



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.11.2019

PRONOUNCED ON: 01.06.2020

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THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 4906 of 2019
and
W.M.P. No. 5590 of 2019

K. Shanthi

...Petitioner

-vs-

- 1.The Government of Tamil Nadu,
Rep. By its Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.
- 3.The Chairman/Managing Director,
Tamil Nadu Slum Clearance Board,
No. 5, Kamarajar Salai,
Chennai - 600 005.
- 4.The Executive Engineer,
Zone - 9, Corporation of Chennai,
No. 1, Lake Area, 4th Cross Street,
Nungambakkam,
Chennai - 600 034.

...Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Managing Director, Tamil Nadu Slum Clearance Board, No. 5, Kamarajar Salai, Chennai - 600 005 the Third Respondent herein culminating in Na. Ka. No. E5/2188/2018 dated 08.01.2019 and quash the same and further direct the Third Respondent to issue the sale deed to the Petitioner in respect of the Plot No. 337 (or) 338, in East Namachivayapuram, Chennai - 600 094 on payment of land cost to be paid by the Petitioner.



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For Petitioner : Mr.K.Balakrishnan
For Respondents : Mr.R.Venkatesh,
Government Advocate (for R1)

Mr.S.Saravanan,
Standing Counsel (for R2 & R4)

Mr.S.Prabhu,
Standing Counsel (for R3)

O R D E R

Heard Mr. K.Balakrishnan, Learned Counsel for the Petitioner, Mr. R.Venkatesh, Learned Government Advocate appearing for the First Respondent, Mr. S.Saravanan, Learned Standing Counsel appearing for the Second and Fourth Respondents and Mr. S.Prabhu, Learned Standing Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is borne out from the records that one Vijaya had filed the Writ Petition in W.P. No. 27955 of 2011 before this Court for a direction to the concerned authorities of the Chennai Metropolitan Development Authority (herein after referred as 'the CMDA' for brevity and convenience), Corporation of Greater Chennai and the Tamil Nadu Slum Clearance Board to immediately demolish the illegal construction put up by the Petitioner, viz., K.Shanthi and her husband R.Karmegam and remove the encroachment in the land illegally occupied by them in East Namachivayapuram, Choolaimedu, Chennai-600094 and restore the same for public purpose for which it was intended and ear-marked. In pursuance thereof, the Corporation of Greater Chennai had issued notices dated 24.11.2011 and 28.01.2017 to the Petitioner to remove the unauthorized construction made in that property. When the action taken was reported before the Division Bench of this Court on 31.01.2017, the aforesaid Writ Petition was disposed by the following order:-

"The listing of this matter after almost six years appears to have at last triggered off some action on the part of the respondent Corporation / the third respondent, which has found the illegal construction put up by respondents 5 and 6 on plot No.337, East Namachivayapuram, Choolaimedu, Chennai 94, Nungambakkam Village, Egmore Nungambakkam Taluk, Chennai District and has issued a locking and sealing and demolition notice under Sections 56 and 57 read with 85 of the Tamil Nadu



Town and Country Planning Act, 1971, on 28.01.2017 to the fifth and sixth respondents.

2. Learned counsel for the third respondent states that the proceedings shall be concluded within a maximum period of two (2) months from today.

3. The aforesaid statement is taken on record. The Corporation shall remain bound by the same.

Writ petition, accordingly, stands disposed of. No costs. Consequently, M.P.Nos.1 and 2 of 2011 stand closed."

3. Thereafter, the Petitioner filed the Writ Petition bearing W.P. No. 2858 of 2018 before this Court for directing the concerned authority of the Corporation of Greater Chennai and the Tamil Nadu Slum Clearance Board not to take coercive steps to demolish the buildings put in Plot No. 337, Door No. 196, East Namachivayapuram, Choolaimedu, Chennai - 600094 except under due process of law. The said Writ Petition was disposed by the Division Bench of this Court by order dated 02.04.2018 as follows:-

"By consent, the writ petition is taken up for final disposal.

