

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.24857 of 2003
and
W.P.M.P.No.30555 of 2003

S.Michel Sugirtha
represented herein by her
Power Agent G.Mariakannu

.. Petitioner

Vs.

The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Gandhi Irwin Road,
Egmore, Chennai-600 008.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondent to forbear from interfering with the petitioner's peaceful possession and enjoyment of her property comprised of house, ground and premises bearing Door No.59, Semathamman Nagar, Koyambedu, Chennai-600 107 duly comprised in Survey No.193 Part within Koyambedu Village, Chennai-600 107, in any manner inclusive of demolition either by themselves, their workmen, agents, legal representatives and assigns, etc.

For Petitioner : Mr.D.Ashok Kumar
For Respondents : Mr.N.Sampath

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondent to forbear from interfering with the petitioner's peaceful possession and enjoyment of her property comprised of house, ground and premises bearing Door No.59, Semathamman Nagar, Koyambedu, Chennai-600 107 duly comprised in Survey No.193 Part within Koyambedu Village, Chennai-600 107, in any manner inclusive of demolition either by themselves, their workmen, agents, legal representatives and assigns, etc.

2. The case of the petitioner is that numbers of persons

have been in occupation of the Government lands within the limits of Koyambedu Village comprised in S.No.120/1 and 2 for more than three decades. This Writ Petition is filed by the Power Agent of the petitioner and the principal is one among them. The principal is a hut dweller and that the Government has taken welfare measures and allotted a different place for the purpose of locating the Wholesale Koyambedu Market Complex in the land in S.No.120/1 and 2. Alternative site has been identified and such alternative allotment was considered to occupants who are in possession of B-Memo. Even though initially 349 occupants have been declared as valid persons and alternative site had been assured, the Government has approved the list of 275 members alone and the rest of the allotment has been kept pending for scrutiny. 175 families have been immediately accommodated as an interim measure and that with regard to others, though they have been allowed to occupy the alternative sites, regular allotments have not been made. The principal herein was sought to be disturbed where she was in occupation and enjoyment of the property for more than a decade.

3. It is further stated by the petitioner that the Association, namely Seemathamman Nagar Hut Dwellers Welfare Association has filed a Writ Petition in W.P.No.14066 of 1997, which was disposed of on 15.09.1997, directing that the possession of the members should not be disturbed pertaining to the new location, as members of the petitioner-Association have surrendered their valuable lands comprised in Survey No.120/1 and 2 and hence, they are entitled to the lands on priority basis. According to the petitioner, in the new location, the petitioner has been paying property tax, metro water tax, etc. The petitioner was also issued with a Family Card. The petitioner stated that he has been given general Power of Attorney by the principal and it is in force on the date of filing of the Writ Petition. It is further stated by the petitioner that the CMDA has been taking steps to demolish the superstructure put up by the petitioner, without any intimation to the petitioner or providing alternative site, inspite of the fact that the petitioner is possessing property tax receipts, metro water tax receipts, electricity bill receipts and Ration Card. The action of the respondent in trying to displace the petitioner is illegal. The petitioner is in enjoyment of the superstructure of the property and that without an alternative site, the respondent interferes with the possession, which is illegal. Hence, the petitioner has filed the Writ Petition for the relief stated supra.

4. The respondent has filed counter affidavit stating that the wholesale market complex has been developed at Koyambedu and the Market Complex comprised of both the private and Government lands. The Government Eri poramboke land in S.No.120 of

Koyambedu Village lying in the midst of the project site, was occupied by number of encroachers. Since that part of the land is essentially required for the development of perishable market complex and also for laying of the A and E roads, an understanding was reached among the larger section of encroachers who had lived in the North of "A" Road and CMDA decided that alternative plots will be provided for them in close proximity based on production of B-Memo as evidence for their continued occupation of the Government Eri poramboke land at least two years before 08.04.1987. Since major portion of the land occupied by them was required for development, they were allowed to settle in three pockets of area developed for re-settlement purpose. About 600 members were accommodated in the area.

5. It is further stated by the respondent in the counter affidavit that the encroachers were in between E and A Roads and the portion North of E Road and mainly under three Associations, viz., Semathamman Nagar Kudisai Vazhvor Sangam, Puratchi Thalaivar MGR Narpani Mandram and Bharathi Nagar Kudisai Vazhvor Sangam and other small groups. It is further stated that Semathamman Nagar Kudisai Vazhvor Sangam consisting of 554 persons, have agreed for shifting with mutually agreed terms, which are as follows:

i) Alternative plots will be provided to 554 hut dwellers as furnished by the said Association. The identification of these allottees will be mainly based on B-Memos endorsed by the Tahsildar Office, Egmore-Nungambakkam Taluk.

ii) The alternative site shall be situated very near to the Koyambedu Market site.

iii) The extent of the alternative plot shall not be less than 300 Sq.Ft.

iv) The basic facilities to be provided in the alternative site shall be on par with shelter projects being executed at present by CMDA.

v) The land cost of the alternative plot will be collected but only the cost of infrastructure will be recovered on a long term basis.

vi) They will take steps to withdraw the Court cases after receipt of CMDA's letter. However, the encroachers will be required to vacate the present site occupied by them, only after the alternative plots are made ready for re-location.

vii) CMDA should give them No Objection Certificate when required, if there is any development programme from outside agencies for their area.

