

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 20.02.2020

Orders Pronounced on : 27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.30386 of 2019
and
W.M.P.Nos.30376, 30377 and 30379 of 2019

1. Nachammal
2. Susheela
3. Rajammal
4. M.P.Sekar
5. Pappayi
6. Baby Ruth Gurusamy

... Petitioners

Vs.

1. The Chairman,
Tamil Nadu State Housing Board,
Anna Salai, Nandanam,
Chennai-600 035.
2. The Executive Engineer,
Special Scheme Division-III,
Tamil Nadu Housing Board,
Cowleypuram, R.S.Puram,
Coimbatore-641 002.
3. The District Collector,
Collectorate,
Coimbatore.

(Third respondent impleaded,
vide order of Court, dated 31.10.2019
in W.M.P.No.30905 of 2019 in
W.P.No.30386 of 2019)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings dated Nil,

on the file of the second respondent herein insofar as the lands and the buildings bearing Door Nos.6/80, 6/57, 6/81, 6/49, 6/84, 6/82, Dr.Ambedkar Nagar, Kavundampalayam, Coimbatore-641 030, belonging to the petitioners herein, and to quash the same and forbear the respondents from interfering with the possession and enjoyment of the petitioners in respect of their lands and the buildings bearing Door Nos.6/80, 6/57, 6/81, 6/49, 6/84, 6/82, Dr.Ambedkar Nagar, Kavundampalayam, Coimbatore-641 030, in any manner, except otherwise than in accordance with law and the procedure.

For petitioner : M/s.Elizabeth Ravi

For respondents : Mr.R.Bharath Kumar for RR-1 & 2

Mr.V.Shanmuga Sundar, Spl.G.P. for R-3

ORDER

R.SUBBIAH, J

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings dated Nil, on the file of the second respondent herein, insofar as the lands and the buildings bearing Door Nos.6/80, 6/57, 6/81, 6/49, 6/84, 6/82, Dr.Ambedkar Nagar, Kavundampalayam, Coimbatore-641 030, belonging to the petitioners herein, and to quash the same and forbear the respondents from interfering with the possession and enjoyment of the petitioners in respect of their lands and the buildings bearing Door Nos.6/80, 6/57, 6/81, 6/49, 6/84, 6/82, Dr.Ambedkar Nagar, Kavundampalayam, Coimbatore-641 030, in any manner, except otherwise than in accordance with law and procedures.

2. It is the case of the petitioner that the land in S.No.52/9 in No.28, Kavundampalayam, Coimbatore North Taluk and District, had been classified as Cart Track in the Revenue Records. The petitioners came into occupation of different extent of the lands on the unused land in the said S.No.52/9 and have put up their residential houses in their respective lands and the said area including the buildings constructed by the petitioners and others had been named as "Dr.Ambedkar Nagar". Insofar as the petitioners are concerned, the residential houses put up by them are provided with the electricity supply and were assessed by the then Kavundampalayam Panchayat, now merged with the local limits of Coimbatore City Municipal Corporation and the assessments in relation to the respective Door Numbers in respect of each of the petitioners are as follows:

- (i) Nachammal - Door No.6/80
- (ii) Susheela - Door No.6/57
- (iii) Rajammal - Door No.6/81
- (iv) M.P.Sekar - Door No.6/49
- (v) Pappayui - Door No.6/84
- (vi) Baby Ruth Gurusamy - Door No.6/82

all at Dr.Ambedkar Nagar, Kavundampalayam, Coimbatore-641 030.

3. While so, the first respondent-Tamil Nadu Housing Board (TNHB) framed a Scheme for construction of apartments containing 1848 multi-storied flats for use of the allottees of the Scheme to the employees of the State Government and the Scheme having been implemented, a multi-storied building with 15 floors had been completed. The said Scheme had been implemented over the lands bearing S.Nos.49/2 etc., and insofar as the land situated in S.No.52/9 classified as Cart Track (tz;o ghij), it could not have been assigned to the first respondent. The first respondent cannot have any control or interest over the said land classified as Cart Track and especially when the lands having not been vested with the first respondent, the Board cannot have any claim either over the lands in the occupation of the petitioners, or over the superstructures put up by them, i.e. 30 years back or both.

4. At this juncture, in view of the threat posed to them, especially by the second respondent, in the name of the first respondent, the petitioners have already instituted a civil suits for permanent injunction as against the respondents herein and others, and the suits are pending on the file of the II Additional District Munsif Court, Coimbatore, in O.S.No.1614 of 2018 filed by Nachammal, Susheela, Rajammal and Sekar (petitioners 1 to 4 herein) and O.S.No.617 of 2019 filed by Pappayi (5th petitioner herein) and the sixth petitioner herein did not file any suit. In the said suit filed by the fifth petitioner, I.A.No.1 of 2019 filed for temporary injunction is still pending without any orders having been passed in the same. Further, along with the suit, the petitioners 1 to 4 herein with 2 others filed I.A.No.1287 of 2018 for temporary injunction against the respondents herein restraining them from interfering with their peaceful possession and enjoyment of the properties, with no interim relief granted in the same after notice. The counter affidavit had been filed by the respondents. The trial Court took up I.A.No.1287 of 2018 in O.S.No.1614 of 2018 for enquiry and passed orders on 24.09.2019 as if the petitioners' remedy is only to approach the appropriate forum, even by branding the approach of the petitioners as one nothing but a Forum Shopping. It was also observed by the learned District Munsif, challenging the order of the Government authority, specifically relating to the encroachments, that the same could only be challenged by way of Writ Petition before this Court and on the basis of the above observations, the I.A. was dismissed,

with liberty to the petitioners to approach appropriate forum. In view of the same, without preferring any appeal as against the said order of the trial Court, dated 24.09.2019, the petitioners have preferred the present Writ Petition.

