

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WA.No.2417 of 2013 and MP.No.1/2013

Mrs.S.Valli

.. Appellant /
Writ Petitioner

Versus

1. The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Triplicane,
Chennai-600 005.
2. The Estate Officer,
Estate Office 8,
Tamil Nadu Slum clearance Board,
Sivalinghapuram
K.K.Nagar,
Chennai-600 078.
3. The Secretary to Government.
Housing and Rural Development Department,
Fort St.George,
Chennai-600 009.

4. Mr.B.Palani

.. Respondents

PRAYER:- Writ Appeal filed under clause 15 of the Letter Patents prays this Court to set aside the Judgment dated 27.08.2013 and made in W.P.No.30287 of 2012 passed by this Court.

Prayer in W.P.No.30287 of 2012:

Petition filed under Article 226 of the constitution of India for the issuance of a Writ of Certiorarified Mandamus to Call for the records under Reference No. Va.Na.Ka.No.24484/95/E issued by second respondent on 11.09.1995 quash the same and to further direct the respondents 1 & 2 to execute and register the sale deed in favour of the petitioner in respect of the residential house bearing Plot No.322 Door No.4 Malligai Poo Nagar Ashok Nagar Chennai-83 pursuant to the allotment letter vide proceedings No. Se.Mu.No.38981/88/2 dated 23.09.1989 of the 2nd respondent .

For Appellant : Mr.V.Chockalingam
For RR1&2 : Mr.B.Kesavan
For R3 : Mr.A.N.Thambidurai, Spl.GP
For R4 : Mr.C.Umashankar

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN,J.,]

The writ petitioner made a challenge to the impugned allotment letter issued by respondents 1 and 2 in favour of the 4th respondent with a consequential direction, directing the respondents 1 and 2 to execute the registered Sale Deed to her father-in-law in respect of the residential house bearing plot No.322, Door No.4, Malligaippoo Nagar, Ashok Nagar, Chennai-93, in pursuant to the allotment letter dated 22.09.1989 issued by the 2nd respondent.

2 The said writ petition after contest, was dismissed on 27.08.2013 and challenging the legality of the same, the appellant had filed the present writ appeal.

3 The facts leading to litigation have been narrated in detail and in extenso by the learned Single Judge in the impugned order dated 27.09.2013, while dismissing the writ petition and therefore, it is not

necessary to restate the facts once again except to cull out the relevant facts for the purpose of disposal of this writ appeal.

4 The petitioner was issued with a letter of allotment on 22.09.1989 regarding the above said property and it is her claim that ever since the date of allotment, she was in continuous possession and enjoyment of the same and also strictly complied with the terms of the allotment. The writ petitioner/appellant, after the demise of her father-in-law viz., Munian, had approached the 1st respondent / Board for execution of Sale Deed in her favour and in the interregnum, she went to panruti to visit her mother-in-law and on return, she found that somebody was in possession of the premises. The petitioner, on enquiry came to know that the 4th respondent had purchased the property and further that the property in question had already been allotted to 4th respondent vide proceedings of the 1st respondent /Board dated 23.02.2011. The petitioner after collecting information by invoking the provisions of Right to Information Act, 2005, averred that behind her back and without putting her on notice, allotment given to her was cancelled and it was changed in the name of father-in-law viz., Munian, who in

turn sold the property in favour of the 4th respondent. Therefore, challenging the legality of the proceedings, the petitioner had filed the writ petition.

5 The 1st respondent / Tamil Nadu Slum Clearance Board has filed the counter and contended among other things that the allotment was made in favour of the petitioner vide proceedings dated 23.09.1989 and though the father-in-law was in possession of the said property, his name was not shown in the eligibility list drawn by the Tahsildhar, Chepauk, Chennai-5, and the said person has submitted an application dated 05.02.1993, praying for reallocation of the said property.

6 The 1st respondent / Board started processing the application and also issued a notice dated 03.08.1993 to the writ petitioner/original allottee/appellant, and since the writ petitioner / appellant was not residing in the allotted property, notice was affixed by the authority in the said plot in the presence of witnesses and since, the original allottee did not respond to the notice, after following due formalities, the said property was reallocated in favour of father-in-law viz., Munian and the Sale Consideration of Rs.3660/- was also paid to them and after collecting due amount and penal interest, it was allotted in favour of the father-in-law and he in turn had executed an unregistered Sale Deed dated 14.07.1995 in favour of the 4th respondent. Thus, it is the stand of the Tamil Nadu Slum Clearance Board that after following and complying all procedural formalities only, reallocation was made in favour of the writ petitioner's father-in-law and hence prayed for dismissal of the writ petition.

