



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.06.2021**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS. JUSTICE S.ANANTHI

W.P. (MD)Nos.18678 of 2019 and 8934 of 2021

and W.M.P. (MD) No.15053 of 2019

(Through Video Conferencing)

W.P. (MD) No.18678/2019

P.Subramani

: Petitioner

Vs.

1.The Chairman cum Managing Director,
Tamil Nadu Slum Clearance Board,
No.5 Kamarajar Salai, Ayothiya Nagar,
Triplicane, Chennai 600 005.

2.The Executive Engineer,
Madurai Division,
Tamil Nadu Slum Clearance Board,
No.169 K.K.Nagar Main Road
Madurai 20

3.Siraj Nisha

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus to forbear the respondent No.2 from taking any steps to remove ½ feet land in the name of alleged encroachment situated in his dwelling house Door No.29 Plot No.26 Town Survey No.497/16, Karumbalai Middle Street, Madurai District 20 till the disposal of the appeal preferred by the petitioner dated 21.08.2019 pending before the respondent No.1.

For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.P.Mahendran for R1 & R2

Mr.D.S.Haroon Rasheed for R3

W.P. (MD) No.8934/2021

Siraj Nisha

: Petitioner

Vs.

1.The Chairman cum Managing Director,
Tamil Nadu Slum Clearance Board,
No.5 Kamarajar Salai, Ayothiya Nagar,
Triplicane, Chennai 600 005.



2.The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Madurai Division, Madurai.

W.P.(MD) 3.Subramani

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus to direct the 1st respondent to conclude the appeal dated 13.01.2020 in his proceedings No.E2/1003/2020 filed by the petitioner within a time frame fixed by this Court.

For Petitioner : Mr.D.S.Haroon Rasheed
For Respondents : Mr.P.Mahendran for R1 & R2
Mr.I.Pinaygash for R3

COMMON ORDER

(Order of the Court was made by T.S.SIVAGNANAM, J)

Since the property in question in both the writ petitions are one and the same, they were heard together and are disposed of by this common order.

2.The petitioner Mr.P.Subramani has filed W.P.(MD) No.18678/2019 to forbear the Executive Engineer, Tamil Nadu Slum Clearance Board, Madurai Division, the second respondent herein, from taking steps to remove the half feet of land, alleging that it is encroached.

3. The petitioner Siraj Nisha, W/o.Mohammed Mustafa filed W.P. (MD) No.8934/2021 stating that the conclusion of the Slum Clearance Board that there is only ½ feet encroachment is incorrect and that order has to be set aside and for which purpose, she has filed an appeal before the Chairman cum Managing Director of the Slum Clearance Board.

4. Mr.P.Mahendran, learned standing counsel for the respondent Board, submitted that the petitioner Subramani has also filed an appeal to the Chairman against the decision of the Executive Engineer stating that there is half feet encroachment.

5. It appears that there has been dispute between the parties in respect of constructions, which were put up from the year 2002 onwards and certain documents were also exchanged between the parties. However, it appears to be no reconciliation between the parties and they went upon complaining against each other. Hence, this Court is of the view that no equitable solution can be arrived at in respect of the writ petitions, but only a legal solution will put an



end to this dispute.

6. We find that in terms of Rule 9 of the Tamil Nadu Slum Clearance Board (Control and Management of Properties) Rules 1971 [hereinafter referred to as 'the Rules'], any person aggrieved by an order of the Executive Engineer or the officer of the Board authorised by the Chairman under the Rules may within 15 days from the date of service of such order prefer an appeal to the Chairman. In terms of the proviso under Rule 9 (1), the Chairman may entertain an appeal, after a period of 15 days, which is the time limit fixed for preferring an appeal, if sufficient cause is shown by the appellant for not being able to prefer an appeal in time.

7. Sub Rule 2 of Rule 9 of the Rules provides for the procedure to be followed by the appellate authority and it states that on receipt of the appeal, the Chairman may call for a report from the Executive Engineer or the officer of the Board authorised by the Chairman and make such further enquiry, if any, as may be necessary and pass orders, as he thinks fit and order of the Chairman shall be final.

8. Sub Rule 3 of Rule 9 of the Rules gives power to the Chairman to grant an order of stay of the order of the Executive Officer or any other Officer of the Board. Thus, both the parties having availed the statutory appeal remedy could pursue the matter before the appellate authority. When the writ petition filed by Mr.P.Subramani was entertained in W.P.No.18678/2019, an order of status quo was granted. Since we are inclined to issue a direction to the first respondent, namely, the Chairman and Managing Director of the Tamil Nadu Slum Clearance Board to decide the appeal petitions, the status quo, which was prevailing as on 28.08.2019, in respect of the property in question shall be maintained and there shall not be any structural alteration done by Subramani.

9. In the result, the writ petitions are disposed of by directing the Chairman and Managing Director to consider the appeal petitions filed by both the writ petitioners and take a decision in the matter, before which, it would be advisable for the Chairman to call for the inspection report by an independent authority, who has not dealt with the matter earlier. Photographs shall also be taken during the inspection and a report can be submitted. While doing so, the Chairman can also authorise the said officer to examine as to whether any of the other neighbours of the petitioners have encroached into a common area, put up unauthorised construction etc. and the report shall also contain such details. On receipt of such report, the first respondent shall pass orders on merits and in accordance with law. The said exercise shall be completed as early as possible, preferably, within a period of four months from the date of receipt of a copy of this order.



10. The Writ Petitions are disposed of accordingly. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chairman cum Managing Director,
Tamil Nadu Slum Clearance Board,
No.5 Kamarajar Salai
Ayothiya Nagar,
Triplicane, Chennai 600 005.

2.The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Madurai Division,
Madurai.

W.P.(MD)No.18678 of 2019 and 8934 of 2021
Dated: 04.06.2021

KB(24.06.2021) 4P 3C