

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:07.01.2015

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.3455 of 2012
and
MP.No.1/2012

Thiruvalluvar Nagar Residents' Society,
rep. by its President S.P.Sivaperumal,
Thiruvalluvar Nagar, Seriyamman Koil
Street, Tondiarpet, Chennai - 600 081.

... Petitioner

V.

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai - 600 003.

2.The Divisional Officer,
Corporation of Chennai,
Division No.4, No.276, Thiruvottiyur High Road,
Chennai - 600 021.

3.Ramesh

4.R.Gomathi
(R3 - Amended the name and R4 - Impleaded
as per order dt.14.8.12 in M.Ps.2 & 3/12)

5.The Tamil Nadu Housing Board,
Rep. By its Chairman and
Managing Director,
Nandanam, Chennai - 600 005.

6.The Tamil Nadu Slum Clearance Board,
Rep. By its Chairman, Chennai - 600 005.
(R5 & R6 Impleaded as per order
dt. 05.02.2013 in M.P.4/2012)

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Mandamus directing the first and
second respondents to initiate appropriate proceedings against all
the encroachers, including the third respondent, and accordingly
removing the encroachments so made in and around 'Thiruvalluvar Nagar

Residents' Society', encroachments made in the 40' road on the eastern side, and V.O.C. Nagar road on the southern side, particularly the encroachment made by the third respondent in the middle of the common pathway apart from restoring the open space throughout jointly entitled to by all the residents' of Thiruvalluvar Nagar from encroachments.

For Petitioner : Mr.S.Perm Rajkumar
For 1st Respondent : Mr.S.Saravanan
For 3rd & 4th Respondents : Mr.R.Jayakumar
for M/s.Fennwalter Associates
For 5th Respondent : No appearance
For 6th Respondent : Mr.N.Duraikannan

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in directing the Respondents 1 and 2 to initiate appropriate proceedings against all the encroachers, including the 3rd Respondent, and accordingly removing the encroachments so made in and around 'Thiruvalluvar Nagar Residents' Society', encroachments made in the 40' road on the eastern side, and V.O.C. Nagar Road on the southern side, particularly the encroachment made by the 3rd Respondent in the middle of the common pathway apart from restoring the open space throughout jointly entitled to by all the residents' of Thiruvalluvar Nagar from encroachments.

2.Writ Facts:

(i)According to the Petitioner, 'Thiruvalluvar Nagar Residents' Society' was established in the year 1982 by registering the same under the Societies Registration Act and its Registration No.41/1982. The main object of the said Society is to maintain the Housing Flats, viz., HIG, MIG, MIG, LIG types consisting of 366 flats in all. The said flats were actually put up by the 5th Respondent/Tamil Nadu Housing Board during the periods from 1979 to 1981 and it was allotted to various persons depending upon their monetary position and requirement commencement from the year 1981. Further, the Petitioner's Society is the authority vested with powers for maintenance of entire flats viz., taking care of due supply of water, electricity connections, maintenance of drainage related works, to keep the entire atmosphere in clean and hygienic condition and peaceful living apart from maintaining the staircase and providing lighting arrangements in the staircase portion, besides making security arrangements, and for the performance of all the necessary

and basic needs of the residents' ensuring their peaceful and comfortable living with their families.

(ii) During the year 1996, R.K.Nagar, V Zone area, Chennai - 600 081 was chosen by the 5th Respondent/Tamil Nadu Housing Board for establishing Flats suitable to various sections of society according to the economic position after making road facilities, establishing part and to put up Housing Flats and to maintain the open space areas suitably and according to the requirement and thereafter possession of the constructed flats were handed over to the buyers from 1979. In executing the said plan, the same was named as 'Seniamman Koil Scheme' and accordingly, fund was created and entrusted to the Respondents 1 and 2.

(iii) When that be the fact situation, the entire residential area, including the said 40' road and the area in and around the residential area are falling under the control of the Respondents 1 and 2, who have the powers not only to carry out maintenance work, but powers to keep the same with encroachment free zone, protecting the right of the residents and therefore, they are bound to maintain the entire residential area including the 40' road properly, keeping the same suitably not only for the free access to the residents', but for the free movement of vehicles, providing with facilities for the movement of all nature of transports without having encroachments in any manner whatsoever.

