

Dr. S. Arumugham vs The Government Of Tamil Nadu ... on 4 December, 1989

Equivalent citations: (1990)1MLJ190

ORDER

Bakthavatsalam J.

1. The prayer in the writ petition is to issue a writ of mandamus restraining the respondents, their officers and men from interfering with the petitioner's possession and enjoyment or evicting the petitioner from the flat B-1 in Lloyds Estate. Lloyds Road, Madras-14 and further to direct the 2nd respondent to allot the said flat on rental basis to the petitioner under the Public Quota and render justice.

2. The petitioner before me was an Additional Director, Animal Husbandry Department. On 29.10.1984, the Government directed the 2nd respondent-Tamil Nadu Housing Board to allot "A" type flat at B-1, Lloyds Estate to the petitioner. Accordingly the petitioner was allotted a flat and he entered into a rental agreement with the 2nd respondent-Board. It is alleged in the affidavit that the petitioner was periodically addressing the respondents for allotment of a house to him on rental basis under the Public Quota System, inasmuch as he does not own a house at Madras and that after retirement he should continue to stay at Madras to take medical treatment. It is stated that in spite of several letters, his request was not favourably considered. The petitioner retired from service on 30.9.1987. His occupation of the said premises, after his retirement was periodically extended by the Government and finally two more months was granted from 31.8.1989 to 31.10.1989. By the last letter of the Government dated 19.9.1989 the petitioner was informed by the Government that he is permitted to retain the apartment for two months from 31.8.1989 on payment of rent last paid by him, while he was in service. It is necessary to state at this stage that the 2nd respondent-Board gave a notice to the petitioner during May, 1989 that is on 29.5.1989 to the following effect:-

It is ascertained from the remarks of the Assistant Revenue Officers, that even after the retirement from service, you have not vacated the flat, you have not got any permission to retain the flat. Hence you are requested to vacate the flat within one month from the date of receipt of this letter failing which the allotment made to you will be cancelled without any further notice.

On 28.9.1989, the Housing Board again gave a notice to the petitioner and asked him to hand over the flat to the Junior Engineer, Lloyds Colony on or before 5.10.1989. At this stage, the petitioner has come to this Court with the prayer as stated supra.

3. It is alleged in the affidavit that the flats are all owned by the Housing Board and it enters into the rental agreements and collects the rents. The Government directs the Housing Board to allot certain percentage of houses to Government servants as per orders issued by the Government from time to

time and it is alleged that though the petitioner has been allotted the flat by the Government as per the Government directions, he is still a tenant under the 2nd respondent-Housing Board. It is stated that it is only the Housing Board that can take steps to evict the petitioner and not the Government. It is alleged that the Government, therefore, cannot issue any directions to vacate the petitioner from the premises on the ground that he has retired from service, inasmuch as the flat is not a Government building but is owned by statutory corporation. The petitioner refers to certain instances in which action has been taken by the Government allotting the flat under the Public Quota System. Instances have been quoted by the petitioner during 1987 and 1988. On this ground the petitioner alleges that there is hostile treatment in his case and the Principles of natural justice and the rights guaranteed under Article 14 of the Constitution of India have been violated. The petitioner alleges that Chapter XI of the Tamil Nadu State Housing Board Act, 1961 deals with the power of the Board to evict persons from Board premises. The petitioner refers to Section 84 (1) of the Act and alleges that in this case, the procedure contemplated under Section 84 of the Act has not been followed. It is also stated in the affidavit that the 2nd respondent has no jurisdiction to evict the petitioner from the premises, without giving a notice. The petitioner alleges that the procedure contemplated under Section 84 of the Act has not been followed in this case and the power has been exercised arbitrarily asking him to vacate the premises. It is also stated that Section 86 of the Act confers the right to appeal to the Government against the order passed under Section 84 and inasmuch as no order has been passed under Section 84 of the Act, the petitioner has been denied the right of appeal to the Government.

4. Notice of motion has been ordered by me on 27.10.1989.

5. The 1st respondent-Government has filed a counter affidavit and Mr. J. Venugopal, the learned Government Advocate appears for the State. The second respondent-Housing Board has also filed a counter affidavit and Mr. S. Doraisami the learned Counsel appears for the Housing Board.

