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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7109 of 2020

and

W.M.P.No.8474 of 2020

Lieutenant Colonel Ganesan S (Retd)

... Petitioner

Vs.

1. The Principal Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai – 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Chennai – 600 035.
3. The Executive Engineer,
CIT Nagar Re-Development Scheme Circle,
Tamil Nadu Housing Board,
No.485, MTB Building,
Nandanam, Chennai – 600 035.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings of the 3rd respondent made in Letter No. CIT03/Revision/2018 dated 30.01.2020 and to quash the same, consequently direct the respondent to retain the old rent in respect of the



premises occupied by the petitioner.

For Petitioner : Lieutenant Colonel Ganesan S (Retd)

For R1 : Mr.G.Krishna Raja,
Additional Government Pleader

For R2 & R3 : Mr.D.Veena Sekaran,
SC for TNHB

ORDER

The lis on hand has been instituted questioning the validity of the order dated 30.01.2020 issued by the 3rd respondent demanding enhancement of rent from the petitioner based on the Government policy issued.

2. The petitioner is a retired Lieutenant Colonel and now practising as an Advocate in the High Court of Madras. The petitioner voluntarily retired from service and practising law at Chennai. He had submitted an application for allotment of tenement before the Tamil Nadu Housing Board under the public quota. At present, public quota has been abolished. During the relevant point of time, considering the fact that the petitioner served in Indian Army, the Government, as a lone case, granted permission to allot one tenement on rental basis in favour of the writ petitioner. The allotment order dated 15.11.2017 issued to the writ petitioner



would reveal that rental apartment No.74 at Nandanam Colony Scheme area has been allotted to the petitioner.

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3. The petitioner appearing in person would submit that a fixed monthly rent of Rs.3,617/- was fixed in the allotment order and surprisingly, enhancement of rent was made, citing the Government Order, which is unreasonable and therefore, the petitioner has chosen to file the present Writ Petition. The house building allotted to the petitioner was in dilapidated condition and found unfit for dwelling purpose. By spending money, the petitioner has made the house in a liveable condition and therefore, enhancement of rent made exorbitantly is untenable. The case of the petitioner ought to have been considered as a special case taking note of the fact that the house building allotted to him was in dilapidated condition and found not fit for dwelling purposes.

4. The petitioner appearing in person would urge this Court by stating that at the time of his relieving from the Indian Army, he suffered 75% disability and considering those facts, allotment of house building was made in his favour by the Government at Nandanam Colony Scheme area. He spent money to repair the house and any enhancement, if made exorbitantly, the same would cause prejudice to his



interest. Further, it is contended that the Government Order issued in G.O.Ms.No.118, Housing and Urban Development Department dated 04.07.2017 referred by the respondents for enhancement of rent was issued even before the allotment order passed in favour of the writ petitioner in letter dated 15.11.2017. Therefore, the said Government Order issued prior to the allotment order cannot be implemented retrospectively so as to revise the rate already fixed in the allotment order. In other words, the petitioner would contend that at the time of issuance of the allotment order, the Government Order was in force and knowing the fact, the monthly rent was fixed and therefore, the respondents cannot turn around and impose enhancement for the petitioner. In this context, the petitioner submit that his case is to be considered as a special case.

5. The learned Standing Counsel appearing on behalf of the Tamil Nadu Housing Board would strenuously oppose the contention of the petitioner by stating that the rental apartment allotted to the writ petitioner at Nandanam Colony Scheme was on certain terms and conditions. The conditions would reveal that the petitioner cannot make any alteration or addition in the building. The building was handed over “as is where is” condition and therefore, any changes made would be a ground for



terminating the lease.

6. In the instant case, the 3rd respondent has issued a letter dated 07.12.2017 to the petitioner stating that the petitioner should furnish a declaration on a stamp paper for a value of not less than Rs.20/- stating that no alteration or addition shall be carried out the originality of the structure cannot be disturbed on any way, only essential repair works can be carried over without any disturbance to the neighbours as well as the adjoining structure and no claim will be made in further for the expenditure more in the three days from the date of receipt of the said letter. In compliance, the petitioner executed the bond.

