

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.34328 of 2017

C.Saivamani,
S/o.Chinnappan,
No.15, Kasipuram B-Block,
7th Street, Royapuram, Chennai 600 013.

...Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai, Chennai 600 005.

2.C.Deivasigamani,
S/o.Chinnappan,
No.HFA278, 33/16, Raja Shanmugam Nagar,
2nd Street, Ajax Back side,
Thiruvottriyur,
Chennai 600019.

.... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus, directing the 1st respondent herein to conduct fresh enquiry regarding the allotment of house site No.15, Kasipuram, B. Block, 7th Street, Royapuram, Chennai 600 013 for the petitioner by giving opportunity to the 2nd respondent and any other person concerned in this matter as early as possible.

For Petitioner : Mr.V.S.Ramadoss

For Respondents : Mr.R.Sivakumar (for R1)

R2-Not ready in notice

ORDER

The Writ Petitioner seeks issuance of Writ of Mandamus, directing the 1st respondent/Tamil Nadu Slum Clearance Board to conduct fresh enquiry regarding the allotment of house site at No.15, Kasipuram, B Block 7th Street, Royapuram, Chennai - 600 013 ('house site') to him after giving him as well as any other

person, who may be concerned in this matter, sufficient opportunity, and as expeditiously as possible.

2. Mr.V.S.Ramadoss, learned counsel appearing for the petitioner submits that the petitioner is residing as a slum dweller in Royapuram since 1971. According to him, the first respondent had, after due enquiry in the year 1985, allotted the house site in question to him, under E.M.No.296/85/E vide allotment order dated 30.03.1985. The allotment had been effected in terms of G.O.Ms.No.117 dated 27.06.1979 and G.O.Ms.No.1100 dated 29.08.1980, issued by the Housing and Urban Development Department. The G.Os stipulate that only such slum dwellers who do not own house sites or houses elsewhere and who have been residing in a slum on or before 30.06.1977, will be eligible for the grant of conditional patta to land of an extent of 20 square meters on payment of Rs.700/- with interest at 6%. According to him, he is fully qualified to the allotment made to him.

3.While this was so, O.S.No.7943 of 1995 came to be filed by the younger brother of the second respondent, seeking a declaration and permanent injunction in regard to the house site and an ex parte order was obtained by him on 23.11.1998 from the City Civil Court, Madras. The petitioner in the mean time filed O.S.No.6291 of 1999, which was dismissed for default. No further action has been taken by the petitioner to pursue the original suit or to set aside the ex-parte decree passed in O.S.No.7943 of 1995. The second respondent has obtained re-allotment of the house site by cancellation of the allotment made to the petitioner in the year 1999. According to the petitioner the second respondent is not even entitled or qualified for such allotment.

4.A counter has been filed by the first respondent pointing that the matter falls within the jurisdiction of the Civil Courts and challenging the very maintainability of this Writ Petition.

5. Heard learned counsel for the petitioner and the first respondent, service being incomplete upon the second respondent.

6. It is seen that the petitioner has filed O.S.No.9815 of 2008 arraying the first and second respondents in this Writ Petition as the first and second defendants and the Special Tahsildhar, Madras Urban Development Project as the third defendant, in the suit. The suit is filed for permanent injunction restraining the first defendant from interfering with the petitioner's peaceful possession of the house site in question and for costs. The suit has been decreed ex parte against the petitioner, against which a first appeal is said to be filed and pending before the V Additional City Civil Court,

Chennai, in First Appeal No.206 of 2016. The petitioner has rightly approached the civil courts in respect of the remedy sought. In the light of the same, I am of the view that this Writ Petition is not maintainable, as it seeks to address the infringement of the petitioners' civil rights.

7. Accordingly, this Writ Petition is dismissed. It is however made clear that none of the observations made in this order will impact the hearing or the result of the First Appeal filed by the Writ Petitioner. No costs.

Sd/-

Assistant Registrar (CS -II)

//True Copy//

Sub Assistant Registrar

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To

The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai, Chennai 600 005.

Copy To:

The Vth Additional City Civil Court,
Chennai.

+1cc to Mr.V.S.Ramadoss, Advocate, S.R.No.13356

W.P. No.34328 of 2017

RV(CO)

RRS (29/03/2019)

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