

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.No.16288 of 2015 and
M.P.No.1 of 2015

S.Dinesh

... Petitioner

Vs.

1. Tamilnadu Slum Clearance Board,
Rep. By its President/Chairman,
No.5, Kamarajar Street,
Chepauk, P.B.No.157,
Chennai - 600 005
2. Assistant Secretary (Housing)
Tamilnadu Slum Clearance Board,
No.5, Kamarajar Street,
Chepauk, P.B.No.157,
Chennai - 600 005
3. Executive Engineer,
Division - II,
Tamilnadu Slum Clearance Board,
K.K.Nagar, Chennai - 600 078
4. The Superintendent, umrage
Tamilnadu Slum Clearance Board,
No.5, Kamarajar Street,
Chepauk, P.B.No.157,
Chennai - 600 005

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings made in Board proceedings K.No.B4/16031/2012 dated 29.05.2015 alleged to have passed by the 1st respondent and quash the same and forebear the Respondents from interfering with the Petitioner's possession and enjoyment of the property allotted to him bearing Door No.4, Perumal Koil Thottam, Athi Kesava Perumal Street, West Mambalam, Chennai - 600 033.

For Petitioner : Mr.G.Ethirajulu

For Respondents : Mr. B.Kesavan

O R D E R

[Order of the Court was Delivered By M.VENUGOPAL, J.]

The Petitioner has preferred the present Writ Petition in calling for the records relating to the Board Proceedings in Reference No. K.No.B4/16031/2012 dated 29.05.2015 purported to have been passed by the 1st Respondent/Tamilnadu Slum Clearance Board and to quash the same. Further, he has prayed for passing of an Order by this Court in forbearing the Respondents from interfering with his possession and enjoyment of the property allotted to him bearing Door No.4, Perumal Koil Thottam, Athi Kesava Perumal Street, West Mambalam, Chennai - 600 033.

2.According to the Learned Counsel for the Petitioner, the Impugned Order in Board Proceedings in Ref.No. K.No.B4/16031/2012 dated 29.05.2015 passed by the 1st Respondent/Tamilnadu Slum Clearance Board, Chennai suffers from illegalities and irregularities and further the same is in excess of jurisdiction.

3.The Learned Counsel for the Petitioner contends that the 4th Respondent/Superintendent of Tamilnadu Slum Clearance Board has no jurisdiction to conduct an enquiry and pass the Impugned Order when this Court in W.P.No.27097 of 2012 on 22.09.2014 had categorically directed the 1st Respondent to conduct an enquiry for providing an opportunity to the Petitioner. However, the said enquiry was not conducted in terms of the said Order. As such, the Impugned Order passed in the present case is non est in Law and contrary to the Order passed by this Court.

4.Expatiating his contentions, the Learned Counsel for the Petitioner projects an argument that the 1st Respondent had unilaterally determined as if the petitioner had put up 855 Sq.Ft., of construction despite the same being denied by the petitioner in his explanation as well as in the statement. Therefore, the said finding is arbitrary and unilateral one and also not based on any documentary evidence.

5.The stand of the Petitioner is that the 1st Respondent had failed to take into account that the Revenue Officer, South, Tamilnadu Slum Clearance Board, Chennai in his Office Proceedings in Na.Ka.No.29/02B dated 18.06.2004 had regularised the construction of 220 Sq.Ft., by enhancing the monthly rent. However, the 1st Respondent had not considered that aspect and

erroneously directed the petitioner to remove the entire construction and the said procedure vitiates the whole order.

6.The prime contention advanced on behalf of the petitioner is that the 1st Respondent had failed to note that the allottees under the same scheme had put up additional construction in the land and also enjoying the same without any proceedings taking into consideration of political pressure, but, the petitioner alone was singled out and an order of eviction was passed, even without considering the defence taken in an enquiry. As such, the said procedure of the 1st Respondent had resulted in miscarriage of justice.

7.It is the stand of the Petitioner that the 1st Respondent having issued a Show Cause Notice to him ought to have conducted an enquiry before passing the Impugned Order. However, an enquiry was conducted by one Tinesh Nathan, namely, the 4th Respondent even without providing sufficient opportunity to the Petitioner, which amounted to violation of Principles of Natural Justice.