5. It is the further submission of the petitioners that after the said order dated 24.09.2019 passed in the said I.A., without resorting to legal process, the respondents caused public notice dated Nil, (impugned herein) affixed and pasted the same on 12.10.2019 on the outer doors of the respective residences of the petitioners, as if indicating that if the encroachments near the multi-Government Officers Rental Quarters, within the limits of the lands belonging to the Government, are not removed on or before 16.10.2019, the encroachments would be removed on 17.10.2019 after disconnecting the electricity supply. After noticing the affixture notice (impugned herein), the petitioners caused a notice dated 13.10.2019 issued to the second respondent, setting out their objections, which notice had been received and acknowledged by the second respondent on 14.10.2019, but there was no reply. Hence, apprehending the initiation of eviction proceedings, the petitioners have filed the present Writ Petition for the relief stated supra.

6. When the Writ Petition is taken up for consideration, it is the submission of the learned counsel for the petitioners, by adverting to the averments made in the affidavit filed in support of the Writ Petition, that, without resorting to the provisions of the Tamil Nadu Land Encroachment Act, the respondents are attempting to remove the alleged encroachment made by the petitioners. Hence, he prayed for allowing the Writ Petition.

7. The learned counsel appearing for the respondents 1 and 2/TNHB, by filing counter affidavit, submitted that the lands measuring an extent of 12.59 acres comprised in S.F.No.52/9 (5 acres), S.F.Nos.49/2A, 49/3, 52/2A and 52/10, situated at Kavundamapalayam Village, Coimbatore North Taluk and District belonged to the Tamil Nadu Government. In the lands measuring an extent of 5 acres in S.F.No.52/9, the TNHB had constructed 532 flats in different categories under the Tamil Nadu Government Servants Rental Housing Scheme (TNGRHS) for accommodation of the Tamil Nadu Government Servants during the year 1965 and the constructed flats were allotted to the Tamil Nadu Government Servants on rental basis. By efflux of the long period, the building became dilapidated and unfit for human habitation. At this stage, the Government passed G.O.Ms.No.279, Housing and Urban Development Department, dated 01.12.2010 to dismantle the said 532 flats including the flats in the other Schemes and for construction of 2000 flats in multi-storey building (MSB) in Kavundampalayam Village. By the said G.O., the TNHB was appointed as the Nodal Agency for construction of MSB flats under the TNGRH Scheme. Further, the TNHB had passed a

resolution in Resolution No.4.12, dated 28.10.2015 according permission to construct 1848 MSB flats for the TNGRH Scheme. The TNHB had obtained necessary planning permission and started construction works on 02.03.2016 and is in the process of completing the project. The external works of the building are completed and now the testing and commissioning of the building like plumbing, electrical works, etc., are going on. The development works like laying of roads, construction of drainage lines, etc., are almost over and the remaining road works and drainage lines/sewerage lines are yet to be over and the same are pending due to encroachment of the lands by the petitioners.

8. It is the further submission of the learned counsel appearing for the respondents 1 and 2 that the total extent of lands covered in S.No.52/9 is 5 acres, which is classified as Government Poramboke Cart Track and out of 5 acres, 93 cents of lands were allotted to a Government School, which is being run by the Government. In the remaining extent of 4.07 acres, parts of MSB flats are constructed and parts of lands are being used as OSR and other development works.

9. It is also stated by the learned counsel appearing for the respondents 1 and 2 that the petitioners have encroached upon the land comprised in S.No.52/9 and are causing hindrance to the completion of the TNGRH Scheme. When the TNHB officials requested the petitioners to vacate and remove the encroachment, they agreed for vacating and handing over the vacant possession by seeking time. Unless they remove the encroachments, the multi-storey building under the TNGRH Scheme cannot be completed. The contention of the petitioners that the Scheme had been implemented over the lands in S.No.49/2, etc., and the lands in S.No.52/9 is classified as Government Poramboke Cart Track and it could not have been assigned to the first respondent, is not correct. The entire extent of 12.59 acres was allotted to the TNHB for implementing the TNGRH Scheme, vide G.O.Ms.No.279, Housing and Urban Development Department, dated 01.12.2010. In a portion of the land in S.No.52/9, the constructed MSB is located and a portion of the land is being used as road, drainage, OSR etc. While so, the TNHB has got right over the land in S.No.52/9 etc., for completing the Scheme. The writ petitioners cannot claim any immunity for their illegal occupation of the subject land(s). As a Nodal Agency and being a public body, the TNHB is entitled to remove the subject encroachment, for facilitating the completion of MSB flats, as mandated by the Government in the abovesaid G.O.

