

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.10536, 13552, 13555, 13557, 13560,
13567 and 13569 of 2019
and W.M.P.Nos.11028 and 11029 of 2019

1. A.THANGAMARIYAPPAN

2. K.THULASI

3. RITAFLORENCE JEKAPRAJ

4. R.NARAYANAN

5. G.NANDHAGOPAL ...PETITIONERS IN W.P.NO.10536 OF 2019

1 S.VIMALA ... PETITIONER IN WP NO.13552 OF 2019

1 M.JEYALAKSHMI ... PETITIONER IN WP NO.13555 OF 2019

1 G.SANKAR ... PETITIONER IN WP NO.13557 OF 2019

1 D.RANI ... PETITIONER IN WP NO.13560 OF 2019

1 V.LAKSHMI ... PETITIONER IN WP NO.13567 OF 2019

1 R.NAGENDRAN ... PETITIONER IN WP NO.13569 OF 2019

Vs.

1. THE TAMIL NADU SLUM CLEARANCE BOARD
REP. BY ITS CHAIRMAN,
KAMARAJ SALAI,
CHENNAI-600 005.

सत्यमेव जयते

..R1 in W.P.No.10536/2019

2. THE TAMIL NADU SLUM CLEARANCE BOARD
REP. BY ITS MANAGING DIRECTOR,
KAMARAJ SALAI,
CHENNAI-600 005.

..R2 in W.P.No.10536/2019,
13552, 13555, 13557, 13560, 13567,
and W.P.No.13569/2019.

3. THE ESTATE OFFICER,
ESTATE OFFICER III,
TAMIL NADU SLUM CLEARANCE BOARD,
CHENNAI-600 040.

..R3 in W.P.No.10536/2019

..R2 in W.P.No.13552, 13555,
13557, 13560, 13567 & 13569/2019.

Prayer in W.P.No.10536/2019:

Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the first Respondent in Che.Mu.No.E3/17361/2017, dated 08.02.2019 and the 2nd respondent's resolution in Resolution No. 5.04./ 477 dated 17.10.2016 and quash the same the further direct the respondents to allot the Plot which is possession of the Petitioner in S.No. 866/ 9 , situate in New Anna Nagar Thanthai Periyar Nagar and Annai Sathya Nagar in Thirumullaivoyal Village.

WP No.13552 of 2019

Writ of Mandamus directing the 1st Respondent to allot Plot No.110, Old Door No.40, New Door No.28, NSK Street, New Anna Nagar, Thirumullaivoyal, Chennai 600 062 to the Petitioner.

WP No.13555 of 2019

Writ of Mandamus directing the 1st Respondent to allot Plot No.412, Old Door No.19, New Door No.24, Bharathiyar First Street, Annai Sathya Nagar, Thirumullaivoyal, Chennai 600 062 to the Petitioner.

WP No.13557 of 2019

Writ of Mandamus directing the 1st Respondent to allot Plot No.217 and 218, Old Door No.48, New Door No.72, Nehru Street, New Anna Nagar, Thirumullaivoyal, Chennai 600 062 to the Petitioner.

WP No.13560 of 2019

Writ of Mandamus directing the 1st Respondent to allot Plot No.218 and 219, Old Door No.9, New Door No.9, 6th Cross Street, Nethaji Street, Annai Satya Nagar, Thirumullaivoyal, Chennai 600 062 to the Petitioner.

WP No.13567 of 2019

Writ of Mandamus directing the 1st Respondent to allot Plot No.229 and 230, Old Door No.47, New Door No.58, Nehru Street, New Anna Nagar, Thirumullaivoyal, Chennai 600 062 to the Petitioner.

WP No.13569 of 2019

Writ of Mandamus directing the 1st Respondent to allot Plot No.7, Door No.7A, Main Road, New Anna Nagar, Thirumullaivoyal, Chennai 600 062 to the Petitioner.

For Petitioner : Mr.J.Ravindran
for Mr.A.Selvendran

For Respondents: Mr.S.Prabhu
Standing Counsel

C O M M O N O R D E R

Since the parties and the issue involved in these writ petitions are one and the same, these writ petitions are taken up together and disposed of by means of this common order.

2. The petitioners in W.P.No.10536 of 2019 questioned the correctness of the order dated 08.02.2019 passed by the first respondent in Che.Mu.No.E3/17361/2017, and the second respondent's resolution in Resolution No.5.04./477, dated 17.10.2016 and sought for a direction to the respondents to allot the Plots which are possession of the petitioners in S.No.866/9, situate in New Anna Nagar, Thanthai Periyar Nagar and Annai Sathya Nagar in Thirumullaivoyal Village. For the sake of the convenience, the facts have been culled out from the said writ petition.

