

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2018

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.15172 of 2017

and WMP.No.16446 of 2017

M.G.Hanif

... Petitioner

-Vs-

1.The Secretary to Government
Housing & Urban Development Department
Fort St.George
Chennai - 600 009.

2.The Managing Director
Tamil Nadu Housing Board
Nandanam
Chennai - 600 035.

3.The Executive Engineer & Administrative Officer
Besant Nagar Division
Tamil Nadu Housing Board
Adyar, Chennai - 600 020.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in Letter No.1682/LA2-1/2016-3 dated 10.08.2016 on the file of the 1st respondent, quash the same and consequently direct the third respondent to restore the petitioner in possession of the land in T.S.No.18/3, Block No.16, Kalikundram Village, Door No.70, New No.37, 2nd Avenue, Indira Nagar, Chennai - 600 020.

For Petitioner : Mr.P.K.Harinath Babu

For Respondents : Mr.Akhil Akbar Ali

Government Advocate [for R1]

Mr.B.Vivekavannan [for R2 & 3]

ORDER

This petition is a manifestation of petitioner's stamina to stay in litigation, probably reflection of his desperation to save the properties from acquisition. The pleadings of either side in this case is elaborate, however, they roam within a very narrow campus. Therefore, this Court confines the fact-narration to the extent required

2.1. The petitioner's father owns a piece of property in T.S.No.18/3, Block No.16 of Kalikumdrum Village, wherein he has a non-residential building bearing Door No.70 (New No.37) II Avenue, Indira Nagar, Adyar, Chennai - 600 020. The petitioner claims title to this piece of property on a basis of a oral hiba said to have been made by his paternal uncle Batcha Sahib, who according to him was the owner of a large extent of 12 grounds. While so, on 20.01.1982, the third respondent issued a notice to the petitioner to deliver vacant possession of the property. Challenging the same, the petitioner filed W.P.No.1239 of 1982 for issuance of Writ of Certiorari to quash the said notice. This writ petition was disposed of by this Court on 18.01.1983, wherein the Housing Board conceded before the Court that it would withdraw the said notice as it conceded to some defects in the notice issued, and promised to issue a fresh notice. However, no such fresh notice was issued till 12.09.2009, but that did not deter the Housing Board from interfering with the possession of the property, as a result of which, the petitioner was constrained to institute O.S.No.3371 of 1988 before the City Civil Court, Chennai, for a decree of bare injunction to direct the Executive Engineer and Administrative Officer/Tamil Nadu Housing Board / the third respondent herein that petitioner's possession shall not be interfered with. On 11.4.1989, the suit was decreed .

2.2. Thereafter, the petitioner attempted to carry out some repair works in the building and this time MMDA (presently CMDA) issued a notice dated 30.9.1991, directing the petitioner to demolish the building. The petitioner approached this Court in W.P.No.14718 of 1991, challenging this notice, and was successful in his challenge, when this Court allowed the said writ petition on 02.2.1999. For the next ten years, there were moments of lull when the petitioner continued with his possession, until the same was interrupted by a fresh notice from the Housing Board on 12.09.2009, requiring the petitioner to show cause why he should not be vacated from the property. This is, to remind, what it promised to do on 18.01.1983. On 01.10.2009, the petitioner submitted a reply to the said notice that show caused him.

2.3. Then after about four years, on 28.5.2013, a fresh notice for eviction was issued by the Housing Board under Section 84(2) of the Tamil Nadu Housing Board Act 1962. On 10.06.2013, the petitioner submitted his reply. However, the same was rejected and on 01.7.2013, an order rejecting the same was made. Dissatisfied with the said order of rejection, the petitioner made an appeal to the Government, sometime in July '2013. During the pendency of this appeal, on 04.09.2013, the petitioner was evicted from his premises. The petitioner yet again approached this Court in W.P.No.25315 of 2013 for a Writ of Mandamus, to direct the Housing Board to put him back in the possession of the property. When the said writ petition came up for hearing, the Housing Board made a statement before the Court that it would maintain the status-quo vis-a-vis the condition of the property, and undertook to dispose of the petitioner's appeal made to the Government expeditiously.

On 12.12.2013, the Government rejected the appeal.