7 The 4th respondent has filed the counter affidavit and would submit that after the property in question was reallocated in the name of the appellant's father-in-law, he had purchased the property through the unregistered Sale Deed and would further contend that the appellant / writ petitioner has also filed the suit in O.S.No.5082/1994 against her father-in-law as well as the Tamil Nadu Slum Clearance Board, praying for a declaration to declare that she is entitled to new allotment as per the original allotment and also for permanent injunction restraining the defendants or their servants or agents, their men or subordinates from interfering with the peaceful possession and enjoyment of the said property. The appellant's father-in-law was arrayed as the 1st defendant and he also filed the written statement refuting the allegation.

8 Subsequently, a compromise came into being between the appellant and her father-in-law, based on which she filed an affidavit dated 17.07.1995 in the said suit and accordingly, the

suit was dismissed as withdrawn on 15.09.1995. Thus, it is a stand of the 4th respondent that the writ petitioner / appellant having filed civil suit for the same relief and got dismissed as withdrawn without any liberty to reagitate the matter, has once again filed the writ petition for the very same relief. Hence, he prayed for dismissal of the writ petition.

9 The learned Judge after going through the materials and taking note of the rival submissions, observed that prior to the reallotment in favour of the father-in-law, notice was issued to the writ petitioner and she did not respond and also taken note of the fact that the appellant/writ petitioner, after the demise of her husband, has eloped with somebody and started residing with the said person as his wife and hence, it is not open to her to question the proceedings and also taken note of the long passage of time and citing the said reasons dismissed the writ petition vide impugned order dated 27.08.2013. Aggrieved by the same, the writ petitioner has filed the writ appeal.

10 Learned counsel appearing for the appellant/writ petitioner would contend that admittedly, the property was allotted in favour of the appellant / writ petitioner and though, the Tamil Nadu Slum Clearance Board took a stand that prior to the reallotment in favour of the father-in-law, notice was issued, no tenable materials have been produced to show that notice was served and it was affixed and though, it is claimed that the property in question was reallotted in favour of her father-in-law during September 1993, instalment amount aggregating to Rs.18525/-, paid on the last day has been accepted by the 1st respondent herein and the receipts bearing Nos.143937, 15028, 15029, 41493 have been issued and even assuming without admitting, the claim made by the appellant, still she is entitled to refund of all the amounts paid by her after the reallotment in favour of the father-in-law and therefore, prays for appropriate orders.

11 Mr.B.Kesavan, learned Standing counsel appearing for the respondents 1 and 2 has invited the attention of this Court to the counter affidavit filed in support of the writ petition and would submit that after strictly following and complying the procedural formalities, reallotment was made to the father-in-law as early in the year 1993. The petitioner made a challenge by filing the suit in OS.No.5082/1994 and later on it was withdrawn and after long lapse of time, she has approached this Court and her claim is hit by delay and laches and prays for dismissal of the writ petition.

12 Mr.C.Umashankar, learned counsel appearing for the 4th respondent would submit that though the 4th respondent has purchased the property from the father-in-law of the appellant

through an unregistered Sale Deed, the fact remains that he was not in possession for very many years and at this point of time, the reallotment was made in favour of the father-in-law need not be cancelled and prays for dismissal of the writ petition.

13 This Court paid its best attention and also perused the materials placed before it.

14 The writ petitioner / appellant on an earlier occasion filed the suit in OS.No.5082/1994 for almost similar relief and it is relevant to extract Paragraph No.9 of the plaint, which reads as follows:-

"9.The plaintiff submits that in the month of February 1994, the plaintiff again approached the 3rd defendant for the payment of the monthly instalments of the lease-cum-sale rent, the 3rd respondent was informed to the plaintiff that the land was allotted against to the 1st defendant. Now only knowing the plaintiff that the 2nd and 3rd defendants with an intention or attempt on the part of the Slum Clearance Board violating its own promise of performance of the infavour of the plaintiff is illegal and against all cannons of law."

