

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.02.2016

DATE OF DECISION: 19.02.2016

CORAM:

The Honourable Mr. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

The Honourable Mr. Justice M.M.SUNDRESH

W.P.No.4678 of 2016
and W.M.P.No.4056 of 2016

P.Nagasundaram Petitioner

Vs.

- 1 The Principal Secretary
to Government, Department of Revenue ,
Government of Tamilnadu, Fort St. George
Chennai-9.
- 2 The Principal Secretary
to Government, Public Works Department,
Government of Tamilnadu, Fort St. George,
Chennai-9.
- 3 The Principal Secretary to
Government, Department of Fisheries,
Government of Tamilnadu, Fort St. George,
Chennai-9.
- 4 The Managing Director,
Tamilnadu Slum Clearance Board,
Kamarajar Salai Chennai-4.
- 5 The District Collector,
Cuddalore District,
Cuddalore-607001.
- 6 Mr. V.Kandan
- 7 M/s. S.S.Natarajan & Co.
Contractor, No.6 Telephone Nagar,
Moolapalayam, Erode-638001.

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus directing the Respondents to permanently stop the construction of 579 house flats in the 9.25 acres in Uppana River Mouth area through the Tamilnadu Slum Clearance Board in T.S.No.66, 67, 68/1, 68/2 and 68/3 in Block No.1 of Ward-1 and T.S.No.83 of Cuddalore Town in Block No.2 of Ward-1 and also direct the 6th Respondent not to interfere in any manner with the above said illegal construction.

For Petitioner :Mr.M.Palanimuthu

For Respondents :Mr. S.T.S.Moorthy, Govt.Pleader
for Mr.V.Shanmughasundar,
Govt.Advocate
for RR.1 to 3 and 5
Mr.Sundaramoorthy for R.4

ORDER

Hon'ble Chief Justice and M.M.Sundresh,J.

The petitioner, who is a lawyer by profession, has filed this writ petition seeking a direction to the respondents to stop the construction of 579 house flats in T.S.No.66, 67, 68/1, 68/2 and 68/3 in Block No.1 of Ward-1 and T.S.No.83 of Cuddalore Town in Block No.2 of Ward-1, on various grounds such as the residents of Panankattu Colony are entitled for allotment under Tsunami Rehabilitation Scheme, the place is not suitable for construction in terms of clay soil and the land being in the midst of Uppana River, apart from large scale irregularities in the process of selecting the beneficiaries.

2. Before going to the case of the petitioner, the factual matrix surrounding the case requires a proper narration.

3. In the year 2004, a large number of people residing in the coastal areas have been affected by the natural calamity caused by Tsunami including the residents of Panankattu Colony. 119 such persons have been identified by the Government. The 4th respondent constructed 74 houses in site (own patta land) and 35 houses had been handed over to the other affected persons. Though they were allotted subject to the condition that the allottees were to maintain the houses, a decision was made to address the grievances qua maintenance through the Tamil Nadu Slum Clearance Board. It was also decided to allot houses for the remaining ten beneficiaries subsequently.

4. A writ petition was filed by the Panankattu Colony village Panchayat in W.P.No.6143 of 2015 praying for a writ of mandamus directing the District Collector, Cuddalore District to dispose of the representation dated 4.8.2014. In the said representation, requests have been made for fresh allotment on behalf of number of persons, who are stated to be the legal heirs of those persons, who were allotted already. Apparently, the said request was based upon the expansion of the families of the allottees. The interim order granted initially by this Court in the said writ petition was modified by the Order dated 20.4.2015 in the following manner:

4. When the matter was listed on 06.03.2015, Ms.P.Rajalakshmi, learned Government Advocate accepts notice for the respondents and also gave an undertaking that necessary instructions will be given to the respondents not to erect any construction in the property in question; further, the case was directed to be listed on 13.03.2015. On 13.03.2015, the learned Government Advocate represented that RDO called upon the persons for enquiry, so that the matter could be sorted out amicably and this Court directed the RDO to enquire with the villagers and conduct a meeting with them and try to evolve an amicable settlement and continued the interim order.

