

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.2.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

Writ Appeal Nos.758, 759 & 1986 of 2013

K.Periyasamy .. Appellant in WA Nos.758 & 759/2013
M.Mari .. Appellant in WA No.1986/2013
vs.
1.The Chairman & Managing Director,
Tamilnadu Slum Clearance Board,
Chennai. ..R1 in WA 758 & 1986 of 2013
1.State of Tamilnadu, rep. by its
Secretary, Housing & Urban Development
Dept., Fort St. George, Chennai-9. ..R1 in WA.759 of 2013
2.The Managing Director,
Tamilnadu Slum Clearance Board,
Chennai.600 005
3.The Estate Officer,
Tamilnadu Slum Clearance Board,
K.K.Nagar, Chennai. 600 078 .. R2 & R3 in all WAs.
4.M.Mari ..R4 in WA 758 of 2013 & 759 of 2013
4.K. Periyasamy ..R4 in WA.1986 of 2013

Prayer: Writ Appeals are filed against the order dated 19.11.2012 made in WP Nos.3614/2011 and 2608/2012.

W.P.No.3614 of 2011: is filed under Article 226 of the Constitution of India praying to the issue of a writ of mandamus to directing the respondents 1 to 3 to forbear the 4th respondent from putting up any construction in the passage measuring to an extent of 2 meter breadth and 8 meter length leading to the petitioner's plot bearing No.301, N.S.K. 2nd street, Nehru Nagar, Velachery, Chennai-42 pending consideration of the representation made by the petitioner dated 15.12.2010 before the third respondent pursuant to the order passed by this court in W.P.No.1844 of 2011, dated 28.01.2011.

W.P.No.2608 of 2012: is filed under Article 226 of the Constitution of India to the issue of a writ of certiorari to call for the records from the file of the first respondent in respect of order G.O.(D)No.220, dated 26.12.2011 and to quash the same.

For appellants : Mr.S.Balasubramanian
in WA 758 & 759/2013
and R4 in 1986/2013

For appellant in
WA 1986/2013 : Mr.L.Chandrakumar for
& R4 in M/s.K.Lavan
WA 758 & 759/2013

Mr.M.Perumal for
Tamilnadu Slum Clearance Board

Mrs.A.Srijayanthi,
Special Government Pleader for
the State Government

COMMON JUDGMENT

[by V.RAMASUBRAMANIAN, J.]

These Writ Appeals arise out of the common order passed by the learned Judge in W.P.No.2608 of 2012 filed by the appellant in W.A.Nos.758 and 759 of 2013 and another filed in W.P.No.3614 of 2011 by the appellant in W.A.No.1986 of 2013.

2. Heard Mr.S.Balasubramanian, learned counsel appearing for the appellant in W.A.Nos.758 and 759 of 2013, Mr.L.Chandrakumar, learned counsel for the appellant in W.A.No.1986 of 2013, Mr.M.Perumal, learned counsel for the Tamilnadu Slum Clearance Board and Mrs.A.Srijayanthi, learned Special Government Pleader for the State Government.

3. The appellant in W.A.No.1986 of 2013 by name Mr.K.Mari was allotted a plot bearing No.301 in Velacherry Nehru Nagar Part II, by the Tamilnadu Slum Clearance Board, by proceedings dated ..5.1992. Similarly, the appellant in the other two Writ Appeals, by name, K.Periyasamy was allotted Plot No.302 by the proceedings dated ..8.1994.

4. After the allotment order, inter se disputes arose between the appellants in these appeals, about the location of the passage through which access could be had to Plot No.301. Therefore, Mr.M.Mari filed W.P.No.1844 of 2011 seeking a direction to the Tamil Nadu Slum Clearance Board [in short 'Board'] to take appropriate action for the removal of the encroachment allegedly made by K.Periyasamy in his plot. The said Writ Petition was disposed of by an order dated 28.1.2011, at the stage of admission, directing the

Estate Officer of the Board to consider the representation of M.Mari and to pass orders about the alleged encroachment.