6. It is stated in the counter affidavit of the 1st respondent that the petitioner was allotted 'A' type flat at B-1, Lloyds Road on rental basis and that the petitioner should pay a monthly rent to the 2nd respondent-Board. It is stated that the allotment was based on the rental agreement made by the petitioner with the 2nd respondent-Housing Board. It is stated that certain percentage of the Board's rental flats was allotted to the Government officials by the Government on concessional rent and the remaining flats are allotted to the public under public quota system. The petitioner was allotted a flat only as a Government servant and the petitioner's occupation of the above said premises after retirement was periodically extended from time to time though the petitioner retired from service in September, 1989. The allegation that the petitioner has been singled out is denied. It is stated that the petitioner has not been treated hostile. It is further stated that though the petitioner becomes a tenant of the Tamil Nadu Housing Board the tenancy can be terminated only on receipt of directions from the Government, since the above said allotment was made under the Tamil Nadu Government Quota System for Government Officials only. The Government have issued orders for the retention of the flat by the petitioner till 31.10.1989. It is also stated that the Housing Board can act only on the directions of the Government and the flat had been allotted to the petitioner under Government Quota to the Government servants. The allegation that the Government could not issue any direction to evict the petitioner from the said premises on the

ground that the petitioner has retired from service and inasmuch as the flat is not Government flat and it is owned by the Housing Board is denied. It is stated that the Government exercise supervisory control and also issue directions from time to time with regard to the allotment of houses. It is also stated that the 2nd respondent is not bound to consider the request of the petitioner for conversion of his apartment into public rental because the Government alone is the competent authority as well as deciding authority in the abovesaid matter. It is stated that all formalities have been fully complied with in accordance with the rules and regulations prescribed under the provisions of the Tamil Nadu State Housing Board Act, 1961. It is further stated in the counter that the petitioner had become unauthorised occupant since the Government's permission to the petitioner to stay in the abovesaid flat was only upto 31.10.1989 and the competent authority, namely the Executive Engineer and administrative Officer, Tamil Nadu Housing Board had initiated the proceedings in order to evict the petitioner from this flat on 1.11.1989. It is also stated that the petitioner, being a retired Government servant is not entitled to stay in Government rental flat after his retirement. The Government have given the petitioner ample time for vacating the said flat. The 2nd respondent is the competent authority for dealing with the cases pertaining to subletting, overstaying and unauthorised occupation. With regard to the contention of the petitioner that he was not given any opportunity to appeal to the Government, it is stated that the 2nd respondent can act directly on the orders of the Government to evict him from the premises, for his overstaying. It is also stated that in the instant case, the petitioner was allotted the flat No. B.1 Lloyds Estate under the Government Rental Quarters while he was in Government service and even after his retirement, he was given ample opportunity for a long time, more than two years for his overstay in the above said flat. It is stated that taking undue advantage of the leniency given by the 2nd respondent, the petitioner refused to vacate the flat with ulterior motive.

7. The 2nd respondent-Board has also filed a counter affidavit stating that the flat was allotted to the petitioner under the Government rental Scheme as per the directions of the Government. It is stated in the counter affidavit that the petitioner retired from service on 30.9.1987 and the moment he retired from service, he is expected to hand over the flat to the Housing Board. It is stated that he did not hand over possession, but made a request to the Government for the extension of time to vacate the premises. Accordingly the Government on 28.9.1987 have granted time to the petitioner to retain the flat till 30.6.1988 and directed the Housing Board to take vacant possession of the flat on 1.7.1988. Again on 19.5.1988, on the request of the petitioner, the Government have extended the time by one year from 1.7.1988. On 29.5.1989, the Government have directed the Housing Board to evict the petitioner on 30.6.1989. Again on request, the time was further extended by two months upto 30.10.1989. It is stated that the Executive Engineer and Administrative Officer, Nandanam Division, who is the competent authority, has issued notice to the petitioner on 29.5.1989 which can be taken as notice under Section 84 of the Act. Since the petitioner has not vacated the premises, final notice was issued on 28.9.1989. It is stated in the counter that all the formalities were followed in passing the order of eviction against the petitioner, as per the provisions of the Tamil Nadu Housing Board Act, 1961. It is stated that the petitioner was put on notice on 29.5.1989 to vacate the premises within 30 days as required under Section 84 of the Act and that since he has failed to vacate within the said period, the Housing Board is empowered to take action to evict him forcibly.