15 Thus, the appellant as a petitioner was very well aware of the reallotment made in favour of father-in-law and precisely for the reason, she filed the said suit in which her father-in-law who was arrayed as 1st defendant, has also filed the written statement. Thereafter, the matter has ended in compromise and the appellant herein being the petitioner has sworn to the affidavit dated 17.07.1995, praying for withdrawal of the suit and it was taken on file and the suit was dismissed as withdrawn vide judgment and decree dated 15.09.1995. Though, the learned counsel appearing for the appellant/ writ petitioner made a valiant attempt by submitting that the signature in the Sale Deed has been forged, the fact remains that no steps have been taken to challenge the said decree. It has become final and thus, the reallotment made in favour of the father-in-law of the petitioner, has been confirmed and he in turn, executed the unregistered Sale Deed in favour of the 4th respondent and after getting possession of the property, the 4th respondent approached the Tamil Nadu Slum Clearance Board for execution of Sale Deed and since, no response was forthcoming, he filed W.P.No.10831/2011 and it was disposed of on 27.04.2011 and alleging violation of the said order, he filed contempt petition No.2049/2011 and the said contempt application disposed of by this Court, by directing the Tamil Nadu Slum Clearance Board to decide about the price and closed the contempt with the said

observation. Now, the Tamil Nadu Slum Clearance has executed the Sale Deed in favour of the 4th respondent on 23.01.2014.

16 It is pertinent to point out at this juncture that the petitioner has invoked the jurisdiction of the Civil Court by filing OS.No.5082/1994 and it was dismissed as withdrawn on 15.09.1995 without any liberty to file a fresh suit on the same cause of action. It is also submission of the learned counsel appearing for the appellant / writ petitioner that the writ petition is not barred in terms of provision of Tamil Nadu Housing Board Act, the appellant was constrained to withdraw the said suit and however, her affidavit dated 17.07.1995 for withdrawing the suit does not contain the said reason and the petitioner after waiting for merely 18 years came forward to file the writ petition and in the considered opinion of this Court, her claim is hit by delay and laches and that apart without getting any liberty to file a litigation on the same cause of action, the writ petition itself is not maintainable.

17 In the interregnum, the 4th respondent has also got the Sale Deed executed in his favour by the Tamil Nadu Slum clearance Board. The learned Judge has taken into consideration the factual aspects and on a fresh consideration and appreciation of materials placed, has rightly reached the conclusion to dismiss the writ petition.

18 This Court on an independent application of mind to the entire materials, is of the considered opinion that there is no error apparent or infirmity assigned to the order passed by the learned Single Judge in dismissing the writ petition and finds no merit in the writ appeal.

19 At this juncture, learned counsel appearing for the appellant / writ petitioner once again reiterated his submission that despite the

allotment made in favour of the appellant's father-in-law during September 1993, the payment made by her on 21.11.2008 and 25.11.2008 respectively, aggregating the sum of Rs.18525/- has been accepted and in all fairness, appropriate direction has to be issued to the Tamil Nadu Slum Clearance Board to refund the said amount to the appellant / writ petitioner.

20 Heard the submission of the learned standing counsel appearing for the respondents 1 and 2, who on instructions, would submit that as and when the appellant submits representation in that regard, the same would be considered and disposed on merits and in accordance with law within a stipulated time.

21 Thus, it is open to the appellant/writ petitioner to submit the representation to the 1st respondent to refund all the amount collected after the reallocation made in favour of the father-in-law within the period of two weeks from the date of receipt of a copy of this order and the 1st respondent, upon receipt of the same, is directed to consider the said representation on merits and pass appropriate orders within a further period of eight weeks thereafter and communicate the decision taken to the appellant/writ petitioner.

22 Accordingly, writ appeal is dismissed with the above observations and direction. No Costs. Consequently, the connected miscellaneous petition is also dismissed.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Triplicane,
Chennai-600 005.
2. The Estate Officer,
Estate Office 8,
Tamil Nadu Slum Clearance Board,
K.K.Nagar,
Chennai-600 078.
3. The Secretary to Government.
Housing and Rural Development Department,
Fort St.George,
Chennai-600 009.

+1 CC to Mr.B. Kesavan, Advocate sr 57181
+2 Ccs to Mr.V. Chockalingam, advocate sr 57206
+1 CC to Mr.C. Umashankar, Advocate sr 57436
+1 Cc to The Govt. Pleader sr 57461

WA.No.2417 of 2013

VD(CO)
sp(01/09/2017)