2. The petitioner claims that a site/plot admeasuring to an extent of 450 sq.ft at No.196, East Namachivayapuram, Chooladimedu, Chennai 600 094, bearing plot no.337 was allotted in favour of her husband viz., Karmegam, in the year 1994 and thereafter, the land was surveyed by the 3rd respondent, after issuing a notice dated 13.05.1994 in H.S./217/1994, the petitioner was also called upon to pay a sum of Rs.40/- as survey charges and he has paid also.

3. It is the claim of the petitioner that she is residing in the plot by putting up superstructure from the year 1995 onwards and the said property is also subjected to statutory levies and the premises in question have been given electricity connection and she has also issued with Aadhar card and given other benefits by the State Government.

4. The grievance of the petitioner is that all of a sudden, steps are being taken to dispossess her from the site/superstructure, without recourse to due process of law and therefore, constrained to approach this Court by filing this writ petition.



5. The writ petition was entertained and notices were ordered.

6. The 3rd respondent has filed a counter affidavit stating among other things that East Namachivayapuram street, Choolaimedu, Chennai 600 094 was initially taken by Chennai Metropolitan Development Authority and later, was transferred to Tamil Nadu Slum Clearance Board and now comes under the control of Estate Office-5 and in the said scheme, on the western side of Plot No.338, Southern side of the temple and northern side of the Children's nutrition Centre, there is an unnumbered plot meant for Public well and the total extent of said area is 199.5 sq.m and in that plot, the petitioner had encroached upon 36 sq.m of land without the permission of Tamil Nadu Slum Clearance Board and put up superstructure consisting of ground + First and Second floor and she is residing there. It is further averred by the 3rd respondent that plot No.337 is not encroached by the petitioner and it is in occupation of Chennai Corporation School and combined Children's Development Center.

7. The 4th respondent has filed the counter affidavit stating that disputed property belongs to Tamil Nadu Slum Clearance Board. The petitioner is in occupation of the same without getting any proper allotment order and she has also put up superstructure consist of ground + First and Second floor and Head room in the Third Floor with a total plinth area of 1712 sq.ft in the year 2012. Insofar as the claim of the petitioner that she has preferred an appeal as to the threat of locking and sealing and demolition is concerned, the 4th respondent has denied that no such appeal is pending on the file of the Tamil Nadu Housing and Urban Development, Greater Chennai-89 and prays for dismissal of the writ petition.

8. The learned counsel appearing for the petitioner would submit that since the land in question is allotted in favour of the petitioner's husband and by way of succession, she is in possession and enjoyment of the same along with superstructure from the year 1992 onwards. She cannot be dispossessed except under due process of law and would further aver that an appeal was submitted by her with regard to threat of locking and sealing and demolition of the superstructure and it may be directed to be disposed of by the appellate authority within a time frame.



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9. Per contra, the learned counsel appearing for the 3rd respondent would submit that land in question is reserved for public well and the petitioner has encroached upon the land admeasuring to an extent of 36 sq.m without any authorisation and she has put up superstructure.

10. The learned standing counsel appearing for the 4th respondent would submit that the petitioner without any planning permission has put up unauthorised structure having total plinth area of 1712 sq.ft. As far as the site is concerned, she is not the owner.

11. This Court has carefully considered the rival submission and also perused the materials placed before it.

12. Insofar as the submission made by the learned counsel appearing for the petitioner that she has filed an appeal against the threat of locking and sealing and demolition is concerned, the letter of Tamil Nadu Housing and Urban Development Department, Secretariat, Chennai-9, bearing no.5751/UD-VI (1)/2018-1, dated 14.03.2018 would disclose that no such appeal is pending on their file. Counter affidavit of the 2nd respondent would indicate that the petitioner is in unauthorised occupation of 36 sq.m of land and as per the counter of the 4th respondent, she has put up unauthorized superstructure consisting of ground + First and Second Floor with head room in the Third Floor with total plinth area of 1712 sq.ft without any planning permission. In the light of the same, it is open to the 2nd respondent to follow the due process of law and evict the petitioner from the land in question within a period of eight weeks from the date of receipt of copy of this order and it is also open to the 3rd and 4th respondent to follow the due process of law and demolish the unauthorised construction put up by the petitioner, within a period of ten weeks from the date of receipt of a copy of this order and decision in this regard shall be communicated to the petitioner.

13. With the above direction, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

14. Call on 21.04.2018 for filing status report of Tamil Nadu Slum Clearance Board as well as Corporation



of Chennai."

