
(1994) 03 MAD CK 0103
In the Madras High Court

Vijayalakshmi Gopalan

APPELLANT

Vs

The Executive Engineer and Administrative Officer, Tamil
Nadu Housing Board and Others

RESPONDENT

Date of Decision : 29-03-1994

Acts Referred:

Tamil Nadu State Housing Board Act, 1961 — Section 84(2)

Citation : (1994) 2 MLJ 389

Hon'ble Judges : S.M. Ali Mohamed, J

Bench : Single Bench

Judgement

S.M. Ali Mohamed, J.—The petitioner herein, in the affidavit filed in support of the writ petition has averred that the Flat No. 6 Lloyds Estate was initially allotted to her husband late Mr. Gopal on 21.9.1965 and continued in his name until his death on 19.2.1972. On 25.8.1972, she applied to the second respondent seeking the transfer of the premises in her name. Subsequently the premises with all the assets and liabilities was transferred to her name on 24.11.1972. She was in enjoyment of the said premises without any obstruction. She submits that the first respondent issued communication to the effect that the flat, allotted to her, had been sublet and that the said subletting was illegal. In the communication, she was requested to tender an affidavit that she was in lawful possession of the said flat without subletting, within 15.9.1981. She replied that there was no necessity for filing a fresh affidavit as she had already executed an affidavit stating that she was in lawful possession of the premises, on 9.8.1979. She also sent a communication dated 22.9.1981 on the above. Not satisfied with her replies, the communication was once again sent to her questioning her relationship with one Vijayalakshmi. In her affidavit dated 1.9.1979, she had set out clearly that she was the widow of late Gopalan and produced the death certificate to get the transfer from her husband's name to her name. On 26.2.1981, she issued a reply stating that she was Vijayalakshmi who is the allottee-cum-resident and there was no question of any sub-letting. On 8.1.1982, the first respondent by way of another communication asked her to

produce the death certificate of her husband along with the transfer order regarding the allotment in her favour. On submitting to the first respondent, that the documents we're in the file same had been submitted twice, he informed that he would look into the file of the case. To her shock and surprise, another communication was issued by the first respondent after two years. She had stated in her earlier letter itself, that she being a widow she was being visited by her sister-in-law for her help and she stays with her for some time. She submits that she is entitled to have visitors and even assuming that her sister-in-law had been continuously staying with her for a long period on her visitation, it would not amount to subletting. Even in that case, the show cause notice should be addressed to her and an explanation should be called from her.

2. While so, the second respondent addressed a communication to the Commissioner of Police dated 3.11.1983 requesting for necessary police bandobust to enable the executive staff of the Tamil Nadu Housing Board to evict the petitioner herein/any other occupant in Flat No. 6, Lloyds Estate, Madras-14. Aggrieved by the said, impugned order the petitioner has filed this writ petition for the issuance of writ of certiorarified mandamus or any other appropriate writ, order or direction in the nature of a writ calling for the records pertaining to the impugned order passed by the first respondent in Letter No. TNHB/ARD/IX/83, dated 3.11.1983 and quash the same and further direct the respondents not to interfere with the possession and enjoyment of the petitioner of the premises No. P-6 Lloyds Estate, Madras-14.

3. It is contended by the learned Counsel for the petitioner that the procedure prescribed u/s 84(2) of the Tamil Nadu Housing Board Act (Tamil Nadu Act 17 of 1961) has not been complied with. He further submitted that though show cause notice was issued by the Executive Engineer, the first respondent, and the reply was given, no enquiry was conducted and straightaway the second respondent has passed the orders and therefore there is a grave infirmity in the impugned order.

4. On the other hand, the learned Counsel for the respondents Mr. Kannadasan contended that upon the facts and circumstances of the case, the requirements of Section 84(2) of the Act have been complied with. In particular, the learned Counsel for the respondents submitted that the facts and circumstances of the instant case will fall u/s 84(1)(b) of the Act, relating to any person who is in unauthorised occupation of any boarding premises, and not u/s 84(1)(ii) of the Act, relating to subletting. Therefore, the impugned order is in accordance with law and there is no infirmity.