(iv) As a matter of fact, the Respondents 1 and 2 are duty bound to remove all nature of encroachments in the budding stage ensuring the safety and convenience of the residents in general. Also that, Seniamman Koil Project in Thiruvalluvar Nagar area was undertaken by the 5th Respondent/Tamil Nadu Housing Board covering more than 25 acres and when the construction was over, possession was handed over to the individual owners, the Tamil Nadu Housing Board had lost its control over the same and henceforth, the maintenance and other works are being carried out only by the Respondents 1 and 2/ Corporation of Chennai.

(v) The Petitioner's main plea is that the 2nd Respondent, through his proceedings in Ma.Aa.1 Na.Ka.No.D1/2764/2010 dated 07.06.2010, had, though informed it that informations were sought for under the Right to Information Act assuring the action against the encroachers, instead of initiating stringent action, the Respondents 1 and 2 had informed it that the encroachment activities with particulars of encroachments were communicated to the 6th Respondent/Tamil Nadu Slum Clearance Board and hence, awaiting for the reply in regard to the further course of action. As such, the reply of the 2nd Respondent dated 07.06.2010 was nothing but a vexatious one and shirking the responsibility despite possessing necessary powers and responsibilities to remove the encroachments. Also that, the Respondents 1 and 2 were callous on their part in mentioning the 35 huts as encroachments without having the particulars of the same.

However, the fact remains that there are different nature of encroachments in and around the residential flats, but the information furnished by the Respondents 1 and 2 lacks necessary/required particulars and mentioning of the encroachments as 35 is incorrect.

(vi) The clear cut case of the Petitioner is that the encroachments are of different types: (1) The encroachments made on the eastern side of the residential flats by putting up unauthorised permanent structures leading from north to south of the residential flats completely obstructing the free movement of vehicles and ingress and egress to the residential flats; (2) The encroachments made on the southern side of the residential flats by putting up of huts by antisocial elements fixing hooks on the southern compound wall belongs to the residential flats encroaching upon the V.O.C. Nagar Road from east to west causing not only heavy traffic congestion in the area, leading to hindrance for the free movement of Ambulance, Fire Service Vehicles, Milk Supplying Vehicles, Water Tanker etc.; (3) The encroachments made by the residents themselves particularly the ground floor residents putting up of their own structures, pillars, compound walls etc. in the open space jointly entitled to by other residents obstructing the free vehicular movements, besides causing inconvenience to other residents etc.; (4) Encroaching upon the space left on the side of each flats for the formation of cross roads to achieve the personal gains of residents at the costs of other residents.

(vii) It is represented on behalf of the Petitioner that the 3rd Respondent (one among the resident), being the owner in respect of LIG Flat No.11-D, which he had purchased from the erstwhile owner, had put up a permanent and unauthorised superstructure in the middle of the cross road completely encroaching upon the entire common open space which he is not entitled to, by taking the law into his hands and since the encroachment made by the 3rd Respondent falls on the backyard of LIG 11-D, LIG 10A, LIG 10 B, SMIG 4, SMIG 5 and as a result of which, 64 families of the residential flats were affected considerably. In fact, the 3rd Respondent had made an encroachment covering nearly 12' to 15' width from his boundary lines across the cross road leaving just 5' width for the other residents to pass through and for the movement of vehicles and for the ingress and egress.

(vii) The Petitioner, in the Writ Affidavit, in paragraph 8, had averred that number of huts were built by antisocial elements on the eastern side of 40' road leading from north to south throughout the area of residential flats and also, due to concomitant encroachments made in the open space jointly entitled to by the residents, the entire residents are put to much hardship and inconvenience and consequently, the free flow of vehicular movement is blocked. Moreover, because of the encroachers parking their vehicles like,

cars, auto rickshaws, bicycles etc., had completely obstructing the 40' road, as a result of which, the said 40' road shrunk considerably.

