

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27..11..2019
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.17672 of 2003
and
W.P.M.P.Nos.22099 of 22100
and
Second Appeal No.977 of 2004
and
C.M.P.No.7257 of 2004

W.P.No.17672 of 2003:

S.Jayaraman

... Petitioner

-Versus-

1.Tamil Nadu Slum Clearance Board,
Rep. by its Chairman,
Chepauk, Chennai 600 005.

2.The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai 600 003.

3.Tmt.Rajeema Kathoon (Deceased)

4.M.Tameema Husna

5.M.Tasneem Husna

[Respondents 4 and 5 are substituted as legal heirs of the
deceased R3 as per order dated 16.08.2019 made in
W.P.M.P.No.1503 of 2017]

... Respondents

सत्यमेव जयते

Prayer in Writ Petition No.17672 of 2003:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the 1st respondent passed in his proceedings in Na.Ka.No.E2/5815/03 dated 16.04.2003 and to quash the above said proceedings and consequently, direct the 1st respondent to allot the plot bearing Plot NO.96, Old Door No.15, New No.15/1, Kathbada Main Road, Old Washermenpet, Chennai 600021 to and in favour of the petitioner.

S.A.No.977 of 2004:-

1.S.Jayaraman

2.Arignar Anna Padippagam

Rep. by its Secretary - A.Cabriel
Plot No.96, Old No.15, New No.15/1,
Katapada Main Road,
Old Washermenpet, Chennai 600021.

... Appellants/Plaintiffs

-Versus-

1.Corporation of Chennai,

Rep. by its Commissioner,
Ripon Buildings, Chennai 600 003.

2.Mr.Thameena Hasna

... Respondents/ Defendants

Prayer in S.A.No.977 of 2004:- This Second Appeal filed under Section 100 of C.P.C. against the judgement and decree dated 18.02.2004 passed by the learned III Additional Judge, City Civil Court, Chennai, in A.S.No.276 of 2002 confirming the judgement and decree dated 12.04.2002 passed by the learned XI Assistant Judge, City Civil Court, Chennai, in O.S.No.3627 of 2000.

For Petitioner / : Mr.B.Soundarapandian for
Appellant petitioner in Writ Petition
and appellant in Second
Appeal

For Respondent(s) : Mr.R.Sivakumar for R1 in
writ Petition

Mrs.T.Ramadevi for RR4 and 5
in Writ Petition and 2nd
respondent in Second Appeal

No appearance for R2&3 in
Writ Petition and R1 in
Second Appeal

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COMMON JUDGEMENT / ORDER

This writ petition challenges the order of the 1st respondent allotting plot No.96 at Kathbada Part-II in Old Washermenpet, Chennai.

2. The petitioner in W.P.No.17672 of 2003 is the 1st appellant in the second appeal. He had filed a suit in O.S.No.3627 of 2000 on the file of the learned XI Assistant Judge, City Civil Court, Chennai, for a declaration declaring that the notice issued by the 1st respondent for removal of the constructions put up by the petitioner as void and for permanent injunction restraining the defendants therein from interfering with the peaceful possession and enjoyment of the property in question by the petitioner. By judgement dated 18.02.2004 the above said suit was dismissed by the learned Assistant Judge. Aggrieved by the same, the petitioner preferred an appeal in A.S.No.276 of 2002 which was also dismissed by the learned III Additional Judge, City Civil Court, Chennai. Further aggrieved by the dismissal of the appeal suit, the appellant is before this court with this second appeal.

3. According to the petitioner, he had purchased a small piece of land measuring 112 square feet in Plot No.96 at Kathbada Main Road, Old Washermenpet, Chennai 600021 from one Munusamy. The said land originally belonged to the 1st respondent. Ever since the date of purchase of the land from Munusamy, according to the appellant, he had been in possession of the same by putting up a house and the said house was also assessed to property tax and was paying necessary taxes and charges to the 1st respondent corporation periodically. In the year 2000, he had applied for allotment of the site in his favour and he had also filed an application seeking to regularize the unauthorized constructions made by him thereon. While so, the 3rd respondent, who was in possession of Plot No.97 had also made an application for allotment of plot No.96 in his favour.

4. It is the further case of the petitioner, that when his application for allotment was pending consideration, the 2nd respondent corporation issued a notice directing the petitioner to remove the constructions put up by him. Challenging the validity of the above said notice and seeking permanent injunction from interfering with his peaceful possession of the property, he filed a suit in O.S.No.3627 of 2000 on the file of the XI Assistant Judge, City civil Court, Chennai. The above said suit came to be dismissed after full-fledged trial by judgement dated 11.04.2002. Aggrieved by the judgement and decree in original suit, he filed an appeal suit in A.S.No.276 of 2002 before the learned III Additional Judge, City Civil Court, Chennai. Pending appeal suit, the 1st respondent, without considering the request of the petitioner for allotment of plot, allotted the plot No.96 in favor of the 3rd respondent. Challenging the same, the present writ petition has been filed.

