

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.13922 of 2010

S.Palanikumar

... Petitioner

Vs

1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore, Chennai 600 008.

2.The Tahsildar,
Egmore-Nungambakkam Taluk,
Egmore, Chennai 600 008.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Lr.No.K1/3762/2003 dated 05.10.2007, on the file of the 1st respondent and quash the same and direct the respondents to restore the portion originally allotted to the petitioner prior to his forcible eviction from his land situated in Survey No.120/1 and 120/2 in Koyambedu Village, Chennai.

For Petitioner : Mr.S.Doraisamy

For Respondents: Mr.N.Sampath for R1

: Mrs.K.Bhuvaneswari,
Additional Government Pleader
for R2

O R D E R

Heard Mr.S.Doraisamy, learned counsel for the petitioner and Mr.N.Sampath, learned counsel appearing for the first respondent and Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing for the second respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the Lr.No.K1/3762/2003 dated 05.10.2007, on the file of the 1st respondent and quash the same and direct the respondents to restore the portion originally allotted to the petitioner prior to his forcible eviction from his land situated in Survey No.120/1 and 120/2 in Koyambedu Village, Chennai."

3. The case of the petitioner is as follows:-

The petitioner along with other persons belonging to Adi dravidar community, were originally the residents of Semathamman Nagar, in S.No.135 to 139 of Koyambedu Village. During the year 1980, the Government proposed to shift the wholesale vegetable market from Kothaval Chavadi to Koyambedu, for which, a large complex was constructed in the lands under occupation of the petitioner and others.

4. For the above said purpose, the petitioner and others were evicted which was the subject matter to challenge before this Court. At the instance of few others in W.P.No.5714 of 1983, in the proceedings before this Court, an assurance was given by the Government that the occupants will be permitted to occupy the alternative sites in S.Nos. 120/1 and 120/2 in Koyambedu Village and given further assurance that the occupants will not be evicted from the alternative sites offered by the Government.

5. Thereafter, the petitioner along with others put up construction in the permitted alternative sites. However, subsequently, the Government evicted the petitioner along with similarly placed others on the ground that they were encroachers. In the said circumstances, the petitioner and others filed a writ petition in W.P.No.5934 of 2004, seeking to declare the action of the first respondent as null and void and for a consequential direction to restore the respective sites occupied by the petitioner and others. This Court after hearing the rival submissions passed the order on 19.06.2007, directing the first respondent to dispose of the representation dated 06.11.2003, 12.12.2003 and 23.01.2004, after hearing the parties. In compliance of the direction passed by this Court, the first respondent rejected the claim of the petitioner on the ground that the B-memo produced by the petitioner and others did not tally with the records and other documents like Identity Card, Family Card etc., produced by them in support of their claim.

6. Aggrieved by the above action of the first respondent vide order dated 05.10.2007, few of the similarly placed persons approached this Court in W.P.No.15405 of 2008 and this Court after hearing both sides, disposed of the writ petition on 27.08.2009, quashing the order dated 05.10.2007, passed by the first respondent and directed the first respondent to pass fresh orders after taking note of the documents submitted by the petitioners therein.

7. The present writ petitioner is also before this Court, challenging the same order of the first respondent dated 05.10.2007. when the matter is taken up for final hearing, the learned counsel for the petitioner would draw the attention of this Court to the earlier order passed in W.P.No.15405 of 2008 dated 27.08.2009, wherein, the learned Judge of this Court quashed the same impugned order in respect of nine other similarly placed persons by directing as follows:-

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6. When the copies of the B-Memo produced by the petitioners along with the representation dated 07.07.2007 and 24.07.2007 are pending verification with the second respondent, the first respondent ought to have passed the impugned order. There is no indication in the impugned order that the representation of the petitioners has been properly considered. Moreover, the petitioners have produced before this court the list of allottees maintained by the first respondent for Sector-3. It is no doubt true that the question as to whether such a list has been maintained and prepared by the first respondent is a question of fact to be decided only by the first respondent.

7. Therefore, taking into consideration of the above said facts, this court is of the opinion that the impugned order passed by the first respondent is liable to be set aside. Accordingly, the said order passed by the first respondent dated 05.10.2007 is hereby set aside and the first respondent is directed to consider the representation of the petitioners dated 07.07.2007 and 24.07.2007, based upon the report of the second respondent regarding the copies of the B-Memo given by the petitioners. While considering the said issue, the first respondent is also directed to consider the list of allottees for Sector No.3 produced by the petitioners before this court. The petitioners are also given liberty to furnish the said list to the first respondent. The first respondent is directed to pass orders after giving one more opportunity to the petitioners."

The learned counsel for the petitioner would submit that this Court may also pass the same order.

8. Upon notice, learned counsel appearing for the first respondent and learned Additional Government Pleader appearing for the second respondent, entered appearance.

9. The learned counsel appearing for the respondents would not dispute the fact that the same impugned order has been set aside by this Court and those persons were also similarly placed like the petitioner herein.

10. In view of the same, this Court has no other option except to follow the directions passed by this Court in the aforesaid proceedings as the present petitioner is also similarly placed like the petitioners therein. In these circumstances, the impugned order in Lr.No.K1/3762/2003 dated

05.10.2007, is hereby set aside. The first respondent is directed to consider the claim of the petitioner on the basis of the B-memo and other documents submitted by the petitioner and also after ascertaining the list of allottees maintained by the first respondent in this regard and pass fresh orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

11. It is also made clear that in case, the first respondent requires any report in regard to the genuineness of the B-memo produced by the petitioner, he may call for the report from the second respondent in order to ascertain the veracity of the claim of the petitioner. The petitioner is also directed to submit whatever documents in support of his claim before the first respondent and the same shall be taken into account before passing the final orders by the first respondent.

12. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The Member Secretary, सतयमेव जयते
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore, Chennai 600 008.
- 2.The Tahsildar,
Egmore-Nungambakkam Taluk,
Egmore, Chennai 600 008.

- + 1 cc to MR.N.Sampath, Advocate Sr.16733
- + 1 cc to Mr.S. Doraisamy, Advocate Sr.16758
- + 1 cc to MR. Government Pleader Sr.17127

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VGII(CO)

EU(03/04/2018)

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