(viii) It comes to be known that the Petitioner, in para 10 of the Writ Affidavit, had averred that the Special Officer to Chief Minister's Cell, pursuant to Letter No.266090/Division-5/Chennai/2009, dated 18.12.2009, had informed that all his complaints or appeals were forwarded to the Respondents 1 and 2 for initiating appropriate action and instructed him to approach the said Respondents in regard to its grievances. As a matter of fact, even thereafter, the Respondents 1 and 2, instead of taking any stringent action against the encroachers and their subordinate officials, pursuant to the proceedings dated 07.06.2010, had shirked their responsibility, despite making inspection of encroachments and collection of all details therefor etc. Hence, the Petitioner has filed the present Writ Petition.

3.The Counter Affidavit of the 1st Respondent:

(i) The 1st Respondent/Corporation of Chennai, in its Counter, had averred that the 5th Respondent/Tamil Nadu Housing Board had handed over the roads to a width of above 9.14 m (30'0") only to it and it took steps to form the road and provide basic amenities to the residents of Seniamman Koil Scheme layout owners and there are no encroachments on the Corporation Land which were handed over by the 5th Respondent/Tamil Nadu Housing Board and the land left for open space belonging to the 5th Respondent/TNHB were encroached by flat owner in front of its individual houses, in so far as the other encroachments are concerned.

(ii) Further, it is the stand of the 1st Respondent that the Deputy Tahsildar, Tondiarpet Taluk, in his letter No.L.DisA1/6583/09 dated 03.06.2009, had stated that around 25 flats and 9 asbestos sheet houses are there in Survey No.3946/05 located near Thiruvalluvar Nagar residents and these lands belong to Corporation (private) and the encroachers are living in the said places for the past 25 years and it is not possible to remove the encroachers without providing alternative sites. A letter was sent to the 6th Respondent/Tamil Nadu Slum Clearance Board to provide alternative sites to the slum dwellers and after providing alternative sites to slum dwellers by the 6th Respondent/Tamil Nadu Slum Clearance Board, then the 1st Respondent would take action to evict the encroachers. Further, there is no encroachments on the road which were already handed over by the 5th Respondent/Tamil Nadu Housing Board. However, the encroachments were made by the residential flats owners only in open space from the year 1996 onwards. The encroachments made on the southern side of the residential flats by putting up huts by slum dwellers were prior to 1987. The 1st Respondent had already initiated action to vacate the slum dwellers by sending letter to the 6th

Respondent/Tamil Nadu Slum Clearance Board to provide alternative site to the slum dwellers.

(iii) In fact, the owner of the building had constructed buildings in Flat No.11-D prior to the year 2005 and subsequently, the said owner put up some unauthorised construction in the open space provided by the 5th Respondent/T.N.H.B. and hence, action was initiated under Town and Country Planning Act, 1971 and the stop work notice was issued to him on 13.03.2012 and further action is also being taken as per the Town and Country Planning Act to remove the unauthorised construction. The land left for roads were handed over by the 5th Respondent/T.N.H.B. to the 1st Respondent/Corporation of Chennai for about 9.14 m (30'0") only. There are no encroachments made on the roads. It is for the 5th Respondent/TNHB to initiate action against those persons who had put up unauthorised structures in their land.

(iv) The 1st Respondent/Corporation is willing to remove the encroachment after the alternative sites were allotted to the slum dwellers and it is ready to take stringent action against the unauthorised construction put up by the 3rd Respondent.

4. The Counter and Additional Counter Affidavit of the 6th Respondent:

(i) The 6th Respondent/Tamil Nadu Slum Clearance Board, Chennai, in its Counter, had stated that the area of encroachments described by the Petitioner does not belong to the Board and in fact, the Thiruvallurvar Nagar area was developed by the Tamil Nadu Housing Board by constructing L.I.G., M.I.G., and H.I.G. flats during the year 1979 and 1981 and the area is also known as 'Seniamman Koil Street Scheme' by the Tamil Nadu Housing Board. The Housing Board has nothing to do with the eviction of encroachments and that the Respondents 1 and 2 are responsible for eviction of encroachments.

(ii) It is the plea of the 6th Respondent that for the encroachments now developing within Thiruvallurvar Nagar area, the Tamil Nadu Slum Clearance Board is not at all responsible and further, the Slum Clearance Board has no role to play in the eviction of encroachments which falls within the area controlled and maintained by the Corporation of Chennai.

