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W.A.Nos.891 to 894 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

W.A.Nos.891 to 894 of 2012 and

M.P.Nos. 1 +1 + 1 of 2012

G.P.Rudhrashan

... Appellant in
W.A.No.891/2012

Asmath Beevi

... Appellant in
W.A.No.892/2012

1. M.Chellaiah (died)

2. C. Hilda

3. C.Praveen

4. C.Rajasekaran

5. C.Vinu

... Appellants in
W.A.No.893/2012

(Appellants 2 to 5 are substituted for the
appellant as legal heirs of the deceased sole appellant
M.Chellaiah, vide order of Court dated 08.08.2023
made in CMP No.17742/2023 in W.A.No.893/2012.)

P.Balu

... Appellant in
W.A.No.894/2012



W.A.Nos.891 to 894 of 2012

Vs.

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1. The Tamil Nadu Slum Clearance Board,
Rep. by its Chairman, No.5,
Kamarajar Salai, Chepauk,
Chennai 600 005.

2. The Executive Engineer, Division II,
Tamilnadu Slum Clearance Board,
13th Sector, 83rd Street, K.K.Nagar,
Chennai 600 078.

... Respondents 1 & 2
in all writ appeals

Meenakshi

... 3rd Respondent in
W.A.No.891/2012

S.Karunanidhi Thevar

... 3rd Respondent in
W.A.No.892/2012

E.K.Lakshmi

... 3rd Respondent in
W.A.No.893/2012

P.Thirumalaikumar

... 3rd Respondent in
W.A.No.894/2012

Prayer: Writ Appeals No.891 to 894/2012 have been filed under Clause 15 of Letters Patent to set aside the order passed by this Court in W.P.Nos. 16949, 16950, 16951, and 17625 of 2009 respectively, dated 23.08.2011.



W.A.Nos.891 to 894 of 2012

In all writ appeals

WEB COPY For Appellant/s

: Mr.K.Raja, Senior Counsel

for Mr.N.Kolandaivelu

For Respondents

: Mr.G.Venkatesan, Standing Counsel

for respondents 1 and 2

Mr.B.Natarajan for third respondent

COMMON JUDGEMENT

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

These Intra Court Appeals in W.A.No.891 to 894/2012 have been filed by the writ petitioners to set aside the common order passed in W.P.Nos.16949, 16950, 16951, and 17625 of 2009 respectively, dated 23.08.2011, whereby the learned Single Judge has directed the Tamil Nadu Slum Clearance Board to appoint a Committee of Engineers to determine the market value of the encroached portion, covered by the impugned eviction notice issued to the appellants/ writ petitioners and also to calculate the interest at the rate of 12% from the date of encroachment till the date of payment and after recovering the said cost from the appellants/writ



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petitioners, the amount shall be paid to the persons proportionately, whose original allotment was encroached by the appellants/writ petitioners in proportion of that allotment; and in case the appellants/ writ petitioners failed to honour their commitment or failed to pay the amounts, the TNSCB is at liberty to invoke the eviction proceedings.

2. The facts and circumstances of the case and the issues involved in all the writ appeals are one and the same and hence, this Court passes the common judgment.

3. The brief facts leading to the filing of the instant writ appeals are as follows.

The appellants are the writ petitioners in the above writ petitions and they were allotted plots by the Tamil Nadu Slum Clearance Board at 5th Street, 6th Cross Street, Vijayaraghavapuram, Chennai-93. The details of Plot number, measurement of plot and the date of allotment are given as below.



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Sl. No	Name of allottee	Plot no.	Measurement of plot in sq.mtrs.	Date of allotment
1	G.P.Rudhrashan (W.A.No.891/2012 in W.P.No.16949/2009)	278	85.0	12.09.1988
2	Asmath Beevi (W.A.No.892/2012 in W.P.No.16950/2009)	285	166.0	14.03.1988
3	M.Chelliah (W.A.No.893/2012 in W.P.No.16951/2009)	279	76.0	10.09.1988
4	Balu (W.A.No.894/2012 in W.P.No.17625/2009) (subsequent purchaser from Kanagarathinam)	277	80.0	21.03.1988

According to the appellants, the Tamil Nadu Slum Clearance Board had not allotted the whole area, that are occupying them for more than three decades, whereas, allotted the above said extent only for the reason that, the remaining area felt on low-lying pond area, as per the records. The details of occupied area by the appellants and the area allotted to them are extracted hereunder.



