

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM:

THE HONOURABLE Mr.JUSTICE.T.RAJA

W.P.No.25644 of 2006

and

M.P.No.1 of 2006

M.Krishnamurthy

...Petitioner

Vs.

1. The Chairman
Tamil Nadu Slum Clearance Board
Chennai - 5
2. The Secretary to Govt.
Housing and Urban Development Department
Fort. St. George
Chennai - 9
3. Ganesan
4. Rajagopal

...Respondents

[R3 and R4 impleaded as per order
dated 18.01.2013 by NKKJ in M.P.No.
1 of 2013 in W.P.No.25644 of 2006]

Writ petition is filed under 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records of the second respondent in Letter No.28666/SC 2(1) 02-9 dated 01.09.2005, quash the same and direct the respondents to take steps to remove the encroachments on the land measuring 45 x 18 feet in T.S.No.73, Block No.26, New No.27, Vellala Street, Aminjikarai, Chennai - 29.

For Petitioner : Mr.M.V.Krishnan

For Respondents : Mr.K.V.Dhanapalan
Addl. Govt. Pleader for R1 to R4

Mrs.D.Tamilselvi
for
M/s.P.Devadass Associates for R3 & R4

ORDER

This writ petition has been directed against the impugned order passed by the Secretary to Government, Housing and Urban Development, the second respondent herein in Letter No.28666/SC 2(1) 02-9 dated 01.09.2005 wherein the second respondent stating that the land in question belongs to private party refused to evict the respondent on the ground that the alternative site and the cost for evicting encroachers have to be borne by the petitioners if at all the encroachers are to be evicted.

2. As against the impugned order, learned counsel appearing for the petitioner would submit that the petitioner had already obtained a decree for ejection against one Loganathan in O.S.No.3185 of 1966 in respect of the land in T.S.No.73, Block No.26, New Door No.27, Vellala Street, Aminjikarai, Chennai - 79. The said judgment and decree passed in O.S.No.3185 of 1966 was dismissed with the modification to the decree to the effect that the petitioner herein would be entitled to take only such land within North South 256 feet. As against the said decree, a second appeal was prepared and the same was also dismissed on 24.11.1972. Subsequently, when eviction proceedings were taken, the judgment debtor Loganathan, for the first time, claimed that the land was a slum area. Therefore, the executing Court negating the contentions of the said Loganathan ordered delivery. Finally, the said Loganathan preferred C.R.P.No.742 of 1977. This Court, by order dated 19.02.1979, accepting the stand taken by the counsel appearing for the Slum Clearance Board that the survey number comes within the meaning of the Slum area, the decree could not be executable having regard to the statutory bar and on that basis holding that there was an error of jurisdiction committed by the Courts below, allowed the Civil Revision Petition. However, the respondent was given liberty to apply to the Slum Clearance Board for permission or if any future execution to the satisfaction of the Court below that this property is in Slum area as conveyed by the authority under the Act. Therefore, under this background, the petitioner claimed that the

petitioner has obtained a judgment and decree in respect of the land in question in his favour, being so, the Slum Clearance Board cannot refuse to grant suitable permission to the petitioner for removal of the encroachers. Further he had stated that when the petitioner, by virtue of the order passed by this Court in the Civil Revision Petition, has moved an appeal before the Lok Adalat on 23.08.1989, the second respondent ought not to have refused the request for eviction of the encroachers.

3. Mr.K.V.Dhanapalan, learned Additional Government Pleader appearing for the second respondent submitted that although the petitioner has obtained order of delivery from the executing Court, the same was set aside by this Court in C.R.P.No.742 of 1977 on 19.02.1979 giving a finding that the land in question comes in survey number belongs to Slum Area as covered in the Government Order. Therefore, when the order passed by this Court in Civil Revision Petition has become final, it goes without saying that the land in question belongs to Slum Area. However, the factum of obtaining a decree by the petitioner also cannot be ignored.

4. Nonetheless, the impugned order passed by the second respondent although mentions that the land in question is a private land, in the light of the order passed by this Court in C.R.P.No.742 of 1977, it should have been considered as a land belonging to the Slum area. Therefore, the petitioner ought to have sought for prior approval before evicting the encroachers. However, the petitioner is directed to move an application seeking prior approval for evicting the encroachers. On such application being filed, the second respondent is hereby directed to consider the same. While considering such request of the petitioner for eviction of the encroachers, the second respondent shall take into account the following factors as provided under Section 29(4) of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971:

a) Whether alternative accommodation within the means of the 1 (Occupant) would be available to him if he were evicted:

(b) whether the eviction is in the interest of improvement and clearance of the slum area;

(c) such other facts, if any, as may be prescribed.

5. However, in the present case, the impleaded respondents have not shown at any point of time that they are registered tenants under Section 4 of the Act, therefore the question of considering alternative accommodation for the impleaded parties by the second respondent does not arise at this point of time.

6. The learned counsel appearing for the impleaded parties taking support from the judgment of the Apex Court in K.Chandru Vs.

State of Tamil Nadu and others and G.Kannan and others vs. State of Tamil Nadu and others reported in AIR 1986 Supreme Court 204 sought for a minimum opportunity of receiving notice before being evicted from the respondent in the event of considering the application of the petitioner. But, this Court finds it difficult to accept the said argument advanced by the learned counsel appearing for the impleaded parties. The reason is, as rightly pleaded by the learned Additional Government Pleader, they are not registered under Section 4 of the Act either as an owner or as an occupant. Leaving that question open to the respondent, whether they are occupier or not, this Court gives liberty to the petitioner to move an appeal before the appellate authority under Section 30, if any such application is filed within 30 days from the date of receipt of copy of this order, such appeal shall be considered on merits.

7. The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Chairman
Tamil Nadu Slum Clearance Board
Chennai - 5
2. The Secretary to Govt.
Housing and Urban Development Department
Fort. St. George
Chennai - 9

2 CCs to M/s.P.Devadass Associates, Advocate SR.No. 15487
1 CC to the Government Pleader, SR.No. 15601
1 CC to Mr.M.V.Krishnan, Advocate SR.No. 15555

KJI (CO)
PSI (23.06.2015)

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