4. In furtherance to the aforesaid orders passed by the Division Benches of this Court, the concerned authorities of the Corporation of Greater Chennai issued de-occupation notice ZOC No. 0498/2018 dated 07.05.2018 to the Petitioner informing that if she fails to discontinue occupation of the aforesaid premises within 7 days from the date of receipt of that notice, action under Section 56 sub-section (2a) and (5) clauses (a) and (d), (i) and (ii) of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as 'the Act' for brevity and convenience), as amended by the Act 61 of 2008, to secure compliance and lock and sealing of the premises and carrying out demolition of the unauthorized construction of the building without further notice to the Petitioner would be taken.

5. At that stage, the Petitioner filed another Writ Petition in W.P. No. 13679 of 2018 challenging the aforesaid de-occupation notice dated 07.05.2018 issued by the concerned authorities of the Corporation of Greater Chennai portraying as if she had preferred Special Revision/Appeal under Section 80-A of the Act before the Government of Tamil Nadu, against the lock and seal notice dated 24.11.2011 and demolition notice dated 28.01.2017 but without awaiting its outcome, that de-occupation notice had been issued. It assumes significance to highlight here that till the disposal of W.P. No. 2858 of 2018 on 02.04.2018, there had not been any appeal filed by the Petitioner against the demolition notices before the Government of Tamil Nadu which has been conspicuously noticed in that order. However, it appears from the order dated 07.06.2018 in W.P. No. 13679 of 2018 passed by the Division Bench of this Court, the aforesaid material facts had not been brought to notice and that Writ Petition was disposed as follows:-

"By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the 1st respondent, Mr.A.Nagarajan, learned Standing Counsel accepts notice on behalf of respondents 2 and 4, Mr.S.Prabhu, learned counsel accepts notice on behalf of the 4th respondent and Mr.S.K.Raameshwar, learned Standing Counsel accepts notice on behalf of the 5th respondent.

2. The petitioner would submit that land bearing Plot no.337, admeasuring to an extent of 450 sq.ft at No.196, East Namachivayapuram, Choolaimedu, Chennai-600 094 was allotted to the husband of the petitioner viz., Karmegam in the year 1984 and vide proceedings dated 12.05.1994,



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the 3rd respondent has also called upon the husband of the petitioner to pay service charges and it was also paid and thereafter, the land was measured and subsequently, superstructure was put up in the year 1995 and it was also subjected to statutory levies. However to the shock and surprise of the petitioner, the 4th respondent has issued a Lock and Seal notice on 24.11.2011 and subsequently, Demolition notice dated 28.01.2017 was issued. The petitioner challenging the same has filed Special Revision / Appeal under Section 80-A of the Town and Country Planning Act, 1971 before the 1st respondent on 23.02.2017 and the same is pending. However, the 4th respondent, without taking note of the pendency of the appeal, has once again issued the impugned Deoccupation, Lock and Seal notice dated 07.05.2018 under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971. Challenging the said notice, the petitioner has come forward with this writ petition.

3. Mr.K.Balakrishnan, learned counsel appearing for the petitioner would submit that Section 57 of the Tamil Nadu Town and Country Planning Act, 1971 cannot be invoked for the reason that it would applies for undergoing construction and admittedly superstructure had been put up very long back and it is also subjected to statutory levies and therefore, the Corporation of Chennai cannot take a stand that the superstructure is unauthorised and also would further urge that the plinth area of the superstructure is minimal in nature and the petitioner belonging to lower economic group and he is in occupation of the same for over thirty years and would further add that since the statutory special revision / appeal is pending for nearly one year, appropriate direction can be issued to the 1st respondent to dispose of the same and till such time, further proceedings may be deferred in respect of the impugned de-occupation notice.

4. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 1st respondent would submit that though the statutory revision/special appeal has been filed, no petition for stay has been filed and the said appeal/special revision would be given disposal in accordance with law at the earliest.

