

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.12924 of 2019

and

W.M.P.No.13092 of 2019

Evangelical Church of India
Administrative Office,
No.1, 2nd Street, Ormes Road,
Kilpauk,
Chennai - 600 010
represented by its General Secretary
Rev.J.Sundara Raj ...Petitioner

Vs.

1. The Principal Secretary to Government,
Housing & Urban Development Department,
Secretariat,
Fort St.George,
Chennai - 600 009.

2. The Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chepakkam,
Chennai-5
represented by its Chairman.

3. Chennai Metropolitan Water Supply and
Sewerage Board,
No.1, Pumping Station Road,
Chindadripet, Chennai - 2
represented by its Executive Engineer,
Regional Office-1 ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from in any manner disturbing or demolishing the petitioner's Church known as "ECI Church" (Evangelical Church of India) having Door/bunk No.28. All that land and building in

Gandhi Nagar Scheme, New Avadi Road, Block B, Ayanavaram, Purasawalkam-Perumbur Taluk measuring 1659 Sq.ft. Pending disposal of the appeal dated 25.03.2019 pending with the 1st respondent/ Appellate Authority.

For Petitioner : Mr.S.Thankasivam

For Respondents : Mr.R.Govindasamy,
Special Government Pleader for R1
Mr.V.Prabhu,
Standing Counsel for R2
Mr.G.Janakiraman,
Standing Counsel for R3

Mr.R.Govindasamy, learned Special Government Pleader takes notice for the 1st respondent, Mr.V.Prabhu, learned Standing Counsel takes notice for the 2nd respondent and Mr.G.Janakiraman, learned Standing Counsel takes notice for the 3rd respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner seeks for a Mandamus forbearing the respondents from in any manner disturbing or demolishing the petitioner's Church known as "ECI Church" (Evangelical Church of India) having Door/Bunk No.28, all that land and building in Gandhi Nagar Scheme, New Avadi Road, Block B, Ayanavaram, Purasawalkam-Perumbur Taluk measuring 1659 sq.ft., pending disposal of the appeal dated 25.03.2019, pending with the 1st respondent/ Appellate Authority.

3. The case of the petitioner in short is as follows:

The 2nd respondent granted lease on 15.12.1983 to the petitioner measuring an extent of 3 cents of land in part of Survey No.T.S.No.4/1(Part), Ayanavaram-2 Village, Block No.8, Ayanavaram Taluk, Chennai -38. The petitioner has constructed a Church therein and about 300 families have been participating in the religious activities of the said Church for the past more than 35 years. The petitioner has been paying the monthly rent to the 2nd respondent regularly upto the year 2017. Thereafter, the 2nd respondent has not accepted the rent. The 2nd respondent also offered to sell the said property to the petitioner upon payment of guideline value. The petitioner was asked to meet the Chennai District Collector for determining the value of the land. However, the value was not determined at all. While that being the fact, the 3rd respondent started to claim that the land leased to the petitioner by the 2nd respondent belongs to the 3rd respondent and threatened to demolish the Church. Hence, the petitioner filed a Civil Suit in C.S.No.9/2019 before this Court

seeking for permanent injunction against the respondents 2 and 3 and also for mandatory injunction, directing the 2nd respondent to ascertain the value of the land to enable the petitioner to pay the same and obtain the sale deed. Pending the suit, the 2nd respondent issued the present impugned order dated 28.02.2019, cancelling the allotment order dated 15.12.1983 stating that the petitioner has violated the allotment condition. The petitioner filed O.A.No.3/2019 in C.S.No.9/2019 seeking for temporary injunction. Simultaneously, the petitioner has also filed the statutory appeal before the first respondent against the order dated 28.02.2019 as contemplated under section 59 of the Tamil Nadu Slum Areas Improvement and Clearance Act, 1971. The O.A.No.3/2019 was dismissed on 08.03.2019. However, Section 59 (3) of the said Act contemplates that on the admission of an Appeal, all proceedings to enforce the order challenged in the appeal shall be held in abeyance, pending decision of the Appeal. Therefore, pending disposal of the appeal, the petitioner's interest should be protected against the demolition attempt of the respondents.

