

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 18/12/2014

DATED : 21/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.7449 of 2009

and

M.P.No.1 of 2009

Annai Sathya Nagar
Extension Welfare Association,
Registered No.168 of 2004,
Rep. by its Secretary,
R.Jayaraman

... Petitioner

Vs.

- 1.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai-600 005.
- 2.The District Collector,
Commissionerate Office of the
Collectorate,
Kanchipuram.
- 3.The Commissioner for Land Administration,
Chepauk,
Chennai-600 005.
- 4.The Special Commissioner,
Commissioner for Urban Land Ceiling
and Urban Ceiling Tax,
Chepauk, Chennai-600 005.
- 5.The Tahsildar,
Tambaram.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the respondents to initiate proceedings for regularization of the possession of the land for the members of the petitioner's Association comprised in Survey Nos.722, 723, 724/4, 658/1A, 658/1B, 658/1C and 658/2 in Pallikaranai Village and Survey Nos.37/1, 37/2A and 37/2B in Perungudi Village.

For Petitioner : Mr.G.Ravi Sankar

For Respondents : Mr.R.V.Balu for R1
Mr.M.S.Ramesh
Addl. Govt. Pleader for R2 to R5

- - -

ORDER

The petitioner has submitted that the petitioner's Association is registered under the Provisions of the Tamil Nadu Societies Registration Act 27 of 1975 and after following due procedure, the first respondent registered the petitioner's Association on 26.04.2004. The object of the Association is to improve the area by getting basic amenities like water, road and electricity supply etc., In fact, the Tamil Nadu Slum Clearance Board, after conducting due enquiry and after being satisfied with the condition of the weaker section of the members of the Association, proposed to take up the scheme and for the same, the Tamil Nadu Slum Clearance Board had approached the Government for allotment of the lands to the respective members who are in occupation and possession of the said area.

The said Association was formed in the year 2004 for the members who occupied the area situated at Pallikaranai and comprised in Survey No.722, 723, 724, 658 and in Perungudi Village, bearing Survey Nos.37/1, 37/2A, 37/2B and there are totally 13 streets, in which, the member of the petitioner's Association have been in possession and enjoyment of the lands and the petitioner's Association had identified the respective members of the Association and issued identity cards and also collecting santha receipts for the purpose of maintenance as well as to take care of the basic needs like clearing the garbage and other basic amenities.

2. The petitioner has further submitted that the first respondent had taken up the scheme to rehabilitate persons who are residing in Pallikaranai and Perungudi Village and after due verification by the first respondent's Board, it was found that there are 800 slums in the various survey numbers situated at Pallikaranai and Perungudi and comprised in S.No.722, 723, 724/4, 658/1A, 658/1B, 658/1C and 658/2 in Pallikaranai Village and Survey Nos.37/1, 37/2A and 37/2B, in Perungudi Village hereinafter referred as the said area. The members of the petitioner's Association have been in possession and enjoyment of the said area and in occupation right from the year 1990 and the voter list and ration card issued to the members would reveal that the members of the petitioner's

Association have been in possession and enjoyment of the property. In the circumstances, with a view to obtain patta, petitioner's Association approached the respondents for regularization of their possession under their occupation and for the same they are willing to pay land cost fixed by the respondents.

3. The petitioner has further submitted that the first respondent by letter dated 05.11.2002 made in Na.Ka.No.A2(1)-23342/2002 called the fifth respondent to furnish adangal and 'A' register for the aforesaid areas in the two villages. Based upon said proceedings, the fifth respondent directed the Village Administrative Officer to furnish adangal extract and the extract of the 'A' register for the aforesaid areas. In terms of the directions of the fifth respondent, the Village Administrative Officer furnished the particulars available in 'A' Register extract for the aforesaid areas which are as follows:-

Pallikaranai Village

1. S.No.722/1 - 2.55 Hectares belonged to State Government
2. S.No.722/2 - 0.15 hectares belonged to Sulthan Ibrahim
3. S.No.723 - 1.71 Hectares belonged to the State Government
4. S.No.724/4 - 1.45 Hectares belonged to the State Government
5. S.No.658/1A - 85.40 Hectares belonged to Manavari

Thavasu

6. S.No.658/1B - 0.56 Hectares belonged to Manavari Thavasu
7. S.No.658/1C - 0.40 Hectares belonged to Manavarithavasu
8. S.No.658/2 - 2.50 Hectares belonged to Manavarithavasu.