5. When the matter was listed today, the second respondent has filed a counter affidavit stating the layout has been prepared and approved by the Member Secretary, Local Planning Area, Cuddalore Town and Country Planning Department, Tamil Nadu, for construction of houses in 187 plots with an extent of 6.24 acre in Ward No.1, Block No.1 and T.S.Nos.66, 67, 68/1, 68/2 and 68/3 of Cuddalore Town, in one portion of land and in another portion of land, the layout has been prepared by the same authority, for construction of houses in 100 plots with an extent of 3.15 acre in Ward No.1, Block No.2 and T.S.No.83 of Cuddalore Town and now it has been proposed to construct 392 houses in the above mentioned approved layout portion; the Tamil Nadu Government has given administrative sanction for the construction of 392 houses at Panangattu Colony, vide its G.O.(Ms) No.80 Revenue (DM4(2)) Department, dated 17.02.2014. It is further stated in the counter affidavit that the allotment of houses cannot be made based upon the caste,

religion as stated by the petitioner and the approved list includes people of all castes and religions; the beneficiaries would be shortlisted only after the completion of construction of houses and denied the allegation that the Patta was granted to 392 houses. It is further stated that only 9 encroachers, with the help of other villagers, are not allowing to perform the boomi pooja and hence, prays this Court to vacate the interim order passed and to dismiss the writ petition.

6. Mr.M.Palanimuthu, learned counsel for the petitioner, would vehemently contend that under the guise of constructing houses, the members of the petitioner Association are sought to be dispossessed and persons, who are ineligible are likely to get allotment and the exercise carried out by the respondents shows malafide intention and hence prays this Court to pass appropriate orders.

7. Per contra, Mr. Arvind Pandian, learned Additional Advocate General, appearing for the respondents would contend that, apart from T.S.Nos.66, 67, 68 (1), (2) and (3), in Block No.1, Ward No.1, of Cuddalore Town, ad-measuring about 6.24 acres, other survey numbers / lands have also been identified for construction of houses and assures to this Court, on instructions, that the Members of the petitioner Association, who are said to be in possession of T.S.Nos.66, 67, 68/1, 68/2 and 68/3 would not be disturbed / dispossessed till the disposal of this writ petition.

8. The learned counsel for the petitioner, on instructions, undertakes to produce the list of members, who are in respective occupation of the above said lands in question, to the second respondent and the said submission is placed on record.

9. In the result, in continuation of the earlier interim orders, this Court passes the following order:-

"The members of the petitioner Association, who are in possession of T.S.Nos.66, 67 and 68 (1), (2) and (3), in Block No.1, Ward No.1, of Cuddalore Town, shall not be dispossessed, till their genuineness of claim is identified. The

second respondent is permitted to carry on further activities in terms of G.O.(Ms) No.80 Revenue (DM4 (2)) Department, dated 17.02.2014, in respect of other survey numbers".

5. Accordingly, the earlier interim order granted in pursuant to the undertaking given by the learned Government Advocate towards the construction was duly modified.

6. Curiously, the petitioner made a representation dated 12.9.2015 after the modified order was passed by this Court in W.P.No.6143 of 2015 on 20.4.2015. The said representation dated 12.9.2015 also makes a reference about the order passed by this Court both at the time of admission and thereafter. It was also mentioned therein that the modified order was passed without considering the details of the case. Thus, it can be safely concluded that the petitioner was aware of the earlier proceedings.

7. The petitioner's request was rejected by the Superintendent Engineer, Tamil Nadu Slum Clearance Board as per the letter dated 2.12.2015 by taking note of the Order passed in W.P.No.6143 of 2015 dated 20.4.2015. The writ petition was disposed of on 18.11.2015 in the following manner:

'By consent, the writ petition itself is taken up for disposal.

2. The petitioner made a representation on 04.08.2014 stating that an enquiry will have to be made by respondent No.3 and thereafter, appropriate steps are required to be taken to construct houses for the residence of petitioner's colony as against others. Seeking early disposal of the representation, the present writ petition has been filed.

3. Taking into consideration of the pendency of the representation dated 04.08.2014 with respondent No.3, a direction is issued to the said authority to pass appropriate orders on the same, within a period of six weeks from the date of receipt of a copy of this order. Till such time, the interim order already granted by this Court dated 20.04.2015, shall continue.

4. Writ petition is disposed of accordingly.
No costs.'

8. In pursuant to the order aforesaid, the residents of Panankattu Colony appeared before the 5th respondent herein and reiterated their stand that all of them will have to be given allotment of houses. The request made was rejected by a detailed order dated 22.1.2016 stating that the list of beneficiaries under the scheme meant for people affected by Tsunami is yet to be exhausted by providing houses. Therefore, there is no question of considering houses on behalf of all their legal heirs. The occupants of the place proposed for construction are liable to be evicted. There is no basis of allotment based upon caste or community, as the scheme is meant for everyone, who is affected by Tsunami. The list already filed ten years back is not meant to be tampered or tinkered with, except the possible addition of 10 persons left out of the original beneficiaries.

