

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 03..10.2019

Orders Pronounced on: 21..10..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.17476 of 2009

and

M.P.No.1 of 2009

T.Sethupathi

... Petitioner

-Versus-

1.The Chairman,
Tamil Nadu Slum Clearance Board,
Kamaraj Salai,
Triplicane, Chennai 600 005

2.S.Malarkodi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus seeking to quash the proceedings of the 1st respondent in Se.Mu.Ka.No.G7/31322/98 dated 22.06.2009.

For Petitioner : Mr.V.Karthikeyan

For Respondent(s) : Mr.R.V.Babu for R1

Mr.L.J.Krishnamurthy for R2

ORDER

This writ petition has been filed challenging the order dated 22.06.2009 passed by the 1st respondent in Se.Mu.Ka.No.G7/31322/98 re-allotting the house in favour of the 2nd respondent.

2. The brief facts leading to the filing of the present writ petition are as follows:- The petitioner is the son and the only legal heir of Thulasisingampillai and Mrs.Padmavathi Ammal. In 1966, the 1st respondent Slum Clearance Board allotted a tenement bearing No.81 (Goonduveedu), in other words 'Catenary Shed' at Indira Nagar Development Scheme. The petitioner had been residing in the tenement all along with his parents until their demise. According to the petitioner, after the demise of

his father, he only took care of his mother and had paid the monthly installments to the 1st respondent for the allotment of the tenement along with his mother. Since the petitioner was the only bread winner of the family, the entire cost of the tenement was paid only through the funds contributed by him. On 26.11.1984, he had lost his mother also. While that being so, the 2nd respondent, who is none other than the sister's daughter of Padmavathi Ammal approached the 1st respondent for transfer of allotment of tenement in her favour claiming to be the adopted daughter of Padmavathi Ammal and she had no other legal heirs to succeed her property. The 1st respondent without verifying the same had transferred the allotment in the name of the 2nd respondent. When the petitioner approached the 1st respondent objecting to the transfer of allotment in favour of the 2nd respondent with necessary legal heir ship certificate in support of his claim that he is the only legal heir of the deceased Padmavathi Ammal, the 1st respondent had issued a show notice dated 05.03.1993 to the 2nd respondent calling for explanation as to why the allotment made in her favour should not be cancelled.

3. It is further stated by the petitioner that while so, the 2nd respondent has filed a suit in O.S.No.2549 of 1993 on the file of the City Civil Court, Chennai against him challenging the show notice dated 05.03.1993 issued by the 1st respondent and seeking the relief of declaration declaring that the allotment made in her favour is valid and in accordance with law; that the 1st respondent should have no right to transfer the allotment or cancel the allotment and for permanent injunction restraining the petitioner from interfering in the lawful possession and enjoyment of the property without due process of law, which was decreed in favour of the 2nd respondent as prayed for. However, on appeal in A.S.No.47 of 2001 preferred by the petitioner, the first appellate court allowed the appeal suit in part and thereby confirmed the decree in respect of permanent injunction and set aside the decree in respect of declaration. Thus, the suit in respect of declaration of validity of allotment ended against the 2nd respondent. Aggrieved against the judgement and decree of the first appellate court, the 2nd respondent preferred a further appeal in S.A.No.1351 of 2002 before this court and the same was pending. In the mean while, based on the judgement and decree of the appellate court, the 1st respondent board had cancelled the allotment made in favour of the 2nd respondent. Thereafter, the 2nd respondent has filed a writ petition in W.P.No.1518 of 2003 challenging the show cause notice dated 05.03.1993 issued by the 1st respondent which was also pending before this court. Considering the the fact that the issues are interconnected and the dispute is one and the same, this court had clubbed the writ petition in W.P.No.1518 of 2003 and Writ Appeal in W.A.No.1409

of 2006 filed by the petitioner against the interim order passed in W.P.M.P.No.1897 of 2003 in W.P.No.1518 of 2003 along with S.A.No.135 of 2002 and heard together and disposed the same on 05.01.2009 by a common order whereby this court had set aside the show cause notice dated 06.01.2003 and directed the 1st respondent to consider the issue based on the documents produced by the parties and take an independent decision. However, status quo regarding possession was ordered to be maintained till the board disposes of the matter.

