

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

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

W.P.No.18471 of 2017
and
W.P.No.14881 of 2017

W.P.No.18471 of 2017:

1. S.Isakimuthu
2. R.Shanmuga Anandhi
3. M.Sumathi
4. E.Shaji
5. R.Lakshmi
6. J.R.D.Aruldoss
7. M.Chandrasekar
8. Rajeswari
9. M.Vincent
10. R.Saravanan Perumal
11. R.Maharaja
12. V.Gabriel
13. M.Ashok
14. C.Radha
15. Pyula
16. S.Sunil
17. M.Anand
18. K.Sarojini
19. P.Brill Bobby
20. K.V.Raju
21. A.Balasubramanian
22. Muhaideen Fathima
23. K.Yuvaraj
24. Pechithangam

... Petitioners

vs.

1. The State of Tamil Nadu,
rep. by its Secretary to the Government,
Revenue Department,
Fort St. George, Chennai 600 009.

2. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai 600 005.
3. The District Collector,
Kancheepuram District,
Kancheepuram.
4. The Assistant Engineer,
Tamil Nadu Slum Clearance Board,
Division VI, Sub Division III,
Chennai 600 004.
5. The Tahsildar,
Tambaram Taluk,
Kancheepuram District.
6. The Revenue Divisional Officer,
Office of the Revenue Division,
Tambaram, Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the Respondents 1, 2 and 4 to pay compensation for illegal eviction and demolition of buildings made by the 4th Respondent herein in consequence of Notice issued by the 4th Respondent in No.Nil, dated 24.05.2017 causing eviction and demolition by the Tamil Nadu Slum Clearance Board in Survey No.403/3, Perungalathur Village, Tambaram Taluk, Chennai, insofar as it relates to houses of the Petitioners in Annai Anjugam Nagar Extension, Old Perungalathur, Chennai 600 063, in accordance with the Letter No.D76, dated 17.04.2017 by the 1st Respondent herein and direct the 5th Respondent to grant three cents of land to the Petitioners.

W.P.No.14881 of 2017:

C.Sridharan

... Petitioner

vs.

1. The Secretary,
Housing and Urban Development Department,
Fort St. George, Secretariat,
Chennai 600 009.
2. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chennai 600 005.

3. The District Collector,
Kancheepuram District,
Kancheepuram.
4. The Assistant Engineer,
Tamil Nadu Slum Clearance Board,
Division VI, Sub Division III,
Chennai 600 004.
5. The Tahsildar,
O/o.Tahsildar,
Tambaram Taluk,
Kancheepuram District.
6. The Revenue Divisional Officer,
O/o. Revenue Divisional Office,
Tambaram, Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the Respondents 1, 2 and 4 to pay compensation for illegal eviction and demolition made by the 4th Respondent herein in consequence of Notice issued by the 4th Respondent in No.Nil, dated 24.05.2017 causing eviction and demolition by the Tamil Nadu Slum Clearance Board in Survey No.403/3, Perungalathur Village, Tambaram Taluk, Chennai, (insofar as it relates to house by the Petitioner in No.16, Annai Anjugam Nagar Extension, Old Perungalathur, Chennai 600 063), in accordance with the Letter No.D76, dated 17.04.2017 by the 2nd Respondent herein.

For Petitioner
in W.P.No.18471 of 2017 :Mr.D.Nagarajan

For Petitioner
in W.P.No.14881 of 2017 :Mr.T.Sivagnanasambandan

For Respondents 1, 3, 5 & 6
in both Writ Petitions :Mr.R.Udayakumar,
Addl. Government Pleader

For Respondents 2 & 4
in both Writ Petitions :Mr.S.Prabhu

C O M M O N O R D E R
(Order of the Court made by S.VAIDYANATHAN,J.)

