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W.P.No.36404 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.36404 of 2024
&
W.M.P.No.39274 of 2024 in W.P.No.36404 of 2024

A.Subramani

S/o. Adhimoolam

... Petitioner

vs

1. The Tamil Nadu Housing Board
Rep. By its Chairman
Nandanam, Chennai – 600 034

2. The Executive Engineer & Ado
K.K.Nagar Division
Tamil Nadu Housing Board
C-48, TNHB Complex
2nd Avenue Anna Nagar
Chennai – 600 040

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the entire records of the second respondent and quash the impugned notice dated 11.11.2024.

For Petitioner : Mr.G.A.Thiyagarajan

For Respondents : Mr.D.Veerasekaran
for R1 and R2

ORDER

(Order of the Court was made by K.RAJASEKAR, J.)

Challenging the impugned notice issued by the second respondent, for removal of encroachment of the land in S.No.342, Kodambakkam Village, Chennai, in which 'Tamil Nadu Housing Board' [hereinafter 'TNHB' in short] has formed a layout and earmarked it as TNHB land (public purpose), the captioned writ petition has been filed.

2. According to the petitioner, he and his sister's son Iyappan are in possession and enjoyment of the property at No.1A, Ayyavu Street, West



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Jafarkhanpet, Chennai in S.No.297/1, Kodambakkam Village from the year

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1950 onwards and they were also given Certificate of Possession by the concerned Tahsildar. In the year 2007, Officers of the TNHB have taken steps to dispossess the petitioner's family and therefore, a suit was filed by them in O.S.No.1205 of 2008 on the file of IV Assistant Judge, City Civil Court, Chennai. After trial, an order of permanent injunction has been passed in favour of the plaintiffs therein viz., petitioner herein and his sister's son Iyappan and against TNHB from taking any steps for evicting the petitioner from S.No.297/1. Even after passing of the decree in favour of petitioner and his family members, Officers of the TNHB has issued the impugned notice dated 11.11.2024 under Section 84(2) of the Tamil Nadu Housing Board Act, 1961 ['TNHB Act' hereinafter] to the petitioner and his family members calling upon them to appear for enquiry and to submit their explanation. Since they already obtained permanent injunction against the respondents from initiating any eviction proceedings, notice issued is in violation of the civil court decree and TNHB is not entitled to claim any



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right in property in S.No.297/1.

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3. Mr.D.Veerasekaran, learned Standing counsel, who accepted notice on behalf of TNHB, submitted that already they have obtained clarification from the Tahsildar who had issued the possession certificates and it reveals that those certificates were not issued by the Tahsildar and the impugned proceedings were initiated for removal of encroachment under Section 84 of the TNHB Act is relating to S.No.342, which has been classified as 'public purpose site' in the layout. He would further submit that Housing Board is having authority to remove the encroachment made in their land and after thorough enquiry, if the petitioner comes forward with any reply, final orders will be passed. The impugned notice is a only a show-cause notice and hence, prays to dismiss the writ petition.

4. We have considered the submissions made on both sides and perused the materials filed in the form of typed-set of papers. Section 84 to



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88 of Chapter XI of the TNHB act, deals with power of Housing Board, to evict persons from board premises. Under Section 84 of the TNHB Act, the competent authority is empowered to evict the persons from the Board premises. Section 85 empowers a competent authority to impose damages on the person in unauthorised occupation of any board premises and procedure to recover the rent or damages fixed by the competent authority. Section 86 provides appeal remedy against the order passed by the competent authority under Sections 84 and 85 of TNHB Act. Section 88 of the Act, bars the jurisdiction of the Court from passing order made by Government or Competent authority. Sections 84 to 86 and 88 of TNHB Act read as follows:

"84. Power Go Evict Certain Persons From Board Premises:

- (1) If the competent authority is satisfied -*
- (a) that the person authorized to occupy any Boards premises has -*
- (i) not paid rent lawfully due from him in respect of such premises for a period of more than two months; or*
- (ii) sub - let without the permission of the Board, the*



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whole or any Part of such premises; or

(iii) otherwise acted in contravention of any of the terms express or implied, under which he is authorised to occupy such premises; or

(b) that any person is in unauthorized occupation of any Board premises, the competent authority may, notwithstanding anything contained in any law for the time being in force, by notice served

(i) by registered post or

(ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises or

(iii) in such other manner as may be prescribed, order that the person authorized to occupy as well as any other person who may be in occupation of the whole or any part of the premises shall vacate them within one month of the date of service of the notice.

(2) Before an order under sub - section (1) is made against any person. the competent authority shall inform the person, by notice in writing and served in the manner provided for service of notice under sub - section(1). of the grounds for which the proposed order is to be made and give him a reasonable opportunity for tendering an explanation and producing evidence, if any, and to show cause why such order should not be made within a period to be specified in such notice.

(3) The competent authority may, on application, grant extension of the period specified in such notice on such terms as to payment and recovery of the amount claimed in the notice as he deems fit.