8. Mr. K. Chandra Mouli the learned Counsel appearing for the petitioner contends that the provisions of Section 84 of the Act have not been complied with and that the impugned notice given to the petitioner on 28.9.1989 by the Housing Board is not in consonance with the provisions of the Act. Further, the learned Counsel contends that though the petitioner has been permitted to retain the flat upto 31.8.1989, he cannot be evicted without following the procedure prescribed under Section 84 of the Act. The main contention of the learned Counsel for the petitioner is that even assuming that the petitioner could be said to be in unauthorised occupation he cannot be evicted without a notice under Section 84 of the Act. According to the Explanation to Section 84 of the Act, the expressions "unauthorized occupation" in relation to any person authorized to occupy any Board premises, includes the continuance in occupation by him or by any person claiming through or under him of the premises after the authority under which he was allowed to occupy the premises has been duly determined. Based on this Explanation, the learned Counsel contends that the petitioner cannot be dispossessed summarily. The learned Counsel contends that similar allotments made to Government servants on rental basis have been allotted under Public Quota System and that when the petitioner has no house in the city and requested for allotment under Public Quota System, there is no reason why the Government should deny the benefit of allotment to him. The learned Counsel argues that the petitioner is entitled to be considered for allotment under Public Quota system in his favour, with regard to the flat he is occupying. The other contention by the learned Counsel is that the Government is the competent authority under the Act and by its order passed asking the petitioner to vacate the premises, the right of appeal to the Government is lost.

9. Mr. K. Chandra Mouli learned Counsel for the petitioner relies upon an unreported judgment of Sathiadev, J. in *K.V. Ramakrishnan v. The Chairman, Tamil Nadu Housing Board*, Mad. 35 W.P. No. 94 of 1979 dated 3.11.1981 for the proposition that if within the period fixed for giving vacant possession, the tenant does not respond to the notice the only course available to the Housing Board is to initiate action under Section 84 of the Act.

10. The learned Counsel appearing for the State and the Board contends that the petitioner being a retired Government servant, has no locus standi to remain in the flat, which has been allotted to him under the Government rental scheme. The learned Counsel further contends that the petitioner has retired from service even as early as September, 1987 and that time has been given to the petitioner from time to time to vacate the premises and as such, it is not correct on the part of the petitioner to contend that no notice has been given to him. The learned Counsel for the Board relies upon the notices dated 29.5.1989 and 28.9.1989 and states that these notices have to be taken as notices under Section 84 of the Act. As such, the contention of the learned Counsel for both the respondents is that the provisions of the Act have been fully complied with and the petitioner is not entitled to any relief in the hands of this Court.

11. I have considered the arguments of the learned Counsel Mr. K. Chandra Mouli for the petitioner and the learned Counsel for the respondents. It is not disputed that the petitioner has been allotted one 'A' type flat at B-1, Lloyds Estate on rental basis when he was in Government service. It is also not disputed that the petitioner has retired from service as Additional Director of Animal Husbandary Department on 30.9.1987. As stated in the counter-affidavit of the 1st respondent-Government, certain percentage of the Board's rental flats was allotted to the

Government officials by the Government on concessional rent and the remaining flats are allotted to the public under Public Quota System. It is seen that one allotment to the petitioner is admittedly under the Government rental scheme.

It is also not in dispute that the petitioner has entered into a rental agreement with the Housing Board. I find that the Government has allotted the flat to the petitioner by order dated 29.10.1984 and that the Chairman of the Housing Board has been requested to issue necessary allotment order. It is necessary to state at this stage a few facts. The file of the Government shows that the petitioner applied to the Government on 25.3.1988 stating the facts that he was occupying the flat from 29.10.1984 and he is continuing the occupation after his retirement on 30.9.1987 on payment of concessional rent as per the Government Order. It seems that the Government passed an order on 29.9.1987 permitting the petitioner to continue in the same house upto 30.6.1988. As such, the petitioner made this application during March, 1988 to the Government. In this application he requested that the present house 'a' Type flat No. B-1 at Lloyds Estate may be converted under Public Quota and allotted to him since he has retired from service on 30.9.1987. The petitioner also requested the Government to pass order for retention of the house in his name under the Public Quota or extension of time upto 30.6.1990 for two years since his children are studying. I find a letter of Member of Parliament addressed to the then secretary. Housing Department dated 29.3.1988, in which that Member of Parliament has requested the secretary to the Government to permit the petitioner to continue in the flat and to convert the said flat from the Officers' Quota to Public Quota and help the petitioner to retain the house. Again on 18.4.1988, the petitioner made a request to the Government that he may be permitted to retain the flat for another two years on humanitarian grounds. I also find a letter dated 30.3.1988 written by the Managing Director of the Overseas Manpower Corporation Limited to the Deputy Secretary to Government. Housing Department, requesting to help the petitioner on the ground that he is his close family friend. In that letter it is stated that the petitioner is now requesting that at least he may be given extension for staying in that house till his son's marriage within 2 or 3 months. It seems that the petitioner has made personal representation to the Secretary, Housing Department during May, 1988 and one year extension has been given from 1.7.1988. This is the way in which the petitioner has been getting extension of time from the Government for vacating the premises, knowing fully well that he is in an authorised occupation of the flat after retirement from service. The Government has also granted time right from September, 1987 upto now for more than 2 years. In this back ground, now it has to be seen whether the petitioner's contention that provisions of Section 84 of the Act have still be complied with, is tenable.

