

In the High Court of Judicature at Madras

Dated: 07.02.2017

Coram

The Honourable Mr.JUSTICE B.RAJENDRAN

W.P.No.41009 of 2016

and

WMP Nos.35019 and 35040 of 2016

- 1.K.Rajendra Prasad
- 2.N.Unnikrishnan
- 3.K.M.Elizabeth Mary
- 4.C.Balakrishnan
- 5.A.Solaiappan
- 6.B.Subadra
- 7.Mahalakshmi
- 8.Syed Mazharuddin
- 9.B.Chithra
- 10.Habibunnisa Begum

..Petitioners

Vs

- 1.The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai 600 009.
- 2.The Tamilnadu Housing Board,
Rep. By its Managing Director,
Nandanam,
Chennai 600 035.
- 3.The Executive Engineer cum Administrative Officer,
CIT Nagar Renovation Scheme,
O/o of the Tamilnadu Housing Board,
Nandanam, Chennai 600 035.

..Respondents

Prayer: Writ petition filed under Article 226 of the constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the third respondent pertaining to Letter No.CIT/A1A 1259B/16, dated 26.08.2016 issued to the petitioners and quash the same and consequently direct the first and second respondents to allot on outright sale basis the properties already allotted to the respective petitioners comprised in Model Hutment Road, CIT Nagar, Nandanam, Chennai 600 035.

For Petitioner : Mr.P.Wilson,
Senior Counsel
for M/s.Richardson Wilson

For Respondents: Mr.Venkatramani
Additional Advocate General
Assisted by
Mr.V.Anandamoorthy
Additional Government Pleader

ORDER

The writ petition has been filed for a certiorarified mandamus to call for the records of the third respondent pertaining to Letter No.CIT/A1A 1259B/16, dated 26.08.2016 issued to the petitioners and quash the same and consequently direct the first and second respondents to allot on outright sale basis the properties already allotted to the respective petitioners comprised in Model Hutment Road, CIT Nagar, Nandanam, Chennai 600 035.

2.According to the petitioners, the respondent corporation originally developed hundreds of plots and out of which, 50% of the plots were sold at outright price and the remaining plots were allotted as independent tenements in favour of the persons including the petitioner with understanding that these persons are entitled to purchase the same in terms of G.O.Ms.No.1854, Revenue Department dated 03.05.1957 as amended by G.O.Ms.No.1348 dated 03.04.1958. Subsequently in the year 2002, the second respondent converted 50 houses in the same CIT Nagar abutting the houses of the petitioners which are similar plots and sold the same to various third parties and that after various sales made by the department, there are 119 houses remaining including the petitioner's houses, to whom the respondents have not made the sale outright for the reasons best known to them. Therefore, it amounts to discrimination. Further, according to them, Tamil Nadu Housing Board is bound by G.O.Ms.No.1854, Revenue Department dated 03.05.1957 and ought to have sold to the petitioners/allottees the occupied tenements when they made a request for outright sale by converting from the rental scheme. Originally, the Association made a representation dated 22.11.1978 and that earlier, there was even a recommendation made by the second respondent to take various measures. The representation of the petitioners herein to extend the same benefit to them were rejected by the second respondent by order dated 31.12.2010.

3. Further, the petitioners and others preferred an appeal and the same was pending with the first respondent. Whiles, the second respondent had issued notices of eviction dated 16.09.2011 to all the 119 allottees. challenging the notices of

eviction, a batch of writ petitions in W.P.No.24679 of 2011 and others was filed by the allottees including the petitioners in which the second respondent undertook to consider 474 flats out of which 126 flats to accommodate 119 tenants and the remaining 348 flats to be sold outright to public under self financing category. That writ petition was disposed of by order dated 30.11.2011. In the meanwhile, the Government decided to demolish. One more writ petition W.P.No.13963 of 2012 was filed challenging the G.O.Ms.No.52 dated 05.03.2012. In the meanwhile, a writ appeal filed in W.A.No.2815 of 2012 against the order of the learned Single Judge dated 30.11.2011 was disposed of by order dated 25.07.2014 observing that the second can have recourse to Section 84 of the Tamilnadu Housing Board Act to evict the petitioners against which review petitions were filed in Review Petition No.177 of 2014 and others and the same were also dismissed by the Division Bench by order dated 21.04.2015.