4. Mr.Thangasivam, learned counsel for the petitioner submitted that even though the interim application filed in O.A.No.3/2019 in C.S.No.9/2019 was dismissed on 08.03.2019, since the petitioner has approached the 1st respondent and filed an appeal challenging the order of the 2nd respondent dated 28.02.2019, the statutory protection provided under sub clause 3 of section 59 has to be given to the petitioner.

5. On the other hand, the learned counsels appearing for the respondents submitted that the petitioner was given permission to temporarily to occupy the property measuring 1200 sq.ft. only by the 2nd respondent Board and however, the petitioner has encroached 4000 sq.ft of land belonging to the 3rd respondent and therefore, the petitioner is not entitled to seek any indulgence before this Court in respect of such encroachment as well as the cancellation of permission granted in respect of 1200 sq.ft. of land by the 2nd respondent.

6. Heard the learned counsel for the petitioner and the learned counsels appearing for the respondents.

7. It is seen that the petitioner was issued with an order dated 28.02.2019 by the 2nd respondent Board cancelling the allotment of 1200 sq.ft. of land, based on the reasons set out in the said order. Admittedly, as against the said order, a statutory appellate remedy is provided under Section 59 of the Tamil Nadu Slum Areas Improvement and Clearance Act, 1971, to the petitioner.

8. Section 59 of the said Act reads as follows:

Appeal:- (1) Except as otherwise expressly provided in this Act, any person aggrieved by any notice, order or direction issued by the prescribed authority may, within such time as may be prescribed, appeal to the Government.

(2) Every appeal under this Act shall be made by petition in writing accompanied by a copy of the notice order or direction appealed against.

(3) On the admission of an appeal, all proceedings to enforce the notice, order of direction and all prosecutions for any contravention thereof shall be held in abeyance pending the decision on the appeal and the notice, order or direction is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

(4) No appeal shall be decided under this section unless the appellant has been heard or has had a reasonable opportunity or being heard.

(5) The decision of the Government on appeal shall be final and shall not be questioned in any Court.

9. It is stated that the petitioner has preferred such appeal on 25.03.2019 and the same was acknowledged by the 1st respondent on 27.3.2019. No doubt, sub section 3 of Section 59 contemplates an interim protection, keeping the order under challenge before the Appellate Authority, in abeyance. But such protection is available only when the appeal is admitted by the 1st respondent Government. Therefore, this Court is of the view that the 1st respondent has to consider the appeal presented by the petitioner and pass orders on the same including its admission and grant of any interim protection as contemplated under section 59(3) without loss of further time, as it is apprehended by the petitioner that there is a threat of demolition. However, this Court makes it very clear that the appeal presented before the 1st respondent by the petitioner shall be confined only in respect of 1200 sq.ft. of land which was given by the 2nd respondent Board to the petitioner and not in respect of the entire extent of land which is in occupation of the petitioner.

10. Accordingly, this Writ Petition is disposed of by directing the 1st respondent to take up the appeal presented by the petitioner on 27.03.2019 and pass orders on the same on its admissibility and also grant of interim protection under section 59(3). Such exercise shall be done by the 1st respondent within a period of two weeks from the date of receipt of a copy of this

order. If the appeal is admitted by the 1st respondent by granting interim protection, if any, the Appellate Authority shall thereafter dispose the appeal on its own merits and in accordance with law within a period of four weeks thereafter. It is made clear that this Court has not expressed any view on the merits of the claim made by the petitioner in the appeal, as it is for the Appellate Authority to consider and decide. Since this Court has directed the Appellate Authority to take up the matter and decide on admissibility and grant of interim protection within a period of two weeks from the date of receipt of a copy of this order, the respondents are directed to maintain status quo as on today only in respect of 1200 sq.ft. for a period of two weeks. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vsi

To

1. The Principal Secretary to Government,
Housing & Urban Development Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chepakam, Chennai-5
3. The Executive Engineer,
Regional Office-1
Chennai Metropolitan Water Supply and
Sewerage Board,
No.1, Pumping station Road,
Chindadripet, Chennai - 2

+1cc to Mr.S.Prabhu, Advocate SR.No.41145

+1cc to Mr.S.Thankasivan, Advocate SR.No.41357

+1cc to Government Pleader SR.No.41357

W.P.No.12924 of 2019

NMI (CO)
GMY (30/04/2019)