8.Apart from the above, the plea of the petitioner is that the 1st Respondent had committed an error in coming to the conclusion that the petitioner had put up 30'x20' construction in the ground floor and 30'x20' with asbestos roof in the 1st Floor. Per contra, the Petitioner had put up construction only 22'x10' alone and the same was regularised by the Revenue Officer in his Office proceedings dated 18.06.2004. However, inspite of his objection, the Impugned orders were passed.

9.Lastly, it is the submission of the Learned Counsel for the Petitioner that the Impugned Order passed by the 1st Respondent is contradictory wherein the Petitioner was directed to demolish and handover possession of encroached portion of the land, but his entire allotment was cancelled and the discrepancy in the order so passed by the 1st Respondent vitiates the whole proceedings.

10.It comes to be known that in the Impugned Order dated 29.05.2015 passed by the 1st Respondent, it was categorically mentioned that the petitioner on 22.12.2014 at about 11.00 a.m., had given a statement before the Board's President/Chairman to the effect that he had constructed a building in the vacant place in addition to the place allotted by the Board and further in the upper portion had put up cement tiles and residing there and the ground floor is used by him as Physical Exercise Centre and therefore, had prayed for re-inspection of the site once again and to allot an excess extent of 855 Sq.Ft by means of an allotment order in his favour.

11.It is not in dispute that the petitioner at the time of allotment had entered into a lease agreement with the Tamilnadu

Slum Clearance Board and in violation of the Clause Nos.5 and 7, had obtained an allotment for running a petty shop and further not running petty shop had encroached 855 Sq.ft over and above the allotted extent and in the Impugned Order passed by the 1st Respondent, it was crystal clearly pointed out that the encroachment of 855 Sq.Ft would create obstacles to the extent of not removing the same, if the maintenance works and blockage had occurred in the drainage pipe. As such, the plea of the petitioner was not accepted because of the reason that he had violated the Board's Rules of Procedure. Further, his allotment of petty shop order dated 18.06.2004 in Na.Ka.No.39/02/B was ordered to be cancelled and further his advance amount of Rs.7,080 deposited by him was also ordered forfeited. That apart, he was directed to remove the encroachment within a week at his own cost from the date of receipt of copy of the Order and to handover the same etc.,

12.However, this Court on going through the contents of the Impugned Order passed by the 1st Respondent dated 29.05.2015 is of the considered view that the 1st Respondent had rendered finding on fact to the extent that the petitioner had encroached 855 Sq.Ft over and above an extent allotted to him and further he was not running the petty shop after the allotment order and thereby violated Clause 5 and 7 of Lease agreement entered into by him with the Board. Therefore, the 1st Respondent in the considered opinion of this Court had rightly cancelled the Petty shop order dated 18.06.2004 and ordered a forfeiture of deposit of Rs.7,080/- paid by the petitioner and the same does not suffer from any illegal infirmities in the Eye of Law. Per contra, the Impugned Order passed by the 1st Respondent dated 29.05.2015 is a fair, valid and just order to meet the ends of justice. Consequently the Writ Petition fails.

13.In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. Before parting with the case, this Court in furtherance to certain cause of justice directs the 1st Respondent/Tamilnadu Slum Clearance Board and other 2 to 4 Respondents to take necessary action against those persons, who are similarly placed like that of the petitioner in violating the allotment of respective petty shop order, strictly in the manner known to law and in accordance with law, of course without showing any favouritism/nepotism or discrimination of any kind on any score. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The President/Chairman,
Tamilnadu Slum Clearance Board,
No.5, Kamarajar Street,
Chepauk, P.B.No.157,
Chennai - 600 005
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Tamilnadu Slum Clearance Board,
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4. The Superintendent,
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Chepauk, P.B.No.157,
Chennai - 600 005

+1cc to Mr.B.Kesavan, Advocate, S.R.No.27825

+1cc to M/s.G.Ethirajulu, Advocate, S.R.No.27877

W.P.No.16288 of 2015
and
M.P.No.1 of 2015

UG(CO)
CA(19/06/2015)

सत्यमेव जयते

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