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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	08/10/2021
DELIVERED ON	29/10/2021

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P. NO.22018 OF 2021 &
W.M.P.NO.23239 OF 2021
(Heard through VC)

Rt.Rev.Dr.J.A.David Onesimu,
Bishop-President,
Evangelical Church of India,
No.1, Ormes Road, Kilpauk,
Chennai-600 010.

...Petitioner

Versus

- 1.The Principal Secretary to
Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St.George, Chennai - 600 009.
- 2.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chepauk, Chennai - 600 005.
- 3.The Managing Director,
Slum Clearance Board,
No.5, Kamarajar Salai,
Chepauk, Chennai - 600 005.
- 4.The Executive Engineer, Division No.3,
Tamil Nadu Slum Clearance Board,
Vyasarpadi, Chennai - 600 039.



5.The Executive Engineer,
Regional Office-1,
Chennai Metropolitan Water
Supply and Sewerage Board,
No.1, Pumping Station Road,
Chindadripet, Chennai - 600 002.

6.The Collector,
Chennai District,
Singaravelar Maaligai,
Rajaji Salai, Chennai - 600 001.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the third respondent made in Letter in Na.Ka.No.P2/7342/2021, dated 08.09.2021 and that of fourth respondent's proceedings made in Na.Ka.No.637/A.3/Ko.3/2021, dated 30.09.2021, to quash the same and consequently direct the respondents to consider allotment of the said 473 sq.ft in favour of the petitioner at the rate as may be fixed by the competent authority and to regularize the same.

For petitioner : Mr.L.Chandra Kumar

For respondents : Mr.T.N.C.Kaushik
Government Advocate R1 and R6

Mr.M.Rajasekhar
Standing Counsel for R2 to R4

ORDER

K.KALYANASUNDARAM, J.,

By consent, the Writ Petition is taken up for final hearing at the stage of admission itself.

2. This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to quash the order of the third respondent made in Letter in Na.Ka.No.P2/7342/2021, dated 08.09.2021 and that of the fourth respondent's proceedings in Na.Ka.No.637/A.3/Ko.3/2021, dated 30.09.2021, and consequently



direct the respondents to consider allotment of 473 sq.ft in favour of the petitioner at the rate as may be prescribed by the competent Authority and to regularize the same.

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3. The Tamil Nadu Slum Clearance Board, vide proceedings dated 15.12.1983 in Na.Ka.No.B2/11375/83 allotted 1200 sq.ft of vacant land in favour of the petitioner-Church on a monthly rent of Rs.36/-. It is stated that the allotment is temporary and they have also imposed as many as 9 conditions. It appears the petitioner approached Slum Clearance Board to purchase the said land. Though the Board had agreed to sell the land at the market value or the guideline value which ever is higher in the year 2000, but the fact remains, the land was not sold to the petitioner.

4. On 28.02.2019, the Slum Clearance Board having found that the petitioner constructed a permanent structure and also encroached upon the land belong to the Slum Clearance Board, in violation of the allotment condition, cancelled the allotment itself. The cancellation was challenged by the petitioner-Society by way of Appeal. The Principal Secretary to Government/Appellate Authority heard the Appeal on 11.06.2019 and at that point of time, the Church Authorities themselves gave undertaking to vacate the excess land beyond 1200 sq.ft. By an order, dated 28.06.2019, the Appellate Authority held that before cancellation of allotment, no opportunity was given to the petitioner/appellant and on that score remanded the matter back to the Slum Clearance Board with regard to the allotment of the land to an extent of 1200 sq.ft. and the balance land was directed to be vacated.

5. Pursuant thereto, the Slum Clearance Board sent letters dated 09.10.2020 and 15.10.2020 to hand over encroached portion to an extent of 473 sq.ft, as per the undertaking given before the appellate Authority. The letters of Slum Clearance Board dated 09.10.2020 and 15.10.2020 were challenged along with the rejection of the Appeal by the Government dated 28.02.2019 in W.P.No.14235 of 2021. The Division Bench, by an order dated 27.07.2021, while dismissing the Writ Petition, directed the petitioner to hand over the encroached portion of 473 sq.ft to the Slum Clearance Board within a period of two weeks. The matter was listed for reporting compliance on 12.08.2021 and it was adjourned by four weeks. When the Writ Petition was listed



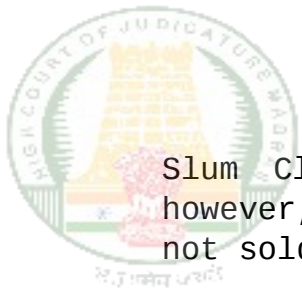
on 13.09.2021, the petitioner sought further time, but this Court directed the respondent-Board to take back portion encroached by the petitioner in accordance with law within a period of four weeks. The impugned notice dated 30.09.2021 was issued by the respondent-Board to remove the encroachment on or before 07.10.2021, failing which, the Board would remove the encroachment and recover the amount and damages from the petitioner. Challenging the order, the present Writ Petition has been filed.

