

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 04.07.2018
CORAM
THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.3011 of 2013

1. R.Suguna (Deceased)
2. R.Mohan
3. P.Poongothai
4. D.Lalitha
5. S.Amudha
6. A.Kalaivani
7. R.Anandhan
8. R.Anbu
9. R.Damodharan

..Petitioners

[P2 to P9 are substituted as LRs of the deceased
P1, R.Suguna, as per the order of this Court,
dated 26.02.2018, in WMP.No.30704 of 2017
in WP.No.3011 of 2013]

Vs

1. The Managing Director,
Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai 600 005.
2. R.Ravi
3. Chandra

..Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus to direct the first respondent to evict the third respondent from the premises at No.16, E-Block, Tamil Nadu Slum Clearance Board Apartments, Clive Battery, Chennai - 600 001, allotted to the petitioner by the Tamil Nadu Slum Clearance Board and restore the same to the petitioner within a stipulated period by the order of this Court.

For Petitioner : M/s.K.R.Gunashekar
For Respondents : M/s.D.Latha, for R1
No Appearance, for RR2 & 3

ORDER

Heard Mr.K.R.Gunashekar, learned counsel for the petitioners and Miss.D.Latha, learned counsel for the first respondent and perused the materials available on record.

2. This writ petition has been filed seeking issuance of a writ of mandamus to direct the first respondent to evict the third respondent from the premises at No.16, E-Block, Tamil Nadu Slum Clearance Board Apartments, Clive Battery, Chennai -

3. The case of the writ petitioner is that she was allotted apartment No.16, E-Block in Tamil Nadu Slum Clearance Board tenement at Corporation Lane Clive Battery, Chennai in the year 1994. Since then, she was in possession and enjoyment of the property along with her family. While so, her son Anandhan had borrowed Rs.2,000/- as hand loan from the second respondent, but he did not repay the amount along with interest. Hence, the second respondent trespassed into the apartment and threw the petitioner out of the apartment and regarding this, a criminal complaint was given to B.1 Police Station on 11.06.2013, which was registered in C.S.R.No.91 of 2003. Thereafter, the second respondent sublet the apartment to the third respondent. The petitioner would further state that the representation given to the first respondent to take possession from the third respondent was not considered. Hence, the present writ petition.

4. In the Counter affidavit filed by the first respondent, it is stated that the writ petitioner was allotted the apartment, by an order dated 14.04.1994. But subsequently, she failed to pay the monthly installment and as on date, the arrears comes to Rs.40,500/-. It is further stated that the petitioner deliberately suppressed pendency of the suit in O.S.No.8437 of 2011. Since the petitioner violated the rules and conditions of the allotment, the board issued notices dated 19.12.2012 and 07.01.2013 to handover the possession. Therefore, the writ petition is highly vexatious and frivolous and is liable to be dismissed.

5. The learned counsel for the petitioners submitted that admittedly the writ petitioner was an allottee, but the house has been forcibly occupied by the private respondents. So, the first respondent has an obligation to evict the encroachers and that the petitioners are ready to pay the entire arrears, eventhough the premises have been in occupation of the third party so far.

6. The learned counsel for the first respondent submitted that the third respondent is not in possession of the property and now it is occupied by one Loganayaki and that the petitioners have to approach the Civil Court and the present writ petition is not maintainable.

7. In the instant case, it is not in dispute that the writ petitioner was allotted the apartment E-16 at Corporation Lane Clive Battery, Chennai, by an allotment order dated 14.04.1994. Perusal of the records would reveal that the deceased first petitioner, a senior citizen of 80 years, lodged complaint against the second respondent on 11.06.2003 before B.1, Police Station, alleging illegal trespass into her apartment and she also gave a representation to the first respondent on 02.01.2013.

8. It is also seen from the records that the second respondent had filed a suit in O.S.No.8437 of 2011 against the son of the deceased first petitioner, which was dismissed for non-prosecution on 05.10.2012. According to the learned counsel for the petitioners, the suit has not been restored so far and no notice was served on the defendant.

9. It is the specific case of the petitioners that the second respondent by force trespassed into the house and sublet to the third respondent. However, both of them failed to establish their right to occupy the house and according to the first respondent, one Loganayaki is in possession of the house in dispute. The first respondent, a statutory body is not expected to merely state that a third party occupied the home without enquiry on what basis the occupation has been taken place.

10. Taking note of the above facts, this Court is of the opinion that the petitioners are entitled to succeed in this writ petition. The first respondent is directed to take possession of the premises at No.16, E-Block, Tamil Nadu Slum Clearance Board Apartments, Clive Battery, Chennai from the occupant of the premises with the help of police force, within a period of two weeks from the date of receipt of a copy of this order and hand over the possession of the property to the petitioners, after payment of the arrears amount. The Inspector of Police, B-1 police station is directed to give police protection, if required, to evict the occupant of the apartment. Accordingly, this writ petition is allowed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

pvs
To

The Managing Director,
Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai 600 005.

Copy to: The Inspector of Police
B-1, Police Station,
North Beach Station, Chennai.

+1cc to Mr.K.R.Gunashekar, Advocate Sr.No.42929
+1cc to Mr.D.Latha, Advocate Sr.No.42926

sm:12.7.2018

W.P.No.3011 of 2013