



W.A(MD)No.1212 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2024

CORAM

**JUSTICE N. SESHASAYEE
and
JUSTICE P.VADAMALAI**

W.A(MD) No.1212 of 2017

and

C.M.P(MD)No.8518 of 2017

1.The Tamilnadu Housing Board,
Through its Managing Director,
Tamil Nadu Housing Board,
Chennai – 600 035.

2.The Executive Engineer & Administrative Officer,
Tamilnadu Housing Board,
Trichy – 620 020.

... Petitioners/Respondents 3 & 4

Vs.

1.K.Vivekanandhamoorthy

... 1st Respondent/Writ Petitioner

2.State of Tamilnadu,
Rep. by its Secretary to Government,
Agriculture Department,
Secretariat,
Chennai – 9.

3.The Director of Agriculture,
“Ezhilagam” Chepauk,
Chennai – 600 005.



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4.The Accountant General,
(Accounts and Entitlements),
Pension Section, Tamilnadu,
Anna Salai,
Teynampet,
Chennai – 600 018.

....Respondents 2 to 4/Respondents 1, 2 & 5

Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order dated 20.12.2016 made in W.P(MD)No.5495 of 2010.

For Appellants	:Mr.A.Kannan
For R-1	:Mr.N.Sekar
For R-2 & R-3	:Mr.V.Nirmal Kumar, Government Advocate
For R-4	:Mr.P.Gunaseelan

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This writ appeal has been filed by the appellants/Housing Board, challenging the order of the learned Single Judge, dated 20.12.2016, made in W.P(MD)No.5495 of 2010.

2. Brief facts of the case are as follows:

- The first respondent herein was working in a transferable Government job.

He was allotted an accommodation at Sengulam in Trichirappalli by the



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appellants vide proceedings, dated 31.01.2000. On 15.12.2000, he was transferred to Karur and the appellants granted extension to occupy the said building up to 31.05.2001 since the first respondent was transferred in the middle of the academic year.

- The first respondent however, did not vacate the said building, instead, he approached the civil Court in O.S.No.1177 of 2001 before the District Munsif Court, Trichirapalli, seeking for a decree of permanent injunction to restrain the appellants herein from interfering with his peaceful possession, but the appellants chose not to contest the suit. The trial Court was blissfully ignorant about Sec. 88 of the Tamil Nadu State Housing Board Act, 1961 and passed an ex-parte decree of injunction. The first respondent thereafter happily continued his possession of the property allotted to him.
- In these circumstances, the first respondent had addressed a communication dated 28.11.2008 to permit him to surrender possession of the apartment allotted to him by the appellants. The appellants would now respond with its proceedings, dated 26.02.2009, in which it *inter alia* stated that owing to the decree of permanent injunction passed by the civil Court on 10.03.2008, the



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appellants could not evict the first respondent. It again required the first respondent to deposit Rs.6,18,737/- as penal rent for unauthorized occupation of the property and also required him to have the decree of injunction revoked. This was challenged by the first respondent in W.P(MD)No.5495 of 2010.

3. On 20.12.2016, the learned Single Judge of this Court has allowed the writ petition and passed the following order:

“31.In the result, I am inclined to pass the following orders:

(a)the writ petition is allowed by setting aside the proceedings Letter No.C2/187/01 dated 26.02.2009 passed by the fourth respondent and the same is quashed.

(b)the respondents 1 and 2 to take immediate steps to send the pension proposals of the petitioner to the fifth respondent within a period of two weeks from the date of receipt of a copy of this order.

(c)thereafter, the fifth respondent is hereby directed to sanction the pension from the date of superannuation of the petitioner i.e. 30.06.2010 and sanction the said pension and pay the arrears with 6% of the interest within a period of four weeks and continue to pay the pension on the every month to the



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petitioner.”

4. This order is now under challenge. Heard both sides. This Court cannot appreciate the strategy of the first respondent to overstay in a premises allotted to him only as a quarters for his accommodation during the term when he was serving at Sengulam. Transfer is an exigency of service and no allottee of a quarters will be entitled to seek permanency of accommodation. But, the first had approached the District Munsif Court, Trichirappalli in O.S.No.1177 of 2001, for a decree of permanent injunction restraining the appellants herein from interfering with his peaceful possession.

5. The appellants, who have now shown an overwhelming enthusiasm to challenge the order passed by the learned Single Judge in W.P(MD)No.5495 of 2010, had been in blissful state when it chose to contest the suit. The suit instituted and a decree came to be passed in that suit was very much within the knowledge of the appellants as it could be seen from the notice, dated 26.02.2009.

6. What is significant here is that the first respondent with no legal right to stay in a quarters allotted to him had overstayed in it, and also approached the civil Court to



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sustain it. It is to be recorded that the learned District Munsif, who with little care could have ascertained the nature of the writ petitioner's right to seek the remedy as well as its sustainability in law, has appeared to have mechanically passed an exparte decree. But, what is even more significant is that under Section 88 of the Tamil Nadu State Housing Board Act, 1961, the jurisdiction of the Courts is barred from taking cognizance of any litigation *vis-a-vis* any order which is passed or to be passed by the authorities in exercise of their powers under the said Act and Chapter-XI of the Act, in which Section 84 finds a place which essentially deals with the power to vacate persons from the Board premises. This implies that the decree of the civil Court is plainly incompetent and without jurisdiction.

7. Turning to the merit of the order passed by the learned Single Judge, this Court finds it difficult to subscribe to the line of reasoning of the learned Single Judge. The larger issue is about the right of the first respondent to stay in a premises beyond 31.05.2001 and till he chose to surrender the premises. When there is no legal right to retain such possession, necessarily the statutory authorities who are under a statutory obligation to take necessary steps, cannot be prevented from taking it. The Courts are established to uphold the rule of law and not to do charity, especially, to one who was conscious of breaking law. So far as the reliefs 'b' and



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c', granted by the learned Single Judge are concerned, this Court considers that falls outside the scope of the writ petition. Given the nature of this case, there is no need to expand the scope of the petition.

8. This Court is informed that except couple of terminal benefits, other pensionary benefits have been granted to the writ petitioner. This Court does not want to make any statement *vis-a-vis* regarding grant of any terminal benefits and this has to be done in accordance with the service conditions and other appropriate applicable Rules.

9. To conclude, this writ appeal is allowed and the order of the learned Single Judge 20.12.2016 made in W.P(MD)No.5495 of 2010, is set aside. No Costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.S., J.) (P.V.M., J.)
01.04.2024

NCC : Yes/No
Index : Yes/No

PM



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- To
- 1.The Secretary to Government,
State of Tamilnadu,
Agriculture Department,
Secretariat,
Chennai – 9.
 - 2.The Director of Agriculture,
“Ezhilagam” Chepauk,
Chennai – 600 005.



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P.VADAMALAI, J.

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