Perungudi Village

1. S.No.37/1 - 5.83 Hectares Industrial Education Centre
2. S.No.37/2A - 243 Hectares Industrial Education Department
3. S.No.37/2B - 2.22 Hectares Industrial Education Department

Thus, the Competent Authority had taken into consideration the classification of the said areas for regularization of the members of the petitioner's Association for the purpose of grant of patta by the first respondent. The petitioner has further submitted that the first respondent, by communication, dated 10.02.2003 made in LA-2(1)/23342/02 addressed to the third respondent, had stated to take up the scheme in the said area under the Urban Development Scheme. The first respondent had also surveyed No.722/1, 723 situated at Pallikaranai and found that only 2.98 hectares out of 4.26 hectares of land was found suitable for the purpose of allotment and requested the third respondent to fix the land cost as per G.O.Ms.No.140, dated 20.02.1998 and 40% of the Administrative charges. The first respondent found that out of 104.25 only 16.96 hectares of land was found suitable for development and rehabilitation of slum people under the Madras Urban Development Scheme. Subsequently, the first respondent

by communication, dated 17.04.2003 addressed the third respondent to allot the said area to the Slum Board for proceeding with the Scheme. For the said communication, the third respondent by proceeding dated 30.10.2003 made in Na.Ka.No.3030/30/E2, directed the first respondent to state as to whether first respondent is to construct houses or commercial complex in S.Nos.722/1 and 723. The first respondent in its reply dated 12.11.2003 addressed to the third respondent stated that as the members who are economically poor are residing in the site for long time and therefore, the Board should allow plots for the poor persons who are residing in the said area. Based upon the proceedings of the first respondent Board, the fourth respondent in its proceedings dated 30.06.2005 called for the proposal from the first respondent for the purpose of allotment of 12,850 sq.mts. Accordingly, the first respondent in his proceeding dated 26.09.2005 had sent a proposal to the third respondent for the allocation 12,850 sq.mts in S.Nos.722/1, 723 and situated at Pallikaranai Village. Thus, the first respondent had taken the scheme for regularizing the possession of the members of the Association.

4. The petitioner has further submitted that the members of the Association have been assessed to local tax and they are paying the local tax due periodically. It is the policy of the Government to grant patta for the

persons who had been in enjoyment of the land belonging to the Government for more than 5 years and in this case, the members of the petitioner's Association have been in possession and enjoyment of the said area from the year 1990, which is supported by the voter list, ration card and other tax receipts. The petitioner has further submitted that it is the duty of the State to provide shelter for economically downtrodden persons and in spite of several representations made by the petitioner's Association to regularize the possession and enjoyment of the respective areas under the occupation of the petitioner's Association, the respondents have not taken any action to grant patta. Hence, the petitioner's Association have filed the above writ petition.

5. The fourth respondent has filed a counter affidavit and resisted the above writ petition. The fourth respondent has further submitted that as per the records maintained in the office of the Competent Authority / Assistant Commissioner (ULT), Alandur, the lands in S.No.722/1 and 723 of Pallikkaranaï Village were acquired under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 as detailed below:

<i>Sl. No.</i>	<i>Village</i>	<i>Survey No.</i>	<i>Extent H.A. Sq.mt</i>
1		722/1	2.55.0

<i>Sl. No.</i>	<i>Village</i>	<i>Survey No.</i>	<i>Extent H.A. Sq.mt</i>
2	Pallikaranai	723	1.71.5

The fourth respondent has further submitted that the following lands acquired under Tamil Nadu Urban Land (Ceiling & Regulation) Act 1978, were allotted to the Tamil Nadu Slum Clearance Board vide G.O.Ms.No.463 Rev ULC 1(2) Department, dated 20.09.2010.

<i>Sl.No.</i>	<i>Village</i>	<i>Survey No.</i>	<i>Total extent acquired Sq.mts.,</i>	<i>Extent allotted to TNSCB Sq.mts.</i>
1	Pallikkaranaï	722/1	25,500	16,900
2	Pallikkaranaï	723	17,150	12,900

The fourth respondent has further submitted that Tvl.M.S.Mohamed Ibrahim and two others represented by their power agent Tmt.Thanavathi filed a writ petition in W.P.No.11822 of 2011 requesting to pass an order of interim injunction restraining the respondents from in any way disturbing the possession of the petitioners land comprised in S.No.722/1 of Pallikkaranaï Village and the said writ petition is pending before this Court. Similarly, the same petitioners i.e., Thiru.M.S.Mohamed Ibrahim and two others have also filed another writ petition in W.P.No.13821 of 2012 requesting to pass an order of interim injunction restraining the respondents, their men etc.,

interfering with the peaceful possession and enjoyment of the lands comprised in S.Nos.722, 722/1, 722/2A measuring to an extent of 2.69.0 hectares at Pallikkaranai Village and also to issue a writ of Declaration declaring that the proceedings initiated by the third respondent in his R.C.No.4680/86, dated 05.01.1986 is abated in view of Section 4 of Repeal Act, since the physical possession of the land comprised in S.Nos.722, 722/1 and 722/2A to an extent of 2.69.0 hectares situated at Pallikkaranai Village, Sholinganallur Taluk, Kancheepuram District is with the petitioners and the above writ petition is also pending.

6. The fourth respondent has further submitted that it is seen from the records available in the office of the Assistant Commissioner (ULT) Alandur, that the lands in S.No.722/2, 724/4, 658/1A, 658/1B, 658/1C, 658/2 of Pallikkaranai Village and lands in S.Nos.37/1, 37/2A and 37/2B of Perungudi Village were not acquired under the provisions of Tamil Nadu Urban Land (C&R) Act, 1978. The fourth respondent has further submitted that the petitioner has stated about the registration of their Association and purpose of the said Association and added that their members have occupied the following land in Pallikkaranai and Perungudi Villages.