9. The aforesaid reasons have been assigned in view of the various submissions raised by those who attended the enquiry in pursuant to the earlier order passed by this Court in W.P.No.6143 of 2015. It is to be noted that the parties have raised the issue of malpractice and the intention, being mala fide. It was also contended that the houses allotted to families earlier were not a good quality and in the clay soil land, no construction could be made. Thus, considering the various grounds raised, the order dated 22.1.2016 has been passed by respondent No.5 herein. It is pertinent to note that till now no one has assailed the said order.

10. After the said order has been passed, the petitioner has come forward to file this present writ petition raising various contentions with some of them mutually inconsistent and destructive. While it is stated that the residents of Panankattu Colony are entitled for allotment, another contention has been raised on the selection and suitability of the land. It is not known as to why the petitioner has not chosen to challenge the order of the 5th respondent. It can be safely inferred that both the petitioner and his counsel, who also appeared for the petitioner in W.P.No.6143 of 2015, must have been aware of the said order passed in due compliance. As the petitioner has made reliance upon an interim order he cannot feign ignorance of the final order passed by this Court. Same is the case with the counsel for the petitioner, who also argued the case throughout. Therefore, it is quite apparent that this writ petition has been filed with the sole view of preempting the official respondents from proceeding with the construction. For the reasons known, the petitioner has only sought for a direction not to put up construction. There is no further relief claimed, perhaps with the fond hope that the status quo would be maintained with

respect to the persons in enjoyment of the Government land. The counter affidavit filed by the respondents 4 and 5 making a statement that the petitioner has filed this writ petition at the instance of one encroacher appears to be more probable in view of the facts recorded above. The said averment is also not denied by way of any rejoinder.

11. Thus, we are of the view that the petitioner has indulged in judicial adventurism by styling this writ petition as a probono publico, ostensibly at the behest of certain private parties. One doesn't need a crystal ball to understand the position more so when we juxtapose the arguments made by the counsel in both the cases. We are also at a loss to understand as to how the very same counsel could appear in this writ petition, being aware of the background facts, including the disposal of the earlier writ petition. The typed set of papers filed on behalf of the petitioner also does not indicate the final order having been passed in W.P.No.6143 of 2015. However, we do not intend to proceed further in this regard, except the observation made above.

12. Coming to the merits of the case, a perusal of the records produced by the official respondents would show that there has been a duly approved layout. The proposed construction is not on the Uppana river, though somewhat nearer to it. The existing ground has been raised with an average height of 1.68 metres from the original level by gravel filling as per the soil test recommendations. No water stagnation was found in the proposed place during the recent heavy rains.

13. The allegations made, though rejected by the 5th respondent, in the order dated 22.1.2016, have been reiterated once again. The beneficiaries have been selected ten years back. The order of the 5th respondent clearly states that there is no scheme to provide houses to all the legal heirs of the beneficiaries. Apart from the beneficiaries, who have been allotted houses, only ten are remaining. Thus, merely because the others are in unauthorised occupation, being the legal heirs of the beneficiaries, who were allotted houses, they cannot be provided with the same. This is a matter to be agitated by such persons and not in the present proceedings, wherein, the petitioner has sought for a direction not to put up construction. A perusal of the affidavit filed in support of the writ petition also shows that it is totally bereft of relevant particulars. The petitioner is unable to substantiate his allegations by pointing out the irregularities.

14. In the result, there is no merit in the writ petition and accordingly, it is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1 The Principal Secretary
to Government, Department of Revenue ,
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- 2 The Principal Secretary
to Government, Public Works Department,
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- 3 The Principal Secretary to
Government, Department of Fisheries,
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- 4 The Managing Director,
Tamilnadu Slum Clearance Board,
Kamarajar Salai Chennai-4.
- 5 The District Collector,
Cuddalore District,
Cuddalore-607001.

+1cc to Mr.B.S.Sundaramoorthy, Advocate, S.R.No.10626
+1cc to the Government Pleader, S.R.No.14769

W.P.No.4678 of 2016

sns (CO)
srg (03/03/2016)