

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.33833 of 2002 & W.P.No.9436 of 2012
and
W.P.M.P.221 of 2010

Sarala ... Petitioner in both WPs.

Vs.

- 1.The Secretary to Government,
Housing and Urban Development Department,
Fort Saint George,
Chennai-600 009. ... R1 in W.P.9436/2012
- 2.The Chairman,
Tamilnadu Slum Clearance Board,
Chennai. ... R1 in W.P.33833/2002
... R2 in W.P.9436/2012
- 3.The Estate Officer,
Tamilnadu Slum Clearance Board,
No.212, R.K.Mutt Road,
Mylapore, Chennai-4. ... R2 in W.P.33833/2002
... R3 in W.P.9436/2012

Prayer in W.P.33833 of 2002:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the proceedings in N.K.No.E O 6/No.344/D/98/E06, dated 09.08.2002 and to quash the same.

Prayer in W.P.9436 of 2012:- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to pass necessary orders in the letter dated 21.12.1995 bearing No.NB 1(1) 29774/9 sent by the 2nd respondent to the 1st respondent for consideration.

For Petitioner	: Mr.S.Natana Rajan
in both the WPs.	
For respondents	: Mr.P.Sanjay Gandhi, AGP (For R1)
	Mr.R.V.Babu (For R2 & R3)

ORDER

Writ Petition No.338833 of 2002 has been filed by the petitioner praying to quash the proceedings in N.K.No.E O 6/No.344/D/9B/E06, dated 09.08.2002 issued by the Estate Officer, Tamil Nadu Slum Clearance Board, whereby the petitioner was directed to vacate the premises that had been let out by the Board.

2.Writ Petition No.9436 of 2012 has been filed by the petitioner seeking to direct the 1st respondent to pass necessary orders in the letter dated 21.12.1995 bearing No.NB 1(1) 29774/9 sent by the 2nd respondent to the 1st respondent for consideration.

3.Since the issue involved in both the writ petitions are interrelated to each other, both the writ petitions are disposed of by way of this common order.

4.The case of the petitioner, which are necessary to dispose of these writ petitions, in brief, is as follows:-

4-1.The petitioner is the wife of one late M.K.Balan. The petitioner's husband M.K.Balan was allotted 100 sq.ft of land in Andimaniya Thottam Mandaveli, Chennai, by the Tamilnadu Slum Clearance Board (hereinafter referred to as 'Board') for the purpose of putting up a Bunk shop, on a monthly rent of Rs.50/-, vide its letter vide Na.Ka.No.6723/85/B1, dated 21.11.1985. By the said letter, the petitioner's husband was directed to pay ten months rent as deposit. The petitioner's husband complied with all the conditions and took possession of the said 100 sq.ft, of land and put up a bunk shop thereon. Later, on the request of the petitioner's husband, another 30 sq.ft of land, annexing the above said 100 sq.ft of land, was allotted to the petitioner's husband, by the Tamil Nadu Slum Clearance Board by its letter Na.Ka.No.B1/6723/85/B1, dated 06.02.1986, on a monthly rent of Rs.300/- with a deposit of Rs.3,600/- only, for the purpose of running an Arrack Shop. Thus, the petitioner's husband was allotted to total extent of 400 sq.ft at Andimaniya Thottam, Mandaveli, Chennai. On practical usage the petitioner's husband came into occupation of another 989 sq.ft, and thus, the petitioner's husband was in a total occupation of 1398 sq.ft of land.

4-2.On the basis of a letter of requisition made by the petitioner's husband, the Tamilnadu Slum Clearance Board passed a resolution No.306 to sell the said total extent of land ie., 1398 sq.ft to the petitioner's husband on the rate fixed by the Collector of Chennai and after obtaining the permission from the Government. In pursuance thereof, the Tamilnadu Slum Clearance Board had also sent a letter No.NB 1 (1) 29774/9, dated 21.12.1995 to the Government. While the said letter dated 21.12.1995 sent by the Board is still pending with Government, the Board issued Form-A to the

petitioner's husband. The petitioner's husband sent a reply to the said Form-A. Thereafter, the Board issued Form-B on 10.09.1998, directing the petitioner's husband to vacate the subject premises. Hence, the petitioner's husband filed O.S.No.6499 of 1998 before the learned III Assistant Judge, City Civil Court, Chennai, for a declaration that Form-B dated 10.09.1998 is not valid in the eye of law and for consequential injunction. Meanwhile, the Board issued another proceedings dated 22.10.1998 and so the petitioner's husband was constrained to file another suit O.S.No.7581 of 1998 before the learned XII Assistant Judge, City Civil Court, Chennai. While the said suits were pending, the petitioner's husband was not seen since 31.12.2001. It could not be ascertained whether the petitioner's husband was murdered or he is otherwise dead or he is alive. The Board issued another Form-A on 16.07.2002 on the petitioner as the wife of the said M.K.Balan. Against that issuance of Form-A only, the petitioner has filed the above writ petition in W.P.No.33833 of 2002.