3. Tamil Nadu Slum Clearance Board (in short, "TNSCB") was established in 1970 to cater the land needs of the poor people in Chennai City with the Motto - "God we shall see in the smile of the poor". The Tamil Nadu Slum Areas (Improvement & Clearance) Act was enacted in 1971 for the said purpose. Its vision is "Slum Free Cities in Tamil Nadu by 2022". In 1984, its activities extended to all the Municipal towns / Town Panchayats.

4. The Government of Tamil Nadu by G.O.Ms.No.370, Revenue Department, dated 09.07.1990, had allotted an extent of lands measuring about 7.69.0 hectares situate in New Anna Nagar, Thanthai Periyar Nagar and Annai Sathya Nagar in Thirumullaivoyal Village in favour of the first respondent, which is the Tamil Nadu Slum Clearance Board (in short, "TNSCB") to be converted as housing plots for the benefit of the people without shelter. The petitioners herein are persons belonging to the poor and downtrodden sector, who are socially and economically backward, have been living as Slum Dwellers, in the subject Survey No.866/9 for more than three decades. Though the above said G.O. was issued in the year 1990, there was a huge delay in starting the Tamil Nadu Urban Development Project. Only in the year 2008, the first respondent had directed the third respondent/Estate Officer to inspect the site and verify the initial payment details and the residence proof for the purpose of executing lease or sale deed to the residents and to send the proposal for issuance of allotment order. Again as usual, there was a delay, as the third respondent had not taken any effective steps, despite several representations given by

the petitioners requesting the respondents to issue the allotment orders. The respondents, who ought to have issued fee challan for payment for the allotment of land, also had not issued the same.

5. While so, a similarly placed candidate, i.e., one Thirulochana Kumari, has approached this Court in W.P.No.40790 of 2016 praying for a Certiorarified Mandamus calling for the records in Na.Ka.No.E3/4623/2015, dated 03.07.2015 and ultimately, sought a direction to the first respondent to issue allotment order and this Court had passed the following order dated 22.03.2016 :

"5. It is the specific case of the petitioner that she has been residing in the plot for the past several years and paid taxes to the local authority and also got electricity connection and ration card in her name. On contrary, it is the case of the first respondent that the plot claimed by the petitioner is a vacant land and the petitioner is not residing over there and she has not produced any document to substantiate her claim. These are all disputed questions of fact. This Court, while exercising its extraordinary jurisdiction under Article 226, cannot conduct a roving enquiry to determine the disputed questions of fact, which require consideration of evidence, which is not on record. However, since the petitioner has been agitating her claim for allotment of plot, stating that she is having evidence to substantiate her claim, I am of the view that the matter can be remitted to the first respondent for fresh consideration while setting aside the impugned order.

Accordingly, the impugned order, dated 3.7.2015 is hereby set aside and the petitioner is directed to make a fresh representation along with all relevant documents showing that she has been residing in the plot. On such representation being made by the petitioner, the first respondent is directed consider the same and pass appropriate orders in accordance with law and on merits, within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner."

6. The said order was complied with and the writ petitioner therein has been allotted a plot and she is in possession of the same. The present writ petitioners in W.P.No.10536 of 2019 claim that they are also similarly placed and that they had also sent representations to the respondents for allotment of the lands, which are in their possession from 1990. The said

representations were not considered by the first respondent constraining the petitioner to file W.P.No.14433 of 2018 seeking for an order of direction to the first respondent to consider their representation for allotment of lands. On 03.09.2018, this Court had issued the direction to the respondents to consider their representation within four weeks, pursuant to which, the first respondent had passed the impugned order in Che.Mu.No.E3/17361/2017, dated 08.02.2019. As per the said order, the petitioners were directed to pay the present guideline value for getting the allotment, as per the resolution of the second respondent in Resolution No.5.04/477, dated 17.10.2016.

7. Aggrieved by the same, the above writ petition is filed.

8. The remaining petitioners in W.P.Nos.13552, 13555, 13557, 13560, 13567 and 13569 of 2019 have contended that they are similarly placed as that of Thirulochana Kumari and the petitioners in W.P.No.10536 of 2019 and hence, they had submitted representations to the respondents. Since the same were not yielded any fruit, they are before this Court in these writ petition seeking a Mandamus directing the first respondent to allot the plots, in which they are residing, in their favour.

