

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 12.03.2019

Delivered on : 21.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.5010 of 2011

M.Shankar

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai-5.

2.The Estate Officer,
Estate Office - VII,
Tamil Nadu Slum Clearance Board,
Chennai 78.

... 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 of the first respondent herein in his proceedings Se.Mu.Ka.No.2882/08/E7 dated 05.2008 and proceedings Na.Ka.No.E7/2892/08 dated 10.2008 and quash the same and consequently direct the first respondent to re-allot the Plot No.2518 in favour of the petitioner wherein he is residing at present.

For Petitioner : Mr.L.Chandrakumar for
M/s.V.R.Shanmuganathan

For Respondents: Mr.R.V.Babu,
Standing Counsel for R1 & R2

: Ms.A.Nilaphar, Advocate Commissioner

O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.R.V.Babu, learned standing counsel appearing for the respondents.

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

"To issue a writ of Certiorarified Mandamus, to call for the records of the first respondent herein in his proceedings Se.Mu.Ka.No.2882/08/E7 dated 05.2008 and proceedings Na.Ka.No.E7/2892/08 dated 10.2008 and

quash the same and consequently direct the first respondent to re-allot the Plot No.2518 in favour of the petitioner wherein he is residing at present."

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

The petitioner was originally a road side hawker at Velachery. The first respondent had floated a scheme of constructing several Plots for allotment to the persons who were street hawkers at Velachery. It appears that the petitioner had applied for allotment of the Plot in the scheme floated by the first respondent. Originally, the Plot No.2518 was allotted to one Ellammal and on application made by the petitioner, the allotment was ultimately granted to him viz., Plot No.2518 by the first respondent vide his proceedings dated 01.10.1995.

4. It appears that the petitioner has been complying with the conditions stipulated in the order dated 01.10.1995. According to the petitioner, the payments have been regularly made and tax has also been regularly paid to the respondents. The petitioner also obtained Ration Card and also obtained Electricity Connection to the said Plot. While so, when the petitioner was paying tax regularly to the authorities till 09.03.2008, the authorities refused to receive the tax after March 2008, on the ground that the Plot No.2518 did not stand in the name of the petitioner and in fact, the petitioner was allotted another Plot.

5. In the said circumstances, the petitioner appears to have made several representations to the respondents in order to ascertain as to what happened to the allotment made to him on 01.10.1995, as the petitioner has been in occupation of the Plot No.2518, ever since the allotment in 1995. Since there was no response forthcoming from the respondents, on verification, the petitioner found that his allotment was cancelled by the respondents on the ground that the petitioner was not residing in the said Plot and the notice of cancellation was affixed on the address. Two proceedings were passed by the respondents in May 2018 and October 2018, cancelling the allotment of Plot No.2518 on the ground that the petitioner was living in a different Plot and the Plot No.2518 has been granted to some other person as per the records. The proceedings of cancellation are put to challenge by the petitioner in this writ petition.

6. The learned counsel for the petitioner would submit that the impugned proceedings of the respondents cannot be countenanced both in law and on facts, since the same came to be passed without any notice to him and the petitioner was not heard before the allotment was cancelled. Even otherwise, according to the learned counsel that the petitioner was infact living in the same Plot allotted to him ever since the allotment in 1995 and all the documents are in possession of the

petitioner, would disclose that the petitioner has been in occupation of the Plot No.2518. Therefore, the authorities on a mistaken fact, has cancelled the allotment as if the petitioner was living in a different Plot i.e., Plot No.2656, in the same locality and some other person was living in Plot No.2518.

7. According to the learned counsel for the petitioner that this Court earlier appointed an Advocate Commissioner to verify the factum of occupation of the petitioner at Plot No.2518 and the Advocate Commissioner vide his report dated 06.02.2019, has confirmed the factum of occupation of the petitioner in Plot No.2518. Therefore, in the teeth of the clear report of the Advocate Commissioner, the impugned action has to be interfered with.

8. On the other hand, the learned counsel appearing for the respondents would submit that the Board has found that the petitioner was not actually living in Plot No.2518, though the same was allotted to him. But, the petitioner was found living in Plot No.2656 and any representation if it is made by the petitioner, the same would be considered by the Board.

9. In the counter affidavit, in paragraph No.7, it is admitted by the respondents that the Plot was allotted by proceedings dated 01.10.1995 and the petitioner had also produced Ration Card, Aadhar Card, Voter Identity Card, Pan Card and Electricity Connection which stood in his name indicating the address as per the occupation. However, the impugned cancellation was passed because of the fact that the petitioner was occupying a different Plot.

