

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.30658 of 2017

Thideer Nagar Social Welfare Scheme Trust,
rep. By its President,
A.Velankanni,
No.100, Thideer Nagar,
Greems Road,
Thousand Lights,
Chennai 600 006.

... Petitioner

vs.

1. The District Collector,
O/o. Chennai District Collector,
Singaravelan Maligai,
Chennai 600 001.
2. The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai 600 005.
3. The Commissioner,
O/o.Greater Chennai Corporation,
Ripon Building,
Chennai 600 003.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, forbearing the Respondents from evicting the Trust members residing at Thideer Nagar, Thousand Lights, Greems Road, Chennai-6, living for 75 years, without due process of law.

For Petitioner : Mr.R.Narayanan

For 1st Respondent : Mr.A.N.Thambidurai,
Special Government Pleader

For 2nd Respondent : Mr.S.Prabhu

For 3rd Respondent : Mr.K.Soundararajan

O R D E R

(Order of the Court was made by S.VAIDYANATHAN,J.)

The Petitioner has come up with this Writ Petition seeking to forbear the Respondents from evicting the members of the Trust, residing at Thideer Nagar, Thousand Lights, Greams Road, Chennai-6.

2. When the matter was taken up for hearing on 29.01.2018, this Court passed the following order:

"2. According to the petitioner-Trust, its members are not encroachers and they have been living in the banks of Cooum River and Thideer Nagar. It is further submitted that the second respondent/TNSCB has constructed rehabilitation site and that all the families have been shifted to the newly allotted site given by the second respondent-TNSCB. It is further stated that the Thideer Nagar is not a Slum and in any event, as similarly placed persons have been given the benefit of alternative sites, the petitioner-Trust being a welfare scheme Trust, had been sidelined. It is further submitted that the members of the petitioner-Trust shall not be disturbed without following due process of law.

3. The third respondent-Corporation of Chennai has filed status report, wherein it has been averred that the members of the petitioner-Trust are encroachers and that the representatives of the Thideer Nagar encroachers were taken to the Perumbakkam Slum Clearance Board tenements and they have been shown various blocks and based on their choice, the allotments were made after agreeing for the same. The eviction drive was initiated on 18.11.2017 and transport arrangements were also made by the Corporation. Even though no averment has been made with regard to Mr.A.Velankanni, the President of the petitioner-Trust, who has filed this Writ Petition in the capacity of Trust, the learned Standing Counsel appearing for the third respondent-Corporation submitted that the name of the said gentleman has also been enumerated and that the said President A.Velankanni will be given an alternative site for the building that has been constructed by the TNSCB.

4. Learned counsel appearing for the second respondent-TNSCB submitted that the second respondent has filed counter affidavit, wherein it has been narrated that the Thideer Nagar is declared as a Slum and encroachments have been extended upto Cooum River. Based on the enumeration conducted by the land owning Department and recommendations based on the merit, the allotment order is issued to the beneficiaries at resettlement and rehabilitation site at Perumbakkam by the TNSCB. It is further stated that the local authorities have issued Ration Card, Voter ID Card, Aadhar Card, etc. and EB connection was also given. It is further stated by the learned counsel for the second respondent-TNSCB that the petitioner's mother and the petitioner were residing in one house in the encroachment area and that the mother had been allotted alternative site and that the said Velankanni is not entitled to another allotment. It is however stated that the third respondent-Corporation has identified the name of the petitioner and that if there are any instructions given by the Corporation, the TNSCB has no objection to accommodate the petitioner.

5. In reply, learned counsel for the petitioner submitted that all the members of the petitioner-Trust have been allotted alternative sites, except the present person, namely the President of the petitioner-Trust, namely Mr.A.Velankanni and hence, he has approached this Court in the name of the Trust. It is further stated that the mother has not been allotted the place and that the said Velankanni and his mother were residing at different places.

6. To the above contentions, learned counsel for the third respondent-Corporation drew the attention of this Court to the enumeration list and also the allotment order given to the mother of the said Velankanni, and the mother's name is reflected in Sl.No.722.

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

8. It is not in dispute that the members of the petitioner-Trust and others have encroached upon the land(s) in Thideer Nagar and other places which are declared as Slum. However, alternative sites have been provided to everyone including the mother of the said Velankanni and that it has been stated across the Bar that the said Velankanni will also be given an alternative site. One of us (ie. S.Vaidyanathan,J) sitting singly, held that there should be a pre-emptive clause in the allotment order/agreement itself, so that the land(s)/house(s) given by the TNSCB reaches the poor people and that the person who has got the allotment, cannot enrich themselves by selling the land allotted and again occupying the encroachment site. In the said decision while one of us (S.Vaidyanathan,J) was sitting singly and dealing with encroachment matters, in W.P.No.24857 of 2003, dated 04.12.2017, it was observed as follows:

"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."

9. At this stage, learned counsel for the petitioner submitted that the said Velankanni is the only son of Sarasu and his father is no more and he is willing to file affidavit before this Court to the effect that in case any unfortunate things take place, no claim will be made to the site allotted to the said

Velankanni's mother and that it can be allotted to any other person of the choice of the TNSCB based on the seniority list maintained for that purpose.

10. In order to file such affidavit by the petitioner, i.e. Velankanni in his individual capacity, with regard to the stand that he will have no claim over the property allotted to his mother by the TNSCB, list the Writ Petition on 02.02.2018 "for orders" on 02.02.2018 and the Registry is directed to treat this matter as Part Heard."

3. Today, an additional affidavit has been filed by the Petitioner/Velankanni, relevant portion of which, reads as under:

"5. I submit that admittedly, I have produced all the records that I have resided in the said area and living separately and hence, it is just and necessary to allot house in favour of me and further, I am undertaking that I will not claim any rights over the allotment of house issued in favour of my mother namely, Sarasa, W/o.Arockiyanathan, provided, separate order of allotment issued in favour of me."

4. As the Petitioner/Velankanni has agreed that he will not claim the site allotted to his mother under any circumstance, there is no need to pass further orders in this Writ Petition, more particularly, taking note of the contentions of the Respondents that all the persons residing in the disputed site have been evicted and that they have been provided alternative accommodation at Perumbakkam.

5. Further, it is represented by the learned counsel appearing for the 2nd Respondent/Slum Clearance Board that alternative site will be provided to the Petitioner/Velankanni within one month from the date of receipt of a copy of this order.

6. The said submission of the learned counsel appearing for the 2nd Respondent/Slum Clearance Board is taken on record and this Court directs the 2nd Respondent/Slum Clearance Board to provide alternative accommodation to the Petitioner/Velankanni within a period of one month from the date of receipt of a copy of this order.

The Writ Petition is disposed of with the above observation and direction. No costs. Consequently, connected W.M.P.No.33568 of 2017 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The District Collector,
O/o. Chennai District Collector,
Singaravelan Maligai, Chennai 600 001.
2. The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai, Chennai 600 005.
3. The Commissioner,
O/o.Greater Chennai Corporation,
Ripon Building,
Chennai 600 003.

+1 cc to M/s.Dr.S.Manohara Advocate sr 7889
+1 cc to M/s.S.Prabhu Advocate sr 8270
+1 cc to M/s.K.Soundararajan Advocate sr 8336
+1 cc to Govt Pleader sr 8472

W.P.No.30658 of 2017

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