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(2014) 4 LW 849

Madras High Court

Case No: Writ Appeal Nos. 1247 to 1256, 2815 to 2825 of 2012 and W.P. Nos. 13963 of 2012, 6038, 27867 to 27869, 28142, 28389 of 2013

K.A.M. Gunalan	APPELLANT
Vs	
The Government of Tamil Nadu	RESPONDENT

Date of Decision: July 25, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 14, 226

Citation: (2014) 4 LW 849

Hon'ble Judges: Satish K. Agnihotri, Acting C.J.; M.M. Sundresh, J

Bench: Division Bench

Judgement

1. As the issues involved in the writ appeals as well as the writ petitions are interlinked, they have been taken up together and disposed of by way

of common order. For the sake of brevity, the parties as arrayed in the writ petition are taken as such for the writ appeals as well.

2. Brief Facts:

2.1. Rental quarters have been constructed way back in the year 1953 by the City Improvement Trust. The name of the Trust was changed

subsequently as Tamil Nadu Housing Board, which is one of the respondent before us. The petitioners have been allotted rental quarters on rental

basis on various dates by the respondents starting from the year 1953 onwards. A joint inspection was made by the Tamil Nadu Housing Board

and the Anna University and it was observed by the Committee that the buildings are severely damaged and they have outlived their age.

Accordingly, it was resolved by the Tamil Nadu Housing Board in Resolution No. 5.05, dated 24.01.2005, by which, a recommendation was

made to the Government for demolition of the existing buildings.

2.2. A decision was made by the Government to demolish the buildings and thereafter, reconstruct the same. Accordingly, the Government Order

has been passed in G.O. (Ms). No. 52 Housing and Urban Development (HB 4(1)) Department, dated 05.03.2012 granting administrative

sanction to the Tamil Nadu Housing Board to construct flats. It has been made clear in the said Government order that the existing tenants viz., the

petitioners before us, would be re-accommodated. In order to augment capital for construction, it was also decided to construct and sell the flats

under the self financing category.

2.3. Prior to the said Government Order referred to supra, the Government has decided to put an end to the earlier policy adopted in converting

the rental quarters by way of sale through hire purchase. This earlier policy was changed in the year 2007 by which a conscious decision was taken

not to sell the rental houses to the tenants in order to convert rental quarters as a hire purchase. The said decision was taken on a consideration of

increase in demand for the rental quarters in the city of Chennai. When the tenants were asked to vacate, writ petitions in W.P. Nos. 24649 of

2011 etc., batch were filed.

2.4. The learned single Judge, in W.P. Nos. 24649 of 2011 etc batch, in and by the order dated 30.11.2011, has disposed of the writ petitions in

the following manner.

6. In view of the above stand taken by the Tamil Nadu Housing Board, these writ petitions are disposed of, granting liberty to the second

respondent to issue another notice after getting plan approved as well as sanction of funds for the construction of new flats numbering 474 as

assured in the very same place. Till new notices are issued to the petitioners, the petitioners are permitted to continue in their present quarters. The

petitioners are granted liberty to challenge the subsequent notice to be issued, if any other legal and valid ground is available to them. No costs.

Connected miscellaneous petitions are closed.

Challenging the common order passed by the learned single Judge, writ appeals in W.A. Nos. 2815 to 2825 of 2012 etc., have been filed.

Challenging the Government Order, by which, administrative sanction was given as well as the notices issued directing the petitioners/tenants to

vacate the respective flats in their occupation, writ petitions have also been filed. Hence, all the cases are before us.

3. During the hearing in W.A. Nos. 2815 of 2012 and 1247 of 2012 additional counter affidavits have been filed by the Tamil Nadu Housing

Board, who is the one of the respondents herein. The following passages of the additional counter affidavits filed are apposite.

(i) In W.A. No. 2815 of 2012

11. I state that in this regard, it is submitted that construction of 104 Flats and 16 Flats in Pocket 1/2 and 9/2 respectively under Board"s Rental

Scheme will be completed within 18 months from the date of demolition. Further, bonafidely the Board has taken all the steps to construct the

same at the earliest. No prejudice is going to be caused to the existing tenants, since they will be re-accommodated in flats with an extent of same

sq.ft. which they have been allotted earlier. On the other hand, if Tamil Nadu Housing Board is not allowed to construct new houses after

demolition all the efforts taken by the Tamil Nadu Housing Board viz., getting plan approval and building licence from the concerned authorities

would be lapsed and Board would be put into irreparable loss and hardship apart from the endanger of life to the existing tenants.