4. As against the order of the appeal in W.A.No.2815 of 2012 and against the dismissal of the review petitions, SLP Nos.7779-7793 of 2015 and 13948-13962 of 2015 were filed before the Supreme Court and the Supreme Court by order dated 27.04.2015 has granted an order of status quo in so far as the houses of the SLP petitioners are concerned and therefore the Supreme Court is now seized of the matter. In the meanwhile, the third respondent has issued the impugned notices dated 26.08.2016 to the petitioners stating that the houses of the petitioners are in dilapidated condition and that the petitioners have to quit the houses and shift to alternate housing to be provided by the second respondent voluntarily. They also warned the petitioners that if they do not vacate and hand over possession, the third respondent will demolish on or before 16.09.2016. According to the learned senior counsel, the letter dated 26.08.2016 issued to the petitioners is wholly illegal and contrary to the orders passed in SLP passed by the Supreme Court. In fact, he would contend that the scheme itself contemplated that the allottees will be sold the plots at a subsidized price and accordingly, Tamilnadu Slum Clearance Board sold as well as the Tamil Nadu Housing Board sold plots to the various allottees at various point of time even as early as in the year 2015. But when it comes to 119 allottees, they are not inclined to enter into an outright sale. Therefore, it is totally discriminatory and arbitrary which cannot be countenanced in law. Hence, the present writ petition is filed.

5. Though counter affidavit is not filed, learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for the respondent would mainly contend that the petitioners are fence watchers and since they were not party in the earlier case they cannot claim the same

relief here. Even otherwise, the authorities will take steps to provide some other places for them. But these are the places where the houses are in dilapidated condition and they are to be demolished and hence, the petitioners have to vacate that place. In fact, they also produced a layout plan for the West CIT Nagar saying that SLP cases are pending before the Supreme court and in some places where possession taken over after demolition and therefore, the petitioners are not entitled to seek for any relief herein. They would also contend that the eviction notices were issued in a phase manner and there is no discrimination involved and that the petitioners have not challenged the Government Orders. Further, the earlier orders were made on the basis of hire purchase and therefore, it is a policy decision. Therefore, at this point of time, they cannot seek any remedy and the writ petition is liable to be dismissed.

6. Heard both sides.

7. Learned Senior Counsel vehemently pointed out that earlier round of litigation matter went to the Supreme Court and the Supreme Court is seized of the matter wherein the status quo was granted. He further relying upon the judgment of the Supreme Court contend that since the petitioners are similarly placed person and they are identical one and they should be granted the same relief even though they are not added as party in the earlier round of litigation. On a careful perusal of the affidavit of the petitioner, it shows that the first and fifth petitioners filed their respective allotment orders and others lost their allotment orders during flood. Even though there are 119 houses remaining including the petitioner house to whom the sale was not made outright but they have been promised that if they vacate the premises voluntarily they are entitled to get back new houses. They want the property to put up the construction for housing board where the houses are in dilapidated condition. Unfortunately, they did not approach the court and they are not added as parties in the earlier round of litigation. Hence, the status quo granted does not create any right. In this case, the respondent produced a layout plan where they stated that some of the properties possession has been taken. Of course, the petitioners' possession has not been taken. Considering the fact that the impugned order has stated that those persons who are surrendering their houses will be given allotment in the new construction and that they are asked to appear before the Executive Engineer and Administrative Officer on or before 16.09.2016 to present the papers and documents to make them eligible to get allotment in new construction, I do not find any discrimination in the impugned order as stated by the petitioners. Further, the writ petition is pre-mature in view of the fact that in the impugned order, they are given only an opportunity to appear on 16.09.2016 and without even appearing for the same, straight away they have

filed the writ petition and they have not ensured their option for new allotment. Hence the writ petition is not maintainable. Hence, the writ petition is dismissed. No costs. The connected miscellaneous petitions are also dismissed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

- 1.The Principal Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai 600 009.
- 2.The Managing Director,
The Tamilnadu Housing Board,
Nandanam,
Chennai 600 035.
- 3.The Executive Engineer cum Administrative Officer,
CIT Nagar Renovation Scheme,
O/o of the Tamilnadu Housing Board,
Nandanam, Chennai 600 035.

+1cc to Government Pleader sr.8156

+1cc to Mr.Richardson wilson Sr.8000

+1cc to Mr.V.Anandha Moorthy sr.7995

rv(co)
ss(14/2/2017)

W.P.NO.41009 OF 2016

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