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Sl. No	Name of allottee	Plot no.	Occupied area in sq.mtrs.	Allotted area in sq.mtrs.	remaining area in sq.mtrs.
1	G.P.Rudhrashan (W.A.No.891/2012 in W.P.No.16949/2009)	278	114	85.0	0.29
2	Asmath Beevi (W.A.No.892/2012 in W.P.No.16950/2009)	285	184	166.0	0.18
3	M.Chelliah (W.A.No.893/2012 in W.P.No.16951/2009)	279	103.5	76.0	27.5
4	Balu (W.A.No.894/2012 in W.P.No.17625/2009) (subsequent purchaser from Kanagarathinam)	277	108	80.0	0.28

Subsequently, a lease cum sale agreement was also entered into between the appellants and the first and second respondent. Further, no objection certificate was issued in favour of the appellants to obtain electricity service connection, water and sewerage service connection and to avail the loan. Since the date of allotment, the appellants have been enjoying the above said allotted plots along with their occupied portion, by raising pucca construction and they had also paid the amounts regularly, as demanded by the first and second respondent. While that being so, when the appellants are under the impression that the sale deed would be executed in their favour, the second respondent issued a show cause notice dated 10.08.2009,



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directing the appellants to remove the encroachment on or before 21.08.2009. Challenging the above said order, the appellants had filed W.P.Nos.16949 to 16951 and 17625/2009. The Writ Court has taken the above writ petitions along with W.P.No.19699/ 2009 and Cont.Petn. No.120/2010 and passed the common order, by directing the Tamil Nadu Slum Clearance Board to appoint a Committee of Engineers to determine the market value of the encroached portion, and recover the same from the appellants and to pay that amount to the original allottees. Aggrieved by the above said order, the appellants have filed the present appeals.

4. The learned counsel for the appellants submitted that the appellants came to know that third respondent in W.A.No.891 to 894/2009 respectively, had filed W.P.No.12732/2005 along with six others, as against the Tamil Nadu Slum Clearance Board to execute the sale deed in respect of Plot Nos.420/1 to 420/10, in S.No.201, admeasuring 1151 sq.mtrs. in Old Vijayaraghavapuram, in which some portions have been occupied by the appellants and the same was allowed. As against the above said order, the Slum Clearance Board had filed W.A.No.166/2006 and also one



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Paramasivam, third party had filed W.A.No.1336/2005 and the same were ended against them, vide order dated 23.03.2006. The Slum Clearance Board had also filed SLP (Civil) No.8480/2006 and it was also dismissed on 12.05.2006 by the Hon'ble Supreme Court.

4.1.He further submitted that, the above order in W.A.No.12732/2005 was passed, without impleading the appellants herein, who have been occupied and in possession of the portion of the property, allotted to the third respondent in all the writ appeals. He further submitted that, the Slum Clearance Board had allotted the plots to the appellants only to an extent as stated supra and not allotted the whole area occupied by them, because, the remaining area is a low-lying pond area, as per the records. However, the officials concerned, colluding with the third respondent in the appeals, had issued the allotment order illegally in favour of them and six others, with respect to the Plot no.420/1 to 420/10 and subsequently, they had filed Cont.Petn.No.287/2006 for non compliance of the order passed in W.P.No.12732/2005 and it was also allowed on 19.01.2007.



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4.2. The learned counsel further submitted that, there was no scheme and also there is no pathway to Plot No.420/1 to 420/10. However, the official concerned had created the illegal allotment order and for the same, disciplinary proceedings was initiated against the errred employees. Further more, the third respondent in the writ appeals have not been residing in the allotted plots, whereas, for more than three decades, the appellants have been in possession and enjoyment of the allotted land along with the occupied portion, by raising pucca construction and even if the same is said to have been encroachment, the same cannot be segregated. Therefore, the appellants are entitled to get allotment in their favour for the occupied/ encroached portion.

4.3. The learned counsel also submitted that, without considering the fact that the appellants are in possession of the property in question for more than three decades and also without taking int account that the third respondent in the writ appeals are not in possession of the plots, the writ court has passed the order, that too beyond the scope of the prayer, directing to fix the market value of the property and to recover the same with 12%



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interest from the appellants from the date of encroachment, which is unsustainable. Therefore, he seeks to set aside the order passed by the learned single judge.