12. I state that the soil test for construction of 120 flats in different pockets at C.I.T. Nagar was already done by M/s. Mahindra Consultant

Engineers Ltd. Further the type design and plan was prepared to match the already existing sq.ft of the existing tenants. The Tamil Nadu Housing

Board has made all the arrangements to call for the tenders for construction of new flats, the same process has been delayed only because of the

existing litigations before this Hon"bel High Court.

(ii) In W.A. No. 1247 of 2012:-

6. I state that, the Tamil Nadu Housing Board has made arrangements to construct the 44 Flats after demolishing the 27 Flats at

Mandaivalipakkam village. Due to the pendency of the Writ Appeals and the status quo order granted by the Hon"ble High Court, the Tamil Nadu

Housing Board is not able to proceed with the construction of new flats. The Tamil Nadu Housing Board is planning to construct the 44 Flats

under Self Finance Scheme and it is reliably learned and survey has been done by the Tamil Nadu Housing Board the demand in the

Mandaivalipakkam area. Since the demand is high for the residential units it is positively stated that the construction of new houses can be done in

24 months from the date of demolition.

7. It is submitted that construction of 44 Flats under Board"s Rental Scheme and self-finance Scheme will be completed within 24 Months from

the date of demolition. Further, bonafidely the Board has taken all Steps to construct the same at the earliest. No prejudice is going to be caused

to the existing tenants, since they will be re-accommodated in flats with an extent of same Sq.ft which they have been allotted earlier. On the other

hand, if Tamil Nadu Housing Board is not allowed to construct new houses after demolition all the efforts taken by the Tamil Nadu housing Board

viz., getting plan approval and building license from the concerned authorities would be lapsed and Board would be put in to irreparable loss and

hardship apart from the endanger of life to the existing tenants.

4. Submissions of the writ petitioners:-

The learned counsel appearing for the petitioners submitted that at the time of construction of the flats, they were meant to be sold to the

occupants. Therefore, the principle of legitimate expectation would govern the cases. The respondents have effected sales on hire purchase basis

earlier and therefore, they cannot be permitted to take a different stand, which would be hit by Article 14 of the Constitution of India. The

proposed action is only an attempt to evict the tenants. There is no necessity to demolish the buildings, which are in good condition. Once a

demolition is made, the petitioners with their families will be on the street. The past experience would show that the respondents would take

considerable time in making the new constructions. The Government Order passed in G.O. Ms. No. 1348, Revenue Department, dated

03.04.1958, gives substantial right to the petitioners. There is no bona fides in the action of the respondents. The respondents cannot evict the

petitioners without following due process of law. Therefore, the writ appeals and writ petitions will have to be allowed. In support of the

submissions, the learned counsel has made reliance upon the following judgments.

(i) Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, ;

(ii) Navjyoti Coo-Group Housing Society etc. Vs. Union of India and Others, ;

(iii) Noida Entrepreneurs Association Vs. NOIDA and Others, ; and

(iv) Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others,

5. Submissions of the respondents:-

The learned Advocate General appearing for the respondents submitted that the petitioners do not have a vested right to continue in the rental

premises for eternity. On the same score, they cannot insist that the flats will have to be sold to them on a hire purchase basis. From the year 2007

onwards, it was decided not to effect any sale in favour of private parties. Such a policy decision cannot be questioned. There is no violation of

Article 14 of the Constitution of India involved. The petitioners would be given the priority of allotment in the proposed fiats that are to be

constructed. In view of the additional counter affidavits filed by the respondent--Housing Board, the grievance of the petitioners is satisfied. Even

before the learned single judge, the petitioners have sought for only six months time for vacating the flats. The respondents stand by the statements

made in the additional counter affidavits. Therefore, in the absence of any legal right, no interference is required.

6. Heard the learned counsel appearing for the appellants and petitioners and the learned Advocate General, Government Pleader and the counsel

appearing for the respondents and perused the records and written arguments.

