

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 23.09.2019

Order pronounced on : 04.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.s 36640 & 36641 of 2007

W.P. 36640 of 2007

P.Ekambaram (deceased)

1. Radhabai,
2. E.Rajasekhar
3. E.Yuvaraj
4. E.Sasikumar
5. E.Usha

[P1 to P5 are substituted as legal heirs in the place of deceased petitioner P.Ekambaram vide order made in W.M.P. 22363 of 2019 dated 14.08.2019]

.... Petitioners

Vs

1. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai-600 005.
2. The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Estate-I, Ibrahim Road,
Chennai-600 001.
3. Veeraraghavan,
S/o. Parthasarathy Pillai,
Plot No.88, Sri Mahalakshmi Nagar,
Ernavoor,
Chennai-600 057.

... 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 from the 1st and 2nd respondents herein in Na.Ka.No.32/07/Aa.Ea.Aa1 dated 26.03.2007 and quash the same and directing the 1st and 2nd respondents herein to execute the sale deed in favour of the petitioner herein at Plot No.87, Sri Mahalakshmi Nagar, Ernavoor Village, Madhavaram

Firka, Saidapet Taluk, within a stipulated/specified time as fixed by this Hon'ble Court to hand over the said vacant plot to the petitioner.

W.P. 36641 of 2007

S.Rajeswari

... Petitioner

Vs

1. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai-600 005.
2. The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Estate-I, Ibrahim Road,
Chennai-600 001.
3. Veeraraghavan,
S/o. Parthasarathy Pillai,
Plot No.88, Sri Mahalakshmi Nagar,
Ernavoor,
Chennai-600 057.

... 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 from the 1st and 2nd respondents herein in Na.Ka.No.31/07/Aa.Ea.Aa1 dated 26.03.2007 and quash the same and directing the 1st respondent herein to execute the sale deed in favour of the petitioner herein at Plot No.88, Sri Mahalakshmi Nagar, Ernavoor Village, Madhavaram Firka, Saidapet Taluk, within a stipulated time as fixed by this Hon'ble Court to hand over the said vacant plot to the petitioner.

For Petitioners : Mr.S.Ramesh Kumar

For Respondents : Mr.R.V.Babu for R1 & R2
Mrs.A.Madhumathi for R3

C O M M O N O R D E R

These Writ Petitions have been filed challenging the order passed by the 1st and 2nd respondents, and directing them to execute the Sale deed in favour of petitioners within a stipulated time and to hand over the vacant plot the petitioners.

2. The issue involved in both the Writ Petitions are one and the same and both the Writ Petitions are heard together and disposed of by way of this common order.

W.P.No.36640/2007

3. According to the petitioner, plot No.87, Sri Mahalakshmi Nagar, Madhavaram Firka, Saidapet Taluk in Survey No.154/1 Part, at Ernavoor, belongs to Tamil Nadu Slum Clearance Board (hereinafter called as 'Board') and the Board under a World Bank scheme has allotted the above said plot to the petitioner by an order dated 21.09.1995, and the petitioner has paid the entire cost of the plot. The petitioner has also obtained No objection certificate from the respondents 1 and 2 for getting metro water, and drainage connection, electricity connection and he has been continuously enjoying the above said plot. After payment of entire cost, the petitioner has approached the respondents 1 and 2 to execute the sale deed in his favour, but the 2nd respondent did not come forward to execute the same. In the meantime, the 3rd respondent herein illegally trespassed into the property and occupied the plot. The petitioner has lodged a police complaint against the 3rd respondent, and he has also filed a suit against the 3rd respondent in O.S.No.1051 of 1997 on the file of District Munsif cum Judicial Magistrate Court, Thiruvottiyur, seeking for declaration of his title and also for recovery of possession. But, the suit has been dismissed on the ground that since the sale deed was not executed in favour of the petitioner by the Board, the title was not passed on the petitioner, and the petitioner cannot maintain a suit for declaration of title. Now, the 2nd respondent has passed the impugned order on the ground that, the petitioner is not entitled for the plot allotted to him as he has permitted the third party to occupy the plot, which is in violation of the allotment order, and the petitioner is not entitled to seek for execution of sale deed. It is further stated that the respondents 1 and 2 will take steps to cancel the order of allotment issued in favour of the petitioner. Challenging the same, the present Writ Petition has been filed.