As the issue involved in both the Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

2. According to the Petitioners in W.P.No.18471 of 2017 and the Petitioner in W.P.No.14881 of 2017, they belong to the economically weaker section of the society and are in occupation of a small extent of land comprised in S.No.403/3 at Annai Anjugam Nagar Extension, Old Perungalathur, Chennai 600 063, for the past several years. It is further stated by the Petitioners that the said land is classified as 'Nanjai Tharisu' and they are provided with basic amenities, apart from being issued with Family Card, Voter Identity Card and electricity service connection and that they are paying necessary taxes and other charges to the Government.

3. With a view to benefit the houseless or landless poor persons, the Government has passed (i) G.O.Ms.No.854, Revenue Department, dated 30.12.2006; (ii) G.O.Ms.No.34, Revenue Department, dated 23.01.2008 and (iii) G.O.Ms.No.43, Revenue Department, dated 29.01.2010 for the issue of free house site pattas for an extent of 3 cents each and hence, the Petitioners made representations to the Respondents periodically, claiming assignment of Patta in respect of dwelling houses. But, there was no response to the same. The grievance of the Petitioners is that the Tamil Nadu Slum Clearance Board, without any proper notice to them, evicted them from their dwelling place and also demolished their houses.

4. The case of the Petitioners is that the land in question is a Government Poramboke land and the Slum Clearance Board has no locus to evict them and even assuming they have got right to do so, the Board ought to have issued a notice of eviction to them. It is further stated by the Petitioners that the Tamil Nadu Slum Clearance Board issued Notices dated 28.02.2015 and 17.03.2015 in respect of the houses constructed by them in the land in question and hence, the Petitioners filed Writ Petition in W.P.No.23345 of 2014 seeking to issue Patta records to them in respect of the occupied lands of 3 cents comprised in S.Nos.403/2 and 403/3 at Annai Anjugam Nagar, Old Perungalathur, Chennai and W.P.No.9805 of 2015 seeking to quash the said Notices with a direction to the Respondents not to disturb their peaceful enjoyment. W.P.No.9805 of 2015 came to be allowed and W.P.No.23345 of 2014 came to be disposed of with liberty to the Tamil Nadu Slum Clearance Board to issue fresh notice to the persons concerned and take consequential action in accordance with law.

5. Thereafter, Petitioners preferred an Appeal against the eviction notice issued by the Assistant Engineer, Tamil Nadu Slum Clearance Board under Section 59 of the Tamil Nadu Slum Areas (Improvement and Clearance Act), 1971, that the eviction notice is contrary to the procedure and also in violation of the Government Order. The Appeal was heard in detail and the

Secretary, Housing and Urban Development Department, rejected the Appeal vide Letter (D) No.76, dated 17.04.2017 on the ground that the Petitioners have encroached the said land with the sole purpose of grabbing the Government land and directed the Slum Clearance Board to immediately prepare tenemental scheme in the said land and submit the proposal under 'Housing For All' (HFA) Scheme by vacating the encroachers. Further, the Authority directed the Slum Clearance Board to ascertain as to whether the encroachers have any other place to live with their family and if they are genuinely houseless people and not possessing any place to live in Chennai, but are working in establishments in Chennai on regular basis for a long time after construction of tenements, they may be allotted tenements on rental basis. It is the contention of the Petitioners that the order of the Authority in holding that they are encroachers is incorrect and pleaded that they may be allotted 3 cents of land each.

6. Respondents 2 and 4/Tamil Nadu Slum Clearance Board has filed counter affidavit, wherein, it is stated that taking note of the fact that the Petitioners are encroachers, the Slum Clearance Board has issued eviction notice on 10.08.2015 and directed them to be evicted. Against the said notice, Petitioners preferred an Appeal on 04.09.2015 and the same stood rejected on 17.04.2017 and the Authority directed that the encroachers shall be evicted immediately and further directed that enumeration should be conducted for the purpose of identifying genuine encroachers. On 08.05.2017, first enumeration was conducted and the second enumeration was conducted on 12.05.2017. On completion of enumeration and eviction, it was found that only 13 residents had residency proof and Identity Cards were prepared and issued to them and the documents submitted by the occupants clearly reveal that none have obtained electricity connection prior to 2012.

