

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22/01/2020

DATED : 27.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.29925 of 2019

And

W.M.P.No. 29834 of 2019

1. A.Sekar
2. Smt. Neela ... Petitioners

Versus

1. The Chairman
Tamil Nadu Slum Clearance Board
No.5, Kamarajar Salai
Chennai - 600 005.
2. The Assistant Executive Engineer
Division V
Tamil Nadu Slum Clearance Board
Teynampet, Chennai - 600 018. ... Respondents

PRAYER:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the second respondent which culminated in the impugned notice dated nil and quash the same and further forbearing the respondents from taking coercive steps in violation of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. सत्यमेव जयते

For Petitioners :: Mr. K.Senthilkumar

For Respondents :: Mr. S.Prabhu

ORDER

The Writ Petition had been filed by the petitioner, in the nature of a Writ of Certiorarified Mandamus calling for the records of the second respondent which culminated in the impugned notice and quash the same.

2. The petitioners had been allotted a house bearing No.12, I Block, Alayamman Koil Street, Teynampet, by the first respondent, Chairman, Tamil Nadu Slum Clearance Board, on

19.11.1994 under a Hire Purchase Scheme. The house of the petitioners was part of 12 blocks of houses (A-J) allotted by the first respondent under Mambalam Erikarai Scheme. There were totally 118 houses. The entire area is claimed to be a 'slum area' in terms of Section 3(1) of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. The petitioners claimed to have been paid all the instalments. The petitioners further claim that they came across a notice dated 27.09.2019 issued in the name of the second respondent, namely, the Assistant Executive Engineer-Division V, Tamil Nadu Slum Clearance Board, Teynampet, Chennai, stating that since the 118 houses in Blocks A-J in Alaiyamman Koil Street, Teynampet, is a dilapidated condition, it had been proposed by the Government to demolish the houses and built new Apartment complexes under the Prime Minister's 'Housing for all' Scheme and that the details of the residents are required before 25.09.2019. The petitioners claimed that they had issued a reply to the second respondent through their counsel. It was further stated that another notice was pasted on 12.10.2019 addressed to the petitioners by the second respondent once again stating that the buildings are in a dilapidated condition and that the said condition had been certified by an expert team and calling upon the petitioners to produce documents relating to their possession. The notice further directed the petitioners to vacate the premises on or before 21.10.2019. The petitioners again replied by notice through their counsel on 14.10.2019. The petitioners claimed that the respondents have taken coercive steps in violation of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. It is under these circumstances that the Writ Petition came to be filed.

3. A counter affidavit has been filed by the respondent. It had been stated that the 118 houses in Alaiyamman Koil Phase-II had been constructed by the Tamil Nadu Housing Board about 49 years ago and were transferred to the Tamil Nadu Slum Clearance Board. It was stated that there were also 150 huts which had been put up by encroachers in the area. It was stated that the expert committee had declared the slum tenements to be in an irreparable condition and had therefore recommended to demolish and reconstruct the same. It was stated that the Government had obtained approval for construction of 324 slum tenements with financial assistance from the Government of India, Government of Tamil Nadu and contribution from beneficiaries. The contract was finalised on 31.01.2019 for reconstruction. The representatives had requested all the allottees to submit necessary copies of documents, viz., Aadhaar Card, Ration Card and allotment letter to finalise the enumeration list. It was also stated that a sum of Rs.8,000/- would be paid as shifting allowance and though the present plinth area was 150 sq.ft., the plinth area in the constructed house would be 400 sq.ft., with additional facilities. It was also stated that the encroachers had filed W.P.No. 29667 of 2019 and a Division Bench of this Court had directed the Association

to co-operate for the enumeration process. It was therefore stated that the Writ Petition should be dismissed.

4. Heard Mr.K.Senthilkumar, learned counsel for the petitioners and Mr.S.Prabhu, learned counsel for the respondents.

5. Section 3(1) of the Slum Areas (Improvement and Clearance) Act 1971 is as follows:-

"3(1). Declaration of slum areas

(1) Where the Government are satisfied that -

(a) any area is or may be a source of danger to the health, safety or convenience of the public of that area or of its neighbourhood, by reason of the area being low-lying, insanitary, squalid, overcrowded or otherwise; or

(b) the buildings in any area, used or intended to be used for human habitation are-

(i) in any respect, unfit for human habitation; or (ii) by reason of dilapidation, over-crowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, detrimental to safety, health or morals, they may, by notification, declare such area to be a slum area. "

6. Section 11 of the Slum Areas (Improvement and Clearance) Act 1971, is as follows:-

"11. Power to declare any slum area to be a slum clearance area. -

(1) Where the Government, on a report from the Board or the prescribed authority, or the local authority concerned or the State Housing Board or an officer authorized by the Government for this purpose are satisfied as respects any slum area that the most satisfactory method of dealing with the conditions in the area is the clearance of such area and the demolition of all the buildings in the area, they may, by notification, declare the area to be slum clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of this Act:

Provided that before issuing such notification the Government shall call upon the owners of the land and buildings in such slum area to show cause why such declaration should not be made and after considering the cause, if any, shown by such owners, the Government may pass such orders as they may deem fit.