5. Pending writ petition, the appeal suit filed by the

petitioner got dismissed on 18.02.2004 passed by the learned III Additional Judge, City Civil Court, Chennai. Challenging the same, the petitioner has filed the present second appeal.

6. The 1st respondent filed counter affidavit denying the allegations made in the writ petition and inter alia contending that pursuant to the directions of this court dated 31.10.1997 passed in the writ petition filed by the petitioner in W.P.No.5703 of 2008, after due enquiry, Plot No.97 had been allotted to the husband of the 3rd respondent by the 1st respondent by order dated 29.09.1984. During enquiry, it was found that though the petitioner had initially encroached upon the road and had put up constructions unauthorizedly, subsequently, he had stretched his building into a small portion of the land comprised in Plot No.96. Therefore, eviction proceedings had been initiated against the petitioner by the 2nd respondent. Thereafter, plot No.96, measuring an extent of 12 square meter was allotted to the 3rd respondent's husband. The husband of the 3rd respondent had paid the entire cost. Pending execution of the sale deed, the husband of the petitioner died on 13.10.2000 and therefore, after the death of the husband of the 3rd respondent, the allotment of plot was transferred in the name of the 3rd respondent by order dated 27.02.2004 and a sale deed was also executed in her favour on 02.03.2004. The suit filed by the petitioner came to be dismissed and the major portion of the building which was put up by encroaching upon the road was demolished and cleared on 05.04.2003 with the aid of the police protection. After the removal of encroachments, the petitioner had been removed from the disputed site and he is out of possession of the disputed plot.

7. The 2nd respondent filed counter affidavit stating that the petitioner had encroached upon a portion of land in Plot No.96 and put up constructions. Based on the available materials, the civil court had dismissed the suit filed by the petitioner. The finding of the civil court is that the petitioner was only an encroacher of the property.

8. I have heard the learned counsel on either side and also perused the records carefully.

9. Admittedly, the petitioner was an encroacher of a portion of land comprised in Plot No.96 situated at Kathbada Housing Scheme, Kathbada Main Road, Old Washermenpet, Chennai 600021 wherein the petitioner had put up constructions illegally by encroaching upon the road also. Therefore, a proceedings were initiated by the 2nd respondent corporation for the removal of the encroachments and a notice was issued to the petitioner under Section 256(1) of The Chennai City Municipal Corporation Act. Challenging the above said notice, the petitioner filed a

civil suit for declaration, declaring that the notice issued by the respondent corporation is void and for permanent injunction from disturbing his peaceful possession. The said suit was dismissed and the appeal suit filed by the petitioner was also dismissed. Challenging the dismissal of the appeal suit, the petitioner filed the present second appeal. From the counter affidavit filed by the 1st respondent, it could be seen that the petitioner had been evicted from the property in question. The plot comprised at Plot No.97 was earlier allotted to the 3rd respondent. So far as the plot No.96 is concerned, it measures only a small extent of 12 square meter. Considering the fact that the petitioner was an encroacher of a portion of land in plot No.96 and had put up constructions illegally, the 1st respondent had initiated proceedings and removed the encroachments. The petitioner had not only encroached upon the road but had also put up constructions illegally by encroaching upon a portion of the land in plot No.96 belonged to the 1st respondent. While rejecting the request of the application for allotment of plot No.96, the 1st respondent had given justifiable reasons for being allotted the plot in question in favour of the 3rd respondent and for rejecting the request of the petitioner. This court do not find any illegality or irregularity in the order passed by the 1st respondent board allotting the disputed plot in favour of the 3rd respondent and the writ petition deserves only liable to be dismissed.

10. Coming to the second appeal, the suit filed by the petitioner in O.S.No.3627 of 2000 seeking declaration declaring that the notice issued by the 1st respondent corporation under Section 256(1) of The Chennai City Municipal Corporation Act for removal of encroachment is void and for permanent injunction restraining the defendants therein from interfering with this peaceful possession was dismissed on 12.04.2002. The appeal suit in A.S.No.276 of 2002 filed by the petitioner was also dismissed on 18.02.2004. Challenging the dismissal of the appeal suit, the present second appeal has been filed.

11. Pending second appeal, the encroachment had been removed and the petitioner had vacated the premises in question. Admittedly, the plot in question has also been allotted in favour of the 3rd respondent. In the above circumstances, the prayer sought for in the suit has become infructuous and no further adjudication is required in this matter and the second appeal is liable to be dismissed as infructuous.

