

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2022

DATE OF DECISION : 22.06.2022

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NOS.615 OF 2015 AND 3448 OF 2019

Mrs.Kamalam

... Appellant in
both appeals

.Vs.

1. Mrs.Punithavalli
2. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 5.
3. The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Division No.III,
Vyasarpadi, Chennai - 39.
4. The Estate Officer-III,
Tamil Nadu Slum Clearance Board,
Vyasarpadi, Chennai - 39.

... Respondents in
both appeals

COMMON PRAYER:-

Writ Appeals have been filed under Section 15 of Letter of Patent against the common order passed by the learned Single Judge in W.P.Nos.79 of 2004 and 6103 of 1999, dated 03.02.2015.

PRAYER IN W.P.NO.7103 OF 1999:-

Writ Petition filed to issue a Writ of Mandamus directing the Respondents 2 and 3 to execute a Sale Deed in favour of the Petitioner on the Stamp Papers purchased and produced by her and to register the same before SRO, Sembiam-Perambur.

PRAYER IN W.P.NO.79 OF 2004:-

Writ Petition filed to issue a Writ of Certiorari to call for the records of the 1st Respondent in respect of the impugned order dated 23/06/2003 made in Se.Mu.Ka.No.6431/E3/03 and quash the same.

(IN BOTH W.A'S)

For Appellant : Mr.R.Manickavel
For R1 : Mr.Om.Prakash
Standing Counsel
For Mr.S.Rajendrakumar
For R2 to R4 : Mr.R.Sivakumar

COMMON JUDGMENT

Mrs.Kamalam/appellant herein is the fourth respondent in W.P.No.79 of 2004. Mrs.Punithavalli/first respondent herein is the writ petitioner in both writ petitions.

2. W.P.No.6103 of 1999 was filed seeking for issuance of a writ of mandamus to direct the respondents 2 and 3/Slum Clearance Board to execute a Sale Deed in her favour. W.P.No.79 of 2004 was filed challenging the proceedings dated 23.06.2003 made in Se.Mu.Ka.No.6431/E3/03 of the Chairman, Tamil Nadu Slum Clearance Board. Learned Single Judge, by the impugned common order dated 03.02.2015, allowed both the writ petitions. Aggrieved by the same, Mrs.Kamalam has filed these two writ appeals.

3. It is submitted by the learned counsel for the appellant that the Tamil Nadu Slum Clearance Board has allotted Plot No.173, Second Cross Street, Dr.Ambedkar Nagar, Kolathur, Chennai - 9, comprised in Old S.No.53/1, now R.S.No.11612(part) of Kolathur Village, measuring an extent of 40.5 sq.mtrs. under an allotment order dated 30.05.1996 to the appellant. Pursuant to the allotment, the said plot was handed over to the appellant, who, in turn, entered into a lease-cum-sale agreement dated 10.05.1996 with the first respondent. It is further submitted that after the full payment was made, the Slum Clearance Board has also issued No Objection Certificate to the appellant for Metro Water and Drainage Connection to mortgage the said plot with any financial institution. Thereafter, she

sought permission for construction of a residential house and commenced levelling the ground for laying a foundation. Whiles, on 25.12.2003, the first respondent's husband S.R.Hari alias Kothandaraman, with the help of labourers, was digging the plot allotted to the appellant to put up column. Thereafter, the appellant and her husband immediately rushed to the place in question and strongly objected the unauthorized entry of the first respondent and digging the earth and thereby, a police complaint was also lodged in I.P.No.337/03 on the file of Rajamangalam Police Station. As the issue is civil in nature, the Inspector of Police advised both parties to approach the Civil Court for appropriate relief. Therefore, the appellant also filed a civil suit in O.S.No.313 of 2004 on the file of XIV Assistant Judge, City Civil Court, Chennai, seeking for permanent injunction restraining the first respondent from interfering with her peaceful possession and enjoyment of the property in question. It is further submitted that the said suit was dismissed by the trial Court on 01.04.2022, after contest.

4. It is further argued that the Tamil Nadu Slum Clearance Board, on verifying the records, found certain mistakes and therefore, vide proceedings dated 23.06.2003, it has revised the extent of the plot allotted to the first respondent in Kannagi Nagar from 37.50 sq.mtrs. to 47 sq.mtrs. It is further argued that if the extent is 87.50 sq.mtrs. in Plot No.144 allotted to the first respondent, then it is inclusive of 40.50 sq.mtrs. allotted to the appellant on the rear side of Plot No.144. The plot allotted to the first respondent is in Kannagi Nagar Scheme whereas the plot earlier allotted to the first respondent is under Dr.Ambedkar Nagar Scheme which was approved by the CMDA.