10. It is further submitted by the learned counsel appearing for the respondents 1 and 2 that the petitioners 1 to 4, having agreed to vacate and remove the encroachments, filed O.S.No.1614 of 2018 before the Court below seeking the relief of permanent injunction restraining the TNHB officials and other Government officials from interfering with their possession, except by due process of law. Similarly, the fifth petitioner herein has filed

O.S.No.617 of 2019 before the Court below and both the said suits are pending. The TNHB filed written statement and are contesting the suit. As per the abovesaid G.O.Ms.No.279, the TNHB is entitled to remove the encroachments and in fact, the District Collector, Coimbatore had also given permission to the second respondent to remove the encroachment with the help of Police officials as well as Revenue officials. The present Writ Petition is filed only to stall the Government Scheme with ulterior motive.

11. It is further brought to the notice of the Court by the learned counsel appearing for the respondents 1 and 2 that the fourth petitioner's wife Smt.Rani, wife of M.P.Sekar, has got free house site, vide Patta No.392 in proceedings in Na.Ka.No.1191/86, dated 03.03.2016 passed by the Special Tahsildar, Adi Dravidar and Pazhankudiyinar Welfare Department to an extent of 60 Sq.Mts. in Plot No.18 in S.Nos.378/2B, 381/2A and 382/2 of Kavundampalayam Village, Coimbatore. Similarly, the sixth petitioner Smt.Babu Ruth Gurusamy, wife of Mr.Gurusamy is not residing in the subject land and she has no right to join in the present Writ Petition.

12. Further, with a view to provide alternative accommodation for the encroachers of the Government lands, the Government had constructed flats through the Tamil Nadu Slum Clearance Board (TNSCB). The petitioners 1 to 3 and 5 have also been given the benefit of alternative accommodation in TNSCB flats at free of cost, vide proceedings in Na.Ka.No.G3/7371/2017, dated 08.03.2019. Furthermore, the names of the petitioners 1 to 3 and 5, i.e., Smt.Nachammal, Smt.Susheela, Smt.Rajammal and Smt.Pappayi, find place in the list of beneficiaries in Keeranatham North Scheme and listed in Sl.Nos.27, 35, 32 and 26. Since the petitioners 1 to 3 and 5 have not approached the TNSCB for taking over the flats, they have not been assigned with the tenement numbers, but the other encroachers have got allotment from the TNSCB. The petitioners 1 to 3 and 5 alone are not accepting the allotment from the TNSCB and are being encroachers of the Government lands, they cannot have any preference. Due to the encroachment of the petitioners, the TNHB is unable to complete the project and ultimately, the Government servants are waiting in the queue to get the rental accommodation and to serve the public. The petitioners are blocking the Government Scheme and cannot indulge in Forum Shopping like filing Civil Suits in Munsif Court and Writ Petition before this Court to suit their convenience. Even now, the TNSCB is ready to allot the flats to the petitioners 1 to 3 and 5 and they can avail of the benefit of the same. The Writ Petition is devoid of merits and without bona-fides. It is further stated by the respondents 1 and 2 that the petitioners can ventilate their grievances through common law remedy and hence, the present Writ Petition is not maintainable and the same may be dismissed.

13. This Court also heard the submissions made by the learned Special Government Pleader appearing for the third respondent who submitted that the petitioners are encroachers and cannot have any preference, when the TNSCB is prepared to give them the alternative accommodation and they could accept the same and by filing the present Writ Petition, they are causing hindrance to complete the project and they are avoiding to approach the authorities stating that they should be allotted the flat that they want.

14. Keeping the above submissions made on either side, we have perused the materials available on record.

15. When the TNSCB, in consultation with the TNHB, is prepared to give the alternative accommodation to the petitioners, the petitioners cannot ask for quashing the impugned notice. We do not find any merit in the present Writ Petition filed by the petitioners. We are of the view that by filing the present Writ Petition, the petitioners are only standing as a stumbling block for completion of the Government project/scheme, more particularly, the project/scheme is meant for Government servants. Because of the pendency of the present Writ Petition, the respondents are unable to complete the Scheme in question. Therefore, absolutely we find no substance in the submissions made by the learned counsel for the petitioners and the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. The respondents are at liberty to proceed with the scheme/project in question, if the petitioners are really the encroachers. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

CS
To

1. The Chairman,
Tamil Nadu State Housing Board,
Anna Salai, Nandanam, Chennai-600 035.
2. The Executive Engineer,
Special Scheme Division-III,
Tamil Nadu Housing Board,
Cowleypuram, R.S.Puram, Coimbatore-641 002.

3. The District Collector,
Collectorate, Coimbatore.

+lcc to M/s.Elizabeth, Advocate SR.No. 17537

W.P.No.30386 of 2019

A.SK(28/05/2020)