12. Earlier, on the submissions made by the learned counsel for the petitioner that the 1st respondent may be directed to consider the application of the petitioner dated 14.10.2019 for allotment of a tenement at Moolakothalam scheme, this court, by order dated 21.10.2019, directed the 1st respondent board to

consider the application of the petitioner for allotment of a tenement and pass suitable orders in accordance with law within a period of three weeks from the date of receipt of a copy of the order.

13. Accordingly, today, the learned counsel for the 1st respondent submitted that some of the tenements are still available for allotment to the beneficiaries at Moolakothalam scheme and 25% of the plots have been earmarked for the employees of the Corporation of Chennai. He has also produced a Xerox copy of proceedings of the 1st respondent dated 22.11.2019 issued pursuant to the interim directions of this court.

14. The learned counsel for the 1st respondent board further submitted that after the removal of encroachment, the petitioner had moved out from the disputed property and he was not given any alternative accommodation. If the petitioner makes an application for allotment of tenement, through proper channel, the same would be considered by the 1st respondent board on merits and in accordance with law.

15. Thus, considering the submissions made by the learned counsel for the petitioner and the learned counsel for the 1st respondent, the petitioner is directed to submit a fresh application to the 2nd respondent corporation seeking allotment of tenements at Moolakothalam scheme and on such application, the 2nd respondent is directed to consider the name of the petitioner also in the list of eligible employees for allotment of tenements under 25% quota earmarked for the employees of the Chennai Corporation and pass suitable orders.

In the result, (i) the writ petition is dismissed, however, with the directed as indicated above. No costs. Consequently, connected WMP is closed.

(ii) The second appeal is also dismissed and the judgements and decree of both the courts below are confirmed. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The III Additional Judge, City Civil Court, Chennai

2.The XI Assistant Judge, City Civil Court, Chennai

3.The Chairman, Tamil Nadu Slum Clearance Board, Chepauk,
Chennai 600 005.

4.The Commissioner, Corporation of Chennai, Ripon Building,
Chennai 600 003.

Copy to:

The Section Officer, VR Section, High Court, Chennai.

+2ccs to Mr.B.Soundarapandian , Advocate SR.No.98865

+1cc to M/s.T.Ramadevi , Advocate SR.No. 98875

Writ Petition No.17672 of 2003
and

W.P.M.P.Nos.22099 of 22100

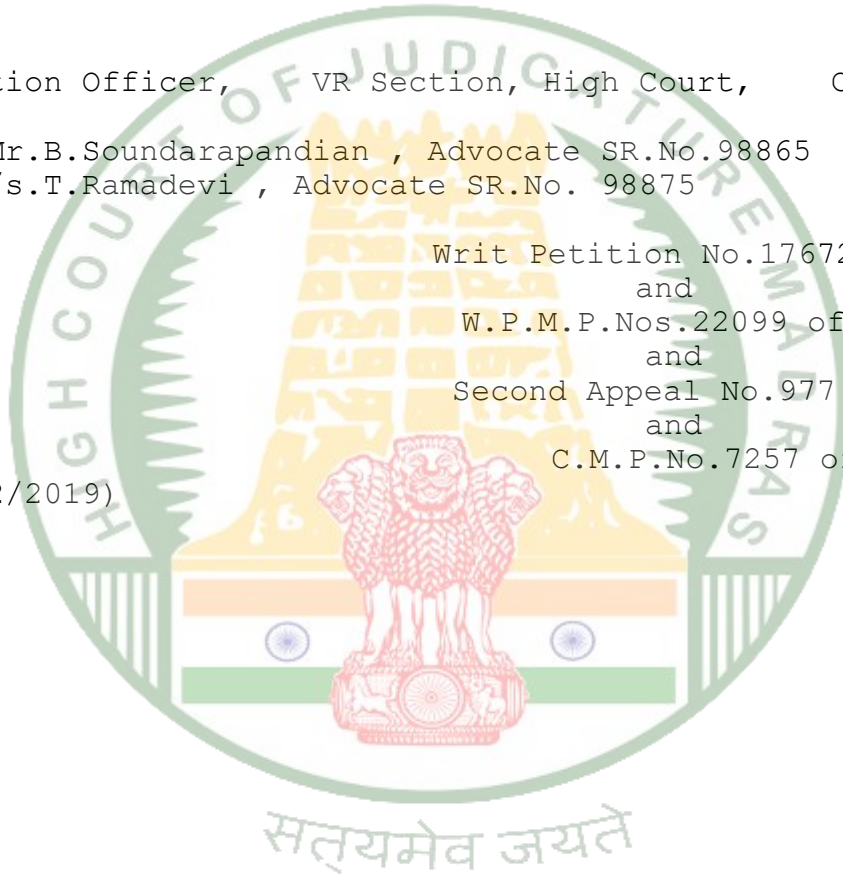
and

Second Appeal No.977 of 2004

and

C.M.P.No.7257 of 2004

A.SK(11/12/2019)



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