12. Section 84 of the Tamil Nadu State Housing Board Act, 1961 empowers the Board to evict persons from the Board's premises on certain conditions and Sub-sections (2) and (3) to Section 84 of the Act are in the following terms:

(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 to 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.

The counter-affidavit of the Board relies mainly on the notice given by the Board on 29.5.1989, which is to the following effect:

It is ascertained from the remarks of the Assistant. Revenue Officers, that even after the retirement from service, you have not got any permission to retain the flat. Hence you are requested to vacate the flat within one month from the date of receipt of this letter failing which the allotment made to you will be cancelled without any further notices.

This notice has been received by the petitioner. Another notice dated 28.9.1989 has been given, which is to the following effect:

As the time granted by the Government expires on 30.9.1989 I request you to hand over the flat to the JE/Col. on or before 5.10.1989.

Even after this notice directing the petitioner to vacate before 5.10.1989, the petitioner has got order from the Government permitting him to retain the premises upto 31.10.1989 apparently on a letter written by him to the Government. I find that the said letter is dated 19.9.1989. When the petitioner is aware of the fact that he is occupying the premises under the permission granted by the Government, even after his retirement, I do not see as to how the petitioner can ask for a notice under Section 84 of the Act. It is no doubt true that sub-Section (2) of Section 84 contemplates a particular procedure. If this sub-Sections considered, I find that the petitioner had enough opportunity and indulgence so to say from the Government to retain the flat for more than two years. With the eyes wide open, I find that the petitioner was occupying the flat unauthorisedly. Since it cannot be denied that it is unauthorised occupation, and having obtained extension of time for more than two years from the Government to retain the flat, I do not see any rhyme or reason in the request of the petitioner that the provisions of Section 84 of the Act have to be complied with, on the facts and circumstances of this case. If sub-Section (2) of Section 84 of the Act is intended to give an opportunity to the person and to consider his explanation before an order of eviction is passed, virtually this sub-section is based upon a-principle of natural justice. On the facts of this case, I do not see how the petitioner can complain that he is not aware of anything. Being a retired Government servant, even after the retirement from service, he is hanging on to the premises without vacating it in time on some pretext or other. From the files, I am able to see that he had enough indulgence from the Government. He was able to get time for more than two years to vacate the flat. Assuming that the argument of Mr. K. Chandra Mouli that the

procedure has not been followed in this case is correct, I am unable to see what is that the petitioner is going to say if an opportunity is given. This is a case where the facts are admitted and actually two notices also have been given by the Housing Board to vacate the premises in May and September, 1989. Till then, the petitioner got the time extended by the Government, knowing fully well that he is in unauthorised occupation and he has to vacate the premises and as such the petitioner cannot turn round now and say that the procedure Under Section 84 of the Act has to be complied with strictly in his case before an order of eviction is passed. Though non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary on the facts and circumstances of this case, in my view, the petitioner cannot ask for the relief that his possession should not be interfered with by the respondents. On the admitted and indisputable facts, in my view, only one conclusion is possible and as such it is well settled that the court sitting under Article 226 of the Constitution of India may not issue a writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because courts do not issue futile writs. It has been so held in the decision reported in *S.L. Kapoor v. Jagmohan*. Further, in the decision reported in *K.L. Tripathi v. State Bank of India* the Supreme Court has held as follows:-

It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of such particular case.

The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate against that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed. See in this connection the observations of this Court in the case of *Jankinath Sarangi v. State of Orissa*. *Hidayathullah C.J.*, observed there at page 394 of the report There is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right". Judged by this principle, in the background of the facts and circumstances mentioned before, we are of the opinion that there has been no real prejudice caused by infraction of any particular rule natural justice of which appellant before as complained in this case. See in this connection the observations of this Court in the case of *Union of India v. P.K. Roy* where this Court reiterated that "the doctrine of natural justice cannot be imprisoned within the strait-jacket of a

rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons effected, the scheme and policy of the statute and other relevant circumstances disclosed in a particular case.