5. The learned Standing counsel appearing for the Corporation of Chennai would submit that since the unauthorised superstructure has been put up, action has



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been taken by following due process of law and it cannot be faulted with and would further submit that the Tamil Nadu Slum Clearance Board has nothing to do with the unauthorised construction and it is for the concerned official to take appropriate action in accordance with law. The learned Standing Counsel appearing for the 5th respondent would submit that in the event of any order of interim direction being passed, the 5th respondent would obey and comply with the said order.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. It is not in dispute that the statutory special revision / appeal is pending on the file of the 1st respondent and taking note of the same, this Court, without going into the merits of the claim projected by the petitioner and the said special revision / appeal, directs the 1st respondent to entertain the said appeal, if the papers are otherwise in order and thereafter dispose of the said appeal / special revision on merits and in accordance with law within a period of six weeks from the date of receipt of copy of this order and till such time, the 4th respondent shall defer further decision in terms of the impugned de-occupation notice dated 07.05.2018. It is also made clear that till the disposal of the special revision / appeal, the petitioner shall not create any third party rights in respect of the superstructure in question and shall not alter the physical features also.

8. The writ petition stands disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed."

6. The Government of Tamil Nadu through the Additional Secretary (Technical), Housing and Urban Department, referring to the Appeal Petition received from the Petitioner dated 23.02.2017 received on 18.05.2018 and a representation dated 20.06.2018, issued letter No. 575/OD-VI(1)/2018-4 dated 08.11.2018 to the concerned authorities of the CMDA, Corporation of Greater Chennai, the Petitioner and the said Vijaya stating as follows:-

"5. The Government after careful consideration of the appeal and facts brought out during the personal hearing observed that the site lies in a scheme developed by the Tamil Nadu Slum Clearance Board. The sale deed for transfer of land to the Appellant under reference is not



yet issued. The Appellant has informed that she had taken the matter with the Tamil Nadu Slum Clearance Board and expecting orders on allotment.

6. Therefore, the Government directs the Appellant to obtain the sale deed from the Tamil Nadu Slum Clearance Board and then apply for planning permission to the Greater Chennai Corporation.

7. The Commissioner, Greater Chennai Corporation is informed to pursue action accordingly.”

7. Relying on that letter dated 08.11.2018 issued by the Government of Tamil Nadu, the Petitioner had submitted a representation dated 13.12.2018 to the Third Respondent, viz., the Chairman, Tamil Nadu Slum Clearance Board, Chennai, for issuing her sale-deed in respect of Plot No. 337, East Namachivayapuram, Choolaimedu, Chennai - 600 094.

8. The Managing Director, Tamil Nadu Slum Clearance Board Chennai by order Na. Ka. No. E5/2188/2018 dated 08.01.2019 stated that the lay-out of the East Namachivayapuram Scheme was approved by the CMDA and transferred to the Tamil Nadu Slum Clearance Board and the allotments were made to the eligible persons in the enumeration list prepared by the Tahsildar, but the name of the Petitioner does not find place in the same. On site inspection, it has been ascertained that the portion of the land occupied by the Petitioner does not relate to Plot No. 337 as claimed by her and it forms part of an unnumbered plot measuring an extent of 36.0 sq.m. out of 199.5 sq.m. assigned for public purpose of public health, on the western side of Plot No. 338, southern side of Karumariamman Temple and northern side of Children's Nutrition Centre, which has been encroached by the Petitioner without the permission of the Tamil Nadu Slum Clearance Board and in which she has unauthorizedly constructed a pucca building comprising of ground, first and second floors, where she is residing. It is also explained that the school run by the Corporation of Greater Chennai and the Combined Children's Development Centre are situated in Plot No. 337 of East Namachivayapuram, Choolaimedu, Chennai - 600 094, and it has nothing to do with the land claimed by the Petitioner. Accordingly, the representations dated 29.01.2018, 20.08.2018 and 24.08.2018 made by the Petitioner for executing sale-deed for that property in her favour, which had not at all been allotted to her, has been rejected. The Petitioner has challenged the same in this Writ Petition.

