

(2000) 10 MAD CK 0028
In the Madras High Court
Case No : W.A. No's. 1367 to 1369 of 1999

P. Jayakumar

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 19-10-2000

Acts Referred:

Tamil Nadu State Housing Board Act, 1961 — Section 84

Citation : AIR 2001 Mad 51 : (2001) 1 LW 710

Hon'ble Judges : V.S. Sirpurkar, J;M. Chockalingam, J

Bench : Division Bench

Advocate : A.K. Sriram, for the Appellant; M. Rathinam, Government Advocate (for No. 1) and K.V. Venkadapathi, General, Assisted by K. Chelladurai, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—This judgment shall dispose of Writ Appeal Nos. 1367 to 1369 of 1999. The appellant-Ramachandran was admittedly

the allottees of Shop No. 1. Sathya was the allottee in respect of Shop No. 2 while Jayakumar was the allottee in respect of Shop No. 3. These

shops were allotted by allotment order dated 26-9-1972. The allotment order clearly stated that the shops were being leased out to the allottees

for running a shop for a period of three years. The other condition was vide Clause 3 of the allotment order that the shop should not be sub-let.

2. It was found during the inspection that there were some irregularities in respect of these three shops and, therefore, a notice came to be served

to the three appellants. In that notice it was pointed out by the Board that though the shops were Individually allotted to the three appellants, all the

three shops were merged as one and one restaurant was being run by one Thiru

S. Ramachandran, (probably the allottee of Shop No. 1). This amounted to sub-letting. The second respondent in the show cause notice further stated that the lessee Ramachandran, who was allottee of Shop No. 1, had dug, a bore-well inside the premises near to the road without obtaining permission from the Board. It was pointed out that the water service connection was given not for running a restaurant, but for the purposes of individual shop. It was pointed out that Ramachandran and constructed a tank of the size of 4" x 4" x 6" without obtaining any prior permission. It was also pointed out that since the walls between shops 1 and 2 and 2 and 3 were demolished, that was a damage to the main structure. There was also an additional huge chimney constructed, adjacent to the wall of the first floor of the residential block which caused much hardship and inconvenience to the residents of the flats. Thus it was pointed out that the allottees had violated the conditions of allotment and lease agreement and, therefore, the allottees were liable to be evicted.

3. It seems that explanation was given to this notice, wherein, all the three allottees admitted that the shops were individually allotted and though initially other businesses were carried in the shops and because of the rough weather and other reasons, the said business ran into trouble and loss and that since shop No. 1 was not having sufficient space to have a good restaurant, the allottees of all the shops mutually agreed to run a restaurant in all the three shops, in partnership. It was pointed out that even no objection was individually given by the Board in respect of all the three shops for getting water connection. It was further pointed out that the rents were being paid by the allottees regularly and the licence from the appropriate authorities had been obtained for running the eating house and as such there was no question of any violation. It was pointed out the letter of allotment did not contain any condition as to the nature of business an allottee could do in the said shop. As regards bore-well, it was admitted that there was a bore-well dug, but that was not within the premises of the Board and, therefore, there was no necessity of obtaining no objection certificate from the Board. It was pointed out that water was very essential much less for running a restaurant and, therefore, the digging of bore-well was justified. It was then stated also that the no objection certificate was issued by the Board for obtaining water connection from the

Metro water and since the water from the Metro came only in odd hours and there was no running water all the 24 hours therefore the allottees had to store water and for that purpose temporary water tank was made available. It was admitted that the temporary water tank was built out of necessity because of the sporadic supply of the water by the Metro. Then it was very bravely claimed that there was no common wall dividing the shops. It was claimed that such a wall was never demolished. On the contrary, it was claimed that the allottees had improved the premises to keep it clean. It was then claimed that since only liquid gas was being used, there was no question of any smoke from the chimney.

4. After this explanation, the Board, as per the procedure prescribed in Section 84 of the Tamil Nadu Housing Board Act, called the petitioners/appellants for enquiry and held the enquiry on 2-5-1990. However, on that day none of the petitioners appeared and, therefore, the allotment was cancelled. An appeal came to be filed u/s 86 of the Tamil Nadu Housing Board Act, but it also met with the same fate and the Government by its order dated 11-1-1991 dismissed the appeal. This was challenged by three separate writ petitions before the learned single Judge who was disposed of the three petitions by a common order.

5. Learned Judge came to the conclusion that there was indeed violation of the conditions, not only of the allotment order, but also the lease deed.

Learned Judge observed that though separate individuals were allotted shops, it was obvious that the shops were joined together and this was totally contrary to Clause 15 of the lease agreement. Learned Judge also found the argument that no enquiry was conducted was not accepted.

In fact, the tenor of the order shows that the learned single Judge went into the records filed by the Board and observed "Further the records show that they were requested to appear for personal enquiry on 2-5-1990 but only one petitioner appeared while the other two did not appear.