5. It is further contended that the Board has committed a mistake while making the allotment to the first respondent herein and therefore, the said mistake was subsequently rectified by order dated 23.06.2003 as stated above. Aggrieved by the same, the writ petitioner/first respondent herein has filed W.P.No.79 of 2004 challenging the rectification order dated 23.06.2003, that too without impleading the appellant herein in the said writ petition. Taking advantage of the difference in the extent of land, the first respondent herein has been attempting to encroach the plot allotted to the appellant. It is further argued that as per the direction of this Court, the Managing Director, Tamil Nadu Slum Clearance Board, held an enquiry and gave personal hearing to both parties. Subsequently, the Managing Director filed his report dated 22.11.2013, in which, the name of the appellant herein was found place for occupation of Plot No.173. As per the layout approved by the CMDA, extent of Plot No.144 is only 47 sq.mtrs.,

however, for Plot No.144, the authorities have wrongly allotted 87.50 sq.mtrs. including 40.5 sq.mtrs. of Plot No.173 of Ambedkar Nagar Scheme allotted to the appellant. Thus, in view of such difference in the extent of land, after getting a consent from the first respondent herein for reducing the extent of land, revised order was passed vide proceedings dated 23.06.2003, however, this has been wrongly challenged by the first respondent. It is argued that on 12.05.2003, the Tamil Nadu Slum Clearance Board have conducted an enquiry and in the enquiry, the first respondent has given written undertaking and declaration that she would accept the difference in the extent of the land and that she has no objection in allotting the remaining extent of 40 sq.mtrs. to Ambedkar Nagar Scheme, hence, based on her written undertaking/declaration, revised order has been passed on 23.06.2003. However, these crucial aspects have been completely overlooked by the learned Single Judge while allowing the writ petitions. Hence, the impugned common order passed by the learned Single Judge is liable to go.

6. Heard the learned counsel appearing for the appellant, learned Senior counsel for first respondent and learned counsel for the respondents 2 to 4.

7. In the grounds of appeal, the appellant averred that on the basis of the direction of this Court to the Managing Director of Tamil Nadu Slum Clearance Board, an enquiry was held and an opportunity of personal hearing was afforded to both parties. Thereupon, after completion of the enquiry, a report dated 22.11.2013 was filed, in which, it is reported that for Plot No.173, the name of the appellant herein was found place, but, as per the layout approved by the CMDA, the extent of Plot No.144 is only 47 sq.mtrs., however, for Plot No.144, the authorities have wrongly mentioned the extent of the land as 87.50 sq.mtrs., including 40.5 sq.mtrs. of Plot No.173 of Ambedkar Nagar Scheme allotted to the appellant. Thus, in view of such difference in the extent of land, it is averred in the grounds of appeal that after getting a consent declaration from the first respondent herein for reducing the extent of land, revised order has been passed on 23.06.2003. But, such consent declaration given by the first respondent has not been placed before us.

8. Secondly, a written undertaking/declaration said to have been given by the first respondent accepting the difference in the extent of the allotment and giving no objection for allotment of the remaining extent of 40 sq.mtrs. to Dr.Ambedkar Nagar Scheme also has not been filed. These two factual aspects

have not been considered/looked into by the learned Single Judge. Therefore, on these two counts, the matter is remanded back to the learned Single Judge and both parties are directed to file the aforesaid two documents. On production of such documents, learned Single Judge is directed to pass orders on merits and in accordance with law. The writ appeals stand disposed of with the above observations and directions. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 5.
2. The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Division No.III,
Vyasarpadi,
Chennai - 39.
3. The Estate Officer-III,
Tamil Nadu Slum Clearance Board,
Vyasarpadi, Chennai - 39.

+1cc to Mr.G.Venkatesan, Advocate, S.R.No.38691
+1cc to Mr.S.Rajendrakumar, Advocate, S.R.No.38457
+1cc to Mr.R.Manickavel, Advocate, S.R.No.38096
+1cc to Mr.R.Sivakumar, Advocate, S.R.No.38087

W.A.NOS.615 OF 2015 AND
3448 OF 2019

SSD(CO)
PBS/28/07/2022