5. However, the dispute did not end there. Mr.M.Mari came up with a second writ petition in W.P.No.3614 of 2011, alleging that after the order of this Court, K.Periyasamy pulled down the thatched shed in the encroached passage and that he was attempting to put up a construction. Contending that the officials of the Board did not take any effective steps to prevent the construction by K.Periyasamy in the passage, M.Mari filed the second writ petition in W.P.No.3614 of 2011 seeking a mandamus to direct the official respondents to prohibit K.Periyasamy from putting up any construction in the passage measuring an extent of 2 meter breadth and 8 meter length leading to his own plot bearing No.301.

6. Thereafter, the Estate Officer initiated proceedings against K.Periyasamy for the removal of encroachment, by notice dated 18.2.2011, on the basis of an interim order passed by this Court in the Writ Petition. A notice in Form No.B was also served on K.Periyasamy.

7. As against the said notice, K.Periyasamy filed a statutory appeal under Section 59[1] of the Tamil Nadu Slum Areas [Improvement and Clearance] Act, 1971. On the said appeal, the Government passed an order in G.O. [D] No.220, Housing and Urban Development Department, dated 26.12.2011. By the said order, the Government directed K.Periyasamy to remove the encroachment and directed the Slum Clearance Board to execute sale deeds in favour of both the rivals, viz., M.Mari and K.Periyasamy, as per the approved layout.

8. Aggrieved by the said G.O., K.Periyasamy came up with a writ petition in W.P.No.2608 of 2012. Since the issue raised in K.Periyasamy's writ petition in W.P.No.2608 of 2012 was interconnected with the prayer in the writ petition filed by M.Mari in W.P.No.3614 of 2011, both the writ petitions were clubbed together and they were taken up for disposal. By a final order dated 19.11.2012, the learned Judge found that K.Periyasamy did not make out any case against the order of the State Government in G.O.[D] No.220, Housing and Urban Development Department, dated 26.12.2011. Therefore, the learned Judge dismissed the W.P.No.2608 of 2012 filed by K.Periyasamy.

9. Insofar as W.P.No.3614 of 2011 is concerned, the learned Judge found that M.Mari was entitled to a plot of an extent of 126 square meter and that the passage on the northern side of plot No.302 to an extent of 2 meters x 8 meters should remain as a vacant space. In other words, the contentions of M.Mari were accepted.

10. Therefore, K.Periyasamy has come up with two Writ Appeals, viz., W.A.Nos.758 and 759 of 2013, challenging the dismissal of his own W.P.No.2608 of 2012 and the directions issued in M.Mari's writ petition in W.P.No.3614 of 2011.

11. M.Mari has also come up with W.A.No.1986 of 2013 on a very limited ground that the passage is actually on the southern side of the plot and not on the northern side and that there is a small clerical mistake in the operative portion of the order passed by the learned Judge. Though such clerical mistake could also be corrected by a review, this is a case where as against the very same common order, two Writ Appeals have come up. Therefore, M.Mari has chosen to file a Writ Appeal.

12. Insofar as the appeals filed by K.Periyasamy are concerned, we do not find anything wrong with the order of the learned Judge. The learned Judge upheld G.O. [D] No.220, Housing and Urban Development Department, dated 26.12.2011 whereby the Government directed the Board to act in accordance with the approved plan.

