



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.08.2017

CORAM :
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5597 of 2017
and
W.M.P(MD) .Nos.4482 & 4483 of 2017

Tamilthai

... Petitioner

vs.

1. Tamil Nadu Housing Board,
Rep.by Executive Engineer and
Administrative Officer,
Madurai Housing Unit,
Ellis Nagar, Madurai.

2. Muthukumar

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for records pertaining to the impugned order dated 28.02.2017 issued by the first respondent herein and quash the same as arbitrary unreasonable and against the order dated 01.11.2016 made in WP(MD)15666 of 2016 by Division Bench of this Court and Article 14 of Constitution of India and the provisions of Tamil Nadu Housing Board Act 1961.

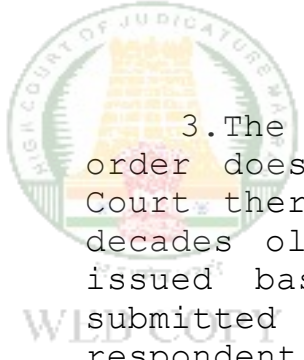
For Petitioner : Mr.Y.Krishnan for Mr.M.Gnanasekaran
For Respondents : Mr.S.Nagarajan for R1
Mr.J.Bharathan for R2
Ms.T.Seeni Syed Amma, Adv.Commissioner
(Enrl.No.2151/2013)

O R D E R

(Order of the Court was made by G.R.SWAMINATHAN, J)

The writ petitioner challenges the order dated 28.02.2017 issued by the first respondent for removal of the encroachment alledgedly committed by him.

2.According to the impugned communication issued by the Tamil Nadu Housing Board, the writ petitioner was allotted shop No.1 in Ellis Nagar and that he is occupying area in excess of the allotted site.



3.The learned counsel initially contended that the allotment order does not specify the actual area to be occupied. This Court therefore summoned the original records which are several decades old. It can be seen that the order of allotment was issued based on the writ petitioner's application which was submitted in response to the notification issued by the first respondent Board. In the original notification, the plinth area to be allotted was mentioned. The applications were submitted and finally allotment orders were passed. Therefore, one can safely conclude that even though the final allotment order did not contain the plinth area, in view of the mentioning of the Shop numbers, the writ petitioner cannot claim anything beyond what was originally notified. Serious allegations were made on both sides. While the writ petitioner would allege that it was the second respondent who is blocking the common path way, the second respondent would point accusing fingers at the writ petitioner.

4.To resolve the matter, this Court appointed Ms.Seeni Syed Amma as Advocate Commissioner. The learned Advocate Commissioner inspected the premises on two occasions and she submitted her final report dated 31.07.2017. In the final report, the Advocate Commissioner has pointed out that the writ petitioner has totally occupied 603.12 sq.feet, even though the allotted plinth area is 213.56 sq.feet. Thus there is an encroachment to the tune of 389.56 sq.feet. She has also pointed out that the second respondent had constructed a compound wall without permission. The other shop owners have also committed encroachments. The details are spelt out in her report dated 31.07.2017.

5.The first respondent shall take the report of the Advocate Commissioner into consideration and clear all the encroachments which have been pointed out in the said report. The first respondent shall carry out the removal of the encroachments indicated in the said report after complying with due process of law within a period of three months from the date of receipt of a copy of this order.

6.This Court place on record its appreciation of the Advocate Commissioner Ms.Seeni Syed Amma for the thoroughness with which she has carried out her work. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions also closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



To

Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Madurai Housing Unit,
Ellis Nagar, Madurai.

Copy to

Ms.T.Seeni Syed Amma,
(Enrl.No.2151/2013)
Advocate, No.99, Law Chamber,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Nagarajan , Advocate Sr.No.70448
+1cc to Mr.M.Gnanagurunathan, Advocate Sr.No.70077
+1cc to Mr.T.R.Jeyapalam, Advocate Sr.No.70725

SKM/ARUL

VB/MR/KKR/SAR2/17/08/2017/3P/6C

**W.P(MD)No.5597 of 2017
and
W.M.P(MD) .No.4482 &
4483 of 2017
03.08.2017**