5. The learned Standing Counsel appearing for the first and second respondents submitted that, pursuant to the impugned order passed by the learned Single Judge, the Tamil Nadu Slum Clearance Board had constituted a Committee of the Board Engineers to determine the market value of the encroached land by the appellants and obtained their report. He further submitted, as per their report, the amounts to be remitted by the appellants/ writ petitioners have been calculated and the same was communicated to them to remit the same, vide notice dated 15.02.2012.

5.1. He further submitted that, since the order of the writ Court in W.P.No.12732/2005 has become final, the Department had issued the eviction notice to the appellants to remove the encroached portion made by them and to give vacant possession. Since the appellants were not allotted the land in question, it can be construed only as an encroachment and hence,



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they have no legal right to challenge the above eviction notice. Therefore, he seeks for dismissal of the appeals.

6. The learned counsel appearing for the third respondent vehemently opposed the contentions made by the appellants and submitted that, originally the plots in question was allotted to the third respondent in the instant appeals and they had complied with all the conditions as mentioned in the allotment order and hence, they are entitled for getting sale deed in their favour, however, the Tamil Nadu Slum Clearance Board has refused to execute the sale deed. Therefore, they filed W.P.No.12732/2005 and it was allowed and the appeals preferred by the Department before the Division Bench of this court as well as before the Hon'ble Supreme Court had also ended against them and hence, the order passed in the above writ petition has become final. As such, the appellants have no locus standi to challenge the impugned eviction notice and hence, he seeks for dismissal of the appeal.

7. Heard the learned counsel for the appellants and the learned



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standing counsel for the respondents 1 and 2 and the learned counsel for the third respondent. Also, we have perused the materials on record.

8. It is an admitted fact that the appellants namely i) G.P.Rudhrashan, ii) Asmath Beevi, iii) M.Chelliah and iv) P.Balu were allotted plot No.278 to an extent of 85.0 sq.mtrs.; 285 to an extent of 166.0 sq.mtrs.; 279 to an extent of 76.0 sq.mtrs.; and 277 to an extent of 80.0 sq.mtrs. respectively in the Vijayaraghavapuram Village. However, they have encroached a portion the land, which is allotted to the third respondent in the writ appeals.

9. The appellants themselves admitted that, they have not been allotted the full area occupied by them and they were allotted only a part of area as stated earlier, and the remaining portion, which is said to be as encroachment, as stated supra, is also under their possession. It is their contention that, they have been in continuous possession of the allotted area along with the remaining area/ encroached area by putting up pucca construction and they have been granted permission by the authorities concerned to obtain electricity service connection and water and sewerage



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connection. The appellants further contended that they have also made a request to the Board to allot the remaining area also, which is under their occupation, however, since some complaints have been preferred against such allotment, the same has been cancelled. In such circumstances, the appellants were served eviction notice by the board to give vacant possession of the encroached land and it was challenged by way of filing writ petitions. According to the appellants, without considering their case in proper perspective, the learned single judge has dismissed the writ petition.

10. It is the contention of the learned counsel for the appellants that, the learned single judge, beyond the scope of the prayer of the writ petitions, has discussed the matter and has given a direction to the appellants to pay the market value of the encroached portion along with 12% interest, without any justification and hence, the order of the writ court is liable to be set aside.

11. At this juncture, it is relevant to extract the extent of



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encroachment made by the appellants and its market value along with 12% interest, as per the report of the Committee of the Board Engineers, as evidenced by a notice dated 15.02.2012, sent by the Board to the appellants, which is as below.

<i>Sl. No</i>	<i>Name of allottee</i>	<i>Plot no.</i>	<i>extent of encroachment</i>	<i>market value/ sq.ft.</i>	<i>market value for the encroached area in Rs.</i>	<i>Total amount including 12% for 23 years of encroachment in Rs.</i>
1	G.P.Rudhrashan (W.A.No.891/2012 in W.P.No.16949/2009)	420/7	29.00 sq.mtrs. 312 sq.ft.	7500	23,40,300	87,99,528
2	Asmath Beevi (W.A.No.892/2012 in W.P.No.16950/2009)	420/1	18.00 sq.mtrs. 194 sq.ft.	7500	14,52,600	54,61,776
3	M.Chelliah (W.A.No.893/2012 in W.P.No.16951/2009)	420/6	27.50 sq.mtrs. 296 sq.ft.	7500	22,19,250	83,44,380
4	Balu (W.A.No.894/2012 in W.P.No.17625/2009) (subsequent purchaser from Kanagarathinam)		30.00 sq.mtrs. 323 sq.ft.	7500	24,21,00	91,02,960

12. The factum of i) filing of W.P.No.12732/2005 by the third



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respondent and others and the order of the writ court; ii) filing of W.A.No.166/2006 by the Department and the order of dismissal by a Division Bench of this Court; iii) and filing of the SLP (Civil) No.8480/2006 by the Department and the order of dismissal by the Hon'ble Supreme Court are not denied by either parties and the order passed in W.P.No.12732/2005 has become final.

