

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2020

DELIVERED ON : 21.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.28252 of 2012

&

M.P.No.1 of 2012

Lourdunathan

... Petitioner

vs.

1.The Chairman cum Managing Director,
TamilNadu Slum Clearance Board,
Kamarajar Salai,
Chennai - 5.

2.The Assistant Secretary
Tamilnadu Slum Clearance Board,
Kamarajar Salai,
Chennai - 5.

3.S.Syed Azezullah.

4.Sheriff Jati Begum

5.The Sub Registrar,
Registration Department,
Kodambakkam,
Chennai - 600 024.

...Respondents

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Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of certiorari calling for the records relating to impugned Sale Deed dated 10.06.2011 executed by the 2nd respondent to and in favour of 3rd & 4th respondents and registered as Doc No.2024/2011 in the office of the 5th respondent herein, quash the same.

For Petitioner : Mr.K.M.Subramanian, Senior Counsel
for Mr.K.Goviganesan

For Respondents 1 & 2: Mr.R.Sivakumar,
Standing Counsel

For Respondents 3 & 4: Mr.AR.L.Sundaresan

For Respondent 5 : Mr.P.P.Purushothaman,
Government Advocate

ORDER

This writ petition has been filed to issue a writ of certiorari calling for the records relating to the impugned Sale Deed dated 10.06.2011 executed by the 2nd respondent in favour of the third and fourth respondents and registered as Doc No.2024/2011 in the office of the 5th respondent herein and to quash the same.

2.It is the case of the petitioner that he belongs to a poor and down trodden community. According to him, the Tamil Nadu Slum Clearance Board allotted in his favour on lease cum sale basis a vacant Plot measuring 0.82.0 square meter bearing Plot No.501 at Door No.88, 6th Cross Street, Trustpuram, Kodambakkam, Chennai - 600024. Pursuant to the allotment, it is his case that he entered into a lease cum sale agreement dated 13.05.1989 with the Tamil Nadu Slum Clearance Board. According to him, the total sale consideration was fixed at Rs.3,180/- and the said consideration was to be paid in monthly installments of Rs.42/-. It is his case that the first installment commenced on 01.05.1989 and the repayment period was for a period of 20 years. According to the petitioner, he has paid the entire sale consideration to the Tamil Nadu Slum Clearance Board and the Tamil Nadu Slum Clearance Board will have to execute the sale deed in his favour.

3.According to the petitioner, immediately after the payment of the installments during the year 2009, he requested the Tamil Nadu Slum Clearance Board to execute the sale deed in his favour. According to him, he was informed by them that it will take another two or three years for the execution of the sale deed as all the allottees have to be issued with sale deeds at one stretch.

4. According to the petitioner, subsequent to entering into a lease cum sale agreement, no objection certificate was also issued by the first respondent for the Sewage and Water Connection and for obtaining Planning permission. According to the petitioner, he has put up a small house and obtained water and sewage connection and was residing in the property. According to the petitioner, the electricity service connection was also issued in his name and he is in absolute possession and enjoyment of the property allotted by the Tamil Nadu Slum Clearance Board.

5. According to the petitioner, during the year 1994, he had borrowed a sum of Rs.3,00,000/- from the third respondent herein agreeing to repay the same with interest at 9% per annum for the purpose of his father's medical expenses. According to him, the third respondent was already known to his father. According to the petitioner, towards security, the third respondent asked the petitioner to execute an unregistered sale deed for the property allotted by the Tamil Nadu Slum Clearance Board. According to the petitioner, he informed the third respondent that the sale deed has not been executed in his favour by the first and second respondents and even if he executes an unregistered sale deed, the same is not a valid document. According to the petitioner, the third respondent insisted for the following documents namely (a) Allotment copy, (b) Sale Agreement, (c) Plan copy (d) unregistered sale deed and (e) no objection certificate issued by the Slum Clearance Board for water, sewerage and planning permission. It is the case of the petitioner that the third respondent promised to return back all the aforementioned documents once the petitioner discharges the loan. It is also the case of the petitioner that the third respondent apart from obtaining the aforementioned documents from the petitioner, had also obtained the petitioner's signatures in various blank papers.

6. According to the petitioner, after availing the loan of Rs.3,00,000/- from the third respondent, he shifted his residence to the new address to take care of his ailing father who was residing there. According to the petitioner, he kept the house locked and every month he used to go and open the house and clean the house and premises. According to the petitioner, he has also duly paid the property tax to the Corporation of Chennai every year without committing any default. According to the petitioner, his father died during the year 1997. It is his case that in the month of May 2001, he wanted to repay the debts and went to the house of the third respondent herein at No.32, Padmanabha Nagar, Main Road, Choolaimedu and found the door locked.