13. On the last date of hearing, we directed the learned Standing Counsel for the Board to file the original approved plan. The original approved plan produced by the learned counsel shows that plot No.302 which abuts N.S.K. II Street, lies on the eastern side of Plot No.301. Plot No.301 has an access through a passage lying to the south of plot No.302. This passage provides the only access from the N.S.K. II Street to Plot No.301. Therefore, the order of the Government directing K.Periyasamy to remove the encroachment in the passage has been rightly upheld by the Government and by the learned Judge. But, while doing so, the learned Judge has mistakenly indicated the passage to lie on the northern side. It is not. It lies on the southern side, as per the original approved plan. Therefore, this is the only correction that needs to be made to the order of the learned Judge. It appears that the encroachment has also been removed in the passage. 14. In view of the above, the writ appeals filed by K.Periyasamy in W.A.Nos.758 and 759 of 2013 are dismissed. W.A.No.1986 of 2013 filed by M.Mari is allowed modifying the order of the learned Judge in the penultimate paragraph to the effect that the passage actually lies on the southern side of plot No.302 and not on the northern side. The Board is directed to register the sale deeds in favour of the respective parties, in respect of the plots allotted to them. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gs.

To

1.The Chairman & Managing Director,
Tamilnadu Slum Clearance Board,
Chennai.

2.The Managing Director,
Tamilnadu Slum Clearance Board,
Chennai.

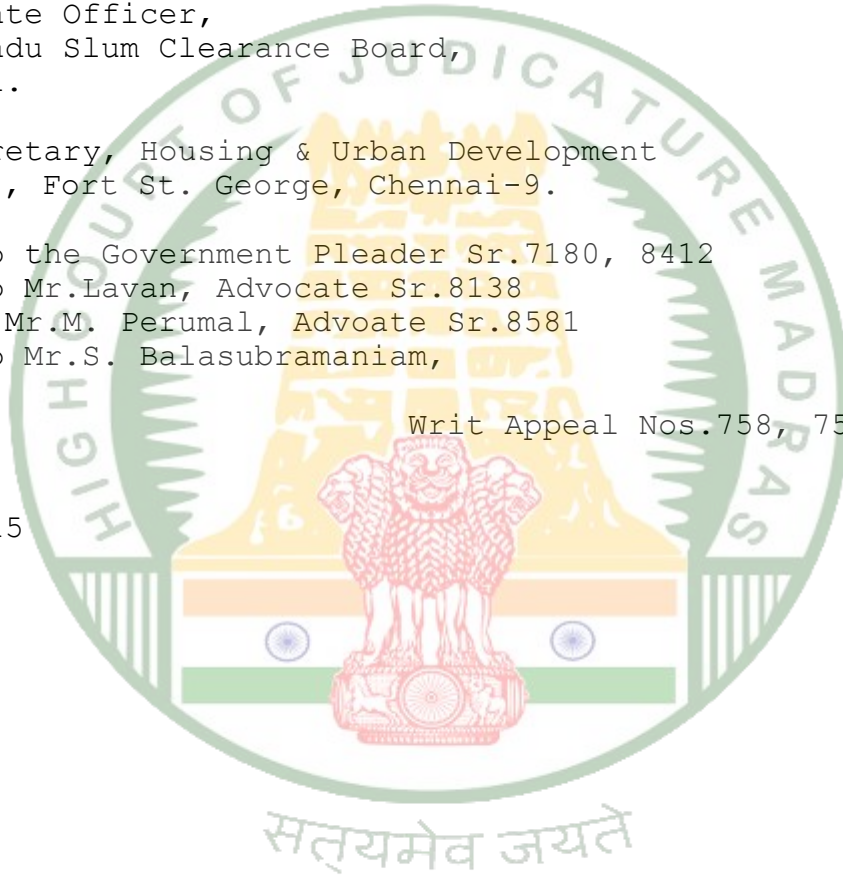
3.The Estate Officer,
Tamilnadu Slum Clearance Board,
Chennai.

4.The Secretary, Housing & Urban Development
Dept., Fort St. George, Chennai-9.

+ 2 ccs to the Government Pleader Sr.7180, 8412
+ 2 ccs to Mr.Lavan, Advocate Sr.8138
+ 1 cc to Mr.M. Perumal, Advocate Sr.8581
+ 2 ccs to Mr.S. Balasubramaniam,

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JSV(CO)
Eu 26.02.15



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