
(1996) 01 MAD CK 0110
In the Madras High Court

Srimathy

APPELLANT

Vs

Executive Engineer and Administrative Officer, Tirunelveli
Housing Unit

RESPONDENT

Date of Decision : 30-01-1996

Acts Referred:

Citation : (1996) 1 MLJ 408

Hon'ble Judges : Jayarama Chouta, J

Bench : Single Bench

Judgement

Jayarama Chouta, J.—The prayer in this writ petition is to issue a writ of certiorari or any other appropriate writ, order or direction in the nature of a writ of certiorari, calling for the records of the respondent in L.R. No. 22-C. 11/1-86, dated 5.6.1986 and quash the same.

2. In support of the writ petition, the petitioner who is working as Junior Assistant in Tirunelveli Medical College Hospital has filed an affidavit. In the affidavit she has stated that as a Government servant she has applied for a flat under the Rental Housing scheme and a flat No. C. 13/1, M.N. Colony was allotted to her by the respondent by allotment order No. T.V. R2/6847/76, dated 26.9.1976. The petitioner asked to change the flat to Flat No. C. 11/1 and the said change was affected on 7.10.1976 allotting Flat C-11/1.

3. She received a letter No. R2/C. 11-1/86, dated 5.6.1986 from the respondent asking her to vacate the flat and hand over the same on or before 16.6.1986. The said communication was sent on the basis that the petitioner owns a house at Palayamkottai and that an allottee owning a house should vacate the flat. The said order further says that she is liable to pay penal rent at the rate of Rs. 132 per month from the date of allotment upto 31.8.1984 and Rs. 678 per month with effect from 1.9.1984 till the date of vacation of the flat. She has further stated that she does not own any house on her own and her husband purchased a house site at V.M. Chatram village and was constructing a house. Since there was some dispute between the Municipality and her husband the house could not

be completed. She has stated that house under construction by her husband is not complete and her husband is living with her.

4. The said order of eviction is the subject matter of this writ petition. The respondent had filed a counter. I have heard the learned Advocate for the writ petitioner and also the learned Advocate for the respondent. The main contention of the learned Advocate for the writ petitioner was that the respondent has not complied with the requirements of Section 84(2) of the Tamil Nadu State Housing Board Act, 1961. He has invited my attention to the provisions of the said section which reads as follows:

Section 84: Power to evict certain persons from Board premises: (1) If the competent authority is satisfied (a) that a person authorised to occupy any Board premises has;

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

(2) Before an order under Sub-section (1) is made against any person, the competent authority shall inform the person, by which notice in writing and served in the manner provided for service of notice under Sub-section (1) of the grounds on which the proposed order is to be made and give him a reasonable opportunity of 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.

Placing reliance on the above section, the learned Advocate for the petitioner submitted that the respondent has not followed the said procedure and on this ground alone, the order passed by the respondent is liable to be set aside. However, the learned Advocate for the respondent tried to justify the order passed by the respondent. He took me through the counter filed by the respondent. After hearing the rival submissions and perusing the records, I am of the opinion that the order passed by the respondent is not sustainable in law. No notice as provided u/s 84(2) of the Tamil Nadu Housing Board Act and no procedure has been followed. Further, the respondent was not justified in cancelling the allotment and imposing penal rent on the ground that the petitioner owns a house at Palayamkottai which is factually incorrect. Further, it is represented on behalf of the petitioner that the petitioner that the petitioner has vacated the premises on 31.8.1995, Under these circumstances, I am of the opinion that the order passed by the respondent is liable to be set aside.

5. Accordingly for the reasons stated above, I allow this writ petition, setting aside the order passed by the respondent, However, there will be no order as to costs.