taken steps to evict the petitioners and that if the officials had demanded the rent on time, there would not have been an occasion for accumulation of such huge rental arrears. Therefore, the learned counsel submitted that the respondents can be directed to consider modification or waiver of the penal interest that has been charged by them and which has been added towards the total arrears.



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9. In the considered view of this Court, the rent that has been fixed by the Housing Board is not a subject matter in these writ petitions and this Court is not inclined to go into that issue. Apart from that, even if the officials of the Housing Board have not claimed for the rent regularly, the petitioners are duty bound to pay the rent every month and they cannot wait for the Housing Board's demand for the rent and thereafter pay the same. The failure on the part of the officials in not demanding for the rent as and when it became due cannot be taken advantage by the petitioners and this cannot be put against the Housing Board also. Hence, the petitioners are bound to pay the arrears of rent to the Housing Board.

10. Insofar as the penal interest is concerned, the same has been calculated from the year 1998 onwards and this component has been added to the total arrears and as a result, there is a huge amount that is due and payable by the petitioners. This Court cannot interfere with the penal interest that has been arrived at by the Housing Board, since it forms part of the agreement between the parties. However, considering the financial status of the petitioners, the fact that their livelihood is dependant on the income derived from the shops, a request can be made by the petitioners to the respondents seeking for the modification / waiver of the penal interest. It is well left open to the Housing Board to consider the same by taking into account the financial status of the petitioners. This observation is made by considering the fact that



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ultimately even if the petitioners are evicted from the shops, the Housing Board has to go behind them for claiming the arrears and it will be more appropriate if the amount is able to be recovered when the petitioners are in possession of the shops.

11. In the light of the above discussion, these writ petitions are disposed of in the following terms:

(a). The petitioners are directed to pay the total rental arrears as of September 2023 in three (3) equal monthly instalments starting from December 2023. Thereby, the petitioner in W.P.(MD).No.15421 of 2020 shall clear the total rental arrears of Rs.12,38,181 (Rupees Twelve Lakhs Thirty Eight Thousand One Hundred and Eighty one only). The petitioner in W.P.(MD).No. 15374 of 2020 shall clear the total arrears of Rs.9,17,430/- (Rupees Nine Lakhs Seventeen Thousand Four Hundred and Thirty only) and the petitioner in W.P. (MD).No.15185 of 2020 shall clear the arrears of rent of Rs.9,04,428/- (Rupees Nine Lakhs Four Thousand Four Hundred and Twenty Eight only).

(b). The petitioners are directed to make a representation before the third respondent seeking for the modification / waiver of the penal interest and the same shall be considered by the third respondent in line with the observations made by this Court and the decision shall be conveyed to the petitioners within a period of four (4) weeks from the date of receipt of the representation from the petitioners. The petitioners shall make a representation



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in this regard to the fourth respondent within a period of one (1) week from the date of receipt of a copy of this order.

(c). If the third respondent considers for the modification of the penal interest, the Service Tax / GST shall be calculated on the modified penal interest effective from June 2007. The total amount that is due and payable by the petitioners under this head shall be informed to the petitioners.

(d). The petitioners on receipt of the communication from the third respondent shall pay the amount as calculated in Clause (c) within a period of twelve (12) weeks from the date of receipt of the communication from the third respondent and

(e). If the petitioners fail to comply with any of the conditions imposed by this Court, it is left open to the third respondent to proceed further to evict the petitioners without awaiting for any further orders of this Court.

No costs. Consequently, the connected miscellaneous petitions are closed.

07.11.2023

NCC:yes/no

Index:yes/no

Internet:yes/no

tsg

To

The Principal Secretary to Government,
Housing and Urban Development Department,

Secretariat,

Fort St.George, Chennai-600 009.

<https://www.mhc.gov.in/judis>



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N.ANAND VENKATESH, J.

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