

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 2710 of 2011

G.Vadivelu

..Petitioner

vs

1.Corporation of Chennai,
Rep. by its Commissioner,
Rippon Building,
Park Town, Chennai 600 003.

2.The District Revenue Officer,
Land and Estate Department,
Corporation of Chennai,
Chennai 600 003.

3.Chakravarthy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorarified Mandamus, to call for the records on the file of the respondents 1 and 2 and quash the order dated 15.12.2010 in Ni.Mi.Thu.Na.Ka.No. LE6/2536/2010 on the file of the second respondent as arbitrary, perverse, illegal and unconstitutional and consequently direct the respondents 1 and 2 to take appropriate legal action against the unauthorized occupation of Shop No. 3, Chennai Corporation Commercial Complex, Narayanappa Road, Broadway, Chennai 600 108 and place the Writ Petitioner in possession of the said shop.

For Petitioners : Mr.P.B.Ramanujam

For Respondents : Mr.Soundarajan for R1

Senior counsel for Chennai Corporation

Mr.J.Rameshwar for R2

Additional Government Pleader

Mr.G.Appavu for R3

O R D E R

The case of the petitioner, the petitioner was allotted of Shop No.3, which was subsequently transferred and the same was allotted in favour of the third respondent, against which the present Writ Petition is filed.

2. According to the petitioner, the respondents 1 and 2 are the owners of the shops situated commercial complex in Narayanappa Road, Broadway, Chennai. Originally the shop No.3 was allotted to the one Kathirvelu, which was subsequently after his demise, the same was transferred to his wife Mohanambal. Thereafter, the said shop was transferred in the name of the petitioner by the second respondent vide his proceeding dated 30.01.2009. The case of the petitioner is that the third respondent who is the owner of shop Nos.2 and 4 situated on either side of shop No.3, had forcibly occupied shop No.3 and also filed a suit in O.S.4852 of 2003, seeking for declaration that the said shop No.3 was exclusively belonging to him and also sought for permanent injunction not to disturb his alleged possession. The Trial Court dismissed the suit holding that the third respondent has no right over the shop No.3.

3. Aggrieved by the same, the third respondent has preferred an appeal in A.S.No.268 of 2008 before the Fast Track Court No.2, City Civil Court, Chennai, wherein, by judgment dated 30.11.2009, the lower Appellate Court, while declining the relief of declaration, granted an injunction alone in favour of the third respondent that his possession should not be disturbed except due process of law even though, he may be a trespasser. In view of the findings of the lower Appellate Court, it appears that the petitioner made a representation to the respondents 1 and 2, praying to take steps to evict the third respondent from the unauthorized occupation of shop No.3 and hand over the same to the petitioner. Thereafter, the second respondent conducted an enquiry on 17.09.2010 and canceled the allotment of the petitioner and vide impugned proceedings dated 15.12.2010 the second respondent allowed the third respondent to occupy the said shop, contrary to the G.O.Ms.92 dated 03.07.2007. Challenging the said impugned proceedings, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner would submit that the second respondent has erroneously extended the benefit of the said G.O., and allotted the shop No.3 in favour of the third respondent, which is not sustainable in law. The learned counsel would point out that the third respondent was already allotted two shops, viz., shop Nos. 2 and 4 and he has been in occupation of the same, while so allotting one more shop in favour of the third respondent is contrary to the said G.O., and the same is liable to be set aside. The learned counsel would also submit that the second respondent has not considered the findings of the Trial Court as well as the lower Appellate Court declining the relief of declaration sought for by the third respondent. Therefore, the learned counsel prays this Court to quash the impugned proceedings of the second respondent.

5. The learned counsel appearing for the first respondent did not dispute the fact the third respondent occupied two shops, viz., shop Nos.2 and 4 and apart from these, he also occupied shop No.3.

6. The learned Additional Government Pleader appearing for the second respondent would submit that after conducting a detailed enquiry and on consideration of relevant factors that the third respondent was in occupation of shop No.3, the second respondent has rightly allotted the shop No.3 in favour of the third respondent, which requires no interference by this Court.

7. The learned counsel appearing for the third respondent would reiterate the submissions made by the learned Additional Government Pleader and would submit that initially the allotment was made in favour of one Kathirvelu and thereafter, in favour of one Umakandhan and one Murugeswari and thereafter, in favour of the third respondent and right from the allotment, the third respondent has been in occupation of the same. Therefore, he prayed for dismissal of the Writ Petition.

8. Heard, the learned counsel for the petitioner, the first and third respondents and also learned Additional Government Pleader appearing for the second respondent and perused the entire materials placed on record.

9. It is not in dispute that initially the subject shop No.3 was allotted in favour of one Kathirvelu and after his demise in favour of his wife Mohanambal and on her request the same was transferred in favour of the petitioner by the second respondent on 30.01.2009. It is also not in dispute that the third respondent was already in occupation of two more shops, viz., shop Nos.2 and 4 and he also filed a suit in O.S.4852 of 2003, seeking for declaration that the said shop No.3 was exclusively belonging to him and also sought for permanent injunction not to disturb his alleged possession. The Trial Court dismissed the suit holding that the third respondent has no right over the shop No.3. Aggrieved by the same, the third respondent has preferred an appeal in A.S.No.268 of 2008 before the Fast Track Court No.2, City Civil Court, Chennai, wherein, by judgment dated 30.11.2009, the lower Appellate Court, while declining the relief of declaration, granted an injunction alone in favour of the third respondent that his possession should not be disturbed except due process of law even though, he may be a trespasser.

10. As rightly contended by the learned counsel for the petitioner that the Civil Courts have not granted any declaratory relief in favour of the third respondent in respect of the subject shop but only observed that the third respondent

should not be evicted without due process of law. It is to be noted that the Courts below have not given any positive direction to the respondents to consider favourably in favour of the third respondent. However, the second respondent conducted an enquiry and arrived a conclusion as if the third respondent's occupation is sufficient for a confirming the allotment of shop No.3 in his favour, which in the opinion of this Court is not legally sustainable one. Further, the second respondent made allotment based on the G.O.Ms.No.92 dated 03.07.2007 that regularization of unauthorized occupancy can be considered for one time measurement. However, the fact remains that the third respondent was already in occupation of two shops, viz., shop Nos.2 and 4 by encroaching the same and therefore, he is not entitled to get regularization of his occupation in respect of shop No.3 by virtue of G.O.Ms.No.92. Therefore, I have no hesitation to interfere with the impugned order of the second respondent.

11. Accordingly, the Writ Petition is allowed and the impugned order dated 15.12.2010 is hereby set aside. The respondents 1 and 2 are directed to take necessary steps to evict the third respondent by following due process of law and after eviction pass appropriate orders allotting the shop No.3 in favour of the petitioner within a period of six weeks thereafter. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

vkr

To

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Park Town, Chennai 600 003.

2.The District Revenue Officer,
Land and Estate Department,
Corporation of Chennai,
Chennai 600 003.

+2 CCS to Mr.P.B.Ramanujam, Advocate sr 73811.
+1 CC to Mr.G.Appavu, Advocate sr 74172.
+1 CC to Mr.K. Soundararajan, Advocate sr 73385.
+1 CC to Govt. Pleader sr 74666.

W.P.No. 2710 of 2011

VBA(CO)
SP(13/09/2019)