7. According to the petitioner, he periodically made enquiries about the third respondent but could not locate his whereabouts to enable him to discharge the loan. According to the petitioner, with great difficulty, he came to know that the fourth respondent was working at Bank of India, Kodambakkam Branch and when he went and enquired there, he was informed that the fourth respondent had voluntarily retired from service and both the third and fourth respondents have settled in Brunei as the third respondent got a job there. According to the petitioner, the third respondent was earlier working as Professor at New College, Chennai and there also he enquired about him but they had also replied that he had resigned long back.

8. According to the petitioner, the Corporation Officials issued last warrant notice and metro water disconnection notice for non payment of property tax for the period 2006-2011. According to him, when he went to pay the same, he was informed that he is not entitled to pay the same as they have got intimation that the third and fourth respondents have become the owners of the property which was allotted to him by the Tamil Nadu Slum Clearance Board.

9. According to the petitioner, during the month of May 2012, when he visited his property, he found to his shock and surprise that his house was broken open and the same was demolished and a new construction has started coming up. According to the petitioner, when he objected to the construction being put up by the third and fourth respondents, he was informed by the third and fourth respondents that they have purchased the property from the first and second respondents and they are putting up construction and requested him not to interfere with the construction. It is the case of the petitioner that the third and fourth respondents have maneuvered to get the sale deed registered in their favour from the second respondent, since the petitioner has not repaid the loan to the third respondent.

10. According to the petitioner, thereafter, he applied for the certified copy of the sale deed and found that the second respondent herein has executed and registered the sale deed dated 10.06.2011 in the name of the third and fourth respondents by the Tamil Nadu Slum Clearance Board in respect of the property allotted in his favour. According to the petitioner, the execution and registration of sale deed is arbitrary which was executed with malafide intention and for extraneous reasons. Aggrieved by the execution of the sale deed dated 10.06.2011, this writ petition has been filed to quash the impugned sale deed.

11.A counter affidavit has been filed by the respondents 1 and 2 stating that plot No.501 situated at Door No.88, 6th Cross Street, Trustpuram, Kodambakkam, Chennai - 600024 which is the subject matter of challenge in this writ petition was originally allotted by the TamilNadu Slum Clearance Board to one Perumal son of Rajamanickam and the said Perumal has also obtained sale deed in his name from the Tamil Nadu Slum Clearance Board. According to them, on the basis of the said purchase, the writ petitioner had obtained the allotment order from the Tamil Nadu Slum Clearance Board, Chennai - 5 as per their letter dated 25.09.1989 in the proceedings Se.Mu.Ka.No.38982/88. It is further stated that the third respondent Syed Azezulla got the allotment order from the Tamil Nadu Slum Clearance Board, Chennai - 5 as per the proceedings in Na.Ka.No.29778/94/E5 dated 11/1997 and the third respondent also obtained the registered sale deed dated 10.06.2001 in respect of plot No.501 which is the subject matter of challenge in this writ petition.

12.It is also their case that the writ petitioner never obtained any sale deed from the Tamil Nadu Slum Clearance Board, Chennai - 5 for plot No.501 at any point of time. It is also their case that the dispute raised by the petitioner is purely a civil dispute and hence, this Court under Article 226 of the Constitution of India cannot entertain this writ petition as it is not maintainable in law.

13.The third and fourth respondents have also filed their counter affidavit. According to them, the third respondent has obtained a valid sale deed dated 10.06.2001 in respect of plot No.501 from the Tamil Nadu Slum Clearance Board pursuant to the allotment order as per Na.Ka.No.29778/94/E5 dated 11/1997. It is their case that subsequent to the purchase, the third and fourth respondents by their application dated 02.03.2012, had applied for demolition and re-construction of the building as per the sanctioned plan. According to them, only after obtaining the building permission and planning permit from the competent authority, CMDA, they have put up the construction. According to them, the petitioner had not objected to the construction put up by them at any point of time.