On this ground. I am not inclined to grant the writ as prayed for. It is also well settled that the principles of natural justice have to be decided taking into account the provisions of the Act and the intention behind it. I am inclined to take the view that the petitioner had enough opportunity before he was asked to vacate the premises in this case. The petitioner was hoping to get the flat for himself under the Public Quota System and was asking for extension of time to vacate the premises. That means, he has accepted the unauthorised occupation. Having taken that stand before the Government, it is not open to him to approach this Court by way of this writ petition under Article 226 of the Constitution of India, that too, for a writ of mandamus to prevent the respondents from interfering with his possession. The decision of Sathiadev, J. is entirely on different set of facts, though it is also concerned with a retired Government servant. The facts of that case show that he retired in 1978 and he was asked to vacate the premises by 1979 within 4 or 5 months. In those circumstances, the learned Judge held that Section 84 has to be complied with before he is asked to vacate. But, on the facts and circumstances of this case, I am of the view that Section 84 has been fully complied with in the petitioner's case, taking note of the notice given by the Housing Board and the reply of the petitioner, asking for extension of time to vacate the premises.

13. Even before the first notice was given to him in May, 1989, the petitioner started corresponding with the Government on 8.5.1989. Actually his request was turned down by the Government on 29.5.1989. I find another letter addressed by the present Minister of Transport to the then Minister for Housing, that is, almost when the Housing Board issued the first notice in May, 1989. The entire file shows that the petitioner has been moving the Ministers concerned also for getting time and allotment under Public Quota. Everything has been turned down and as such, I do not see how the petitioner is entitled to another notice under Section 84 of the Act. In my view, if a notice is given under Section 84 of the Act, it will be only an empty formality. In these circumstances, I do not see any merits in the contentions raised by the learned Counsel for the petitioner. There are no merits in the writ petition.

14. It is necessary for me to dilate upon certain principles taking into consideration the facts of this case. The petitioner is a Government servant, who has been allotted the flat under rental scheme. Even after retirement he wants to cling on to the premises somehow or other. From the files, I am able to see that he has moved heaven and earth to keep the flat for himself. He has not left any person to obtain the order in his favour. He has not spared even the Ministers concerned. I find repeated petitions to the respective Ministers and the recommendations by them. He was able to obtain the recommendation of the bureaucrats earlier when the State was under the President's rule, to stay on the flat. Afterwards, he started appealing to the concerned Ministers. If a Government servant is allowed to take this attitude after retirement, I do not see how the Government can

accommodate the servants who are in service. The petitioner forgets the fact that houses are needed to the persons who are in Government service at present. The petitioner was allotted the flat only because he was a Government servant and once he retired from service, he should have vacated the premises magnanimously. The petitioner tried his level best to stay on and once he was not able to obtain the relief at the hands of the Government he as turned against the Government and seeks remedy under Article 226 of the Constitution of India. The relief being discretionary, I think discretion should not be exercised in favour of the persons like the petitioner. If persons granted perquisites or conveyance or accommodation taking into consideration the service in the Government or in any other organisation, they must be prepared to quit everything once they retire. But unfortunately this attitude is not prevailing with many Government servants and authorities even after retirement from service. This is one such instance where the Government servant wants to retain the flat which was allotted to him in preferential quota as a Government servant. I am of the view that such an attitude should not be entertained by this Court, exercising writ jurisdiction. I am also of the view that the protection given under the statute is only against the arbitrary eviction. If the facts of the case are looked upon, it will be evidence that the petitioner had sufficient time to vacate the premises. As I have already stated if relief under Article 226 of the Constitution of India is given in a case like this, I do not know how the rest of the Government servants will behave after their retirement from service. As such, I am inclined to observe that in future the Government should be very careful enough to evict the retired Government servants immediately, after complying with the provisions of the Act. This is a case where sympathy is misplaced and when once the petitioner is not able to get retention, he is trying to hit at the Government and the Housing Board. This should not be allowed in future by the Housing Board and the Government.

15. This writ petition will, therefore, stand dismissed with costs. Counsel fee Rs. 500 one set. Though I am not inclined to grant time to the petitioner to vacate the premises, taking into account his attitude, Mr. K. Chandra Mouli the learned Counsel for the petitioner requests that taking into consideration the fact that the petitioner is a heart patient, some indulgence be shown to the petitioner, otherwise the Housing Board will throw him out overnight, I am inclined to grant time to the petitioner till 16th day of this month to vacate the premises.