4. Pursuant to the directions of the Division Bench of this Court, the 1st respondent conducted an enquiry and without considering the fact that the petitioner is the lawful legal heir of the deceased allottee, passed the impugned order cancelling the allotment already made in his favour and reallotting the disputed tenement in favour of the 2nd respondent which is not only illegal but against the settled law. The 1st respondent has not followed the principles of natural justice. Therefore, the petitioner has no other alternative or efficacious remedy except to invoke the writ jurisdiction of this court. Hence, this writ petition.

5. The 1st respondent filed his counter affidavit inter alia contending that the catenary shed No.81 was originally allotted to Padmavathi Ammal. The said Padmavathi Ammal died on 26.11.1984. After her demise, the 2nd respondent filed an application in the year 1985 stating that her mother Padmavathi Ammal died and her name is found a place with her mother in the photo pass book issued by the board and therefore, requested to allot the tenement in her favour. Having found justification in the claim, the respondent board allotted the tenement in the name of the 2nd respondent on 15.03.1985 under hire purchase scheme. While so, the petitioner who has been residing at No.81, next to the tenement in question, had given a petition on 28.11.1992, after eight years of allotment in favour of the 2nd respondent alleging that he is the only legal heir of the allottee Padmavathi Ammal by producing the legal heir ship certificate. Based on such claim, the respondent board had sent a notice to the 2nd respondent calling upon her to explain as to why the tenement allotted in her favour should not be cancelled for having given false information. Challenging the same, the 2nd respondent filed a suit in O.S.No.2549 of 1993 for permanent injunction restraining the board from interfering with her peaceful possession and enjoyment. Pending such suit, the petitioner also filed a suit in O.S.No.7640 of 1994 for permanent injunction. The suit filed by the petitioner was dismissed on 07.04.1998 and the suit filed by the 2nd respondent in O.S.No.2549 of 1993 was decreed on 04.08.2000, whereby an order of permanent injunction was granted against the respondent board. Challenging the same, the 1st respondent filed an appeal

in A.S.No.47 of 2001 which ended in favour of the petitioner and the suit filed by the 2nd respondent was dismissed. In the mean time, the petitioner filed a writ petition in W.P.No.36193 of 2002 wherein this court directed the respondent board to pass order on the representation of the petitioner within three months and the orders thereof would, however, be subjected to the result of the Second Appeal in S.A.No.1351 of 2002. Pursuant to the order of this court, the allotment order made in favour of the 2nd respondent was cancelled and the allotment was made in favour of the petitioner on 06.01.2003. While so, the 2nd respondent obtained an order of interim stay in I.A.No.10 of 2003 in S.A.No.1351 of 2002.

6. Thereafter, the 2nd respondent filed a writ petition in W.P.No.1518 of 2003 and aggrieved by the order passed by this court in W.M.P.No.1897 of 2003 in W.P.No.1518 of 2003, the petitioner filed an appeal in W.A.No.1409 of 2006. Considering the fact that the issues are interconnected and the issue involved is one and the same, this court had taken up all the pending proceedings together and disposed of them by a common order on 05.01.2009 whereby the order of the Slum Clearance Board dated 06.01.2003 was set aside and the board was directed to enquire and pass orders within the stipulated time. Both the parties were given liberty to produce the documents in support of their claim. This court however directed status quo to be maintained till then and further directed the board to decide the case independently.

7. Pursuant to the directions of the Division Bench of this Court, the 1st respondent conducted enquiry and after due verification of the documents submitted by the parties passed an order on 22.06.2009 holding that the 2nd respondent submitted sufficient proof to show that she was residing with the original allottee right from the beginning and in the photo passbook, the photo of the the 2nd respondent was also found place, whereas the petitioner herein did not produce any document in support of his claim except the legal ship certificate. The suit filed by the 2nd respondent was dismissed in view of the bar jurisdiction of civil courts under Section 65 of the Act. The 1st respondent had also taken note of the fact that the petitioner has been residing at the adjacent house. Thus, the 1st respondent made allotment in favour of the 2nd respondent. Challenging the same, the present writ petition has been filed by the petitioner. The impugned order has been passed in compliance with the order of the Division Bench of this court and based upon the available materials. No illegality or irregularity can be attached to the same. The writ petition is devoid of merits and the same is liable only to be dismissed.