2.4. Not to give up his quest to succeed, the petitioner moved this Court in W.P.No.95 of 2014 for quashing the said order of the Government dated 12.12.2013. On 02.09.2014, this Court allowed the writ petition, quashing the order of the Government dated 12.12.2013 and remanded the matter back to the Government. On 28.01.2015, the Government rejected the appeal yet again. This was challenged by the petitioner in W.P.No.5522 of 2015. On 21.09.2015, this was dismissed and the petitioner challenged the same before the Supreme Court in SLP Appeal (C) No.32546 of 2015, but chose not to prosecute the same and withdrew it. Thereafter, the petitioner approached the Principal Secretary, Housing and Urban Development Department, the first respondent with his representation dated 27.01.2016, requesting him to invoke Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (Central Act 30/2013). This was rejected by the Government on 10.08.2016. Challenging the said order, the petitioner has come forward with this petition.

3. Counter was filed by the second and third respondent, the Housing Board and the same is adopted by the first respondent. In the context of the present litigation, two facts are significant : (a) That the compensation amount of Rs.9,558.50/- was deposited in the Civil Court under Section 31(2) of the Land Acquisition Act; (b) the property was taken possession on 12.05.1960 and 11.06.1963. Further the petitioner was alleged to be a stranger to the property acquired, that the property originally belonged to Batcha Sahib on whose demise, his heirs succeeded to the estate and the award was passed in Award No.35/65 on 30.10.1965 in the names of the heirs of Batcha Sahib.

4. Heard Mr.P.K.Harinath Babu, learned counsel appearing for the petitioner, Mr.Akhil Akbar Ali, learned Government Advocate for the first respondent and Mr.B.Vivekavannan, learned counsel for the second and third respondents.

5. The one fact on which the learned counsel for the petitioner laid considerable emphasis was as to the manner by which possession was taken from the petitioner. When the appeal filed by the petitioner before the Government under Section 86(1) of the Tamil Nadu Housing Board Act was pending, he was forcibly dispossessed by the Housing Board on 04.09.2013. If only the case of the Housing Board that possession of the property was taken either in 1962 or in 1963, it is absolutely unnecessary for the Housing Board to issue the first notice of eviction on 20.01.1982 or the second notice for eviction on 12.01.2009. Secondly, if only the Housing Board has taken possession as it contends, then there would not have been an occasion for the Civil Court to decree in O.S.No.3371 of 1988. The totality of the conduct of the Housing Board would only indicate that the actual physical position has never been taken before 04.09.2013 and that any documents that the Housing Board might possess or indicative of it taking possession will lose

much of its sheen and consequences in the face of its subsequent conduct, where the possession is taken forcibly, especially when an appeal to the Government is pending, which can never be termed lawful. Consequently, nothing that is done pursuant to the same can hardly be termed lawful and the character of taking possession is tainted with illegality. If that is so, contended the learned counsel, Section 24(2) of the Right to Fair Compensation Act will be attracted to remedy the grievance of the petitioner.

6. Refuting the argument of the learned counsel for the petitioner, both Mr.Akhil Akbar Ali, the Govt. Advocate for 1 & 2 respondents, and the ever vociferous B.Vivekavannan, counsel for the Housing Board, argued in unison that the allegation that the taking of the possession by the Housing Board is no more survives for consideration, since the Division Bench of this Court has already found the same in against the petitioners in W.P.No.5522 of 2015, and the same has become final. They specifically brought to the notice of this Court that in its order in W.P.5522/2015, this court had an occasion to notice the shifting stands that the petitioner had exhibited when he had earlier contended that his father was a lessee of the property under the Government, and having lost the same, he invented a theory that his grandfather was the owner of the property from whom he obtained the property concerned. Dismissing the same, submitted the learned counsel for the respondents, this Court has noticed that the Housing Board has already taken symbolic possession of the property a little over half a century ago. Therefore, it is no more given to the petitioner to contend that no possession has been taken.

7. The one line argument of the respondents has literally foreclosed the options available for the petitioner and defeated the valiant efforts of his counsel. When the order of the Government challenging the Order of eviction has been given a stamp of approval by this Court in W.P.No.5522 of 2015, there is hardly any possibility for the petitioner to set the clock backwards and revive life to something that no more exists for him.

8. In conclusion, this Court does not find any merit in this case, but this Court proceeds to record his appreciation for the manner with which the learned counsel for the petitioner argued his case. Accordingly, this petition is dismissed with no costs. Consequently, connected miscellaneous petition is closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

ds

To:

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Besant Nagar Division
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Adyar, Chennai - 600 020.

+1 cc to Mr.B.Viveka Vanan, Advocate SR.NO. 15297

+1 cc to Mr.R.Bharanidharan, Advocate SR.NO. 15585

W.P.No.15172 of 2017

LRS (CO)
JK 09/04/18



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