

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 27177 of 2019

and

W.M.P. Nos.26571 and 26572 of 2019

1.Lathika Sasi

2.Sasi

... Petitioners

-vs-

1. The Commissioner,
Corporation of Greater Chennai,
Ribbon Building, Chennai.

2. The Chairman,
Tamil Nadu Slum Clearance Board (TNSCB)
5, Kamarajar Salai, Chepauk, Chennai-5.

3. The Estate Officer,
Tamil Nadu Slum Clearance Board (TNSCB)
Vyasarpadi, Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ or order or direction more particularly in nature of writ of Mandamus for a direction forbearing the respondent 1 & 2 from evicting the petitioners from the shop No.1 and 2, M.S.Nagar, Waltax Road, Chennai.

For Petitioners : Mr.V.S.Mannarsamy

For Respondent -1 : Mr.G.Anantharangan

For Respondents-2&3 : Mr.S.Prabhu

O R D E R

This Writ Petition has been filed to forbear the First and Second Respondents from evicting the petitioners from the shop No. 1 and 2, M.S. Nagar, Waltax Road, Chennai.

2.The Second and Third Respondents have filed Counter Affidavit dated 31.10.2019, in which it has been stated as follows:-

"4. I respectfully submit that the bunk No. 1 measuring an extent of 129 Square feet was allotted to one Rayappan on 27-07-1998, at the rate of 617 + GST 18% = Rs.728/- per month, but the 2nd petitioner had illegally purchased the Bunk from the son of the allottee and hence he has not even purchased the Bunk from the original allottee Rayappan. A person who was allotted a bunk cannot sell it to another person as per the terms and conditions of the allotment order. Hence the selling of the bunk by son of the allottee to the petitioner is not a legal one and the allotment is liable to be cancelled. But till 26-06-2019, the petitioner had paid the rent to the Board in the name of the original allottee only and not in the name of the petitioner. Hence the petitioner has got no legal right over the Bunk. Even when the allotment order issued to the original allottee Rayappan, it has been clearly mentioned that the allottee should not sell or sublet the bunk to others. The bunk should be of temporary nature and pucca structure should not be erected. Moreover, it has been clearly mentioned that the allottee has to vacate the bunk whenever the space is needed for the Board activities and when the space is needed for the reconstruction of EWS tenements for the existing dilapidated tenements of M.S. Nagar scheme, the petitioner who is running the bunk illegally had been asked to vacate the bunk.

5. I further submit that the Bunk No.2, measuring to an extent of 129 Sq.ft was originally allotted to one Gopinath at the rent of Rs.1511+18% GST + Rs.1783/- per month. And the said bunk was subsequently purchased by one N.G.Shyju. Thereafter, the petitioner had stated that she purchased the bunk at astonishing value of Rs.12,00,000/- which is an illegal one and that also from the person who was not originally allotted the bunk by the board. Here, the petitioner had purchased the bunk after paying huge sum of Rs.12,00,000/- from the non allottee of the bunk. The petitioner is the third person who occupied the board's bunk. The board will allot the bunk to the residents of the scheme only in order to give livelihood for the people living in the tenemental area only. The petitioners 1 and 2 who are happen to be husband and wife are not at all residing in the scheme area. Hence, the petitioner could not be

allotted any bunk in their name. The petitioner can get back the amount of Rs.10,000/- paid for the name transfer. But till date the petitioner has paid the rent for the bunk in the name of the original allottee only and as per the terms and conditions of the allotment order for the bunk, the person cannot sell or sublet the bunk to anybody else and also it should be of temporary bunk only. But the petitioner had constructed pucca shop and occupied more than the allotted area as admitted by her. Moreover the petitioner had purchased the bunk illegally; hence she cannot claim any right over the bunk.

