

(2012) 04 MAD CK 0126

In the Madras High Court

Case No : Writ Petition No. 23523 of 2011 and M.P. No. 1 of 2011

T.C.P. Jayalakshmi

APPELLANT

Vs

The Executive Engineer and The Administrative Officer,
Coimbatore Housing Unit, Tamil Nadu Housing Board,
Tatabad, Coimbatore 12, The Commissioner of Police,
Coimbatore City, Coimbatore 18, The Inspector of Police, B-4
Police Station, Coimbatore and K. Shanmugasundaram
Section Superintendent, D. Section (MT), Police
Commissioner Office, Coimbatore 18

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Tamil Nadu State Housing Board Act, 1961 — Section 84

Citation : (2012) WritLR 541

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; R. Jayaseelan For Respondents 1,
Mr. V. Jayaprakash Narayanan For Respondent 2 and 3 and Mr. P. Jagadeeswaran
For Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioner has approached this Court with the prayer for issuance of a writ in the nature of Certiorari, to quash the impugned order dated 24.09.2011 issued vide letter No. A19/9702/10 by the first respondent cancelling allotment of flat. The translated copy of the impugned order reads as under:

From -

Thiru G. Ramamurthy, B.E. Executive Engineer & Administrative Officer, Kovai Housing Board, Tamil Nadu Housing Board, Tatabad Coimbatore 642012

To Tmt. T.C.P. Jayalakshmi, Assistant, O/o Joint Commissioner, Commercial Tax Officer, Coimbatore 18. Registered Post

Letter No.A-19/9702/10 Dt. 24.09.2011

Madam,

Sub: Tamil Nadu Housing Board - Coimbatore Housing Division - Panthayasalai
G.O.R.Q. No. 2/34 - Cancellation of allotment - Final Notice - regarding.

Ref:1 Lr.No. A19/9702/10 dt. 09.12.2010

2 Petition by Thiru K. Shanmugasundaram dt. 13.09.2011.

3 Letter by the Inspector of Police, B4 Race Course Police station, Coimbatore
City dated 20.09.2011.

You are residing in the Government Officers' Rental quarters No. 2/34 allotted by the Board. In the reference cited letters, complaints have been received against you and your husband. As per para No. 4 of the Government order relating to allotment Rules, and para 16 of the allotment order, it was agreed and signed that the flat will not be used for any illegal or irregular activities and that no disturbance will be caused to the neighbours, in the event of any such incidents, allottee has agreed to abide by the action to be taken by the Board. However, complaints received that you and your husband have acted contrary to the above undertakings and caused disturbance to the neighbours by using filthy language. Therefore, complaint has been given against you and your husband. In view of that, allotment of flat has been cancelled. Already similar complaints have been received and allotment of flats have been changed on three occasions. Already, this office has issued the final notice to you. But you have not submitted any written explanation. Further, B4 Police station has instructed to take action against you.

Your allotment of flat has been cancelled in this letter. You should immediately vacate the flat and hand over the key to the Assistant Engineer, failing which, you are informed that the Board will recommend for departmental action against you.

Sd/-26.09.2011 The Executive Engineer and The Administrative Officer,
Coimbatore Housing Unit, Coimbatore.

2. The impugned order is challenged on the ground, that it is totally without jurisdiction, as the respondent No. 1 has no jurisdiction to cancel the allotment of flat.

3. The power for cancellation of flat is under Sec. 84 of Tamil Nadu Housing Board Act, 1961, under which the competent authority alone can cancel the allotment.

4. Sec. 84 of the Tamil Nadu Housing Board Act, 1961 reads as under:

84 Power to evict certain persons from Board premises:

(1) If the competent authority is satisfied-

(a) that the person authorized 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) sublet 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 authorized 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 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 complied 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 (1) 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.

5. The competent authority under the Act is Revenue Officer/ Assistant Revenue Officer. The power under Sec. 84 therefore can only be exercised by the competent authority, and not by the Executive Engineer. The impugned order is thus, without jurisdiction.

6. Not only this, under Sec. 84, the cancellation can be ordered only on the grounds mentioned under Sec. 84 that too by following due process of law. The power to be exercised under Sec. 84 is quasi judicial in nature which envisages hearing of both parties. Only on account of dispute between two allottees, it was not open to the respondent to cancel allotment of flat.

7. In case of breach of law, the remedy with aggrieved party is to approach civil Court or criminal court in accordance with law. But the respondent No. 1 has no jurisdiction to act in such arbitrary manner.

8. The impugned order being without jurisdiction and further being contrary to the provisions of statute, cannot be sustained. Consequently, this writ petition is allowed. The impugned order is set aside.

Connected miscellaneous petition is closed. No cost.