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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.26805 of 2017

V.Padma

... Petitioner

Vs.

1. The Managing Director,  
The Tamil Nadu Slum Clearance Board,  
Kamaraj Salai, Chennai - 600 005.

2. The Estate Officer,  
Phase VI, The Tamil Nadu Slum Clearance Board,  
Mandaveli, Chennai.

3. V.Arunagiri

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents 1 and 2 to conduct enquiry and take actions by passing the appropriate orders in Petition No.E6/5663/2016, pending on the file of the first respondent within the time limit that may be fixed by this Court.

For Petitioner : Mr.V.Tamizhselvan

For Respondents 1 & 2 : Mr.S.Prabu

For Respondent 3 : Mr.A.P.Sathyamurthy

O R D E R

This writ petition has been filed seeking a direction to the respondent Slum Clearance Board to consider the petitioner's application filed under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, (hereinafter referred to as the 'Act') seeking permission to file a suit for partition against the third respondent.



2. The grievance of the petitioner is that the petitioner's husband was originally allotted a tenement by the Slum Clearance Board and after his demise the third respondent, who is none other than his son has occupied the entire property. In the above circumstances, the petitioner and her daughters intend to file a suit for partition, however under Section 29 of the Act previous permission in writing has to be obtained from the Slum Clearance Board and hence the petitioner approached the respondent Slum Clearance Board with an application seeking permission, but so far permission was not granted, hence the present writ petition has been filed.

3. The learned counsel appearing for the Slum Clearance Board, submitted that for filing suit for partition, no permission is required. He further submitted that for filing suit for eviction only permission is required under Section 29(1) of the Act. As it is purely a civil dispute between the petitioner and her son, the Slum Clearance Board has not taken any steps to evict him under Section 29(1) and therefore no permission is required under the Act for filing a suit for partition.

4. I have considered the rival submissions.

5. The case of the petitioner is that the petitioner not only wants to file a suit for partition, but also seeking possession from the third respondent and also for eviction of the third respondent. As the petitioner is seeking for eviction of the third respondent, prior permission of the slum clearance board is required. This Court has also held that such permission is required at least at the time of filing Execution Petition. In *Vijayalakshmi Vs. Pushparani* reported in (2011) 6 MLJ 642 this Court has held as follows:

"22. I would like to point out that such an argument cannot be countenanced for the reason that once a final decree is passed after dividing the property by metes and bounds, then the parties are entitled to file directly E.P and take possession. So, if half share by metes and bounds is allotted to each of the parties, then the parties who are not allotted shares could be got vacated with the help of such a decree. Hence, a word of caution has to be left here, for the reason that unless the plaintiff approaches the authority concerned under Section 29 of the Tamil Nadu Slum Areas (Improvement and



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Clearance) Act, 1971 and gets permission, the question of evicting D1 and D2 would not arise and that is found exemplified and demonstrated in the aforesaid decisions. Apart from this, there is no other defect in the judgments and decrees of both the Courts below.

23. Accordingly, the judgments and decrees of the Courts below shall stand modified slightly to the effect that only possessory right should be got divided into two shares and accordingly the parties are at liberty to see for final decree and final decree could be passed and before executing the final decree, it is for the plaintiff or the defendants 3 to 6 as per the case may be to approach the authority under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 and get suitable orders."

6. Considering the above circumstances, as rightly contended by the learned counsel appearing for the petitioner, since the suit is not only for partition but also for recovery of possession, which ultimately involves eviction of the third respondent, the petitioner necessarily has to get permission from the first respondent. Hence, this writ petition is disposed of directing the first respondent to consider the petitioner's application and after hearing the necessary parties pass suitable orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order. This writ petition is disposed of accordingly. No costs.

SD/-  
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1. The Managing Director,  
The Tamil Nadu Slum Clearance Board,  
Kamaraj Salai, Chennai - 600 005.



2. The Estate Officer,  
Phase VI, The Tamil Nadu Slum Clearance Board,  
Mandaveli, Chennai.

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