14.According to the third and fourth respondents, the petitioner was very well aware that the Tamil Nadu Slum Clearance Board had executed the sale deed in favour of the third respondent. According to them, the petitioner was also duly informed by the authority concerned that they were not willing to receive the taxes in view of the fact that the

ownership of the property stands in the name of the third respondent. It is also their case that allotment order for plot No.501 which is the subject matter of challenge in this writ petition, originally stood in the name of one perumal and on the strength of his sale deed, the allotment order was transferred in the name of the petitioner in the year 1989. According to them, the petitioner had also executed the sale deed in favour of the third respondent on the basis of which allotment order was issued in the name of the third respondent by the Tamil Nadu Slum Clearance Board.

15. According to the third and fourth respondents, the petitioner never availed any loan from them as alleged in the writ petition. According to them, the money received by the petitioner was only towards the sale consideration for the purchase of plot no.501. It is also their case that the petitioner never signed in blank papers which were misused by the third and fourth respondents as alleged in the writ petition. Having obtained a valid sale deed from the Tamil Nadu Slum Clearance Board, the third and fourth respondents have submitted that the impugned sale deed executed in their favour by the Tamil Nadu Slum Clearance Board cannot be cancelled.

16. A rejoinder has also been filed by the petitioner to the counter affidavit filed by the respondents 3 and 4 wherein the petitioner has stated that he was working as a Group D employee and he was working as a Shroff/Godown Keeper and retired on superannuation in the said post. According to him, fraud was played on him and he was deprived of his property unlawfully. According to him, all the documents relied upon by the respondents 3 and 4 are fabricated and concocted ones and created for the purpose of cheating him.

17. It is also the case of the petitioner that the Tamil Nadu Slum Clearance Board can allot plots only to slum dwellers. It is his case that the third and fourth respondents are not slum dwellers and are affluent persons and therefore, they are not eligible for allotment.

18. Heard Mr.K.M.Subramanian, learned Senior Counsel for Mr.K.Govi Ganesan, learned counsel for the petitioner, Mr.R.Sivakumar, learned standing counsel for the respondents 1 and 2 and Mr.AR.L.Sundaresan, learned senior counsel for the respondents 3 and 4 and Mr.P.P.Purushothaman, learned Government Advocate for the fifth respondent.

19.The learned Senior Counsel for the petitioner submitted that the third and fourth respondents are not slum dwellers and they are not entitled for allotment of house sites from the Tamil Nadu Slum Clearance Board. He also submitted that the petitioner availed loan of Rs.3,00,000/- from the third respondent and as a security for the said loan, he had signed blank papers which have been misused by the third and fourth respondents for obtaining allotment order as well as sale deed from the Tamil Nadu Slum Clearance Board.

20.The learned Senior Counsel for the petitioner drew the attention of this Court to various documents filed along with this writ petition. In particular, he referred to (a) lease cum sale agreement dated 13.05.1989 in petitioner's favour and (b) proceedings of the Tamil Nadu Slum Clearance Board dated 22.05.1989 and payment receipts with regard to the payments made by the petitioner to the Tamil Nadu Slum Clearance Board under the lease cum sale agreement dated 13.05.1989.

21.Referring to the aforesaid documents, the learned Senior Counsel would submit that even without cancellation of lease cum sale agreement dated 13.05.1989 standing in the name of the petitioner, the Tamil Nadu Slum Clearance Board has illegally allotted the house site to the third and fourth respondents and have also executed the sale deed in their favour. According to the learned Senior Counsel, without any notice to the petitioner, the second respondent has executed the impugned sale deed in favour of the third and fourth respondents for the same property which is the subject matter of the lease cum sale agreement dated 13.05.1989 standing in the name of the petitioner.

22.According to the learned Senior Counsel for the petitioner, the Tamil Nadu Slum Clearance Board cannot sell the property to any person directly without following eligibility criteria namely (a) applicant should be a slum dweller (b) he should have resided in the plot for at least five years (as per Voters List and Family Ration Card) and (c)The applicant's husband /wife, Children, Father and Mother should not own any house/site anywhere in Tamilnadu.

23.According to the learned Senior Counsel for the Petitioner, the third respondent is neither a slum dweller nor has he resided in the plot for a minimum of five years and further he owns several properties in Chennai city and he is not entitled for allotment of plot by the Tamil Nadu Slum Clearance

Board and hence, the impugned sale deed dated 10.06.2011 in favour of the third respondent will have to be set aside. According to the learned Senior Counsel for the petitioner, the impugned sale deed has been executed without any prior notice to the petitioner and hence the Tamil Nadu Slum Clearance Board has violated the principles of natural justice.