9. The respondents have filed counter-affidavits refuting the claims of the petitioners. In the counter-affidavit filed in W.P.No.10536 of 2019, it is their definite case that the names of these petitioners were not found in the eligible list, as the scheme itself known as "As is where is scheme" and the layout was prepared and approved by the CMDA. Before the implementation of the scheme, the respondents' Board had conducted enumeration and prepared eligible list and only those persons whose names were found in the list were allotted with the plots. As names of these petitioners were not found in the eligibility list, it is stated by the respondents that they could not allot the plot as per the request of the petitioners. It is stated further in the counter affidavit that after the allotment made to the petitioner, Thirulochana Kumari in W.P.No.40790 of 2016, the Board had passed a Resolution in Resolution No.5.04/477, dated 17.10.2016 stating that the plots notified, as "vacant plots" in the original eligibility list prepared during the inception of the scheme shall be allotted to the persons, who claim to live in the aforesaid plots continuously after verification of documents and after collecting the amount, as per the guidelines value of the said plot. Therefore, the contention of the respondent is that as per the resolution, unless the petitioners agreed for payment of the guideline value, the plots cannot be allotted in their favour.

10. Placing reliance on Resolution No.5.04/477, dated 17.10.2016, it is contended by the respondents in the other counters that unless the petitioners agreed for payment of the guideline value, the plots cannot be allotted in their favour.

11. Heard the learned counsels on either side.

12. The impugned order is assailed by the petitioner in W.P.No.10536 of 2019 contending that when the object of the very scheme is for eradicating slums and moving towards urbanization, the slum dwellers cannot be expected to pay guideline value as has been done in any private transaction. The attitude of the respondents, as alleged by the petitioners, is that they do not want to allot the land in favour of the slum-dwellers, who are downtrodden, but to convey it to the members of the society, who are capable of paying the market value or the guideline value. The impugned order is based on the resolution dated 17.10.2016, which itself was passed only after the direction given by this Court in W.P.No.40790 of 2016. The petitioners are also on the same pedestal as that of the petitioner in the said writ petition. The allegation made therein are the same as that of the petitioners herein.

13. The respondents had taken the defence that during the field inspection conducted by the third respondent, it was found that the petitioners were not residing in the said plots and they had not produced any document to show that they are residing in the said plot. Despite the same defence taken earlier in W.P.No.40790 of 2016, this Court had directed the petitioner therein to submit a fresh representation along with all relevant documents to the respondents and the first respondent was directed to consider the case of the petitioner therein and pass orders, based on which, the petitioner Thiruloohana Kumari was given the allotment order in Che.Mu.No.E3/0378/2016, dated 24.06.2016. The allotment was based on the lease-cum-sale agreement and the monthly installment payable is only Rs.101/-. It is not case of the respondents that the petitioners herein have a different case. It is evident from the resolution passed by the respondent Board on 17.10.2016 that in order to avoid any further persons seeking the allotment of the land, the above resolution was passed specifically introducing the clause of payment of guideline value of the plots towards the lands value.

14. It could not be stated by the learned Additional Government Pleader appearing on behalf of the respondents Board as to how the present petitioners are different from the person, who was given the allotment on 24.06.2016. According to the petitioners, the introduction of collection of present guideline

value would defeat very purpose and object of the TNSCB Scheme. It is the respondents, who should have been gone to the door steps of the present petitioners to give allotment order in terms of the scheme, instead of dragging them to Court even after the fundamental right conferred under Article 300-A of the Constitution.

15. The earlier order was passed by this Court on 22.03.2016 in favour of Thiruloohana Kumari, which was implemented by the respondents on 24.06.2016 allotting plot No.368, bearing Door No.29 in her favour. Thereafter, the Resolution No.5.04/477, dated 17.10.2016 was passed seeking payment of guideline value of the plots towards the land value. The above sequence of events show the deliberate action of the respondents to defeat the legitimate rights of the petitioners. Admittedly, the Board had fixed the notional value for Thiruloohana Kumari before the implementation of the Board Resolution dated 17.10.2016. The claims of the petitioners are rejected stating that they have made their representations after the implementation of the Board Resolution.

16. The fact that the impugned order has been issued shows that these petitioners have been living there, as per the criteria to find a place in the eligibility list. After ascertaining and confirming their eligibility, the impugned order has been issued on 08.02.2019. Therefore, the only grievance of the petitioners is that they should also be given the same treatment as that of Thiruloohana Kumari and permitted to pay the value of the plots notionally as may be assessed by the respondents.

17. The only reason given in the impugned order is that the names of the petitioners are not found in the eligibility list. The said Thiruloohana Kumari did not have her name in the eligibility list, however, she was allotted the land on notional basis. In fact, this Court had only directed to consider the case of the said Thiruloohana Kumari based on her representation. However, the Board had allotted the land in her favour. The only qualification being that she had obtained a direction from this Court. The petitioners herein are already living in the said plots for more than three decades only to left out in the eligibility list, but to get allot of the plots on the guideline value.