7. Regarding the undertaking given by the petitioner that he will not make any alterations or additions, the authorities found that the petitioner has violated the conditions. The authorities of the Board conducted an inspection and the Assistant Executive Engineer submitted a report to the Executive Engineer, which would reveal that a stop construction order has been issued based on the report and certain allegations are also raised by the officials of the Board regarding the conduct of the petitioner during the inspection conducted by the Board authorities. Based on the



report, the 3rd respondent issued a notice to the writ petitioner in Letter dated 25.01.2023.

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8. The learned Standing Counsel for the respondents would submit that the lease expired in the year 2019 and admittedly, the lease was was not renewed. Therefore, the petitioner, for all purposes, is in unauthorized occupation and not entitled for the relief.

9. Considering the arguments as advanced between the petitioner appearing in person and the learned counsel for the respondents, let us first look into the right of the petitioner conferred in the order of allotment dated 17.11.2017. The order of allotment would reveal that a rental house no.74, Nandanam Colony Scheme is leased out to the petitioner on monthly rental basis under public quota till the demolition of the house and subject to the conditions. Therefore, it is unambiguous that the allotment of rental house was made in favour of the petitioner under public quota on monthly rent and such an allotment order is valid till the demolition of the house is made by the Tamil Nadu Housing Board by taking a decision. In this context, the petitioner appearing in person would also submit that the building was in a bad



condition and he made necessary repair works at the time of occupation in the year 2017.

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10. The condition stipulated in the allotment order would further reveal that the monthly rent of Rs.3,617/- was fixed. Pertinently, Condition No.6 stipulates that “you should renew the lease agreement every 11 months”. Condition No.12 denotes “the rent is payable with effect from 10.11.2017”. Condition No.14 states that “you are liable to pay enhanced rent as and when the rent is revised by the Tamil Nadu Housing Board”.

11. With reference to conditions, the petitioner also had given an undertaking in a stamp paper before the Housing Board pursuant to the letter of the 3rd respondent dated 07.12.2017. Admittedly, the lease was not extended beyond the year 2019 and it had expired. The letter dated 25.01.2023 issued by the 3rd respondent would reveal that the authorities, during the inspection conducted on 14.02.2023 identified that the petitioner is continuing the construction activities in the house. The allottee replied to the authorities that he will proceed with the construction. The report says that the petitioner shouted at the officials of the Tamil Nadu Housing Board to proceed with



the office process to cancel the allotment. In view of the said circumstances, based on the report, a show cause notice dated 25.01.2023 was issued to the writ petitioner seeking his explanations, as to why the allotment should not be cancelled for violation of the conditions. The petitioner states that he has submitted an explanation and no further or final order has been passed.

12. The right of the lessee is undoubtedly to be restricted with reference to the terms and conditions agreed between the parties in the lease. The petitioner is a tenant and agreed to pay the rent and clause 14 of the lease agreement would indicate that the petitioner is liable to pay the enhanced rent as and when the rent is raised by the Tamil Nadu Housing Board. The petitioner is a tenant under the Tamil Nadu Housing Board and not under the Government of Tamil Nadu. The Tamil Nadu Housing Board based on the Government policy is empowered to adopt the same for enhancement of rent by passing necessary orders/resolutions. Thus, the Government order regarding a policy decision is not directly connected with the decision to be taken by the Housing Board subsequently. Such a decision was taken based on the Government policy. The Government order issued in G.O Ms.No.118, Housing and



Urban Development Department dated 04.07.2017 was issued enhancing the rent and the said Government policy was adopted by the Tamil Nadu Housing Board by passing resolution. Subsequently, the revised rent was published and intimated to the allottees for the purpose of payment of rent.

