

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.31345 of 2005
and
W.M.P.No.34339 of 2005

K. Sakthivelu

...Petitioner

Vs

1. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamaraj Salai,
Chennai- 600 005.

2. M. Subramaniam

3. Amir Basha

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue any appropriate Writ or direction in the nature of a writ of Certiorari calling for the records relating of the first respondent's order dated 09.09.2005 under ref. Na.Ka.No. E5/15635/97 and to quash the same as illegal and invalid.

For Petitioner : Mr.Ashok Menon for
M/s. Menon & Goklaney Associates

For Respondents: Ms. D. Latha for R1
Mr. S. Mahesh for R2
No appearance for R3

ORDER

The notice issued by the respondent for eviction of encroachments in proceedings dated 09.09.2005 is under challenge in the present Writ Petition.

2. The learned counsel for the petitioner states that the petitioner was allotted Plot Nos. 90 and 91 (presently No.54 in Azad Nagar, Aminjikarai, Chennai- 600 029). Plot No.90 was allotted under the World Bank Scheme by the 1st respondent on

28.01.1986, Plot No.91 was allotted on 08/03/1983. The petitioner claims that various civil suits were filed by the original allottee and other persons and now the petitioner is in possession and enjoyment of the same.

3. Pursuant to the orders of the High Court, the authorities competent conducted the survey and found that the pathway is under encroachment and the writ petitioner also encroached the land belongs to the Slum Clearance Board. In view of the encroachment, the impugned notice has been issued, directing the writ petitioner to remove the encroachment and inform the same to the Slum Clearance Board. Instead of submitting his explanations/ objections, the petitioner has chosen to file the present Writ Petition.

4. No writ proceedings can be entertained against the notice in a routine manner. Judicial review against the notice is certainly limited. No Writ Petition can be entertained unless the petitioner establishes that the notice is issued by an incompetent authority having no jurisdiction or any allegations of mala fide are raised or if the same is in violation of the Statutory Rules in force. Even in case of raising an allegation of mala fides, the authority against whom such an allegation is raised is to be impleaded as a party respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal grounds, no writ can be entertained against the notice in a routine manner. Merits and demerits are to be considered by the authorities competent and the persons who received the notice should establish his case by defending his/her statements or documents before the competent authority.

5. In the present case, the impugned notice states that the writ petitioner had encroached the land belongs to the Slum Clearance Board. This Court is of the opinion that the welfare State, in order to provide house to the poor houseless people, constructing houses under the World Bank Scheme and other Welfare Schemes and allotting the same to the poor houseless people in various localities. Such people are bound to follow the rules and regulations strictly in accordance with the allotment Rules. Encroachment in Slum Clearance Board areas will certainly affect the rights of other original allottees. If encroachments are permitted in such thickly populated areas/localities, the same would cause inconvenience to all the allottees and other passers of that locality.

6. Thus, there cannot be any leniency or otherwise in respect of evicting such encroachers from the Slum Clearance Board locations. In this view of the matter, the writ petitioner is at liberty to submit his explanations/objections, if any, in respect of impugned notice issued and defend his case, if he is

otherwise able to establish that he is not an encroacher. In the event of identifying the fact that the petitioner is an encroacher, then the respondents are bound to evict all such encroachments/encroachers in that locality by providing an opportunity to the persons concerned, and by following the procedures as contemplated under the Tamil Nadu Land Encroachment Act, 1905.

7. With these observations, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrn/mrm

To

The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamaraj Salai,
Chennai- 600 005.

+2cc to M/S.Goklaney Associates, Sr.87373

W.P.No.31345 of 2005

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