

.IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.131 of 2018
and
C.M.P.No.8216 of 2018

P.Veerasamy

... Appellant

Vs

1.The Official Assignee,
High Court, Madras - 104.

2.K.Kirubakaran

3.Tamil Nadu Slum Clearance Board
rep. by its Chairman,
5, Kamarajar Salai, Triplicane,
Chennai - 5.

4.The Estate Officer IV,
T.P. Chatram Slum Clearance Board.

... Respondents

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w
Clause 15 of Letters Patent against the order and decree dated
21.12.2017 made in A.No.42 of 1997 in I.P.No.33 of 1996.

Prayer in Application No.42/1997: Praying that

i) this Hon'ble Court be pleased to grant a declaration that the
cancellation of Original Allotment in favour as the 1st
Respondent/Insolvent herein made by the Tamil Nadu Slum
Clearance Board the 3rd Respondent herein under Proceedings
No.வாரியச்சேழு க No. 1166, பி.84/எ, 6,2 dated 01.11.95 and the
reallotment made in favour of the second respondent under
proceedings No. ந க.எண் 28542/95/E3 dated 15.11.1995 are not valid
in law and shall be void against the official assignee.

ii) Grant a consequential declaration that the Original
allotment made by the Slum Clearance Board, 3rd Respondent herein
in favour of the 1st Respondent/Insolvent stands good and

restored and therefore the schedule property vest in the official assignee.

iii) Direct the official assignee to shall the entire schedule property bearing Door No. 387(Plot No. 412) N.S.K. Nagar, Arumbakkam, Madras 106(land and Superstructure)in public quction.

Praer in I.P. No. 33/1996: Praying to adjudicating the petitioner herein as an insolvent and direct all his assets to vest in the official assignee, High Court, Madras

For Appellant .. Mr.M.Chidambaram

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

On an application filed by the appellant in Insolvency Petition No.37 of 1997 dated 19.04.1996, he was declared as insolvent. The property in question unfortunately was not included in the schedule. Allotment has been made in favour of the appellant way back in the year 1985. For the non-compliance of the terms and conditions of the order of allotment, which was on lease cum sale basis, it was duly cancelled by the order dated 01.11.1995 by the Tamil Nadu Slum Clearance Board. Thereafter, it was reallocated in the name of the second respondent in and by the proceedings dated 15.11.1995. This order of reallocation was followed by execution of sale deed. In the subsequent insolvency petition filed in an indirect way, these two orders are sought to be challenged.

2.After few rounds of litigation, the applications were once again taken up by the learned single Judge. The applications were dismissed interalia holding that the subject matter of the property is the property of the insolvent in the list of assets. The second respondent and one Kirubakaran have not been shown as creditors and under Section 68 (1)(a) of the Presidency Towns Insolvency Act, 1909, the Official Assignee is entitled to sell only the property of the insolvent, which is not available in the case on hand since the title stood vested at the relevant point of time with the Tamil Nadu Slum Clearance Board. Challenging the aforesaid order, the present appeal has been filed.

3.Learned counsel appearing for the appellant would strenuously contend that over the years, payments have been made followed by construction. Though the title did not vest with the appellant, the aforesaid facts ought to have been considered in proper perspective by the learned single Judge. Thus the same would require interference.

4. We do not find any merit in this appeal. The observations of the learned single Judge require to be confirmed. Admittedly, the appellant did not have the title. The allotment order was lease cum sale. There was a valid cancellation order passed way back on 15.11.1995. This order was followed by the consequential order of allotment in favour of the second respondent on 15.11.1995. The validity of the aforesaid orders cannot be dealt with in the insolvency petition, which has been filed subsequent to them. Thus, apart from lack of title, an order passed by the competent authority which was having title and who did have a jurisdiction cannot be a subject matter of insolvency proceedings. Admittedly the right got vested in favour of the subsequent purchaser viz., the second respondent. Whatever may be the grievance of the appellant, the same cannot affect the second respondent, who is the bonafide purchaser for valuable consideration. Hence looking from any perspective, we do not find any error in the order passed by the learned single Judge.

Accordingly, the Original Side Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1 CC to M/s. M. Chidambaram, Advocate sr 36963.

O.S.A.No.131 of 2018

RSI (CO)
SP(09/07/2018)

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