8. The 2nd respondent filed her counter denying the

averments made in the writ petition and inter alia contending that she is the adopted daughter of Padmavathi Ammal. The petitioner, who claims to be the son of late Padmavathi Ammal, never lived with his mother at any point of time. The father of the petitioner deserted Padmavathi Ammal 40 years ago and his whereabouts are not known. Only after the death of Padmavathi Ammal, the petitioner had started claiming right over the tenement in question. The petitioner never looked after his mother.

9. According to the 2nd respondent, she had joined the deceased Padmavathi Ammal, who is non other than her mother's elder sister, when she was 4 years old. After she grown up, she only looked after the deceased Padmavathi Ammal till her life time. She and the deceased Padmavathi Ammal were getting income by doing household works and were living together in the tenement in question. After the death of the deceased Padmavathi Ammal, she continued to be in possession of the same. While so, the entire area was declared as slum area and it was under the control of Slum Clearance Board, the 1st respondent herein.

10. It is further stated by the 2nd respondent that she was working as Electric Motor Winder in a private company and earning considerably. She only paid the dues to the 1st respondent towards the allotment of tenement. She has been living in the tenement for more than 20 years along with the deceased Padmavathi Ammal until her life time. The petitioner's whereabouts were not known until the death of the deceased Padmavathi Ammal. The allotment was made in her favour after having considered the possession of enjoyment for long years. There is no merit in the writ petition and the same is liable only to be dismissed.

11. The learned counsel for the petitioner would contend that admittedly the petitioner is the only son and legal heir of late Padmavathi Ammal, the original allottee of the tenement. Even though the 2nd respondent claiming to be the adopted daughter, there is no proof for the same and the and the appellate court has also categorically held that the 2nd respondent had failed to prove the adoption. Since the petitioner being the legal heir of the original allottee, he is entitled for change of allotment. The 2nd had managed to obtain the order of allotment in her favour by making misrepresentation and false declaration as if she is the adopted daughter of the original allottee. In the above circumstances, on earlier occasion, the 1st respondent had rightly cancelled the allotment order. When the matter came up for reconsideration, the 1st respondent without considering the fact that the petitioner is the only legal heir of the original allottee, has simply upheld the claim of the 2nd respondent on

the ground that she has been in possession of the tenement in question all along and she only paid the dues to the board.

12. The learned counsel for the petitioner further submitted that mere possession will not give a right to the 2nd respondent to get transferred the allotment of tenement in her favour. The impugned order has been passed without considering none of the objections raised by the petitioner and in total non application of mind. Therefore, according to the learned counsel, the impugned order is liable to be set aside.

13. Per contra, the learned counsel appearing for the 1st respondent submitted that the pursuant to the directions of a Division Bench of this Court, an enquiry was conducted and based on the materials produced by the parties, the respondent Board has come to a conclusion that the 2nd respondent had proved her uninterrupted possession in the disputed tenement and she alone paid the entire cost of the tenement based on the earlier allotment made in the year 1985. Whereas the petitioner had strated claiming right over the tenement in question belatedly 7 years after the allotment made in favour of the 2nd respondent. Apart from the above, according to the learned counsel, except the legal heirship certificate, there was no other material produced by the petitioner to show that he was living along with his mother. Moreover, the petitioner has been residing in another tenement at No.80 which is situated next to the disputed tenement. Considering all these circumstances only the impugned order came to be passed and no illegality or irregularity can be found in the same.

14. The learned counsel appearing for the 2nd respondent would contend that right from the date of original allotment in the year 1966 on lease basis, the 2nd respondent was living with the original allottee and she was treated as adopted daughter by the original allottee Padmavathi Ammal. After the death of Padmavathi Ammal, the allotment of the tenement was made in favour of the 2nd respondent under hire purchase scheme and the 2nd respondent alone paid the entire cost of the tenement. When that be so, now, eight years after the allotment in favour of the 2nd respondent, the petitioner has started claiming right over the disputed tenement on the ground that he is the only legal heir of the original allottee. The impugned order is well considered one and no irregularity or illegality can be attached to the same.