4-3. According to the petitioner, already in another case of similar in nature the Board has passed a Resolution No.278 of 1995 to sell the land measuring 1056 sq.ft of Kuilthottam, Mylapore, Chennai, to one of its Tenants viz., Appaudurai, even though only 240 sq.ft of land was let out by the Board to that tenant. Accordingly, permission was obtained from the government to sell the land measuring 1056 sq.ft of Kuilthottam, Mylapore, Chennai, by issuing a G.O.Ms.No.264 dated 27.10.2003 and has been sold to that tenant. The petitioner's husband had also requested the Board to sell 1398 sq.ft to him on the Market value and the Board had passed a Resolution No.306 to sell the said total extent of Land i.e., 1398 sq.ft to the petitioner's husband on the rate fixed by the Collector of Chennai and after obtaining the permission from the Government and in pursuance thereof, the Board had also sent a letter No.NB 1(1) 29774/9 dated 21.12.1995 to the Government. The petitioner also gave one another letter dated 16.06.2010 to the 1st respondent, requesting to sell the said 1389 sq.ft of land in favour of the petitioner. But, there is no reply from the 1st respondent. Hence, the petitioner has filed the second writ petition in W.P.No.9436 of 2012 seeking to direct the 1st respondent to pass necessary orders in the above said letter dated 21.12.1995 bearing No.NB 1(1) 29774/9 sent by the 2nd respondent.

5. The respondents-Board filed a counter, stating that by proceedings dated 21.11.1985, the Board had allotted a plot measuring 100 sq.ft to the petitioner's husband, on a monthly rent of Rs.50/- and on payment of advance amount of Rs.600/-. The said plot was allotted to the petitioner for putting up arrack shop for a period of one year and after the expiry of the period, the allottee violated the allotment conditions by conducting recreation club in the said site and for the said violation, the Board by proceedings dated 22.10.1998 cancelled

the allotment order and against the said order, the allottee filed two suits in O.S.Nos.6499 & 7581 of 1998 before the City Civil Court, Chennai. Hence, in order to recover the possession from the allottee, the Board had issued notice in Form-A and Form-B on 09.08.2002, which are challenged in present writ petition in W.P.No.33833 of 2002.

6. According to the Board, since the Board had already cancelled the allotment, the petitioner herein who is the wife of the allottee, has no legal right to have the possession of the subject plot. Further, the petitioner has encroached an extent of 1389 sq.ft more than the allotted area under the earlier proceedings, which was duly cancelled by the Board. Further, at present, the Executive Engineer, Division-VI, of the Board, has placed a proposal for the approval of construction of a commercial complex, taking into consideration of the requirements and prospects of the land in the subject land. The proposed complex is projected for three floor complex with the ground + 3 floors, to have a commercial shops and office spaces for immediate occupation with each floor with a total plinth area of 3513 sq.ft. Estimated cost of the construction is projected at a cost of Rs.79,37,000/- and the prospective return of the construction through rent is estimated to fetch more than Rs.80,000/- per month. Thus, the respondents sought for dismissal of the writ petitions.

7. The learned counsel appearing for the petitioner submitted that in similar nature of case, the Board has passed a Resolution No.278 of 1995 to sell the land measuring 1056 sq.ft in Kuilthottam, Mylapore, to one of its Tenants viz., Appaudurai, even though only 240 sq.ft of land had been let out to him by the Board. Even in the present case also, the Board had passed a Resolution No.306 to sell the total extent of land viz., 1398 sq.ft, to the petitioner's husband, on the rate fixed by the Collector and after obtaining the permission from the Government. In pursuance thereof, the Board had also sent a letter No.NB 1(1) 29774/9 dated 21.12.1995 to the Government. The learned counsel for the petitioner would further submit that if a direction is given to the Board to pass orders on the said letter dated 21.12.1995, that would suffice.

8. Heard both sides and perused the materials available on record.

9. Considering the submissions made on either side and the materials available on record, I am of the opinion that absolutely no valid ground has been made out by the learned counsel for the petitioner to quash the impugned proceedings in W.P.33833 of 2002 and there is no merit in the said writ petition. Hence, the writ petition in W.P.33833 of 2002 is liable to be dismissed and accordingly, the same is dismissed.

10. So far as the writ petition in W.P.No.9436 of 2012 is concerned, without expressing any opinion on the merits of the claim made by the petitioner, this Court directs the petitioner to give a fresh representation to the 1st respondent, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the 1st respondent is directed to consider the same, in the light of the 2nd respondent's letter No.NB 1(1) 29774/9 dated 21.12.1995, and pass appropriate orders on merits and in accordance with law, as early as possible. With the above direction, W.P.No.9436 of 2012 is disposed of.

Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssv

To

- 1.The Secretary to Government,
Housing and Urban Development Department,
Fort Saint George, Chennai-600 009.
- 2.The Chairman,
Tamilnadu Slum Clearance Board,
Chennai.
- 3.The Estate Officer,
Tamilnadu Slum Clearance Board,
No.212, R.K.Mutt Road,
Mylapore, Chennai-4.

+1cc to M/s.S. Natana Rajan, Advocate, S.R.No.9266

+ 1 cc to M/s.S.Natana Rajan, Advocate S.R.No.9265 (5/4/16)

MP(CO)

EU(30/03/2016)

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W.P.No.33833 of 2002 &
W.P.No.9436 of 2015
and
w.M.P.No.50027 of 2002
and
W.P.M.P.221 of 2010