

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.30929 of 2016

V.Palaniandi

... Petitioner

vs.

1. The Chairman,  
Slum Clearance Board,  
Kamarajar Road,  
Triplicane, Chennai 600 005.

2. V.Deenadayalan  
3. Indira Gandhi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the 1<sup>st</sup> respondent to consider the name of the other legal heirs viz. the petitioner and the 3<sup>rd</sup> respondent for the purpose of reallocation in respect of the allotment made in the name of Late K.Vinayagamorthy bearing Flat No.31/3, Ayodhya Nagar, Triplicane, Chennai 600 005 for the process of reallocating the tenements after construction forthwith.

|                                |   |                                                                              |
|--------------------------------|---|------------------------------------------------------------------------------|
| For Petitioner                 | : | Mr.V.Manohar                                                                 |
| For 1 <sup>st</sup> Respondent | : | Mr.C.Manishankar,<br>Additional Advocate General<br>assisted by Mr.B.Kesavan |
| For 2 <sup>nd</sup> Respondent | : | Mr.J.Arokiaraj                                                               |
| For 3 <sup>rd</sup> Respondent | : | Mr.A.D.Janarthanan                                                           |

O R D E R

This Writ Petition is filed seeking a direction to the 1<sup>st</sup> respondent to consider the name of the other legal heirs viz. the petitioner and the 3<sup>rd</sup> respondent for the purpose of reallocation in respect of the allotment made in the name of Late K.Vinayagamorthy bearing Flat No.31/3, Ayodhya Nagar, Triplicane, Chennai 600 005 for the process of reallocating the tenements after construction forthwith.

2. According to the petitioner, his father Late K.Vinayagamorthy was assigned with tenement No.31/3 under the Scheme framed by the 1<sup>st</sup> respondent in Ayodhya Nagar, Triplicane, Chennai and he was in continuous possession and enjoyment of the same along with his wife and three children, viz. the petitioner and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. After the death of the said Vinayagamorthy and his wife, V.Chinnaponnu, the persons to

represent the estate of Late Vinayagamoorthy are the petitioner and respondents 2 and 3 herein. As the said tenement built in the year 1973 is in a dilapidated condition, the Government decided to demolish the same, after vacating the families therein. Therefore, the Tamil Nadu Slum Clearance Board conducted proper enumeration on the occupants and issued Family Identity Cards for the provisional allotment in the new tenement. Since the 2<sup>nd</sup> respondent continued to live in tenement No.31/3 with his family members, he was issued with Family Identity Card and a provisional allotment to get a dwelling unit in the new tenement.

3. The grievance of the petitioner is that the 2<sup>nd</sup> respondent obtained the said provisional allotment order by influencing the 1<sup>st</sup> respondent. According to the petitioner, the 2<sup>nd</sup> respondent is employed in Government Department and is living comfortably and it is he and his sister, the 3<sup>rd</sup> respondent herein, who are struggling in their life. It is his contention that the 2<sup>nd</sup> respondent is not only trying to violate the procedural law, but also attempting to make personal gain in the matter of re-allocating the tenement in the event of completion of the reconstruction by the 1<sup>st</sup> respondent. It is the case of the petitioner that the allotment should have been extended to the person, who comes under the purview of the entitlement norms of Tamil Nadu Slum Clearance Board.

4. The 1<sup>st</sup> respondent has filed counter affidavit, wherein, it is stated that the petitioner himself has admitted in his affidavit that he has been living in No.12/8, Ayodhya Nagar, Triplicane and his sister, the 3<sup>rd</sup> respondent is living in Tsunami Quarters, Puducherry and hence, the provisional allotment issued to the 2<sup>nd</sup> respondent's family cannot be said to be illegal and unlawful. It is further stated in the counter that the petitioner has not proved that he was a dependant of the deceased Vinayagamoorthy and continued to live under tenancy and the provisional allotment issued to the 2<sup>nd</sup> respondent family was within a year of expiry of the original allottee, Vinayagamoorthy. It is also stated in the counter that the 1<sup>st</sup> respondent will consider the request of all the legal heirs of the deceased Vinayagamoorthy for permanent allotment of tenement, subject to production of Legal Heir Certificate with joint application.

5. Learned counsel for the petitioner has not disputed that respondents 2 and 3 are the brother and sister of the petitioner and that there is no allotment of tenement in the name of the petitioner or in the name of the 3<sup>rd</sup> respondent. It is his contention that the 1<sup>st</sup> respondent ought to have invited offer to the petitioner or the 3<sup>rd</sup> respondent to submit the request for allotment of tenement as per Rule.