Category No.	Village	S.No.	Extent H.A. Sq.Mt.
1	Pallikaranai	722/1	2.55.0
2		722/2	0.15.0
3		723	1.71.0
4		724/4	1.45.0
5		658/1A	85.40.0
6		658/1B	0.56.0
7		658/1C	0.40.0
8		658/2	2.50.0
9	Perungudi	37/1	5.83.0
10		37/2A	2.43.0
11		37/2B	2.22.0

The fourth respondent has further submitted that the lands in S.Nos.722/1 and 723 of Pallikaranai Village alone were acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and part of them were also allotted to Tamil Nadu Slum Clearance Board vide G.O.Ms.No.463, Revenue ULC 1(2) Department, dated 20.09.2010. The fourth respondent has further submitted that against the acquisition of the land and allotment of the land to the Tamil Nadu Slum Clearance Board, Thiru.M.S.Mohamed Ibrahim and two others filed two writ petitions in W.P.No.11922 of 2011 and W.P.No.13821 of 2012 before this Court in respect of the land in S.Nos.722, 722/1 and 722/2A of Pallikaranai Village Chennai Urban Agglomeration. These writ petitions are pending. Since the above said lands were already

allotted to the first respondent, the request of the writ petitioner for regularization of their possession (encroachments) and grant of pattas in respect of two lands in S.Nos.722/1 and 723 of Pallikkaranai Village for the members has to be decided only by the first and fifth respondents, taking in view of pendency of the other two writ petitions.

7. The fourth respondent has further submitted that out of the total lands referred in the writ petition, only two lands in S.Nos.722/1 and 723 of Pallikkaranai were acquired and part of them were also allotted by the Government to the Tamil Nadu Slum Clearance Board / the first respondent and after the allotment, the first respondent alone has to decide about the regularization of their possession and fifth respondent has to decide about the issue of pattas to them on the advice of the first respondent. Hence, the fourth respondent entreats the Court to dismiss the above writ petition.

8. The learned counsel appearing for the petitioner has submitted that the members of the petitioner Association had approached the first respondent for allotment of the subject lands to them. Now, they are in occupation and possession of the said land. The members of the Association occupied the lands comprised in Survey Nos.722/723, 724 and

658, situated at Pallikaranai Village and also occupied lands in Survey Nos.37/1, 37/2A2 and 37/2B. The first respondent had taken up the scheme to rehabilitate persons, who are residing in Pallikaranai and Perungudi Villages. After due verification, the first respondent found that there are 800 slum dwellers in the said lands. The members of the petitioner Association were also in possession right from 1990. In order to prove their occupation and enjoyment, voters list and ration card have been issued to the occupants. The members of the petitioner Association are ready to remit the land cost to the respondents, wherein they are residing now. The members of the petitioner Association are belonging to economically weaker sections and they are involved in construction and other coolie occupations. Hence, the learned counsel has prayed this Court to direct the respondents to restrain them from assigning or transferring the lands to third parties and also seeking direction to the respondents to initiate proceedings for regularization of the possession of the members of the petitioner Association.

9. The learned counsel appearing for the first respondent has submitted that the Assistant Commissioner had acquired vacant lands in Survey Nos.722/1 and 723, measuring an extent of 2.55.0 Hectares and 1.71.5 Hectares respectively. After acquiring the said lands, the same was

handed over to Revenue Department, who in turn allotted two portions of the said land to the Tamil Nadu Slum Clearance Board. Now, the Tamil Nadu Housing Board is controlling and maintaining it. Therefore, the relief sought for by the petitioner Association is not maintainable since they are not in physical possession.

10. The learned Additional Government Pleader appearing for the respondents 2 to 5 has submitted that the acquired lands were handed over to the Revenue Authorities. The Revenue Authorities had given two portions of the lands in two different survey numbers to the Tamil Nadu Slum Clearance Board for the purpose of usage of general public for residential purpose. The members of the petitioner Association were not allotted the said land, but they themselves had declared that they are in occupation and enjoyment of the property, which is incorrect. The petitioner Association does not have title deeds or any valid records, namely, allotment order, Patta, Tax receipt etc. Therefore, their alleged physical possession is unlawful. As such, the writ petition is not maintainable.

11. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing

the typed set of papers, this Court is of the view that in respect of the same subject matter of land, W.P.No.11922 of 2011 has been allowed by this Court. In such circumstances, the writ petition does not generate much force to allow it and hence it is liable to be dismissed.

12. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous is closed.

21/01/2016
(3/3)

Index : Yes/No.
Internet : Yes/No.

ub

To

- 1.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai-600 005.
- 2.The District Collector,
Commissionerate Office of the
Collectorate,
Kanchipuram.
- 3.The Commissioner for Land Administration,
Chepauk,
Chennai-600 005.
- 4.The Special Commissioner,
Commissioner for Urban Land Ceiling
and Urban Ceiling Tax,
Chepauk, Chennai-600 005.
- 5.The Tahsildar,
Tambaram.

C.S.KARNAN, J.
ub

**W.P.No.7449 of 2009
and
M.P.No.1 of 2009**

21/01/2016
(3/3)