7. Discussion:-

7.1. The Government Order in G.O.(Ms) No. 52, Housing and Urban Development (HB 4(1)) Department, dated 05.03.2012, was passed in

consultation with the Tamil Nadu Housing Board. The Tamil Nadu Housing Board has also resolved to recommend the expert opinion to the

Government for demolition as per Resolution No. 5.05, dated 24.01.2005. It is also seen in the counter affidavit filed that the decision to demolish

the existing structure and reconstruct the flats is a unanimous one made between the Government and the Tamil Nadu Housing Board. The

Government Order in G.O. Ms. No. 1854, Revenue Department, dated 03.05.1957 merely deals with the assignment of lands. The said

Government Order stands modified by a subsequent G.O. Ms. No. 1348, Revenue Department, dated 03.04.1958. A perusal of the Government

Order passed in G.O. Ms. No. 1348, Revenue Department, dated 03.04.1958, would show that it deals with fixation of quit rent. Therefore, there

is no right vested with the petitioners to seek that the respondents are bound to effect sale in their favour. More over, the earlier decisions made

also would show that sales by hire purchase were done on a case to case basis and not by acknowledging any right vested with the tenants. When

the earlier policy has been given a go-by by a subsequent one on the ground of public interest, this Court cannot go into the wisdom behind it while

exercising its discretionary power under Article 226 of the Constitution of India. The decision not to effect any sale in favour of the tenants was

made by taking note of the ever increasing demand for rental quarters. The subsequent decision made to demolish the building was also based

upon the empirical data and materials. The Committee submitted a Report about the condition of the buildings and thereafter, it was proposed to

demolish them followed by a new construction. Such a decision cannot be termed as arbitrary.

7.2. A perusal of the order passed in W.P. No. 24649 of 2011, dated 30.11.2011, would show that the tenants were asked to vacate even as

early as in the year 2011. Therefore, we are of the view that Section 84 of the Tamil Nadu Housing Board Act does not have any application to

the cases before us. Such a power can only be exercised when a person authorised to occupy the premises has not paid the rent lawfully due,

sublet without permission, otherwise acted in contravention of the terms of authorisation and has been in unauthorised occupation. Therefore, we

are of the considered view that the said provision does not have any application to the present cases.

7.3. Further, the respondents have also protected the interest of the existing tenants by proposing to accommodate them. Therefore, beyond the

said measure taken by the respondents, the petitioners cannot seek anything more. The documents produced by the petitioners on the structural

stability of the buildings cannot be gone into by this Court. As discussed above, the petitioners have not been discriminated after the policy has

been evolved and implemented. Therefore, they cannot seek a legal right based upon a decision made when the earlier policy was in vogue.

Accordingly, we do not find any mala fides, arbitrariness and unreasonableness in the action of the respondents. Even otherwise a wrong decision

made contrary to the policy would not give any right to similarly placed persons.

7.4. It is settled law that the doctrine of legitimate expectation would not apply to the cases where public interest is involved and action is taken in

accordance with the statute. In the cases before us, we do not find any legitimate expectation in favour of the petitioners. The petitioners, being the

tenants, cannot seek a larger relief in the absence of any legal right.

7.5. We have perused the judgments relied upon by the learned counsel appearing for the petitioners. We are of the view that those judgments are

not applicable to the facts of the case. The scope and ambit of legitimate expectation has already been discussed by us. We do not find any malice

either on facts or on law. It is well settled that the person, who alleges malice will have to establish the same. It is not, as if, the decision has been

taken over night. The earlier resolution has been passed in the year 2005 by the Tamil Nadu Housing Board. The said resolution was passed after

making a detailed study.

7.6. The additional counter affidavits filed on behalf of the respondent-Tamil Nadu Housing Board take sufficient care of the petitioners. The

undertaking given in the said affidavits coupled with the statement made in the Government Orders as well as that of the learned Advocate General

are recorded by us and would stand as sufficient protection to the petitioners. We are also satisfied with the financial arrangements made on behalf

of the respondents. The decision made to sell some of the proposed flats on outright basis by following the procedure known to law also cannot be

questioned since it has got a rationale behind it. The respondents have also taken appropriate steps by way of getting planning permission

approved from the Chennai Metropolitan Development Authority. Therefore, we do not find any reason to allow the writ appeals as well as the

writ petitions.

7.7. The learned counsels appearing for the petitioners submitted that taking note of the fact that the petitioners are living with their families, a

further period of six months will have to be given for vacating their flats. The learned Advocate General submitted that giving six months time would

further delay the process of demolition. It is submitted that the demolition would be carried out within a period of four weeks from the date of

taking over possession and thereafter, the undertaking given in the additional counter affidavits would be complied with. Considering the

submissions made, we are inclined to grant a further period of three months from the date of receipt of a copy of this judgment to all the tenants to

vacate their respective flats and hand over possession to the Tamil Nadu Housing Board. After taking over the possession of the buildings

concerned, the respondents will have to carry out the demolition within a further period of four weeks. Thereafter they have to comply with the

undertaking given in the additional counter affidavits filed by the respondent-Tamil Nadu Housing Board.

With the above observations, all the writ appeals and the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions

are also dismissed.