5. Upon the facts and circumstances of the case, I am unable to accept the contentions of the learned Counsel for the respondents. Section 84(2) of the Act reads as follows:

Before an order under Sub-section (1) is made against any person the competent authority shall inform the person by notice in writing and serve in the a manner

provided for service of notice under Sub-section (1) of the grounds for which proposed order is to be made and give him a reasonable opportunity to tendering an explanation and producing evidence, if any, and to show cause why within period to be specified in such notice.

It is clear from the reading of Section 84(2) of the Act that the competent authority shall inform the person to be vacated by a notice in writing and serve 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 to tender any explanation and producing evidence if any and to show cause why such order should not be made within the period to be specified in the notice. Therefore, Section 84(2) of the Act contemplates the service of show cause notice to the affected person, recording the explanation of the affected person to the show cause notice and an enquiry and opportunity for producing sufficient evidence and on the basis of the evidence adduced, the competent authority has to decide the matter and issue a second show cause notice why such order should not be made within a period to be specified in such notice. In the instant case a show cause notice dated 16.9.1981 was issued. It reads as follows;

The Flat No. P-6 at Lloyds Estate has been allotted to one Smt. Vijayalakshmi. It is found that the original allottee is not residing in the flat. You are requested to state the relationship with the original allottee Smt. Vinajalakshmi and also requested to furnish your husband's name and present official address for taking further action.

I also request you to furnish the enclosed sworn affidavit typed on Rs. 5 stamp paper duly attested by a Metropolitan Magistrate on or before 15.9.1981, failing which it will be decided that you have no remarks to offer and the Flat No. 6 Lloyds Estate will be cancelled and you will be evicted from the flat without any further notice to you.

To the above notice the petitioner replied as follows on 22.9.1981.

Received your registered A/D. letter on 21.9.1981. With reference to your letter, I have to state that I have already filed the affidavit required by you on 9.8.1979. In the circumstances, I do not understand your present communication nor the necessity for filing a fresh affidavit by me.

I have to state that I am the allottee and I am staying in the flat. I think there is some misapprehension, which, I hope, is cleared by what is stated by me in the previous paragraph.

On 10.8.1983, the first respondent passed the following order:

Whereas, I, V. Rathanasamy A.R.O. (II competent authority) I am satisfied that you are in unauthorised occupation of the Board premises No. P-6 more fully described in the Schedule hereunder written, you are hereby called upon to vacate and surrender vacant possession of the said premises within one month of

the date of the service of this notice failing which the undersigned will take such steps to evict you from the premises aforesaid, without further notice.

The Schedule: M.I.G. P-6 Lloyds Estate.

In pursuance of the said order, the Board addressed the impugned letter dated 3.11.1983 to the Commissioner of Police to arrange for necessary police bandobust to enable the Executive Staff of the Tamil Nadu Housing Board to vacate the petitioner. It is clear from the above that the procedure prescribed u/s 84(2) of the Act, has not been complied with by the first and second respondents. There is infirmity in the order dated 10.8.1983 passed by the competent authority calling upon the petitioner to vacate and surrender the vacant possession of the premises No. P-6, Lloyds Estate, Madras-14. The order is not sustainable as no reasonable opportunity has been afforded to the petitioner before passing the said order, as per Section 84(2) of the Act. There is an infirmity in the impugned order dated 3.11.1983, also which specifically states as follows:

The formalities laid down u/s 84 of the Tamil Nadu Housing Board Act have been observed and the person mentioned in the annexure have not remitted the rental arrears or vacated the site as directed.

It merely says that the rent arrears have not been remitted without stating whether it was rent arrears or as per any direction. The first respondent has not applied his mind before issuing the letter to the Commissioner of Police.

6. In view of the above, both the orders dated 10.8.1983 and 3.11.1983 are hereby quashed. However, it is observed that it is always open to the first and second respondents if necessary to take appropriate proceedings under the Tamil Nadu Housing Board Act, 1961 (Tamil Nadu Act 17 of 1961) in accordance with law. With the above observation, the writ petition is allowed. On the facts and circumstances of the case there will be no order as to costs.