6. Learned Additional Advocate General appearing for the

1<sup>st</sup> respondent/Tamil Nadu Slum Clearance Board submitted the petitioner is having a tenement in Ayodhya Nagar, Triplicane, Chennai and that the 3<sup>rd</sup> respondent is residing in Tsunami Quarters, Puducherry. It is his contention that as there is a fraud in the allotment of tenements, the Government issued proceedings dated 15.10.2008 with regard to the allotment of tenement, as, in the event of the death of the original allottee, documents are fabricated and presented in order to get accommodation. He drew the attention of this Court that in one case, the allottee was impersonated and the signature from the impersonated person has been obtained for getting allotment and in order to avoid malpractices, the said proceedings has been issued by the Secretary to Government, stating that whenever applications are filed, the Estate Officers or Estate Inspectors will enquire the details about the legal heirs and decide as to whether a joint allotment order or a separate allotment order could be given to that person.

7. Learned counsel appearing for the 2<sup>nd</sup> respondent contended that the 2<sup>nd</sup> respondent is in occupation of the tenement allotted to his father and that he is paying necessary charges and that his sister got married and settled in Puducherry and the petitioner has no locus to disturb his possession and that the 2<sup>nd</sup> respondent should be allotted a tenement in the newly constructed building, as his father was allotted a tenement vide No.31/3 in the building constructed in 1973 in Ayodhya Nagar, Triplicane.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. The relief sought in this Writ Petition is that the case of the writ petitioner will have to be considered along with the other legal heirs of his father and that the 2<sup>nd</sup> respondent alone cannot have a say with regard to allotment of tenement.

10. It has been contended by the learned counsel for the 2<sup>nd</sup> respondent that the petitioner has taken a sum of Rs.25,000/- from the 2<sup>nd</sup> respondent and that he would not claim any right over the allotted tenement and recorded the same in writing. Even though the same is disputed by the learned counsel for the petitioner, I find that the signature in the affidavit of the petitioner and the stamp paper appears to be the same.

11. I find much force in the contentions of the learned counsel for the petitioner and the learned Additional Advocate General appearing for the 1<sup>st</sup> respondent. However, in the light of the proceedings dated 15.10.2008 issued by the Secretary, Tamil Nadu Slum Clearance Board, Chennai, the 1<sup>st</sup> respondent herein is directed to consider the case of the 2<sup>nd</sup> respondent

along with the petitioner and the 3rd respondent, and while considering the same, if the 1st respondent finds that the petitioner and the 3<sup>rd</sup> respondent have already been allotted tenements in any place and that the 2nd respondent has no place to reside, then the case of the 2nd respondent shall be considered favourably.

12. This Court makes it clear that the observation made in this Writ Petition is only for the purpose of the disposal of the Writ Petition. It is for the parties to approach the authorities concerned and in case, any representation is made by the petitioner or the 2nd respondent or 3rd respondent with regard to the allotment of tenement in question, the authority concerned shall give an opportunity of hearing to all of them and take a decision at the earliest by taking into account the shelter already provided by the Government to the petitioner and the 3rd respondent.

13. 'Every family must have a roof over their head' must be the policy of the Government. As men change colours, the Government started allotting houses/tenements in the name of women. But, the Government must ensure that the rights of women are protected. The authority concerned should also examine as to whether any tenement is allotted to the petitioner/2nd respondent/3rd respondent either in their name or in the name of their spouse. It is also made clear that if the tenement exists in the name of the spouse, it can be a ground to reject their request. **"In case an order is passed in favour of the second respondent, the second respondent shall be given the tenement, however, the same will be subject to the result of any proceedings that may be questioned by the petitioner or the third respondent".**

The Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected W.M.P.No.26792 of 2016 is closed.

Sd/-  
Assistant Registrar(CS V)  
Dated:22/08/2017

\*Corrected Order as per  
Order of this Court Dated  
30/08/2017

Sd/-  
Assistant Registrar(CS V)  
Dated:01/09/2017

//True Copy//

Sub Assistant Registrar

aeb

To:

The Chairman,  
Slum Clearance Board,  
Kamarajar Road,  
Triplicane,  
Chennai 600 005.

+1cc to Mr.A.D.Janarthanan, Advocate, S.R.No.58297

+1cc to Mr.J.Arokiaraj, Advocate, S.R.No.57850

+1cc to Mr.V.Manohar, Advocate, S.R.No.58029

+1cc to Mr.B.Kesavan, Advocate, S.R.No.58061

W.P.No.30929 of 2016

GN(13/09/2017)



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