18. Considering the sequence of events, it is amply clear that the respondents have introduced the new clause of demanding the guideline value only to deny the rights of the persons as that of the petitioners. Therefore, this Court is convinced that the petitioners are eligible for allotment on a national value that may be fixed by the respondents, as has been done in the case of Thiruloohana Kumari.

19. At this juncture, it is to be stated that the persons, who have been living for around 30 years have been displaced or forced to pay the guideline value, though the Government contemplates a place of its own there. The procedure adopted by the Board officials and the delay on their part results only in a slip between the cup and the lip for the petitioners.

20. The officials of the respondents Board, including the third respondent and his subordinates should have the responsibility to have checks and balances over the lands allotted in their favour by the Government. The classified vacant lands should be taken care by them and any unauthorized occupation or trespass into such lands should be nipped in the bud. On the contrary, the officials have been allowing the persons to squat over the land and ending up in frivolous litigation.

21. In the result, W.P.No.10536 of 2019 is allowed and the impugned order dated 08.02.2019 is set aside. The respondents are directed to allot the plots, in which, the petitioners have been residing, after verifying the documents, fixing the notional value of the plots, as has been done to Thirulochana Kumari, within a period of four weeks from the date of receipt of a copy of this order.

22. The petitioners in the remaining writ petitions are directed to make fresh representations along with all relevant documents showing that they have been residing in their respective plots, and once representations are made, the first respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law, in the light of the orders passed in the earlier writ petition in W.P.No.40790 of 2016. The said exercise shall be completed within a period of four weeks from the date of receipt of representations from the petitioners.

No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

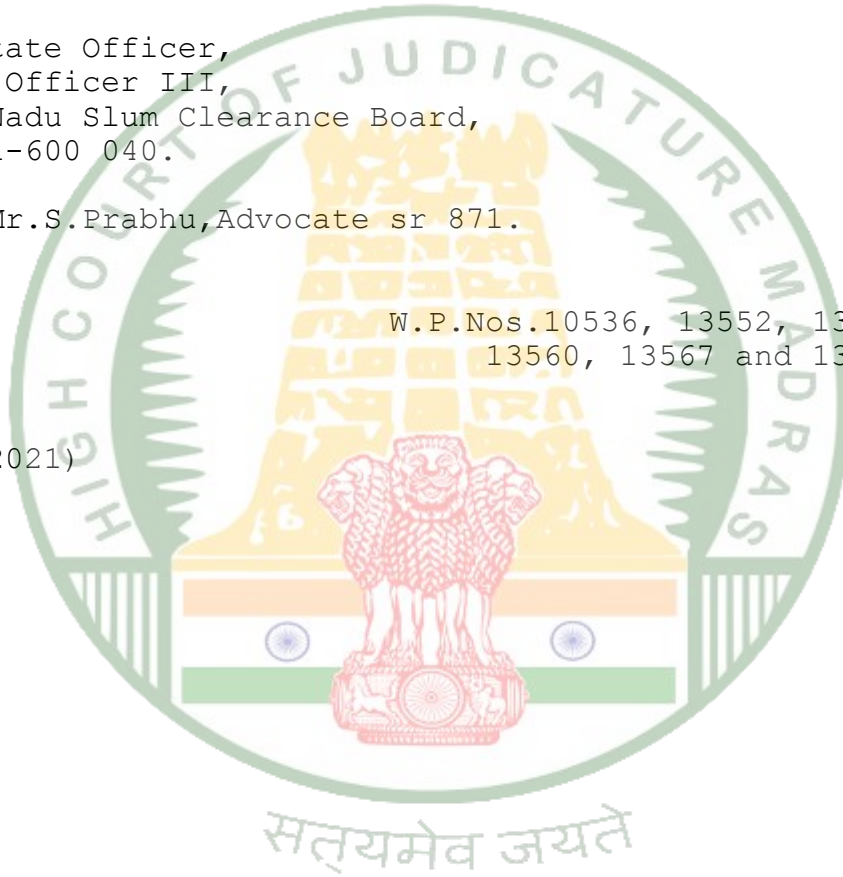
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To

1. The Chairman,
The Tamil Nadu Slum Clearance Board,
Kamaraj Salai,
Chennai-600 005.
 2. The Managing Director,
The Tamil Nadu Slum Clearance Board,
Kamaraj Salai,
Chennai-600 005.
 3. The Estate Officer,
Estate Officer III,
Tamil Nadu Slum Clearance Board,
Chennai-600 040.
- +1 CC to Mr.S.Prabhu,Advocate sr 871.

W.P.Nos.10536, 13552, 13555, 13557,
13560, 13567 and 13569 of 2019

RV(CO)
SP(27/01/2021)



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