15. I have considered the rival submissions carefully.

16. The tenement area is situated adjacent to the Central Institute of Technology, Chennai. In the year 1966, the Madras Housing Board had taken steps to evict the encroachers and

decided to provide alternative housing by constructing catenary shed type houses on the western side of Lattice Bridge Road in South Madras Neighbourhood scheme was on a monthly rent of Rs.10/-. Thereafter, by order dated 28.09.1966, as many as 124 persons were allotted catenary shed on a monthly rental basis and Shed No.81 was allotted to the deceased Padmavathi Ammal on monthly rental basis. All such allottees were treated only as licensees. In the mean time, the area was declared as slum area and the same was taken by the Slum Clearance Board under its control. From the perusal of the records, more particularly, the Photo ID Card issued by the Tamil Nadu Housing Board, it could be seen that even at the time of granting license in favour of Padmavathi Ammal, the 2nd respondent was residing along with her in the disputed tenement. The said Padmavathi Ammal died on 26.11.1984. After the death of Padmavathi Ammal, the 2nd respondent made an application to the 1st respondent seeking allotment in her favour. Considering her request, by order dated 15.03.1985, the tenement was allotted to the 2nd respondent on hire purchase scheme on payment of monthly installment of Rs.60/- for 20 years.

17. Earlier, when some dispute raised in respect of payment of installment, this court by order dated 14.03.2019, directed the 1st respondent to furnish particulars of payment of installments. Pursuant to the same, the 1st respondent produced a Xerox copy of the letter dated 20.03.2019 addressed to the respondent board by the Estate Officer, Tamil Nadu Slum Clearance Board wherein it is stated that it was only the 2nd respondent who had paid a sum of Rs.24,245/- from 02.04.1985 to 03.07.1999 and the petitioner never paid any amount towards cost of the tenement. After nearly 8 years of allotment made in favour of the 2nd respondent, the petitioner had filed an application before the 1st respondent claiming right over the tenement in question on the ground that he is the only legal heir of Padmavathi Ammal. Thereafter, various litigations were going on between the parties as mentioned above and the Division Bench of this Court, by order dated 05.01.2009, directed the 1st respondent to take an independent decision based on the documents produced by the parties. Pursuant to the same, the impugned order came to be passed.

18. Now, the question arise for consideration is whether the petitioner can be given allotment merely on the ground that he is the only legal heir of late Padmavathi Ammal. As stated earlier, originally, late Padmavathi Ammal was not allotted with any tenement by the board, only a license was granted to Padmavathi Ammal to occupy the tenement on a rental basis. After the death of Padmavathi Ammal, the 2nd respondent had sought for allotment in her favour. In the year 1985, for the first time, the tenement was allotted to the 2nd respondent on hire

purchase basis and the cost of the tenement was paid by the 2nd respondent only. The 1st respondent had admitted the payment by the 2nd respondent towards cost of the tenement on installment basis. The materials produced by the 2nd respondent, more particularly, the photo passbook issued by the Tamil Nadu Housing Board, would also clearly establish that the 2nd respondent was residing along with late Padmavathi Ammal right from the year 1966. Even in the suit filed by the 2nd respondent also, the trial court as well as the first appellate court given a specific finding that the 2nd respondent alone was residing in the tenement in question and granted permanent injunction in her favour. Now, it is also stated that the petitioner has been residing in another tenement bearing No.80 which is situated next to the disputed tenement.

19. In the above circumstances, the petitioner cannot claim right over the disputed tenement on the ground that he is the legal heir of late Padmavathi Ammal and he is entitled for transfer of allotment in his favour. As already discussed above, late Padmavathi Ammal was never allotted with any tenement and she was only granted license. It was only the 2nd respondent who approached the 1st respondent for allotment after the death of her foster mother late Padmavathi Ammal and obtained an order of allotment. There is absolutely no material to show that the petitioner was residing with his mother - Padmavathi Ammal and he was in possession of the disputed tenement after the death of his mother. Considering all those facts and circumstances, the 1st respondent has rightly cancelled the allotment made in favour of the petitioner and reallocated the same in favour of the 2nd respondent. This court does not find any illegality or irregularity in the same. The writ petition is devoid of merit and the same is liable only to be dismissed.

In the result, this Writ Petition is dismissed. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Chairman,
Tamil Nadu Slum Clearance Board,
Kamaraj Salai,
Triplicane, Chennai 600 005.

+1cc to Mr.V.Karthikeyan, Advocate, S.R.No. 88385
+1cc to Mr.R..Babu, Advocate, S.R.No. 87802
+2cc to Mr.L.J.Krishnamurthy, Advocate, S.R.No. 87678

Writ Petition No.17476 of 2009

RR(CO)
GN(29/11/2019)