24. The learned Senior Counsel for the petitioner drew the attention of this Court to the following authorities:

(a) The decision of the Hon'ble Supreme Court in the case of *Ajay Hasia & Others vs. Khalid Mujib Sehravardi & Others* reported in CDJ 1980 SC 137

(b) The decision of the Hon'ble Supreme Court in the case of *Km. Neelima Misra vs. Harinder Kaur Paintal and others* reported in AIR 1990 SC 1402;

(c) The decision of the Hon'ble Supreme Court in the case of *Vishal Jeet vs. Union of India and others* reported in AIR 1990 SC 1412;

(d) A Division Bench Judgment of the Madras High Court in the case of *Ramachandra Rexins Private Ltd., Bangalore vs. Customs, Excise and Gold (Control) Appellate Tribunal, Chennai and Another* reported in (2009) 4 MLJ 417;

(e) A Single Bench Judgment of the Madras High Court in the case of *T.E. Vijayaraghavan and another vs. The Joint Commissioner, HR & CE Administration Department, Vellore and others* reported in 2010 (1) CTC 551;

(f) A Division Bench Judgment of the Madras High Court in the case of *Sheeba Philominal Merlin and another vs. The Repatriates Co-op, finance & Development Bank Ltd., and others* reported in 2010 (5) CTC 449.

Referring to the aforesaid decisions, the learned Senior Counsel for the petitioner would contend that wherever there is arbitrariness in State action whether it be of the legislature or of the executive or of an 'authority' under Article 12, Article 14 of the Constitution immediately springs into action and strikes down such State action. According to the learned Senior Counsel for the petitioner, the Tamil Nadu Slum Clearance Board have arbitrarily allotted the same house site which was allotted to the petitioner under the sale agreement dated 13.05.1989 to the third respondent and have also arbitrarily without any notice to the petitioner have executed the sale deed dated 10.06.2011 in favour of the third respondent.

25. According to the learned Senior Counsel for the petitioner, the ratio laid down by the Hon'ble Supreme Court in the decision reported in CDJ 1980 SC 137 referred to supra has

to be applied and the impugned sale deed standing in the name of the third respondent will have to be cancelled.

26.The learned Senior Counsel further contended as seen from the aforesaid decisions that an administrative function is a quasi -judicial function where there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. According to him, the function exercised by the Tamil Nadu Slum Clearance Board, is a quasi-judicial function and the said function will have to adhere to the principles of natural justice. According to him, the Tamil Nadu Slum Clearance Board has failed to adhere to the principles of natural justice before executing the impugned sale deed dated 10.06.2011 in favour of the third respondent. The learned Senior Counsel would further contend that there is no necessity to approach the civil court as the petitioner has been deprived of his property through unconstitutional means adopted by the Tamil Nadu Slum Clearance Board.

27.Per Contra, learned standing counsel for the first and second respondent would contend that the petitioner never obtained a sale deed from the Tamil Nadu Slum Clearance Board. According to him, the impugned sale deed executed in favour of the third respondent is a valid sale deed as it has been executed by following the due process of law. He would further submit that the dispute raised by the petitioner is a civil dispute and hence a writ petition is not maintainable.

28.Per Contra, Mr.ARL.Sundaresan, learned senior counsel for the third and fourth respondent would submit that the petitioner has approached this Court with unclean hands and has intentionally suppressed many vital facts. According to him, the petitioner was working as a cashier in Indian Overseas Bank. It was further submitted that the original allotment by the Tamil Nadu Slum Clearance Board was made in the name of Perumal in February 1981 and the said Perumal had executed unregistered document dated 02.07.1989 in favour of the petitioner for a sale consideration of Rs.1,00,000/-. According to him, after the execution of the unregistered document by Perumal in favour of the petitioner, the Tamil Nadu Slum Clearance Board on the strength of the unregistered document changed the allotment order from the name of Perumal in favour of the petitioner on 22.05.1989. Thereafter, the petitioner offered to transfer the property in favour of the third respondent. The learned senior counsel drew the attention of this Court to the agreement of sale dated 20.03.1991 entered into between the petitioner and the third respondent by which the petitioner agreed to sell the

property to the third respondent. According to the learned senior counsel, the entire sale consideration has been paid to the petitioner and the petitioner also executed a sale deed in the year 1994 in favour of the third respondent. The learned senior counsel further drew the attention of this Court to the allotment order dated 31.10.1994 issued by the Tamil Nadu Slum Clearance Board in favour of the third respondent and also the letter addressed by the petitioner to the Assistant Engineer, Metro Water and Sewerage Board, Chennai requesting for change of ownership in the name of the third respondent. According to him, there is no loan transaction between the petitioner and the third respondent. He would further submit that if there was a loan transaction, the details of the repayment to the third respondent would have been disclosed by the petitioner. According to him, the petitioner only to harass the third and fourth respondent and extract money unlawfully has filed this writ petition.