(iii) The 6th Respondent, in its Additional Counter, had averred that the communication of the Corporation of Chennai dated 16.03.2009 was received by it, after obtaining the copy of the communication and scrutinising the same, it was noticed that there were some discrepancies found in the enclosures of the letter and covering letter itself, the Zonal Officer, Zone No.4, Corporation of Chennai (2nd Respondent) was requested to furnish the list of eligible beneficiaries with their details duly filled in the forms prescribed by this Board along with bio-metric details (vide Board's letter No.G1/15709/ 2013, dated 15.10.2014).

(iv) In effect, the 6th Respondent had taken a stand in its Additional Counter Affidavit that as and when the requisition along with the necessary details are furnished by the 2nd Respondent with

specific recommendation, it would consider the same to provide alternate accommodation for the eligible encroachers, in the tenements constructed at Okkiam Thoraipakkam under JNNURM Schemes.

Analysis:

5. At the outset, this Court relevantly points out that the 6th Respondent/Tamil Nadu Slum Clearance Board, Chennai in its Proceedings Na.Ka.No.G1/15709/2013 dated 05.01.2015 addressed to the Zonal Officer, Zone - 4, Corporation of Chennai, Chennai - 21, had, inter alia, stated that the forms of 51 eligible persons in regard to the alternate accommodation was scrutinised in respect of (i) name of encroachers, (ii) the address in Form 2; (iii) the address in family card; (iv) the voters list address and the 51 encroachers in the Tondiarpet Scheme Road in V.O.C. Nagar, had constructed huts by encroaching the same and are living. Further, 30 encroachers at V.O.C. Nagar Scheme Place had obtained allotments at the already constructed multi-storied residential buildings and some of them, through legal heirs and in other respects, are in enjoyment of the same. Therefore, out of 51 persons, who had encroached by putting up huts at Tondiarpet Scheme Road at V.O.C. Nagar, except 30 persons, who were provided with the accommodation and in respect of remaining persons, if necessary Government Documents, to establish that they are residing in the said place, are obtained and sent to its Board Office, then, the Board would take further action in regard to the residential allotment/accommodation to them.

6. Added further, in the aforesaid letter of the 6th Respondent/Tamil Nadu Slum Clearance Board addressed to the 2nd Respondent/ Zonal Officer, Zone-4, Chennai, it is also mentioned that the 51 encroachers at Tondiarpet Scheme Road are not keeping any document like family card, ration card and other card etc. but in the family card and voters I.D. obtained by the Chennai Corporation from the encroachers, the Board's residential numbers at V.O.C. Nagar are mentioned which is very near to their residential area. Majority of the encroachers at Tondiarpet Scheme Road (V.O.C. Nagar Main Road) are in possession of family ration card of the Board's Scheme V.O.C. Nagar area.

7. On a careful consideration of respective contentions and in view of the fact that the 6th Respondent/Tamil Nadu Slum Clearance Board had come out with a plea through its letter dated 05.01.2015 addressed to the 2nd Respondent, inter alia, stating that out of 51 encroachers, at Tondiarpet V.O.C. Scheme Road in V.O.C. Nagar, 30 of them were provided with residential allotment at the multi-storied buildings and out of them, some of them through legal heirs and in other ways are in enjoyment of the same and in so far as the remaining persons are concerned, if they produce necessary documents to show their residential proof, in that event, they would be allotted residences etc., this Court, in the interest of Justice, Fair Play, Equity, Good Conscience, even as a matter of prudence and on balance, directs the Respondents 1 and 2 to obtain necessary

documents from the remaining encroachers (leaving 30 encroachers) to show their proof of residence/living viz., family card, voters I.D. if any, and to transmit the same to the 6th Respondent/Tamil Nadu Slum Clearance Board, Chennai, within a period of two weeks from the date of receipt of copy of this order and on receipt of the same, the 6th Respondent is directed to consider the same and to allot alternate accommodation/residence to them, within a period of three weeks thereafter.

