
(2001) 10 MAD CK 0105

In the Madras High Court

Case No : W.A. No. 296 of 1997 and C.M.P. No. 4671 of 1997

Bhuvaneshwari

APPELLANT

Vs

The Tamil Nadu Housing Board

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu State Housing Board (Amendment) Act, 1971 — Section 84(1)

Tamil Nadu State Housing Board Act, 1961 — Section 84

Citation : (2001) 10 MAD CK 0105

Hon'ble Judges : N.V. Balasubramanian, J;A.K. Rajan, J

Bench : Division Bench

Advocate : V. Raghavachari, for the Appellant; K. Chelladurai and M.D. Munusamy, Special Government Pleader for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—This writ appeal is against the dismissal of W.P. No. 12130 of 1996.

2. The writ petition was filed to issue a writ of certiorarified mandamus against the order of the second Respondent, dated 19.8.1996 and to direct the Respondents to allot a plot in Anna Nagar, Chennai bearing No. 72, I Block, at 20th Street. Earlier, the Appellant had given a representation on 10.8.1996 to the Respondents and that was considered by the Respondents, but was rejected on the ground that the Appellant was unauthorisedly occupying the plot and she did not vacate the premises in spite of repeated notices. Further, the plot had been allotted already to one Tmt. Padmavathy by the Respondents. The Respondents took proceedings to evict the Appellant with the help of the police. Further, the order dated 19.8.1996 shows that the Appellant had been evicted already. For these reasons, the Respondents rejected the claim of the Appellant; Challenging that, the Writ Petition No. 12130 of 1996 was filed. The learned single Judge dismissed the writ petition; hence the present writ appeal.

3. The contention of the Appellant is that she is in occupation of the plot for more than 16 years by putting up thatched shed. She also contended that while others have been allotted sites by the Housing Board, there is no reason why she cannot be allotted the site. The contention of the Appellant is that provisions of Section 84 of the Tamil Nadu State Housing Board Act, 1961 have not been followed.

4. Counsel for the Appellant argued that as per Section 84 of the Tamil Nadu State Housing Board Act, where any of the property of the Housing Board is under the occupation of any person, such person could be evicted only following the procedure u/s 84 of the Act. In support of this contention, he relies upon the decision of the Supreme Court reported in M/s. Anamallai Club Vs. Government of Tamil Nadu and others, where it has been held that,

In our jurisprudence governed by rule of law even an unauthorised occupant can be ejected only in the manner provided by law....

Due course of law in each particular case means such an exercise of the powers by duly constituted tribunal or court in accordance with the procedure established by laws under such safeguards for the protection of individual rights.

Law respects possession even if there is no valid title to support it. Law does not permit any person to take law into his hands and to dispossess a person in actual possession without having recourse to a Court.

5. Relying upon these passages, the counsel for the Appellant argued that in this case, when the Appellant was in occupation for more than 16 years, he should not have been evicted unauthorisedly without following the due process of law. Therefore, the order of the learned single Judge is to be set aside and the prayer in the writ petition is to be allowed

6. While dismissing the writ petition, the learned single Judge has held as follows:

Therefore, that Section applies only to those persons who had been authorised to occupy the Board's premises. Here is a case where the Petitioner was in unauthorised occupation of the Board's property. If the Petitioner has any other right to continue in occupation, his remedy is only to file a civil suit. Further, in this case, the impugned letter says that the Petitioner had already been evicted. In this view of the matter, I am not inclined to entertain the writ petition and it is accordingly dismissed. Consequently W.M.P. is also dismissed.

6. The learned Counsel for the Respondents argued that the judgment of the learned single Judge is not invalid. In support of his argument, the learned Counsel relies upon the decision reported in Nellai Friends Volley Ball Club, rep. by P. John v. The Government of Tamil Nadu 1987 W.L.R. 377 (D.B.) where the Division Bench of this Court has held that:

It is not as if whenever a litigant comes to the Court under Article 226 irrespective of his conduct, he must be granted relief. His conduct and nature of

the right which he is seeking to enforce are all relevant circumstances for deciding whether jurisdiction under Article 226 should be exercised or not. It would be travesty of justice to permit jurisdiction under Article 226 of the Constitution to be invoked by rank trespassers to perpetuate their illegal occupation of public property. In such circumstances, it is clearly permissible for this Court to refuse to exercise any jurisdiction under Article 226 of the Constitution in favour of such a person. In the absence of any specific permission granting the right to use the structure for any period, the Appellant is nothing short of a rank trespasser.

The learned Counsel for Respondent also relies upon an unreported judgment in W.A. No. 100 of 1994 dated 1.7.1997, where this Court interpreting Section 84(1) of the Tamil Nadu State Housing Board Act held that in so far as the property of the Housing Board is concerned, a person who is an encroacher cannot claim any protection under the provisions of the Act. Consequently no writ can be maintained. Therefore, the counsel for the Respondents argued that the learned single Judge was right in dismissing the writ petition.

7. Section 84(1) of the Tamil Nadu State Housing Board Act, 1971, reads as follows:

84.(1) If the Competent Authority is satisfied:

(a) that the person authorised to occupy any Board 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 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 unauthorised occupation of any Board premises, the Competent Authority may notwithstanding anything contained in any law for the time being in force, by the 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 authorised 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 the service of the notice.

That is, this provision Section 84(i) (a) will apply where the property of the Housing Board is under authorised occupation by any person. The Appellant was not occupying it authorisedly; his possession was not under any authority. She was only an encroacher and hence, a rank trespasser. In the same judgment relied upon by the counsel for the Appellant, the Supreme Court has held in paragraph - 8:

Law makes a distinction between persons in juridical possession and rank trespassers.

In view of the judgments of the Division Bench of this Court referred above, the Appellant has no right whatsoever to continue to be in possession. The provision of Section 84(1)(b), but, admittedly, the Appellant who was a trespasser had already been evicted following the rules and the plot had already been allotted to another person. A trespasser once evicted, has no right whatsoever to regain possession.

8. The prayer in the writ petition is for mandamus directing the Housing Board to allot the plot to the Petitioner. That has been rejected by the Board. No writ lies against such rejection. There is no illegality or infirmity in the order of the learned single Judge; the learned single Judge has rightly dismissed the writ petition. Therefore, we find no reason to interfere with the order of the learned single Judge. Hence, the writ appeal is liable to be dismissed.

8. In the result, the writ appeal is dismissed. No costs. Consequently, CMP No. 4671 of 1997 is also dismissed.