

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM

THE HON'BLE MR. JUSTICE B. RAJENDRAN

W.P. No. 38116 of 2016

S. Saroja

.. Petitioner

Versus

The Managing Director
Tamil Nadu Slum Clearance Board
5, Kamarajar Salai
Chennai - 5

.. Respondent

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondent to execute sale deed in favour of the petitioner.

For Petitioner : Mr. A. Muruganandam
For Respondent : Mr. Kesavan

ORDER

This writ petition has been filed praying for the issuance of a Writ of Mandamus directing the respondent to execute sale deed in his favour.

2. According to the petitioner, the respondent, by an order dated 11.03.1997 allotted the Plot No. 84 comprised in Survey No. 123/1 measuring an extent of 978.2 square feet under the Velacherry-Lakshmipuram Allotment Scheme in favour of her husband Late. Subramanian. It is further stated that on such allotment, the petitioner's husband paid all the dues payable to the Board, however, the respondent failed to execute the sale deed in favour of her husband. While so, on 28.05.2009, the husband of the petitioner died leaving behind the petitioner and her two sons and one daughter as his legal heirs. Further, during the life time of the petitioner's husband, he had executed a Will on 29.04.2009 in favour of the petitioner bequeathing the aforesaid plot in her favour and it was also registered as document No. 22 of 2009 on the file of Sub-Registrar, Velacherry. Thereafter, the petitioner filed OP No. 725 of 2012 before this Court seeking for issuing Letters of Administration in her favour and by order dated 07.04.2016, the OP No. 725 of 2012 was disposed of and she has also obtained Letters of Administration on 03.08.2016. According to the petitioner, as per the Will executed by the testator, the petitioner is entitled to get the sale deed executed in her favour by the respondent even without the consent of the children. The petitioner has also made a representation to the respondent to that effect, but it was not considered.

Therefore, the petitioner has filed WP No. 14654 of 2012 before this Court to direct the respondent to consider her representation dated 12.04.2012. By order dated 23.09.2012, this Court directed the respondent herein to consider the petitioner's representation and to pass orders on merits. As the order dated 12.04.2012 has not been complied with, the petitioner has filed Contempt Petition No.1937 of 2012 before this Court. When the contempt petition was taken up for hearing on 27.03.2013, it was represented on behalf of the respondent herein that the respondent has passed an order dated 20.03.2013 on the representation of the petitioner dated 12.04.2012, as directed by this Court. Recording the said statement, this Court closed the contempt petition on 27.03.2013. In the order dated 27.03.2013, this Court also observed that since the other legal heirs have given consent affidavit in favour of the petitioner for getting the sale deed executed in her favour, it is open to the petitioner and other legal representatives to approach the concerned authorities and satisfy them with regard to their claim based on which necessary orders shall be passed by the authorities concerned.

3. The main ground on which the present writ petition has been filed is that the order dated 20.03.2013 passed by the respondent to execute the sale deed jointly in the name of the petitioner and her three children does not arise inasmuch as the petitioner has already obtained Letters of Administration from this Court based on the Will executed by her husband and on the basis of the same, the sale deed has to be executed only in her favour. While so, the respondent cannot insist upon the petitioner to get the sale deed executed in favour of the petitioner and her three children jointly. The learned counsel for the petitioner would further contend that when the children have already given consent for executing the sale deed in favour of the petitioner, the question of executing the sale deed in favour of all the legal heirs of the original allottee does not arise.

4. The learned counsel for the respondent, though not filed counter, would only content that as per the Rules and Regulations, when original allottee died, the sale deed could be executed only in favour of all the legal heirs and therefore, the order dated 20.03.2013 passed by the respondent is perfectly in order.

5. I heard the learned counsel for both sides. First of all, the petitioner has not challenged the order dated 20.03.2013 passed by the respondent in this writ petition. The petitioner only seeks for issuing a Mandamus directing the respondent to execute the sale deed in her favour. It is seen from the order dated 20.03.2013 of the respondent that the respondent did not dispute the claim of the petitioner to get the sale deed in her favour and the respondent also recognised the petitioner as the legal heir of the original allottee.

6. The petitioner has filed this writ petition on the basis of the order dated 07.04.2016 passed by this Court in OP

No. 725 of 2012 filed by the petitioner. In the said Original Petition, the petitioner has arrayed her sons and daughter as respondents. During the course of trial in OP No. 725 of 2012, consent affidavits have been given by the respondents 1 and 2 in the OP No. 725 of 2012 in favour of the petitioner. Therefore, as per the order dated 07.04.2016 passed in OP No. 725 of 2012, the petitioner is entitled to get the sale deed in her favour. This is more so that the children have also given consent affidavit and it was recorded by this Court in OP No. 725 of 2012. In such circumstances, the respondent is directed to take note of the order dated 07.04.2016 passed by this Court in OP No. 725 of 2012 passed by this Court and to execute the sale deed in favour of the petitioner, if it is otherwise in order.

7. In the result, the writ petition is allowed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The Managing Director
Tamil Nadu Slum Clearance Board
5, Kamarajar Salai
Chennai - 5

+1cc to Mr.A.Muruganandam, advocate, sr.12012

+1 cc to Mr.B.Kesavan, advocate, sr.12065.

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W.P.No.38116 of 2016

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