13. It is the contention of the third respondent in the writ appeals that the order passed in the writ petition in W.P.No.12732/2005 has become final, however, due to the pendency of the litigation, the Board has not executed the sale deed in their favour, especially, in respect of the disputed area encroached by the appellants herein. It is submitted by him that the third respondent in the writ appeals are interested only in respect of executing the order of the writ court in W.P.No.1273/2005 and handing over the possession of the property to them.

14. Though the appellants have contended that they have been in



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continuous possession of the encroached portion for more than three decades, that cannot be considered as a ground for not taking steps to remove the encroachment. It is argued by the learned counsel for the appellants that the allotment of plots No.420/1 to 420/10 in favour of the third respondent in the writ appeals and six others, was made illegally by the official concerned in collusion with the third respondent. A perusal of the records also reveal that disciplinary action was taken against the erred employees. However, to execute the sale deed with respect to the allotted plots, already writ petition in W.P.No.12732/2005 had been filed by the allottees/ third respondent herein, which was decided in their favour and it went up to the Supreme Court and reached finality. Therefore, the encroachment made by the appellants in the plots allotted to the third respondent, definitely has to be removed and hence, the impugned notice for eviction of the encroached portion, sent by the Board is legal and that cannot be quashed.

15. As far as the direction given by the writ Court with regard the



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determination of the market value of the encroached portion and to recover the same along with interest at 12% p.a. from the appellants is concerned, we are of the view that, it requires for reconsideration by this court. Because, the appellants themselves admitted that they made encroachment in the land allotted to the allottees/third respondent in the writ appeals and they have been in continuous possession. To remove the above encroachment, the Board had also issued eviction notice. But, without any justification, the learned Single Judge has directed the Board to recover market value of the encroached portion along with 12% interest from the appellants and to pay the same to the third respondent as compensation. As evidenced by the notice given by the Board dated 15.02.2012, the market value along with interest for the encroached portion comes to several Lakhs and in some cases comes to nearby Crores. Further, if the same would be calculated up to the year of 2023, it would come to several crores.

16. At this juncture, the learned counsel for the third respondent in all the writ appeals has not raised any objection to interfere with the above direction of the learned Single Judge. Therefore, accepting the contention



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of the appellants, we inclined to interfere with the order of the learned Single Judge, only in respect of the above direction alone. In so far as the other observation made by the learned Single Judge that the " *the TNSCB is at liberty to invoke the eviction procedure available to them under the Tamil Nadu Slum Clearance Board (Management and Control of Properties) Act, 1971, in case the writ petitioner failed to honour their commitment or failed to pay the amount* " is concerned, it does not warrant any interference by this Court.

17. Accordingly, it is ordered as follows.

i) The order of the writ court with regard to the direction given to the Tamil Nadu Slum Clearance Board as “ *to appoint a Committee of Engineers to determine the market value of the encroached portion, covered by the impugned eviction notice issued to the appellants/ writ petitioners and also to calculate interest at the rate of 12% from the date of encroachment till the date of payment; After recovering the said cost from the writ petitioners, the amount shall be paid to the persons proportionately, whose original allotment was encroached by the writ*



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petitioners in proportion of that allotment.” alone is set aside and the remaining observation made by the learned single judge is confirmed.

ii) The respondent Board is directed to initiate eviction proceedings in so far as the encroachment made by the appellants in the respective lands, within a period of twelve weeks from the date of receipt of a copy of this order.

18. With the above directions, the writ appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J.)

(P.B.B.J.)

24.08.2023

Internet: Yes/No

Index : Yes/No

mst

To

1. The Chairman, Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chepauk, Chennai 600 005.

2. The Executive Engineer, Division II,
Tamilnadu Slum Clearance Board,
13th Sector, 83rd Street, K.K.Nagar, Chennai 600 078.



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D.KRISHNAKUMAR, J.

and

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