8. In so far as the encroachment/unauthorised construction put up by the 3rd Respondent (owned by Respondents 3 and 4), the 1st Respondent/Corporation of Chennai, in paragraph 8 of its Counter, had clearly stated that it had already initiated action as per the Town and Country Planning Act, 1971 and stop work notice was also issued to the 3rd Respondent on 13.03.2012 to stop the unauthorised construction work and in fact, the 1st Respondent/Corporation of Chennai had categorically stated that it is willing to take action as per the Town and Country Planning Act, 1971 to remove the unauthorised construction in issue and in view of the same, to prevent an aberration of justice and to promote substantial cause of justice, this Court directs the 1st Respondent/ Corporation of Chennai to take necessary follow up action in regard to the removal of encroachment made by the Respondents 3 and 4, within a period of three weeks from the date of receipt of copy of this order.

9. With the aforesaid directions, this Court disposes of the Writ Petition, leaving the parties to bear their own costs. The Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

Dated: 28.1.15

True Copy

Sub Assistant Registrar

To

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai - 600 003.
2. The Divisional Officer,
Corporation of Chennai,
Division No. 4, No. 276, Thiruvottiur High Road,
Chennai - 600 021.
3. The Tamil Nadu Housing Board,
Rep. By its Chairman and
Managing Director,
Nandanam, Chennai - 600 005.

4.The Chairman,
The Tamil Nadu Slum Clearance Board,
Chennai - 600 005.

+1 cc to Mr.T.Fenn Walter Associates, Advocate,SR.1326

+1 cc to M/s.A.Amlaraj, Advocate,SR.1064

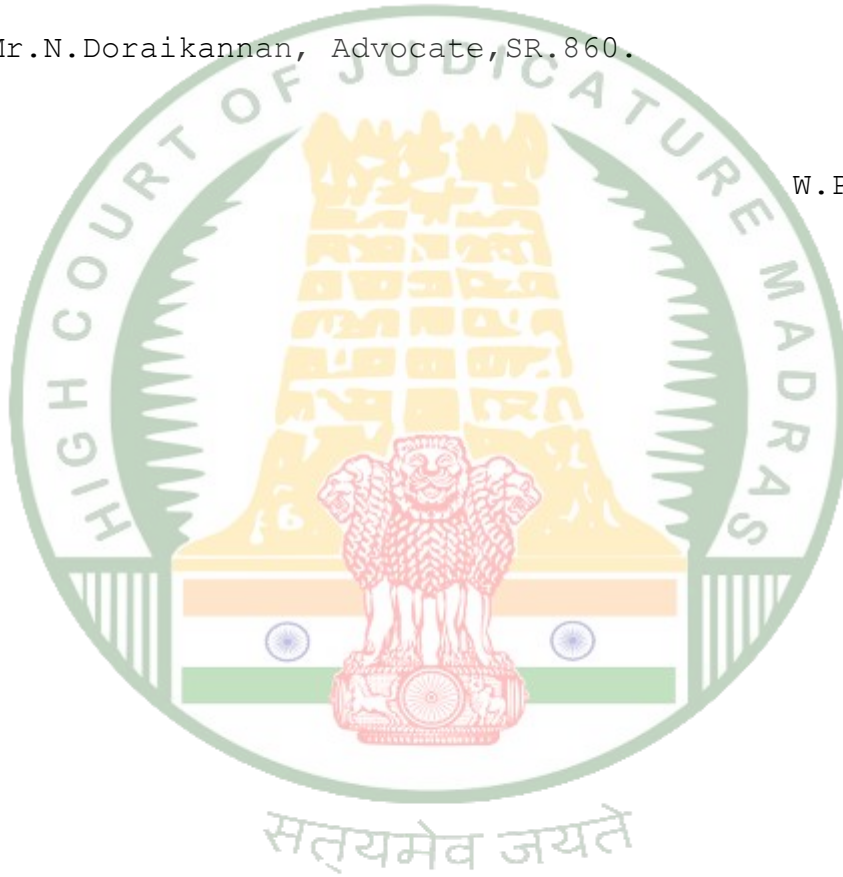
+1 cc to M/s.S.Saravanan, Advocate,SR.637

+1 cc to M/s.V.Anandha murthy, Advocate,SR.825

+1 cc to Mr.N.Doraikannan, Advocate,SR.860.

sai(co)
krd 3/2

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