

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

CORAM:

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

W.A.No.361 of 2012

E.Nandagopal

... Appellant

versus

1.E.Ellammal

2.Malliga

3. Tamil Nadu Slum Clearance Board,
rep. By its Chairman
No.5, Kamaraj Salai,
Chennai 600 005.

... Respondents

Appeal filed against the order passed by this Court dated 28.09.2011 passed in W.P.No.7682 of 2009.

Prayer in W.P.No.7682 of 2009:

Writ petition filed under article 226 of the constitution of India for issuance of Certiorarified Mandamus to call for the records and papers from the files of the 1st respondent in his proceedings bearing SE.MU.KA. E5/23470/08 dated 24/03/2009 and quash the same and consequently direct the 1st respondent to execute the Sale Deed in favour of the Petitioner herein in respect of the property bearing No.301 Door No.303 , 15th Cross Street Block No.5 T.S. No.1 T.P. Chatiram , Aminjikaiarai Chennai-30 in Jyothiammal Nagar part-2 scheme within a time frame.

For appellant : Dr.G.Krishnamurthy

For Respondents : Mr.K.M.Ramesh,

for respondents 1 and 2

Mr.R.V.Babu,

for 3rd respondent

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The allotment made by the Tamil Nadu Slum Clearance Board (hereinafter referred to as "the Board") in favour of the predecessor-in-interest of the respondents 1 and 2 was cancelled

by the Board and allotment was made to the appellant. The order was set aside by the learned Single Judge at the instance of the respondents 1 and 2. The order dated 28.9.2011 in W.P.No.7682 of 2009 is under challenge in this intra court appeal.

2. The learned counsel for the respondents 1 and 2 initially made an attempt to argue the matter on merits. When it was pointed out to him that the order of cancellation was made without notice to the respondents 1 and 2, the learned counsel fairly submitted that the appellant is agreeable for considering the issue once again by the third respondent on merits, without reference to the Civil Court decree in O.S.No.8574 of 1997.

3. The learned counsel for the respondents 1 and 2 submitted that the appellant produced forged documents before the third respondent and obtained allotment behind the back of the respondents 1 and 2. The learned counsel submitted that the respondents 1 and 2 are also agreeable for considering the matter afresh by the third respondent without reference to the civil court decree.

4. The Tamil Nadu Slum Clearance Board allotted a vacant site bearing Plot No.301, D.No.303, 15 Cross Street, Jyothiammal Nagar, T.P.Chatram, Aminjikarai, Chennai, to Thiru.Kannan, husband of the first respondent. The allottee died on 3 September 1993, leaving his widow, first respondent and daughter, second respondent herein. The appellant appears to have made a claim before the Board that the allottee sold the plot to him. The appellant also obtained ex parte decree in O.S.No.8574 of 1997, from the XVIII Assistant City Civil Court, Chennai, against the Tamil Nadu Slum Clearance Board. The Board on the basis of the documents and the decree in O.S.No.8574 of 1997 cancelled the allotment made in favour of the predecessor-in-interest of respondents 1 and 2 and allotted the plot to the appellant. The said order was challenged in W.P.No.7682 of 2009.

5. There is no dispute that respondents 1 and 2 were not parties to the suit in O.S.No.8574 of 1997 on the file of XVIII Assistant City Civil Court, Chennai. The learned XVIII Assistant Judge, in a mechanical manner, allowed the suit ex parte by simply recording "P.W.1 examined. Exs.A2 to A8 marked. Claim is proved. Suit is decreed as prayed for with costs." Since it was a suit for declaration and permanent injunction on the basis of the alleged sale agreement given by the original allottee, who is none other than the predecessor-in-interest of the respondents 1 and 2, the Trial Court ought to have directed the appellants to implead the legal representatives of the original allottee as parties to the suit before granting a decree of declaration. The Board, by making use of the ex parte decree obtained by the appellant, and behind the back of the legal representatives of the original allottee, cancelled the original

allotment and issued a fresh allotment in favour of the appellant.

6. The learned Single Judge was therefore correct in setting aside the order allotting the plot to the appellant. The learned Single Judge after setting aside the allotment, issued a positive direction for execution of sale deed in favour of the respondents 1 and 2. Since the order was set aside primarily on the ground of non issuance of notice to the respondents 1 and 2, the learned Single Judge ought to have remitted the matter back to the Board for fresh consideration. We are therefore of the view that the impugned order is liable to be modified by directing the Board to consider the matter afresh.

7. In the result, the order passed by the learned Single Judge is modified in part. The allotment order in favour of the appellant is set aside and the matter is remitted to the Board for fresh consideration. It is open to the appellants and respondents 1 and 2 to produce materials before the Board to substantiate their contentions. Since the respondents 1 and 2 have taken up a contention that forged documents were filed by the appellant, necessarily, the said issue shall also taken into account by the Board while deciding the matter afresh. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this judgment.

8. The intra court appeal is disposed of with the above direction. No costs. Consequently, M.P.No.1 of 2012 and C.M.P.No.1969 of 2017 are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tar
To

The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamaraj Salai,
Chennai 600 005.

+1 CC to Mr.K.M. Ramesh, advocate sr 74912.

+1 cC to Mr.S.V.S. Ilamvazhuthi, Advocate sr 74873

W.A.No.361 of 2012

SP(22/11/2017)