6. It is further stated in the counter that when the matter was placed before the authority, and it was resolved to re-locate the encroachers in three pockets of land. The families have been re-settled in Sectors I and II on the sites South of A

Road. Sectors I and II have been developed in the area South of A Road. Sector III has also been developed in the area North of E Road, adjoining the truck parking area in S.No.120/1 part (Government poramboke land) and 63 part (area acquired for truck parking). In the meantime, before full process of re-settlement was over, the encroachers themselves have entered upon the site in the proposed Sector III area. The Associates again represented that the rest of the encroachers were not given alternative site and they have filed W.P.Nos.14066 of 1997 and 22573 of 1997 and this Court, by order dated 15.09.1997, directed the CMDA to consider the representation of the Association and pass final orders. In order to provide alternative site to the encroachers, the genuinity of the encroachers were identified with reference to B-Memo from the encroachers and it was found that most of the B-Memos submitted by them are not genuine. Hence, a copy of all the B-Memos received from the claimants were referred to the Tahsildar, Egmore-Nungambakkam Taluk to verify the genuineness and the Tahsildar, by letter dated 31.07.1998, informed that B-Memos have been issued to the encroachers and the same had been recorded in the Adangal Register.

7. It is further stated in the counter that in order to provide alternative site to the genuine encroachers, verification of B-Memos were done at the site and the details have been compared with the Adangal particulars. It was found difficult to identify the encroachers only with reference to the name, as the Adangal particulars contain only the names and does not contain any other reference like father's name, husband's name etc. Later on, during enumeration, it was found that the total number of hut dwellers in existence is 1057 in Sectors I, II and III and the number of encroachers is increasing day-by-day and the actual number of encroachers could not be identified. The petitioner/principal was an encroacher.

8. Heard both sides and perused the materials available on record.

9. Admittedly, the petitioner was not in any of the area in the land which has been taken by the Government for the purpose of developing Koyambedu Market Complex. The petitioner was in the alternative site, which has been identified for persons who have been issued with B-Memo. Admittedly, she was not in the Koyambedu area and the encroachers must have been found in the alternative site, which place is meant for others. The petitioner has encroached upon the Government property and that she was not one among the hut dwellers who had been identified. Since the petitioner's place has been identified and that she has occupied the Government land, it is nothing but encroachment in the site meant for allotment of houses to the hut dwellers in Sectors I, II and III. Having alleged to have constructed in the site meant for hut dwellers, contending that the petitioner is

also entitled to a house-site, may not be correct. Payment of electricity charges, water charges, property tax, etc., besides ration card or any other document showing as resident, cannot give a right to any encroacher to claim the place of accommodation.

10. Thus, I find that the relief sought for by the petitioner cannot be granted, as she is an encroacher in the area identified by the Government for the purpose of giving allotment to the hut dwellers and that the petitioner is not one of hut dwellers carrying B-Memo, which fact has been admitted by the petitioner in the affidavit stating that the Government has decided to allot the tenements to those who are having B-Memos. At no point of time, in the pleadings, she has stated that she was in possession of B-Memos and she was also one of the tenements in Koyambedu area from where she has been evicted.

11. Hence, there is no reason to grant the relief sought for by the petitioner. The Writ Petition is dismissed. No costs. W.P.M.P. is closed.

12. Before parting with the case, this Court is of the view that the Government is taking effective steps to displace the encroachers and provide them alternative accommodation by allotment of houses by the Tamil Nadu Slum Clearance Board on the basis of sale-cum-hire purchase agreement. On the basis of the allotment, the allottees takes possession of the tenement and thereafter execute sale deed on payment of entire cost. When once those persons are given allotment of house either at nominal rate or at free of cost, it is seen that after certain number of years, those residents are trying to dispose of the property allotted to them and move to some other place. Moreover, this Court has come across several instances where the allottees had sold the properties to the third parties. As the place is meant for poor, they cannot sell it to third parties. The object of the allotment itself is defeated, if sold within a short span of time and thereby the allottees occupy the original place in slums. Hence, to prevent the menace, this Court is of the view and suggests the Tamil Nadu Slum Clearance Board to take steps for amendment of the agreement or for any regulation incorporating a pre-emptive clause in the agreement/allotment order itself, without diluting the Transfer of Property Act. Further, in case the occupants want to sell the property, it should only be sold to the Tamil Nadu Slum Clearance Board on the guideline value prevalent on that day. This will ensure that those tenements do not rent it out to somebody, as this Court, on the earlier occasions, had categorically stated that the allottees of the tenements shall not rent it out to third parties and those observations/clauses in the agreement itself shall ensure that those persons do not

dispose of the property to any third party and once again try to encroach upon the Government land and become a slum dweller. When once such pre-emptive clause is incorporated, the property can be sold only to the Tamil Nadu Slum Clearance Board and the authorities can sell the property and give the property to poor persons based on the seniority maintained for the purpose. This Court hopes that in such an event, there will not be any interference by any of the political parties to deprive the genuine persons to get the benefit. This Court expects/suggests that proper amendments are made in the necessary regulations, so as to curb the illegalities and the Tamil Nadu Slum Clearance Board ensure that the said pre-emptive clause is incorporated in the agreement itself, as the decision taken can't run counter to the Transfer of Property Act.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Gandhi Irwin Road,
Egmore, Chennai-600 008.
2. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamaraj Salai,
Chennai-600 005.

+1cc to Mr.N.Sampath, Advocate, S.R.No.86611

+1cc to Mr.D.Ashokkumar, Advocate, S.R.No.85756

W.P.No.24857 of 2003

RRK(12/01/2018)

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