Therefore, in such circumstances they cannot contend that no opportunity was given to them. In that view, learned single Judge dismissed all the three petitions.

6. Learned counsel appearing before us on behalf of the three appellants in the three separate appeals addressed us commonly and firstly pointed out that the reply to the show cause notice was served on the Board on

15-5-1990 while in the order it was observed by the Board and the first authority therein that the enquiry was conducted on 2-5-1990 and after considering the reply sent by the appellants conclusions were being drawn against the appellants. From this learned counsel argues that there was, in fact, no enquiry. Learned counsel appearing on behalf of the Board points out that even in the said order, the explanation is referred at Serial No. 2. That explanation was dated 15-4-1990 and not 15-5-1996.

When we see the xerox copy of the explanation, which is fortunately filed before us, we do not find any date mentioned thereon. The sender of the said explanation has not bothered to record any date. It is also understood that all the three explanations were identical except for few details.

Though there appears to be a stamp and the date mentioned under that stamp as 15-5-1990, there is every reason to believe that it is an error and

in fact the explanation was received on 15-4-1990 and not on 15-5-1990. Learned counsel also invites our attention to the counter and contends

that same mistake has been committed in the counter, where the date of explanation is referred to as dt. 15-5-1990. All that we will say is that the

statement made in the counter was made rather casually without looking into the actual order. But that would not alter the position that in fact the

said explanation was received on 15-4-1990. We do not find any reason on the part of the authorities who passed the first order to falsely mention

that the enquiry was fixed on 2-5-1990 and that not appellant appeared in the said enquiry. There is not even the slightest suggestion of malice on

this account. We are, therefore satisfied that there was an enquiry on 2-5-1990, which was not attended at all.

7. Learned counsel then pointed out that the authority has not bothered to hear the appellants, though in their appeal, the appellants had sought

such an opportunity. It seems that this demand was met on the back drop that the orders were passed by the respondent-authority without holding

any final enquiry. Once it is clear that the personal enquiry was there as contemplated u/s 84 of the Tamil Nadu Housing Board Act, there was no

question of affording any further hearing before the Government. Therefore, this contention has to be rejected.

6. Learned counsel then pointed out that it was entirely on erroneous grounds that the appeals came to be rejected as also the original orders came

to be passed. We do not see any such grave mistake having been committed by any of the authorities, There is undoubtedly a reference to the lease deeds and the learned Standing Counsel for the Board was fair enough to admit before us that the lease deeds could not be found, perhaps, as they were untraceable or they were never executed between the parties. Be that as it may, even if there is a reference to the lease deeds, according to us, that will not forward the case of the appellants anywhere, for the simple reason that it is generally understood that every allottee, who was allotted the shops was given the shops on the leasehold basis. There is a standard form of lease available, which has been produced before us and clauses therein are more clear than necessary. The contention raised by the appellant that there was no lease and, therefore, the allottee was not bound by any condition, cannot simply be understood. We will take for example of the demolition of the walls between Shop Nos. 1 and 2 and 2 and 3. It is now an admitted position as per the reply itself that the three shops were made into one and for that purpose, the three allottees formed a partnership firm. Very curiously, we find that even the licence of the restaurant is not in the name of the partnership firm. It appears to be in the name of one Seivam, who had actually filed all these three appeals in his capacity as an attorney of all the three individual allottees and not of the partnership firm. All these defences, therefore, fail to the ground that there was no wall separating the two shops and that the shops were beautified by using the three shops as one hall. We simply fail to follow the logic. Similar is the case regarding digging of the bore-well. It is admitted that the bore-well was dug. It is rather strange that the bore-well should have been dug in the area which did not even distantly belong to the appellants. Yet not only that bore-well was dug but was also utilised. That may be so. The admission in the reply that the three shops were joined is enough to draw the clause of sub-letting, which was specifically prohibited in the allotment order. So, even if we take the case that there was no lease deed between the Board and these allottees, yet the allottees were bound by the allotment letters and the conditions therein. This is apart from the fact that there are also the conditions laid down in Section 84 of the Act which were binding on the parties. We would, therefore, not interfere with the order of the learned single Judge.

9. Before parting we must observe that there does not seem to be everything alright with the Board. A pathetic reply has been given by the Board

that the lease deeds were not either traceable or they were actually not executed between the parties. We wonder as to how the parties continued

in the shop in the teeth of the inspection by the Board. The restaurant is still run for the last more than nine years as per the claim of the appellants.

It is rather disturbing that the Board should not have initiated the action immediately. Two of the Board officials seem, to have signed the no

objection in respect of the electricity and water supply. We hope that the concerned authorities will take proper action against the erring officials.

With these observations, we dismiss the appeals. No costs.