

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
And
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1556 of 2014

Dasarathan

... Appellant

Vs.

- 1.The Chairman,
Tamil Nadu Slum Clearance Board,
5, Kamarajar Salai,
Chepauk,
Chennai - 600 005.
- 2.The Revenue Officer/ Estate officer - 5,
Tamil Nadu Slum Clearance Board,
Kilpauk,
Chennai - 600 010.

3.K.Rajendran

... Respondents

Prayer:

Writ appeal filed under Clause 15 of Letters Patent praying to call for the records in W.P.No.29350 of 2003 and set aside the order dated 12.03.2013 and consequently quash the order dated 01.09.2003 passed by the first respondent in his proceedings in Se.Mu.Ka.No.21379/2003/E5, for restoring the allotment of Plot No.46, M.G.R.Street, Gangaianman Nagar, Mogappair, Chennai, in favour of the petitioner.

Prayer in W.P.NO.29350/2003

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus to call for the records and quash the order dated 01.09.2003 in the proceedings in Se.Mu.Ka.No.21379/2003/E5, on the file of the first respondent and consequently, restore the allotment of Plot No.46, M.G.R.Street, Gangaianman Nagar, Mogappair, Chennai-50 in favour of the petitioner.

For Appellant : Mr.E.J.Ayyappan

For Respondents: Mr.S.Prabhu for R1 and R2
Standing Counsel
Mr.C.Prakasam for R3

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN,J.)

This intra court appeal is directed against the order dated 12.03.2013 in W.P.No.29350 of 2003 whereby and whereunder, the learned Single Judge without adjudicating the legality and correctness of the order passed by the Tamil Nadu Slum Clearance Board dated 01.09.2003, permitting intra change of the housing plots, disposed of the writ petition on the ground that the civil suit in O.S.No.291 of 2002 was pending before the learned District Munsif, Ambattur.

2.We have heard the learned counsel for the appellant and the learned Standing Counsel for the respondents 1 and 2. We have also heard the learned counsel for the third respondent.

3.The factual matrix indicates that the Tamil Nadu Slum Clearance Board allotted Plot No.46 at M.G.R.Street, Gangaiamman Nagar, Mogappair, Chennai, to the appellant as per the order dated 30.07.1996. The third respondent was given allotment of housing Plot No.45. The third respondent claimed that he was in possession of Plot No.46 and as such, made a request before the Tamil Nadu Slum Clearance Board for interchange of plot. The Tamil Nadu Slum Clearance Board after issuing notice to the appellant passed the impugned order dated 01.09.2003 permitting interchange of the housing plots meaning thereby the Plot No.46 was given to the third respondent in the place of Plot No.45. When a challenge was made to the said order before the writ Court, the learned Single Judge refused to interfere in the matter on the ground that a civil suit filed by the third respondent in O.S.No.291 of 2002 was pending before the District Munsif Court, Ambattur, meaning thereby the parties have to agitate the issue in the suit. Feeling aggrieved by the order passed by the learned Single Judge, the un-successful writ petitioner has come up with this intra Court appeal.

4.There is no dispute that the appellant was allotted the Plot bearing No.46. It is also the admitted case of the parties that the third

respondent was given allotment of Plot No.45. Even if the third respondent was residing along with the appellant in Plot No.46, the same would not give him a right for re-allotment or interchange of plot. The fact that the third respondent filed a suit for injunction would not amount to recognition of the right of the said respondent in respect of Plot No.46. There is no question of interchange of plot unless the beneficiary of the allotment gives his consent for such change. In the subject case, the appellant has not given consent for interchange of Plot Nos.45 and 46. The Tamil Nadu Slum Clearance Board committed a jurisdictional error by issuing the impugned order by which the appellant was given Plot No.45 instead of the originally allotted Plot No.46.

5.The civil suit referred to by the learned Single Judge is a simple suit for injunction filed by the third respondent. Even if such possession is permitted, still it would not give him any right to claim allotment of Plot No.46. This aspect was not considered by the learned Single Judge. We are therefore of the view that the impugned order is liable to be set aside.

6.In the result, the order dated 01.09.2003 is quashed. The order passed by the writ Court is set aside. The writ petition is allowed. We make it clear that the appellant is entitled to retain Plot No.46 which was allotted to him by order dated 30.07.1996.

7.In the upshot, we allow the intra court appeal. No costs.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

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

2.The Revenue Officer/ Estate officer - 5,
Tamil Nadu Slum Clearance Board,
Kilpauk,
Chennai - 600 010.

+ 1 cc to C.Prakasam, Advocate,SR.72763

+ 1 cc to Mr.E.J.Ayyappan Advocate,SR.73036

+ 1 cc to M/s.S.Prabhu, Advocate,SR.73105

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NR 08/11/2017



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