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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.NO.29584 OF 2016

AND

WMP.NO.25592 OF 2016

1.P.L.Chinnaiah
2.A.Masilamani
3.Malaiyandi
4.Selvi
5.Rajammal
6.N.Vasantha Nagarajan
7.S.Gadhimathi
8.K.Kumari
9.Meena

...Petitioners

Vs.

1. The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irvin Road,
Egmore,
Chennai 600 008

2. The Tahsildar,
Egmore-Nungambakkam Taluk,
Egmore,
Chennai

3. The Tahsildar,
Aminjikarai Taluk,
Chennai

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to the letter No.K1/3762/2003 dated 11.03.2014 on the file of the first respondent quash the



same in respect of petitioners and direct the respondents to allot the alternative plot without any further enquiry on the basis of the records submitted by the petitioners.

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For Petitioners : Mr.V.Elangovan

For Respondents

For R2 & 3 : Mr.M.R.Gokul Krishnan,
Government Advocate

For R1 : Mr.P.Tamizhmani,
Standing Counsel

ORDER

This writ petition has been filed to issue a writ of certiorarified mandamus calling for the records relating to the letter No.K1/3762/2003 dated 11.03.2014 on the file of the first respondent, quash the same in respect of petitioners and direct the respondents to allot alternative plot without any further enquiry on the basis of the records submitted by the petitioners.

2. The case of the petitioners is that they were residing at Semathamman Nagar comprised in survey Nos.135 to 139 of Koyambedu Village. During the year 1980, the Government of Tamilnadu proposed to shift the wholesale vegetable markets from Kothavalchavadi to Koyambedu and hence drawn a scheme to construct a complex in the said lands. The petitioners were sought to be vacated and the petitioners along with other persons who were evicted filed writ petition before this Court and also before the Hon'ble Supreme Court of India. Therefore, the Government of Tamilnadu came with proposal to permit the petitioners and others to occupy the alternative site in survey No.120/1 and 120/2 in Koyambedu village. Accordingly, the first respondent herein issued allotment orders.

2.1 Thereafter, they constructed houses and are residing their. While being so, there were some encroachments near their houses. The encroachments were removed along with the petitioners' houses. Thereafter, the above place is kept vacant and as such the petitioners made representation to permit them to rebuild houses. In fact, they also approached this Court in WP.No.8308 of 2003 and this Court by order dated 18.03.2003



directed the first respondent to consider their representation within a period of eight weeks. However, their request was rejected by the first respondent by order dated 17.10.2003. It was also challenged before this Court in WP.No.5934 of 2004 for declaration declaring that the action of the first respondent from evicting the petitioners from survey Nos.120/1 and 120/2 is null and void and to restore their respective premises. This Court directed the first respondent to conduct enquiry and pass orders. During the enquiry, the petitioners produced all relevant documents such as identity card and B Memos issued to them. As directed by this Court, conducted enquiry and the request of the petitioners was rejected. Again, the petitioners filed another writ petition in WP.No.15405 of 2008 and this Court set aside the said order and remanded back to the first respondent to conduct fresh enquiry. Thereafter, the first respondent issued notice to the petitioners and conducted detailed enquiry and rejected the claim of the petitioners by order dated 20.10.2011.

2.2 Once again, the petitioners challenged the said order and this Court by order dated 28.11.2013, again set aside the order and directed the first respondent to consider their request by verifying the genuineness of the B Memos and provide them alternative sites at least 50 % of the extent mentioned in their B memos. In view of the said order, the petitioners made representation and rejected the request of the petitioners by order dated 11.03.2014.

3. The learned counsel for the petitioners submitted that though this Court specifically directed the first respondent to consider the claim of the petitioners by verifying the genuineness of the B Memos and provide alternative sites at least 50% of the extent as mentioned in their B Memos, the first respondent simply rejected only on the ground that the petitioners initiated contempt proceedings as against the first respondent. The petitioners are entitled to have a shelter to be provided with all facilities as contemplated under Article 19 (1) of the Constitution of India. In fact, the petitioners were permitted to occupy the survey No.120/1, 120/2, Koyambedu village and unfortunately by mistake, the first respondent demolished their houses on the pretext of removing the encroachments. Now, the said land is lying vacant and the first respondent may be directed to allot at least 50% of the area which is mentioned in the B memos.



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4. Heard, Mr.V.Elangovan, the learned counsel for the petitioners, Mr.M.R.Gokul Krishnan, Government Advocate appearing for the respondents 2 & 3, and Mr.P.Tamizhmani, Standing Counsel appearing for the first respondent.

5. The first respondent filed counter and stated that the records produced by the petitioners which have been sent to the second respondent revealed that only 383 B Memos were issued to the encroachers in survey Nos.120/1, 120/2, 193/1, 193/4 and 193/11 as per Adangal entries. The B Memos were not issued subsequently and the second respondent requested the first respondent to take that list as basis for deciding any claim. On verification found that the B Memos produced by the petitioners were not found place in the records. The second respondent have sent copy of the adangal indicating the name of each person who are in occupation of about 2 cents in survey No.120/1 and 2. Totally, 383 names find place in the adangal furnished by the second respondent. That apart, on verification of the B Memos submitted by the petitioners found that residing date mentioned in the B Memos is after the cut of date i.e. 07.04.1985. Therefore, the petitioners are not eligible for alternative plot.

6. The third respondent filed counter and stated that the petitioners' residence must have been proved for a period of two years from 07.04.1985 to 08.04.1987, whereas the B Memos produced by the petitioners found to be issued only after the cut off date i.e. 07.04.1985. The petitioners already approached this Court on three occasions and as directed by this Court, the first respondent conducted detailed enquiry and passed impugned orders. Now, the Egmore-Nungambakkam Taluk has been bifurcated into Egmore Taluk and Aminjikarai Taluk. The subject land lies within the jurisdiction of the third respondent. On verification of the B Memos produced by the petitioners, they were communicated to the third respondent and the third respondent found the genuineness of the B Memos comparing with the adangal extract and found that the petitioners' names are not found in the adangal. That apart, the petitioners were already treated as encroachers and they have been evicted from the subject land. Even according to the petitioners, after eviction from the subject land, the land is lying vacant and as such they requested for re-occupation of the subject land.



7. It is also seen that during the development of Koyambedu market, the encroachers in survey No.120/1 of Koyambedu village which falls in the midst of the proposed perishable market and the encroachers were never requested to move and occupy the Government lands located in the survey No.120/1 and 2 of Koyambedu village. No allotment order was issued by the first respondent to any of the occupants to occupy the Government land. Therefore, the first respondent rightly rejected the claim of the petitioners and this Court finds no infirmity or illegality in the order passed by the first respondent.

8. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irvin Road,
Egmore,
Chennai 600 008.
2. The Tahsildar,
Egmore-Nungambakkam Taluk,
Egmore, Chennai.
3. The Tahsildar,
Aminjikarai Taluk,
Chennai.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.44862
+1cc to Mr.P.Tamizhmani, Advocate, S.R.No.45023
+1cc to the Government Pleader, S.R.No.45179

WP.No.29584 of 2016

PCH(CO)

RLP(13/10/2021)