7. According to the Respondents/Slum Clearance Board, the Petitioner in W.P.No.14881 of 2017 viz. Sridharan had earlier been residing in Kadaperi, Tambaram and that he transferred his Ration Card to Anjugam Nagar only in the year 2016 in order to find place in the enumeration list. It is further stated in the counter filed by the Slum Clearance Board that after the second enumeration on 12.05.2017, as mentioned supra, another Eviction notice dated 24.05.2017 was issued on 26.05.2017 and the encroachers have been evicted.

8. In the counter filed by the 5th Respondent/Tahsildar, Tambaram Taluk, it is stated that following the directions of this Court in the order dated 20.07.2015 made in W.P.No.23345 of 2014 and W.P.No.9805 of 2015, the Secretary, Housing Development Department, Chennai, in their Letter (D) No.76, dated 17.04.2017 informed the encroachers that the Tamil Nadu Slum Clearance Board will verify the bonafide encroachers as to whether they

have any other place to live with their family and they are genuinely houseless people not possessing any place to live in Chennai, but are working in establishments in Chennai on regular basis for a long time after construction of tenements on rental basis. According to the 5th Respondent, the Tamil Nadu Slum Clearance Board has given proper notices to the encroachers and had evicted them with due process.

9. For better appreciation of the case, relevant portion of the order dated 20.07.2015 passed in W.P.No.23345 of 2014 and W.P.No.9805 of 2015, is extracted hereunder:

"In view of the foregoing, we are not inclined to express any opinion on the merits of the case. The impugned notices dated 28.02.2015 and 17.03.2015 are set aside and the Writ Petition No.9805 of 2015 is allowed. In view of the orders passed in W.P.No.9805 of 2015, other Writ Petition No.23345 of 2014 is disposed of granting liberty to the Tamil Nadu Slum Clearance Board to issue fresh notice to the persons concerned and take consequential action in accordance with law and on its own merits."

10. Learned Standing Counsel appearing for the Tamil Nadu Slum Clearance Board submitted that on independent identification, apart from the order of the authority, it was found that the Petitioner in W.P.No.14881 of 2017 viz. Sridharan is an encroacher and that even though, it has not been averred in the counter, there are several shelters that have been constructed by Sreedharan, who has given the same to others on rental basis. It is his contention that an encroacher has no right to state that he has been illegally removed from the encroached place and as a matter of right, Petitioners herein are encroachers and they cannot seek alternative place.

11. In reply, learned Counsel for the Petitioners submitted that it is incorrect on the part of the Slum Clearance Board to state that the Petitioner/Sridharan came to reside in the present place only in the year 2016, when the fact remains that he had been residing in the said place ever since 2010. According to the learned Counsel, Petitioners herein have got necessary documents to show that they are not encroachers and the Slum Clearance Board ought to have granted alternative place to all the Petitioners, who are parties to the present Writ Petition. Citing G.O.No.67/Revenue L.D. 5(1) Department, dated 19.02.2010, learned Counsel for the Petitioners submitted that the said Government Order has been issued only for the purpose of granting alternative site to the encroachers and that the Government ought not to have allotted land to the Slum Clearance Board by means of the said Government Order, more particularly, when the Petitioners were in occupation of the land in question.

