

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.3.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.40790 of 2016

B.Thirulochana Kumari

... Petitioner

Vs.

1. The Tamil Nadu Slum Clearance Board,
rep. by its Chairman,
Kamaraj Salai, Chennai-600 005.

2. The Estate Officer, Estate Officer III,
Tamil Nadu Slum Clearance Board,
Chennai-600 040.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus, to call for the records pertaining to Na.Ka.No.E3/4623/2015, dated 3.7.2015 issued by the first respondent, quash the same and consequently direct the first respondent to issue allotment order in favour of the petitioner, S.No.866/9 part at No.29, Indra Gandhi Street, Annai Sathya Nagar, Thirumullaivoyal village, Chennai-62 on receipt of necessary fees under the Tamil Nadu Urban Development project.

For Petitioner : Mr.R.S.Mohan

For Respondents : Mr.S.Prabhu

सत्यमेव जयते
ORDER

Challenging the proceedings, dated 3.7.2015 of the first respondent, in and by which, the claim of the petitioner for allotment of the vacant land in her favour, came be rejected, the petitioner has come forward with the present writ petition.

2. According to the petitioner, she is slum dweller, residing in the plot situated in S.No.866/9 Part at No.29, Indra Gandhi Street, Annai Sathya Nagar, Thirumullaivoyal village, Chennai and she is down trodden and economically backward, living below the poverty line. Pursuant to the orders of this Court made in W.P.No.1833 of 2015, the petitioner approached the Tamil Nadu Slum Clearance Board by way of a representation,

seeking for allotment of the above said plot. However, the first respondent, by proceedings, dated 3.7.2015 informed the petitioner that she is not entitled to allotment of the plot where she claims to be residing, for the reasons, viz., i) that her name does not find place in the list of scheme; ii) that the land claimed by the petitioner is classified as vacant land and she is not at all residing over there and on enquiry by Estate Officer also shows that he is not residing and iii) that the petitioner has not submitted any documents to show that she is residing over the said land. However, according to the petitioner, she has been in possession and enjoyment of the said property and paid taxes to the local authority and also got electricity connection and ration card in her name. Aggrieved by the impugned proceedings of the first respondent, the petitioner has come forward with the present writ petition.

3. A counter affidavit has been filed on behalf of the first respondent, wherein, it is stated that the writ petition subject plot area under the Scheme of Annai Sathya Nagar, Thirumullaivoyal, Chennai comes under the Urban Development Scheme and as per the eligible list, the so-called plot No.368 claimed by the petitioner, is a vacant plot and the same is not allotted in favour of anyone. Pursuant to the orders of this Court, Estate Officer No.III has conducted a field inspection and found that the petitioner is not residing in the said plot and she has not produced any documents to show that she is residing in the said plot. Apart from this, the name of the petitioner is not found place in the eligible list and hence, she is not eligible to get allotment in her favour. The first respondent, by proceedings, dated 3.7.2015 has rejected the claim of the petitioner, for the following reasons, viz.,

- a) As per Board rules, the applicant name should be found in the eligible list;
- b) The applicant should reside in the said plot continuously right from the date of commencement of the scheme;
- c) The applicant should submit evidence to prove that she has been continuously residing in the said plot.

4. It is also stated that though the petitioner stated that she has been residing in the said plot since 1989, her name is not found in the eligible list nor she has produced any document to show that she has been living continuously in the said plot. Hence, the petitioner is not entitled to the allotment. With these averments, the first respondent sought for dismissal of the writ petition.

5. It is the specific case of the petitioner that she has been residing in the plot for the past several years and paid taxes to the local authority and also got electricity connection

and ration card in her name. On contrary, it is the case of the first respondent that the plot claimed by the petitioner is a vacant land and the petitioner is not residing over there and she has not produced any document to substantiate her claim. These are all disputed questions of fact. This Court, while exercising its extraordinary jurisdiction under Article 226, cannot conduct a roving enquiry to determine the disputed questions of fact, which require consideration of evidence, which is not on record. However, since the petitioner has been agitating her claim for allotment of plot, stating that she is having evidence to substantiate her claim, I am of the view that the matter can be remitted to the first respondent for fresh consideration while setting aside the impugned order.

Accordingly, the impugned order, dated 3.7.2015 is hereby set aside and the petitioner is directed to make a fresh representation along with all relevant documents showing that she has been residing in the plot. On such representation being made by the petitioner, the first respondent is directed consider the same and pass appropriate orders in accordance with law and on merits, within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner.

With the above direction, this Writ Petition is disposed of. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Chairman
The Tamil Nadu Slum Clearance Board
Kamarajar Salai, Chennai-600 005

2.The Estate Officer, Estate Officer-III
Tamil Nadu Slum Clearance Board Chennai-40

+1 cc to M/s.T.Karikalan Advocate sr.18750
+1 cc to Mr.S.Prabhu Advocate sr.18646

W.P.No.40790 of 2015

aa15/04/2016