9. It is vehemently contended on behalf of the Petitioner that her husband, viz., R. Karmegam, occupied that land in the year 1994, which has been surveyed by the Tamil Nadu Slum Clearance



Board after issuing notice on 13.05.1994 directing the Petitioner to pay Rs.40/- towards survey charges and that thereafter, the land was measured and identified by the Tamil Nadu Slum Clearance Board and then the Petitioner put up a construction on the land in the year 1995 and she has been residing in that place since then by paying property tax from the year 2011 and Water and Sewerage Charges from the year 2015 with Electricity Connection, Ration Card, Aadhaar Card and Voter Identification Card showing that address. It is further claimed that inasmuch as the building constructed in that property is assessed property tax by the Corporation of Greater Chennai, there is no question of any unauthorized construction and no planning permission is required for the area below 500 sq.ft. and that she is entitled to regularization in respect of the deviated portions of the building, apart from exemptions under Sections 56 and 57 of the Act for the building constructed in the year 1995. It has been stated that in any event, the Petitioner has perfected title to that property by adverse possession for 35 years and is entitled to execution of sale-deed by the Tamil Nadu Slum Clearance Board, which has extended such benefit to similarly placed persons in the neighbouring plots and cannot meet out discriminatory treatment in her case alone.

10. Having regard to the aforesaid submissions made, it is needless to recapitulate at the outset that for the execution of sale-deed by the Tamil Nadu Slum Clearance Board, an applicant has to hold an order of allotment for the same. It has been explained by the Tamil Nadu Slum Clearance Board that no such allotment has been made in the name of the Petitioner at any time and in the enumeration list of the eligible persons for such allotments, the name of the Petitioner does not find place. Even the number of the plot, which has been quoted as '337' by the Petitioner, has been found to be false. The land occupied by the Petitioner is patently an encroachment and the building constructed therein is totally unauthorized and illegal without having obtained any planning permission from the concerned authority. The self-serving claim for regularization has no legal basis and cannot at all be entertained. The circumstance that the Corporation of Greater Chennai has assessed the unauthorized building in the encroached land for property tax, cannot by any stretch of imagination, confer any title to that property in favour of the Petitioner as reiterated by the Hon'ble Supreme Court of India in Sri Ram Mandi, Jagtial -vs- S. Rajyalaxmi [(2019) 2 SC 338]. This Court, in circumstances similar to the present case, has rejected claim for patta in respect of lands belonging to the Tamil Nadu Slum Clearance Board in Padi Pudhunagar Pothunala Manram -vs- State of Tamil Nadu (Order dated 22.08.2003 in W.P. No. 5420 of 1996), wherein it has been held as follows:-



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"8. No encroacher has a legal right to get patta. It is open to the Government to clear any encroachment if such clearance is necessary to ensure water sources and water ways. The fact that the occupants have been paying electricity charges and paying taxes cannot confer any title or rights on them. Illegal action on the part of the authorities in assessing the said properties to tax which they are not entitled to, cannot confer any right on the illegal occupant."

In view of this incontrovertible legal position, the recalcitrant claim of the Petitioner, who is a rank trespasser, for execution of sale-deed for the encroached property cannot be countenanced and deserves only to be rejected outright and the impugned order dated 08.01.2019 passed by the Third Respondent is upheld. As a consequence thereof, the First Respondent shall proceed to dispose the pending appeal under Section 80-A of the Act in terms of the directions issued by this Court in the order dated 07.06.2018 in W.P. No. 13679 of 2018 on the basis that the Petitioner is not entitled to any sale-deed for the property occupied by her from the Tamil Nadu Slum Clearance Board.

11. In the upshot, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vjt

Note:

(1) Registry in conformity with the directions issued by the Division Bench of this Court in the order dated 02.04.2018 in W.P. No. 2858 of 2018, shall post that Writ Petition before the concerned Division Bench for filing Status Report and the records of the subsequent Writ Petitions in W.P. Nos. 13679 of 2018 and W.P. 4906 of 2019 filed by the Petitioner shall also be placed along with the same for taking cognizance of the subsequent events and passing appropriate orders in the matter.



To

1. The Secretary,
The Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.
3. The Chairman/Managing Director,
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Chennai - 600 005.
4. The Executive Engineer,
Zone - 9, Corporation of Chennai,
No. 1, Lake Area, 4th Cross Street,
Nungambakkam,
Chennai - 600 034.

Copy to

1. The Registrar (Judicial),
High Court of Madras,
Chennai - 600104.
2. The Section Officer,
Writ Section
High Court,
Madras.

W.P. No. 4906 of 2019

VSN 1(CO)
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