6. Mr.L.Chandra Kumar, learned counsel appearing for the petitioner would argue that the petitioner is in occupation of 1659 sq.ft. since 2000 and the Board has also agreed to sell the entire land in favour of the petitioner. So, the petitioner cannot be termed as an encroacher of land to an extent of 473 sq.ft. It is also stated that the petitioner made representation to the Authorities in pursuance of the order of this Court dated 27.07.2021 made in W.P.No.14235 of 2021 and at this juncture, the respondent is no authority to issue the impugned order.

7. Per contra the learned Standing Counsel for the respondents 2 to 4 Mr.M.Rajasekhar would argue that the petitioner has violated the conditions of allotment dated 15.12.1983 and it is an admitted case of the encroachment. The Division Bench of this Court in W.P.No.14235 of 2021 has categorically held that the petitioner has encroached 473 sq.ft, hence, the submissions of the learned counsel appearing for the petitioner has no merit consideration. It is further stated that the allotment was already cancelled in the year 2019 and in respect of 1200 sq.ft alone, the appeal was remanded back and insofar as the encroached area, the petitioner undertook to handover possession to the respondent and now the Board has no intention to sell the land to the petitioner.

8. This Court carefully considered the rival submissions and perused the available materials.

9. The allotment order annexed in the typed-set reveals that the Slum Clearance Board had allotted only 1200 sq.ft in favour of the petitioner by fixing a sum of Rs.36/- as monthly rent imposing conditions not to put up permanent superstructure and also not to encroach the other land. As aforementioned, though there were communications between the petitioner and the



Slum Clearance Board with regard to the sale of the land, however, indisputably, the land to an extent of 1200 sq.ft was not sold in favour of the petitioner.

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10. Perusal of the typed-set shows that the petitioner made representations on 22.06.2004 and 13.09.2006 with regard to the sale of the land. In the affidavit filed in support of the Writ Petition, it has been clearly admitted that from the year 2010, rent is not paid. According to the petitioner, the respondents refused to receive the rent. It is relevant to note that nothing has been mentioned in the affidavit about the steps taken by the petitioner to pay the rent when it was refused to be received from 2010. The allotment itself came to be cancelled by the third respondent on 28.02.2019. The Appellate Authority, viz., the Principal Secretary to Government, Housing and Urban Development Department, Chennai-9, has mentioned in the order dated 28.06.2019 that the petitioner/appellant has given undertaking to vacate the excess land beyond 1200 sq.ft allotted to them by the Tamil Nadu Slum Clearance Board. The observation of the Appellate Authority was not questioned by the petitioner in the earlier Writ Petition. The Division Bench, vide order dated 27.07.2021 has clearly held that the petitioner had encroached upon the land of the Slum Clearance Board to an extent of 473 sq.ft, and directed the petitioner to hand over possession to the official respondents. The relevant paragraphs are extracted hereunder:-

"9. It is seen that during personal hearing, the Bishop president on 11.06.2019 gave a statement that they are prepared to give up additional land beyond 1200 sq.ft., which was originally allotted to them. Therefore, it is clear that Petitioner has encroached upon more than 1200 sq.ft., of land and only the excess portion of land of 473 sq.ft., is directed to be surrendered by the Petitioner.

10. When the allotment order was there, wherein an extent of 1200 sq.ft. has been allotted, the Petitioner being a religious institution, cannot behave like an encroacher and encroach the property more than the allotted portion. Therefore, this Court finds no infirmity in the orders passed. Hence, the encroached portion of 473 sq.ft., of land is directed to be handed over by the Petitioner to the concerned



official Respondent within a period of two weeks from the date of receipt of a copy of the order."

11. It is not in dispute that the finding of this Court recorded supra, has reached finality and hence, it cannot be contended by the petitioner that he is not an encroacher in respect of 473 sq.ft of land belonging to the Slum Clearance Board. Since the petitioner has already availed appeal remedy provided under the Tamil Nadu Slum Areas (Improvement Clearance) Act, 1971 and received adverse findings, it cannot be permitted to state that the principles of natural justice has not been followed.

12. Taking note of the holistic view of the matter, we find no merit in this Writ Petition warranting interference of this Court. In that view, the Writ Petition fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

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Housing & Urban Development Department,
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+1cc to Mr.L.Chandrakumar, Advocate SR.No.56335

W.P.No.22018 of 2021 &
W.M.P.No.23239 of 2021

NK(CO)
RVM(10/11/2021)