(4) Any written statement put in by such person and document produced in pursuance of such notice shall be filed with the records of the case, and such person shall be entitled to appear in the



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proceedings either in person or by pleader. (5) If any person refuses or fails to comply with an order made under sub section (1), the competent authority may evict that person from and take possession of the premises and may for that purpose use such force as may be necessary. (6) If a person, who has been ordered to vacate any premises under sub - section (1) or (iii) of clause (a) of sub - section (1) within one month of the date of service of the notice or such longer time as the competent authority may allow, pays to the Board the rent in arrears or carries out or otherwise complies with the terms contravened by him to the satisfaction of the competent authority, as the case may be, the competent authority, shall. in lieu of evicting such person under sub - section(1), cancel its order made under sub - section (I) and thereupon such person shall hold the premises on the same terms and on which he held them immediately before such notice was served on him.

Explanation : For the purpose of this section and section 85, the expression "unauthorised occupation" in relation to any person authorised to occupy any Board premises includes the continuance in occupation on by him or by any other person claiming through or under him of the premises after the authority under which he was allowed to occupy the premises has been duly determined.

85. Power to recover rent or damage as arrears of land revenue.

(1) Subject to any rules made by the Government in this behalf and without prejudice to the provisions of section, 84, where any person is in arrears of rent payable in respect of any Board premises the competent authority may by notice, served

(i) by registered, post or

(ii), by affixing a copy of it on the outer door or some other conspicuous part of such premises, or

(iii) in such other manner as may be prescribed,

order that person to pay the same within such time not being less



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than ten days as may be specify in the notice. If such person; refuses or fails to pay the arrears of rent within the time specified in the notice, such arrears may be recovered as arrears of land revenue.

(2) Where any person is in unauthorized occupation of any Board premises, the competent authority may in the prescribed manner assess such damages on account of the use and occupation of the premises as it may deem, fit and may by notice served in the manner provided for service of notice under sub-section (1), order that person to pay the damages within such time as may be specified the notice. If any person refuses or fails to pay the damages within the time specified in the notice, the damages may be recovered from him as arrears of land revenue.

(3) No order shall be made under sub-section (2) until after the issue of a notice in writing to the person calling on, him to showcase, within such period as may be specified in such notice, way such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same have been considered by the competent authority.

86. Appeal:

(1) Any person aggrieved by an order of the competent authority under Section 84 or 85 may, within one month from the date of service of the notice of such order, prefer an appeal to the Government;

Provided that the Government may entertain the appeal after the expiry of the said period of one month, if they are satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1) the Government may, after calling for a report from the competent authority and after making such further inquiry, if any, as may be



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necessary, pass such orders as they think fit and the order of the Government shall be final.

(3) On such appeal being preferred the Government may stay the execution of the order of the competent authority for such period and on such conditions as they think fit.

88. Bar Jurisdiction of Courts:

No order made by the Government or the competent authority in exercise of any power conferred or under this Chapter shall be called in question in any court and no injunction shall be granted by any court or other authority in respect any action taken or to be taken in pursuance of any power conferred by or under this Chapter."

5. As per Section 84 of the TNHB Act, the Competent Authority shall show cause the person who is in occupation of Board premises along with grounds on which the proceedings were initiated and shall give him reasonable opportunity for tendering explanation and producing evidence.

6. The order passed under Section 84 is also appealable before Government under Section 86 of the Act and as per sub-section (3) of Section 86, Government may stay the impugned order under challenge. A bare reading of Section 84 of TNHB Act makes it clear that it prescribes that competent authority



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shall consider the contention of the writ petitioner, before passing any order of eviction.

7. Though the writ petitioner claims that he is in possession of the land in S.No.297/1 which has been classified as 'Erikarai Grama Natham' and the same has been disputed by the TNHB stating that writ petitioner is in possession of S.No.342 part which has been classified as TNHB land (public purpose), under the Act, it is mandatory on the part of the competent authority to decide the above contentions of both sides, and we are not inclined to consider the disputed facts stated above in this writ petition.

8. We are of the view that, as the impugned notice is a show-cause notice and the petitioner has already sent his reply to the show-cause notice after filing of the writ petition, the reply filed by the petitioner shall be considered by the Competent Authority in terms of Section 84 of TNHB Act within a period of 15 days from today i.e., by 24.12.2024.



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9. We make it clear that, all rights and contentions of writ petitioner including the contentions raised in this writ petition are left open for being canvassed in the above proceedings of Competent Authority.

10. With the above observation, this writ petition is disposed of. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

[M.S., J] [K.R.S., J]
09.12.2024

Index: Yes/No
Neutral Citation: Yes/No
Speaking order/Non-speaking order
gpa/ stn

M.SUNDAR,J.,



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and
K.RAJASEKAR, J.,
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To

1. The Chairman
The Tamil Nadu Housing Board
Nandanam, Chennai – 600 034
2. The Executive Engineer & Ado
K.K.Nagar Division
Tamil Nadu Housing Board
C-48, TNHB Complex
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