W.P.No.36641/2007

4. According to the petitioner, plot No.88, Sri Mahalakshmi Nagar, Madhavaram Firka, Saidapet Taluk in Survey No.154/1 Part, at Ernavoor was originally belongs to Tamil Nadu Slum Clearance Board (hereinafter called as 'Board') and the Board under a World Bank scheme has allotted the above said plot to the petitioner by an order dated 21.02.1991, and the petitioner also paid the entire cost of the plot. He has

also obtained No objection certificate from the respondents 1 and 2 for getting metro water, and drainage connection, and electricity connection, he has been continuously enjoying the above said plot. After payment of entire cost, the petitioner has approached the respondents 1 and 2 to execute the sale deed in his favour, but the 2nd respondent did not come forward to execute the same. In the meantime, the 3rd respondent herein illegally trespassed into the property and occupied the plot. The petitioner has lodged a police complaint against the 3rd respondent, and the petitioner has also filed a suit against the 3rd respondent in O.S.No.1050 of 1997 on the file of District Munsif cum Judicial Magistrate Court, Thiruvottiyur, seeking a direction to execute the sale deed. But, the suit has been dismissed on the ground that, since the sale deed was not executed in his favour by the Board, the title is not passed on the petitioner, and the petitioner cannot maintain a suit for declaration of title. Now, the 2nd respondent has passed the impugned order on the ground that the petitioner is not entitled for the plot allotted to him as he has permitted the third party to occupy the plot, which is violation of the allotment order, and the petitioner is not entitled to seek for execution of sale deed. It is further stated that the respondents 1 and 2 will take steps to cancel the order of allotment issued in favour of the petitioner. Challenging the same, the present Writ Petition has been filed.

5. The respondents 1 and 2 filed a counter affidavit stating that, plot No.87 was originally allotted to one Mohanasundaram, thereafter, the petitioner in W.P.No.36640 of 2007 purchased the same from the original allottee and made a request to the Board to transfer the ownership in his name. Subsequently, the Board has passed an order allotting the plot to the petitioner and also collected a sum of Rs.4,030/- from the petitioner. In so far as plot No.88 is concerned, it was allotted to the petitioner in W.P.No.36641 of 2007 and a sum of Rs.2,550/- was collected from the petitioner. It is also stated that the Board allots plots to the slum dwellers collecting a meagre cost to enable them to use the plots for their livelihood. The people, who have got their allotment in their favour are supposed to build dwelling unit in the plot and use it for residential purposes. But, the petitioners are not using it as residential unit, since they are having residence in some other place. However, while allotting plots, the Board has made a condition that the allottee should not own any house in favour of him/her or his/her family anywhere in the State. Without fulfilling the said condition, the petitioners cannot get the sale deed in their favour. Even though the plots were allotted to them, the sale deed cannot be executed to the petitioners as they have violated the conditions. The petitioners have filed suits against the 3rd respondent, and the Suits came to be dismissed, and they have not taken any steps to file appeals. Further, since the petitioners are not residing in the plots, they are not

eligible for execution of sale deed, which is mandatory to get the sale deeds in their favour.

6. The 3rd respondent has filed a counter affidavit stating that, the property is a Government poramboke land, which was originally occupied by one Ramu, from whom, the 3rd respondent has purchased in the year 1979, for a valid sale consideration. Right from the purchase, he has been in peaceful possession and enjoyment of the property and constructed a thatched house. It is further stated that the 3rd respondent has not trespassed into the property, and not occupied the same illegally. The suits filed by the petitioners against the 3rd respondent were also dismissed by the competent civil court. In the year 1996, the Civil Court permitted the 3rd respondent to renovate the suit property in the suit filed by the petitioners, and there is a finding, that the 3rd respondent was in possession of the plots from the year 1979, he is neither a trespasser nor a permissive occupier. The said finding of the Trial Court was final and a conclusive one. Hence, the petitioners cannot treat the 3rd respondent as an encroacher.

7. I have heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the records finally.

8. Admittedly, the house plots in question were allotted to the petitioner by the respondent board and the petitioners have also paid the entire cost of the plots. Now, the respondent board has refused to execute the sale deed only on the ground that the petitioners have violated the conditions of allotment by deliberately allowing the 3rd respondent to occupy the plots and, therefore, petitioners, who have not in possession of the allotted plots, are not entitled to get sale deeds in their favour and the respondent board is going to cancel the orders of allotment made in favour of the petitioners.

9. From a careful perusal of the records, it could be seen that the 3rd respondent was not permitted by the petitioners to occupy the plots in question. As a matter of fact, the petitioners had filed suits against the 3rd respondent seeking to declare their title and also for recovery of possession alleging that the 3rd respondent had trespassed into the house plots allotted in their favour. However, the said suits were dismissed on a technical ground. In the above circumstances, it cannot be held that the petitioners had deliberately let the 3rd respondent to occupy the house plots in question and therefore, on that ground the respondent board cannot refuse to execute the sale deed in favour of the respective petitioners.