(2) Any part of the slum area or any building in the slum area which is not fit for human habitation or dangerous or injurious to safety, health or morals may be excluded from the notification under sub section (1) if the Government consider it necessary.

(3) The notification under sub-section (1) shall specify each of the buildings to be demolished and the area to be cleared."

7. The learned counsel for the petitioners placed reliance on the Judgement reported in 1984 TLNJ 224 [Kasi and 34 others Vs. Government of Tamilnadu, represented by Secretary Labour Department, Madras and another], wherein a Division Bench of this Court had stated that Section 11 must be followed in letter and spirit and when there is a failure to declare the area as a slum area, then any action taken cannot stand scrutiny of the Court.

8. However, it must be pointed out that the petitioners themselves had stated that the entire area is a 'slum area' in terms of Section 3(1) of the Slum Areas (Improvement and Clearance) Act 1971.

9. Moreover Section 11(2) of the Act provides that a slum area may be excluded from the rigour of Section 11(1) if the building is not fit for human habitation. In the instant case, the respondents have stated that the expert committee had given an opinion that the tenements which had been built nearly 49 years ago and is in a dilapidated condition and have to be demolished. Thus Section 11(1) of the Act will not apply in this case.

10. Mr.S.Prabhu, learned counsel for the respondents placed reliance on the order of the Division Bench of this Court, dated 17.10.2019 [P.Tamilarasi Vs. State of Tamil Nadu, rep. by its Secretary to Government, Department of Housing and Urban Welfare and others] which related to the very same tenements but which had been filed as a Public Interest Litigation on behalf of 150 families. The issue however was

demolition of the very houses in which the petitioners also reside. It was pointed out by the learned counsel for the petitioners that since the encroachers had filed the said Writ Petition in the nature of a Public Interest Litigation, the observations in the Division Bench cannot be followed. However I disagree. The subject matter in W.P.No. 29667 of 2019 relied on by the learned counsel for the respondents relate to the very same houses /blocks of houses in A-J in Alaiyamman Koil Street, Teynampet, wherein the petitioners also reside. In the said Writ Petition, the Division Bench had directed to carry out biometric for the identification of the members and that the members of the petitioners' Association therein were directed to extend all co-operation.

11. In this connection, the learned counsel for the respondents also forwarded a letter from the first respondent dated 22.01.2020 in which it had been stated that the tenement No. 1/12 had been allotted in the name of Neela/Sekar, who are the writ petitioners herein and that if the petitioners submit Aadhar Card copy and copy of documents like Voter ID, Family Card, the petitioners would be recommended for allotment of a new tenement. It has also been stated that the petitioners have refused to co-operate in the enumeration process.

12. This stand of the petitioners cannot be accepted by the Court. When a policy decision has been taken to demolish the houses and build new tenements and when during the said interregnum period, the respondents have offered alternate residential places for the petitioners as a temporary measure and had further assured allotment in the newly constructed flats, the petitioners should join an extend co-operation for such procedure. They have no right to hold the project at reason.

13. As seen from the stand of the respondents, the houses where the petitioners reside have been constructed more than 49 years ago and are in a dilapidated condition and to prevent any further damages which might cause loss of life or injury to persons or property, the respondents have a duty to reconstruct the existing old tenement.

14. With respect to the provisions under Section 11 of the Act extracted above, as stated in the counter affidavit, the tenement had been constructed by the Tamil Nadu Housing Board and had been transferred to the Tamil Nadu Slum Clearance Board and the area itself is declared has been declared as a 'slum area'. It has also been stated by the respondents that the expert committee had examined the condition of the buildings and thereafter had directed demolition and reconstruction. This is only for the benefit of the petitioners. In view of the fact that the buildings are unfit for human occupation, they are excluded from the stipulation under Section 11(1) of the Act.

15. The entire project for reconstruction for 324 slum tenements is being conducted with the financial assistance from Government of India, Government of Tamil Nadu and contribution from beneficiaries. The contract had been finalised as early as on 31.10.2019.

16. In view of all these facts, I hold that the petitioners lack bona fide in questioning the intention of the respondents. The petitioners, if they feel so, may forward the copies of Aadhar Card and other documents and seek allotment in the newly constructed flats. They cannot stop the project from being implemented by the respondents. The project is being implemented for the benefit of all the 118 tenements and the petitioners, who have been allotted one houses, cannot stall the entire project.

17. I therefore hold that the Writ Petition lacks bona fide and accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

vsg

To

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

2. The Assistant Executive Engineer
Division V
Tamil Nadu Slum Clearance Board
Teynampet, Chennai - 600 018.

+1cc to Mr.K.Senthilkumar, Advocate SR.No.5842

+1cc to Mr.S.Prabhu, Advocate SR.No.6322

W.P.No.29925 of 2019

And

W.M.P.No. 29834 of 2019

VBA (CO)

GMV (19/02/2020)

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