10. This Court upon consideration of the arguments advanced on behalf of the parties and perused the materials and pleadings placed on record, is of the considered view that the impugned cancellation of the allotment made to the petitioner originally by proceedings dated 01.10.1995, cannot be recalled by the Board without giving opportunity to the petitioner, that too, after a period of 13 years. Even otherwise, factually it was established by the report of the Advocate Commissioner appointed by this Court, that, the petitioner was indeed living in the Plot No.2518, Bhavani Nagar, West Velachery, Chennai. In fact, the Advocate Commissioner's report would state that the Board officials were also affirmed the factum of petitioner living in the said Plot when the inspection was undertaken. In fact, a detailed observation as contained in the report of the Advocate Commissioner in paragraph Nos.6 to 8 are extracted hereunder, for understanding the claim of the petitioner.

"6. The following documents were produced by the writ petitioner:

(i) October 1995 Allotment Order of TNSCB given to the writ petitioner for Plot No.2518.

(ii) Aadhar Card of the writ petitioner for Plot No.2518.

(iii) Smart Family Card issued by the Tamil Nadu Government to the writ petitioner for Plot No.2518.

(iv) Voters Identity Card issued to the writ petitioner for Plot No.2518.

(v) PAN Card issued by the Income Tax Department.

(vi) Indian Bank Pass Book of the writ petitioner for Plot No.2518.

(vii) EB Card of the writ petitioner for Plot No.2518.

(viii) Water & Sewerage Tax Cum Charges Card issued to the petitioner for Plot No.2518.

(ix) Receipt issued by the CMWSSB for Plot No.2518.

(x) Life Insurance Policy issued to the petitioner.

(xi) Receipts issued by the respondent to the petitioner for Plot No.2518(nos.8)

(xii) Allotment orders issued by TNSCB to the adjacent allottees for the Plot No.2513, Plot No.2515, Plot No.2516 and Plot No.2517.

(xiii) The Plot number was also displayed in the property. Photos are also enclosed herewith."

7. All the documents produced by the writ petitioner were also shown to the respondents side officials. The records and documents produced by both parties are enclosed herewith.

8. As per the directions of this Court, thus, I verified all the records produced by both parties and after perusing the records shown by the Board officials and writ petitioner and after conducting an enquiry in the presence of all the parties, we all found that M.Shankar/writ petitioner is residing along with his family members in Plot No.2518, Bhavani Nagar, West Velachery, Chennai - 600 042. The TNSCB officials also confirmed the above facts."

11. From the above report, it is clear that the petitioner has been living in Plot No.2518 and there are so many supportive documents in possession of the petitioner in order to establish the said fact. In the said circumstances, this Court is unable to countenance the impugned proceedings of the Board in cancelling the allotment made to the petitioner. Moreover, when the Board itself has admitted in its counter affidavit that the allotment was validly made to the petitioner as early as in

1995, this Court is unable to comprehend as to how and what basis, the Board has come to the conclusion about the petitioner was not residing in Plot No.2518, but, residing in Plot No.2656. Nothing has been disclosed in the counter affidavit filed on behalf of the Board. In any event, in the teeth of clear findings by the Advocate Commissioner, the impugned action by the Board has to be interfered with.

12. Although some doubts have been raised by the Board about the actual occupation of the petitioner in Plot No.2518 or in Plot No.2656, however, the factual dispute has been set at rest by the detailed report submitted by the Advocate Commissioner appointed by this Court. In fact, as could be seen from the report, the Board officials who were also took part in the inspection undertaken by the Advocate Commissioner, had confirmed the factum of petitioner's occupation in Plot No.2518.

13. When such is the position, this Court is unable to countenance the impugned action by the Board in cancelling the allotment made to the petitioner vide its proceedings dated 01.10.1995. In fact, the counter affidavit by and large, support the case of the petitioner. In such event, it is not open to the respondents to resist the prayer as sought by the petitioner in the writ petition.

14. For the above said reasons, this Court has no hesitation in allowing the writ petition. Accordingly, the writ petition is allowed and the impugned proceedings Se.Mu.Ka.No.2882/08/E7 dated 05.2008 and proceedings Na.Ka.No.E7/2892/08 dated 10.2008, are hereby set aside. The first respondent is directed to regularise the allotment made to the petitioner at Plot No.2518 and pass appropriate orders to that effect. The Board is directed to pass order as indicated above, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

gsk

To

1.The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai-5.

2.The Estate Officer,
Estate Office - VII,
Tamil Nadu Slum Clearance Board,
Chennai 78.

+1cc to M/s.T.Panchatsaram, Advocate sr.no.27658

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