10. That apart, in the counter affidavit filed by the respondents Board, a new ground has been raised as if the petitioners are having some other properties, and they are not

entitled for any allotment. But, that contention was not supported by any materials, and the Board cannot act on the assumption. So far as the 3rd respondent is concerned, it is his specific case that, it is a Government poramboke land, and he is in possession and enjoyment of the property for a long time. But, the land is not a Government poramboke land, it belongs to Tamil Nadu Slum Clearance Board. The Board has allotted house plots in favour of the petitioners and they have also paid the land cost. As stated earlier, the suit filed by the petitioners have been dismissed only on the ground that they are not able to prove their title, since on the date of filing Suits, the sale deeds were not executed in favour of the petitioners. Therefore, the 3rd respondent cannot take any advantage on the judgment of the civil court. If at all, the 3rd respondent is in possession of the property, it could be held that he is only a trespasser, and he cannot claim any right or title on the house plots, which were allotted to the petitioners. Since it is stated that the 3rd respondent is in possession of the plots, it is for the petitioners and the respondents 1 and 2 to take necessary steps to evict the 3rd respondent from the above said house plots in the manner known to law.

11. Considering the above circumstances, I am of the view that as the respondents board has allotted house sites to the petitioners and also received entire cost of the plots, it cannot refuse to execute the sale deeds in favour of the petitioners on the ground that the petitioners are not in possession of the property and they have permitted the 3rd respondent to occupy the same. In the above circumstances, the impugned order passed by the respondents are liable to be set aside.

12. Accordingly, both the Writ Petitions are allowed and the orders passed by the 1st and 2nd respondents Board in Na.Ka.No.32/07/Aa/Ee.Aa1 dated 26.03.2007 respectively are set aside and the respondents 1 and 2 are directed to execute the sale deeds in favour of the respective petitioners in respect of Plot Nos.87 and 88, Sri Mahalakshmi Nagar, Madhavaram Firka, Saidapet Taluk. No costs.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai-600 005.

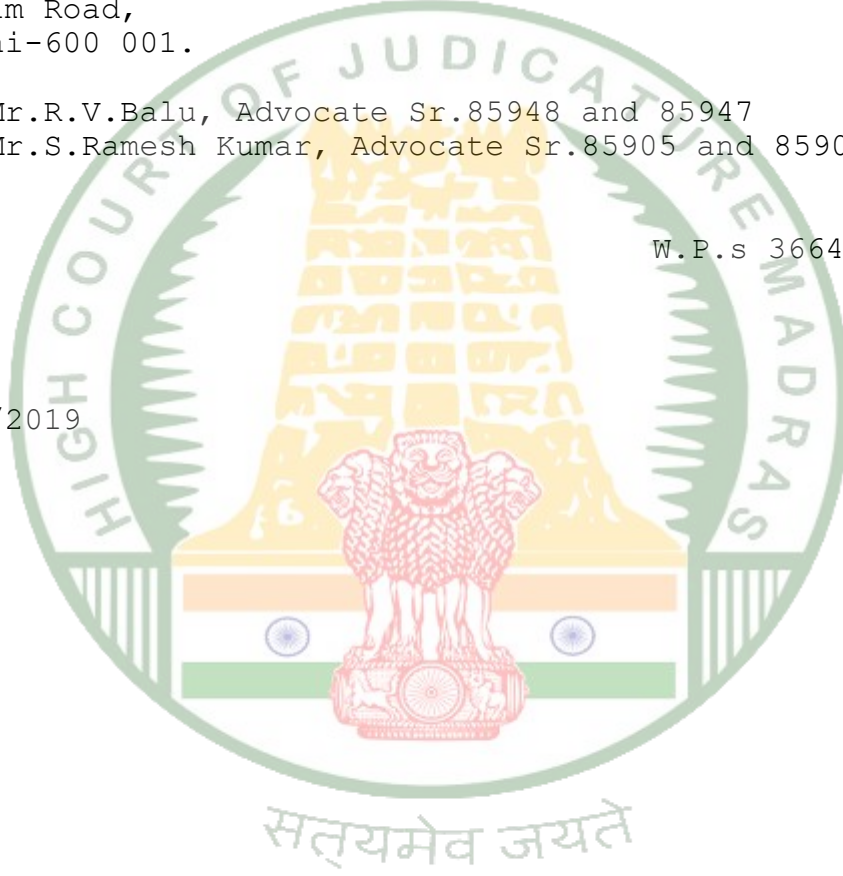
2. The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Estate-I,
Ibrahim Road,
Chennai-600 001.

+2ccs to Mr.R.V.Balu, Advocate Sr.85948 and 85947

+2ccs to Mr.S.Ramesh Kumar, Advocate Sr.85905 and 85904

W.P.s 36640 & 36641
of 2007

BS (CO)
srg 14/11/2019



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