13. The contention of the writ petitioner that the initial monthly rent was fixed as Rs.3,617/- cannot be a ground to claim that such a rent is not revisable. Rent was fixed based on the Board resolution and the Government policy was subsequently adopted and enhanced rent was intimated to the petitioner. Delay in implementation of the Government order by the Board or otherwise cannot be a ground for the petitioner to claim that he is not liable to pay the enhancement, since enhancement of rent is agreed between the parties under clause 14 in the allotment order.

14. The right of the lessee is to be determined within the scope of the allotment order in the present case. The petitioner is a tenant, who had agreed the conditions and occupied the rental premises allotted to him by the Tamil Nadu Housing Board. Admittedly, the lease was not extended beyond the year 2019. Now, the petitioner is an unauthorized occupant and attempting to develop the



property without any permission from the Tamil Nadu Housing Board. When the petitioner has given an undertaking that he will not make any alteration and addition and now attempting to make any such alteration or addition, which was identified by the authorities is undoubtedly a violation of the conditions agreed by the petitioner and therefore, the petitioner has violated the conditions of lease and more so, the lease has not been extended and all the actions of the petitioner in this regard are to be construed as unlawful and unauthorized.

15. Regarding the Government policy issued in G.O.Ms.No.118, Housing and Urban Development Department dated 04.07.2017 and regarding enhancement of rent, the issue is no more *res integra* and the Division Bench of this Court has considered the very same issue in W.A.Nos.535, 131, 133, 138, 140 and 141 of 2019 dated 22.04.2019 and the relevant portion of the judgment reads as under:

“ 6. The learned Standing Counsel for the respondent-TNHB has brought to our notice that the Government servants who have been allotted quarters under the Tamil Nadu Government Rental Housing Scheme (TNGRHS) are paying three times more than the rent payable by the



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appellants who have secured allotments under “public quota”. Furthermore, it is the submission of the learned counsel that all the appellants are in arrears of rent and they have not paid the increase with effect from 1993 onwards. Further, the stand of learned Standing Counsel is that there is no discrimination and all the public quota allottees have been uniformly informed about the increase in rent and considering the location of the property and other facilities in and around the area, the increase in rent is reasonable, just and proper.

7.Assuming the appellants had taken on rent a private accommodation, the Landlord is entitled to revise the monthly rent and is entitled to seek for fair rent. The position becomes no different merely because the State Government or the Tamil Nadu Housing Board is the owner of the property. The appellants have enjoyed Government accommodation all these years and they are bound to pay the rent which has been found to be



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reasonable by the learned Single Bench which also appeals to us and we find no ground to interfere with the order and direction issued by the learned Single Bench.

8. With regard to the plea of discrimination raised by the appellants, we direct the respondents to uniformly apply the Government Order to all the 'public quota' allottees and there shall be no discrimination in implementing the revised rent. The appellants may be granted reasonable time to settle the arrears subject to the condition that they start paying increased rent prospectively.”

16. In view of the fact that the petitioner is an unauthorized occupant and committing default in payment of enhanced rent, as demanded by the Tamil Nadu Housing Board and further violated the conditions by attempting to make alterations and additions, he is not entitled for the relief. Therefore, there is no impediment for the respondent Board to proceed with the notice issued in letter dated 25.01.2023 for cancellation of allotment and to evict the petitioner and to recover the rental arrears



due to the Tamil Nadu Housing Board.

17. The powers of the judicial review under Article 226 of the Constitution of India cannot be expanded for the purpose of granting relief with reference to the contractual obligations between the parties. The conditions stipulated in the allotment order is binding on the parties and any violation would naturally attract actions under the regulations. Thus, the relief, as such sought for in the present Writ Petition cannot be granted. Any lenient or misplaced view by the Courts in these matters would cause prejudice to the public interest. The Tamil Nadu Housing Board is wholly owned by the Government of Tamil Nadu and the recovery of rent is to be construed as public revenue and thus, any default of payment of rent also must be viewed seriously and the authorities competent are bound to recover the arrears of rent punctually and promptly. Any failure in this regard would be construed as lapses, negligence and dereliction of duty on the part of the Board authorities.

18. With these directions, this Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.



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Index : Yes

Speaking order

Neutral Citation : Yes

To

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