

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM :

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.4550 of 2011

Latha

..Petitioner

Vs.

1. The Chairman

Tamil Nadu Slum Clearance Board
No.5, Rajaji Salai
Chennai - 600 005.

2. Rani

..Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, directing to call for the records of the 1st respondent, particularly letter dated 03.02.2009 vide Ref. Na.Ka. No. E5/27544/2001 communicated to the petitioner and quash the same and consequently direct the 1st respondent to give permission to execute the decree passed in O.S. No. 5940 of 1991 dated 27.10.1994 on the file of the Hon'ble I Asst. (i/c of III Asst.) City Civil Court, Chennai after cancelling the allotment order dated 10.12.1999 vide proceeding NO.Se/Mu.No.11345/99/E5 issued in favour of the 2nd respondent and pass such further orders.

For Petitioner : Mr. R. Thanjan

For Respondents : Mr.R.V. Babu for R1

: Mr. G. Saravanan for R2

O R D E R

The learned counsel for the petitioner would submit that the writ petitioner has preferred the suit in O.S. No. 5940 of 1991 for permanent and mandatory injunction against the 2nd respondent. The aforesaid suit was decreed on 27.10.1994. Challenging the aforesaid judgement and decree passed by the trial court, the 2nd respondent has preferred an appeal in A.S. No.121 of 1995 and the said appeal was dismissed. Assailing the judgement and decree passed by the lower Appellate Court, the 2nd respondent preferred an appeal before this Court in S.A. No.885 of 1996 and the said appeal was also dismissed. Subsequently,

the petitioner filed an Execution Petition in E.P.No.1557 of 2003 before the IX Assistant City Civil Court, Chennai, for executing the decree. After hearing the parties concerned, the Executing Court dismissed the petition, with an observation that the petitioner has to seek permission from the 1st respondent as contemplated under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Rules, 1971. The Civil Revision Petition filed by the petitioner against the same, was dismissed by this Court. Subsequent to the said dismissal order, the petitioner has approached the first respondent to grant permission under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Rules, 1971. Considering the said application, the 1st respondent has passed the impugned order stating that the Slum Clearance Board has allotted the Plot No.325 in favour of the 2nd respondent. Therefore, the Board cannot evict the 2nd respondent under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Rules, 1971. Challenging the aforesaid order, the present writ petition is filed before this Court.

2. The learned counsel for the petitioner would submit that the aforesaid order passed by the 1st respondent is per se illegal and without application of mind. According to the petitioner, the Execution Petition has been filed to get permission from the Board to proceed with the execution proceedings and to that extent liberty has also been granted by the Executing Court. Per contra, the 1st respondent has passed the order stating that the 2nd respondent cannot be evicted by him. The reasons stated is totally misconceiving the order of the Execution Court and hence is liable to be set aside.

3. The learned counsel for the 1st respondent would submit that the Execution Court has dismissed the writ petition, with liberty to approach the Board under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Rules, 1971, for getting permission to proceed with the execution proceedings to execute the decree. The Board has considered the said application and passed the order stating the reason that the aforesaid plot was allotted in favour of the 2nd respondent. Therefore, the Board could not evict the 2nd respondent. The learned counsel for the Board would further submit that the order has been passed by the 1st respondent, under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Rules, 1971 and so the same is perfectly valid. Hence, the petitioner has no locus standi to claim the plot.

4. On perusal of the material on records, it is found that the Execution Court has dismissed the E.P. No. 1557/2003 by order dated 07.03.2005, by granting liberty to the petitioner to get permission from the respondent Board under Section 29 of the

Tamil Nadu Slum Areas (Improvement and Clearance) Rules, 1971 and then approach the Executing Court. The Civil Revision Petition filed by the petitioner was dismissed by this Court, confirming the order of the Executing Court, directing the petitioner to get permission from the respondent Board before proceeding with the execution proceedings. But the 1st respondent has misunderstood the orders passed by the Civil Court and has rejected the petitioner's application on the ground that the 1st respondent cannot evict the 2nd respondent. At this stage, it is submitted by the learned counsel for the respondent Board that the 1st respondent shall consider and pass fresh orders in accordance with law. It is also agreed that the reasons stated in the impugned order is liable to be set aside. Both, the petitioner and the 2nd respondent undertakes to co-operate with the enquiry before the 1st respondent.

5. Therefore, this Court has no hesitation to quash the impugned proceedings dated 03.02.2009 in Ref. Na.Ka. No. E5/27544/2001 of the 1st respondent and remit back to the 1st respondent to be considered afresh and pass orders on merit, in accordance with law, after providing opportunity to the parties concerned, as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order.

6. The Writ Petition is allowed, on the above terms. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

avr
To

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

+1cc to Mr.R.Thanjan, Advocate Sr.82203

W.P.No.4550 of 2011

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srg 25/01/2019