12. Heard the learned counsel on either side and perused the material documents available on record.

13. It is not in dispute that the Petitioners are encroachers. The 4th Respondent/Assistant Engineer of the Tamil Nadu Slum Clearance Board had issued eviction notice to the Petitioners herein as early in the year 2015, against which the Petitioners preferred an Appeal on 04.09.2015, which stood rejected on 17.04.2017 with an observation that the encroachers shall be removed and that genuine encroachers have to be identified and enumerated. Accordingly, enumeration was done on 08.05.2017 and 12.05.2017, and of all the encroachers, only 13 persons have been identified as residents having residency proof. Even though, it has been contended by the learned counsel for the Petitioners that the Petitioners have been evicted on 26.05.2017 within two days from the date of receipt of the eviction notice dated 24.05.2017, this Court is not inclined to accept the same. Eviction notices were issued to the encroachers on 10.08.2015 and on 11.09.2015, and as against the notice dated 10.08.2015, an Appeal was preferred and the issue had already been concluded by this Court by directing enumeration of encroachers. Such being the case, the act of the Slum Clearance Board in removing the encroachers within 48 hours of the notice dated 24.05.2017, cannot be said to be unwarranted.

14. Hence, we find no error on the part of the Slum Clearance Board in removing the encroachers and the Petitioners herein have no locus to contend that their names are not found in the enumerated list, when the Slum Clearance Board has clearly stated that only 13 persons are found to be residents having requisite residential proof.

15. While parting with, learned Standing Counsel appearing for the Tamil Nadu Slum Clearance Board pointed out that the wife and son of the Petitioner/Sridharan had also participated in the enumeration and that his wife had been allotted a tenement. It is very unfortunate that despite his wife being given allotment of tenement, the Petitioner/Sridharan is seeking allotment from the Tamil Nadu Slum Clearance Board, thereby trying to deprive a houseless poor, his/her chance of allotment of a tenement. Even though the learned Counsel for the Petitioner/Sridharan submitted that he is not aware of the fact that Sridharan's wife had been given allotment, the document produced by the Slum Clearance Board makes it clear that Sridharan's wife has got alternative accommodation from the Tamil Nadu Slum Clearance Board. In a family, only one person would be entitled to a tenement and hence, the Petitioner in W.P.No.14881 of 2017/Sridharan is not entitled to allotment of tenement by the Slum Clearance Board.

16. It is further reported by the learned Standing Counsel for the Tamil Nadu Slum Clearance Board that out of 13 persons who have been enumerated as residents, only 7 are before this Court in W.P.No.18471 of 2017. Names of the Petitioners in W.P.No.18471 of 2017, who are enumerated as residents, are hereunder:

Rank of the Petitioners in W.P.No.18471/2017	Name of the Petitioner
3	M.Sumathi
4	E.Shaji
13	M.Ashok
16	S.Sunil
17	M.Anand
19	P.Brill Bobby
23	K.Yuvaraj

17. This Court is of the view that the 7 Petitioners in W.P.No.18471 of 2017 mentioned supra, who are found to be residents, shall be given alternative accommodation by the Tamil Nadu Slum Clearance Board. Insofar as the other Petitioners in W.P.No.18471 of 2017 are concerned, it is open to the Respondent/Tamil Nadu Slum Clearance Board to take the assistance of the jurisdictional Police to remove them from the place in question.

Writ Petitions are dismissed with the above direction(s) and observation(s). No costs.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

(aeb)

To:

1. The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai 600 009.

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2. The Secretary,
Housing and Urban Development Department,
Fort St. George, Secretariat,
Chennai 600 009.
 3. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai 600 005.
 4. The District Collector,
Kancheepuram District,
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 5. The Assistant Engineer,
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Chennai 600 004.
 6. The Tahsildar,
Tambaram Taluk,
Kancheepuram District.
 7. The Revenue Divisional Officer,
Office of the Revenue Division,
Tambaram, Chennai.
- +1 CC to Sivagnana Sambandan, Advocate sr 13320.
+1 CC to Mr.D. Narayanan, Advocate sr 13319.
+1 Cc to Govt. Pleader sr 13672
+1 CC to Mr.S. Prabhu, Advocate sr 12865.

W.P.No.18471 of 2017
and
W.P.No.14881 of 2017

SP(12/04/2018)

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