

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.18667/2020
and W.M.P.No.23162/2020

Muthumariamman Nagar Residents Welfare Association,
Registration No.3 of 1998,
rep.by its Secretary Mr.R.Thirupathy,
No.551/45 Muthumariamman Temple Street,
P.H.Road, Arumbakkam, Chennai 600 106.

..Petitioner

Versus

- 1.The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.
- 2.The State of Tamil Nadu
rep.by its Secretary - Home Department,
Fort St.George, Chennai 600 009.
- 3.The District Collector,
Chennai Collectorate,
Chennai 600 001.
- 4.The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chennai 600 005.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents 1 to 4 to conduct a survey in the said area of Muthumariamman Nagar, Arumbakkam, comprised in Survey No.249/4 of an extent of 20 Cents and 249/6 of an extent of 72 cents in all 92 Cents, T.S. No.2, Block No.IV, Arumbakkam Village, Poonamalle High Road, Chennai 600 116, after due enquiry issue pattas to the residents as per the G.O. Ms. No.34 dated 23rd January 2008 .

For Petitioner : Mr.S.Bala Subramaniam
For Respondents : Mr.M.Bharath Kumar
standing counsel for R1
Mr.S.Prabhu
Additional Government Pleader
for R4

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through video conferencing]

The petitioner, who claims to be the resident of Welfare Association, Muthumariamman Nagar, numbering 116, came forward to file this Writ Petition alleging among other things that on an earlier occasion, he had filed W.P.No.3246 of 2020, against the very same respondents, praying for issuance of Writ of Mandamus, directing them to conduct a survey in respect of lands comprised in S.F.No.249/1 to 249/6, 250/1 to 250/8, 251, 252/2A, P.S.No.2, Block No.IV, Arumbakkam Village, Poonamallee High Road, Chennai 106, after due enquiry to issue pattas to the residents. The Writ Petition came to be disposed of with certain directions, vide final orders dated 01.03.2010 and it is relevant to extract paragraph no.3 of the said order:

''3. The learned Advocate General has today filed an affidavit affirmed by the Executive Engineer and Administrative Officer of the Tamil Nadu Housing Board, wherein it is stated that as per the Government Policy of rehabilitating slum dwellers, some 91 persons have been identified to be eligible for being provided with alternative accommodation. It is stated that 81 out of these 91 persons are members of the petitioner-Association, while ten are other individuals. It is further stated that right now there is no possibility of these families being shifted to any other place and in particular, Kannagi Nagar, to which they were to be originally shifted, since the Tamil nadu Slum Clearance Board has informed the Tamil Nadu Housing Board that there is no vacancy in the above scheme, Tenements. The learned Advocate General very fairly states that until the end of April 2010 and until such alternative accommodation is found, the members of the petitioner-Association will not be shifted from the existing place. It is expected that the 91 eligible allottees will certainly get prior intimation to the effect that they will have to shift to such alternative accommodation once it is identified.''

2. The learned counsel appearing for the petitioner would submit that some of the residents prayed for house site pattas, in respect of the lands in their occupation in Block No.4, S.F.No.249/4 and 249/6 and the Collector (incharge) of Chennai District, vide communication dated 21.12.2012 and 04.01.2013, has directed the Tahsildar, Egmore/Nungambakkam, to do the needful. The 150 families residing in the said Survey Numbers also requested for issuance of Sale Deeds and the Estate Officer of the 4th respondent, vide communication dated 11.07.2019, in Na.Ka.No.91/,-v/m5/2019, has informed the petitioner Association that the transfer of the lands in favour of the Tamil Nadu Slum Clearance Board is yet to take place and thereafter further action would be taken on their representations.

3. The primordial grievance expressed by the learned counsel appearing for the petitioner Association, by drawing the attention of this Court to the communication of the Managing Director of the 4th respondent dated 10.07.2020, is that as per the said communication, 19 plots, belonging to the Public Works Department, lie on the Coovam River Bed-right of way and therefore, the Public Works Department requested them to vacate and further drawn the attention of this Court to the communication of the Executive Engineer and Administrative Officer of the 1st respondent, Anna Nagar Zone dated 28.11.2020, as well as the notice dated Nil issued by the very same official, calling upon the members of the petitioner Association to vacate from the lands and would submit that since the lands in question vest with the Tamil Nadu Slum Clearance Board, they are alone entitled to take action and it is not open to the Tamil Nadu Housing Board to take such an action and prays for appropriate orders.