Discussion:

29. Admittedly, there is a sale deed for the property standing in the name of the third respondent. The petitioner has also admitted in his affidavit filed in support of the writ petition that the third respondent has obtained a sale deed from the Tamil Nadu Slum Clearance Board. There is also an allotment order dated 30.10.1994 issued by the Tamil Nadu Slum Clearance Board in favour of the third respondent for the subject property. The said allotment order has also not been challenged by the petitioner. The Tamil Nadu Slum Clearance Board as seen from the counter affidavit has categorically stated that a valid sale deed has been executed for the subject property in favour of the third respondent. They have also denied that there was a loan transaction between the petitioner and the third respondent. The petitioner has not produced any proof to show that he had availed a loan of Rs.3,00,000/- from the third respondent. He has also not produced any proof to show that he has been repaying the loan to the third respondent. The revenue records, electricity connection, water and sewerage board connection have all been transferred in favour of the third respondent. In fact, the petitioner himself addressed a letter dated 11.07.1994 to the Assistant Engineer, Metro Water and Sewerage Board Chennai informing him about the change of ownership in favour of the third respondent. The Tamil Nadu Slum Clearance Board has also issued receipts in the year 1994 towards the payment made by the third respondent for the purchase of the plot namely plot no.501. The third respondent has also obtained planning permit from the Corporation of Chennai on 30.03.2012 for the construction of a house in plot no.501. The petitioner himself is not the original allottee as the original allottee was Perumal. It is the case of the third

and fourth respondents that the petitioner is working as a cashier at Indian Overseas Bank and is not a slum dweller. The petitioner has also alleged that the third respondent is also not a slum dweller and not entitled for slum clearance board allotment. However, the petitioner has not challenged the allotment order issued by the Tamil Nadu Slum Clearance Board in favour of the third respondent. This being the case, the petitioner is estopped from raising the said issue in this writ petition as the petitioner has only challenged the sale deed executed in favour of the third respondent.

30. Excepting for stating that the third respondent has misused the blank signatures of the petitioner, no proof has been produced by the petitioner before this Court in support of the said contention. No police complaint has also been lodged by the petitioner against the third respondent for the alleged misuse of blank signatures. A prudent person would have certainly lodged a police complaint when his property has been illegally alienated. But in the instant case no such complaint was given by the petitioner. All these factors will lead to the inference that the petitioner only as an afterthought has filed this writ petition to harass the third and fourth respondents either to extract more money from them or for any other extraneous reason. Further, whether the sale deed executed in favour of the third respondent is a valid sale deed or not cannot be decided by this Court under Article 226 of the Constitution of India as there are several disputed questions of fact involved. If at all, the petitioner has any grievance, he has to approach the Civil Court for his redressal.

31. The Judgments relied upon by the learned senior counsel for the petitioner are not relevant for the facts of the instant case. It is not in dispute that Tamil Nadu Slum Clearance Board is an instrumentality of the State and hence will come within the purview of Article 12 of the Constitution of India. The case on hand involves disputed questions of fact which cannot be determined by a writ court. The petitioner has also not established that the third respondent has misused the blank signed papers of the petitioner for the purpose of obtaining a sale deed in his name from the Tamil Nadu Slum Clearance Board. The first and second respondents have also categorically pleaded that a valid sale deed has been executed in favour of the third respondent. The petitioner has also not challenged the allotment order issued by the Tamil Nadu Slum Clearance Board in favour of the third respondent. The revenue records, electricity connection, water and sewerage board connection have all been transferred in favour of the third respondent only on the request made by the petitioner. The third respondent has

also obtained a planning permit for construction of a house. Considering all these factors, the judgments relied upon by the learned senior counsel for the petitioner does not have any bearing for the facts of the instant case.

32.In the result, there is no merit in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Chairman cum Managing Director,
TamilNadu Slum Clearance Board,
Kamarajar Salai,
Chennai - 5.
- 2.The Assistant Secretary
Tamilnadu Slum Clearance Board,
Kamarajar Salai,
Chennai - 5.
- 3.The Sub Registrar,
Registration Department,
Kodambakkam,
Chennai - 600 024.

+1cc to M/s.A.L.Ganthimathi, Advocate Sr.4095

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