6. I further submit that the petitioners had illegally purchased the bunk from the unauthorized persons and from the non allottees of the bunk. They had unauthorizedly conducted business in the bunk. The M.S. Nagar tenements were in a highly dilapidated condition and need to be reconstructed immediately to save the life of the people and board had decided to reconstruct the tenements after demolishing the damaged tenements. It is proposed to construct EWS tenement with the plinth area of 400 Sq.ft., and the plinth area of damaged tenement is only 260 Sq.ft. Hence as per the layout prepared now, 12 bunk existing in the scheme have to be demolished for the construction of tenements including the petitioner's bunk. Hence all the 12 Bunk owners had been asked to vacate their bunk. All the Bunk owners had cooperated and vacated their Bunks. Since the petitioners are unauthorised persons running the Bunks, they had been asked to vacate their Bunks many times, sufficient oral instructions and time has given to vacate their Bunks. The petitioner's Bunks were demolished after their valuables are removed by the petitioners themselves in their Bunks and the board had taken possession of the land for the construction of EWS tenements for the poor people.

7. I further submit that the Bunks 1 and 2 were already demolished after giving sufficient time to the illegal occupants. Hence, the prayer for direction forbearing the respondents from evicting petitioners from the bunk becomes infructuous one."

3. Having regard to the aforesaid cogent reasons assigned by the Second Respondent opposing the claim of the Petitioner in this Writ Petition, it would be useful to refer to the dictum laid down by the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R. Apparao [(2002) 4 SCC 638], in which it has been held as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singhv. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

In the light of the aforesaid legal position coupled with the fact that the Petitioner does not have any subsisting right over the property as borne out from the materials placed on record, this Court does not find any justification to entertain this Writ Petition in the exercise of its discretionary power under Article 226 of the Constitution.

4. Accordingly, the Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bkn

To

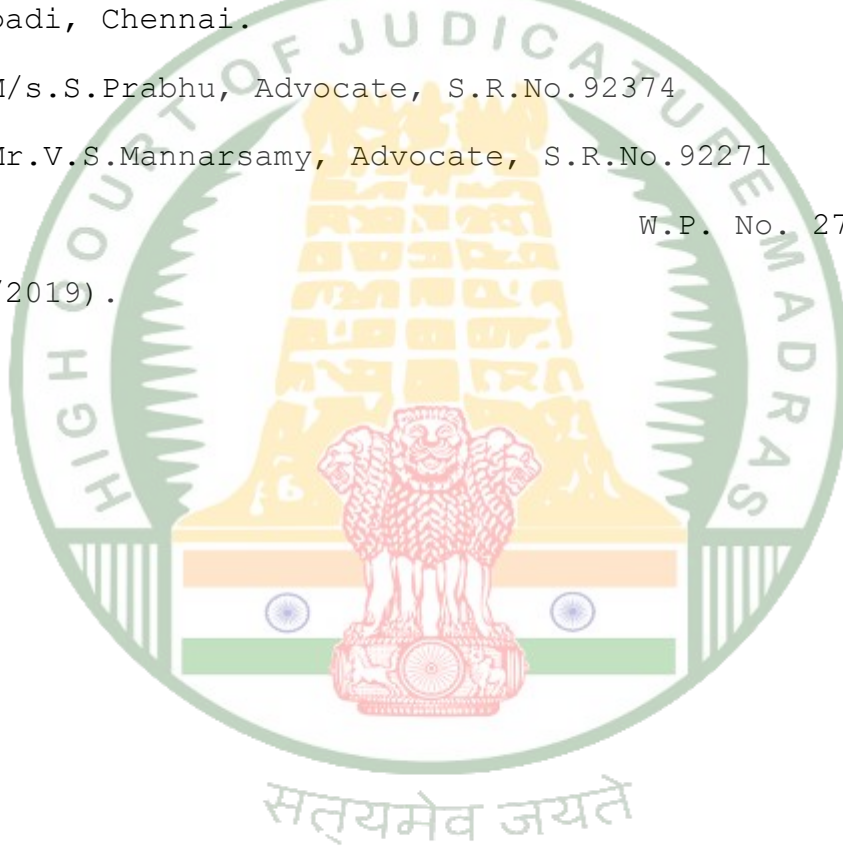
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+1 cc to M/s.S.Prabhu, Advocate, S.R.No.92374

+1 cc to Mr.V.S.Mannarsamy, Advocate, S.R.No.92271

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SJ(CO)
SSM(21/11/2019).



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