3. Mr.Bharath Kumar, learned Standing Counsel accepts notice on behalf of the 1st respondent and Mr.S.Prabhu, learned Standing Counsel accepts notice on behalf of the 4th respondent and on instructions would submit that joint operation for eviction of the persons, who are in occupation of the right of way - Coovam River Bed, is being carried out by the Tamil nadu Slum Clearance Board, Tamil Nadu Housing Board as well as Corporation of Chennai and alternate accommodations have also been identified in NVN Nagar, Thiruvangalam and it is not as if all are going to be evicted and only persons, who are in occupation of the Coovam River Bed-right of the way, to be evicted, subject to providing them alternative accommodation in the said place and further points out that though members of the petitioner Association claiming their long possession and enjoyment, the fact remains that most of them are in possession by way of an unregistered Sale Deeds and the alternative accommodation will be provided to the persons concerned, after enumeration with the aid of Aadhar Card etc.,

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

5. The members of the petitioner Association prima facie appears to be in unauthorised occupation of the land and endeavour is being taken by the Government to desilt and beautify the Coovam River, especially the adjacent area and they have found that some of the members of the petitioner Association are in occupation of an adjacent area, which is also Coovam right of way and classified as Coovam River Bed and steps are taken in accordance with law, by providing alternate accommodation at NVN Nagar, Thirumangalam. It is not open to the petitioner Association to remain in occupation of the lands, as if they are the real owners and the members of the Petitioner Association are also aware of the fact that they have encroached upon a public land. It is also made clear from the affidavit that there are no authenticated documents to show, especially in the absence of Aadhar Card, as to the claim made by the petitioner, in respect of the land in question. As long as due process of law is being followed, it is not open to the members of the petitioner Association to resist their eviction and in the considered opinion of this Court, the 4th respondent has already acted fairly in providing alternative accommodation to the persons concerned, subject to enumeration and as such, it cannot be faulted with.

6. In the result, the Writ Petition is disposed of and due process of law shall be followed, before causing eviction of the members of the petitioner Association from the Coovam River bed - right of way, subject to provision of alternative accommodation, after carrying out necessary enumeration. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.

2.The Secretary - Home Department,
The State of Tamil Nadu
Fort St.George, Chennai 600 009.

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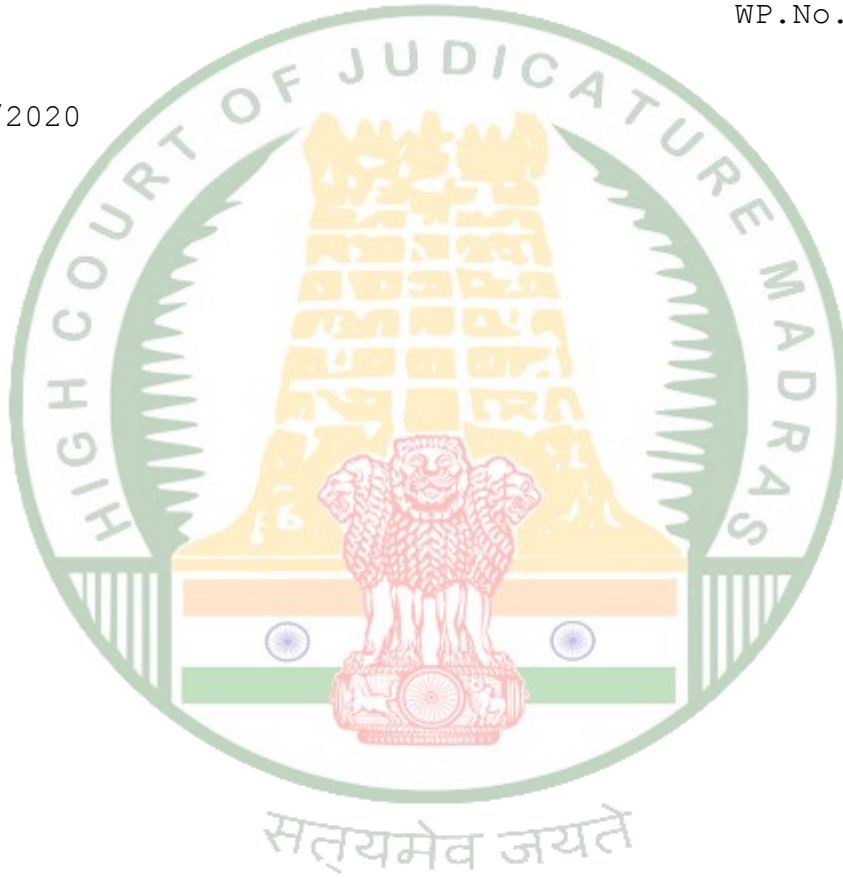
3.The District Collector,
Chennai Collectorate,
Chennai 600 001.

4.The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chennai 600 005.

+1cc to M/s.S.Balasubramanian, Advocate, S.R.No.41361
+1cc to M/s.S.Prabhu, Advocate, S.R.No.41075

WP.No.18667/2020

MJB(CO)
KKV/30/12/2020



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