



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.04.2023

PRONOUNCED ON : 11.04.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.4422, 8441 & 11393 of 2004

and

W.P.M.P.No.9931 of 2004, 236 of 2012

& W.M.P.No.19648 of 2022

W.P.Nos.4422 of 2004:

Agaram Loco Works Slum
Clearance Board Residential
Welfare Association, rep. By
Its President M.Varadarajan,
No.4, S.C.B. Plot No.43, Loco
Works Road, Jawahar Nagar,
Chennai – 82.

... Petitioner

Vs.

1.Slum Clearance Board,
rep by its Managing Director,
Kamarajar Salai, Triplicane,
Chennai – 5.

2.State of Tamil Nadu,
rep by its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai – 9.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to issue the sale deeds and patta of the land allotted by the respondents in S.No.105/2, Agaram Loco Works, Chennai – 82, (declared as Slum Area in G.O.Ms.No.225, Labour (Housing) Department dated 28.09.1972) in favour of the members of the petitioner's association.

W.P.Nos.8441 of 2004:

Agaram Loco Works Slum
Clearance Board Residential
Welfare Association, rep. By
Its President M.Varadarajan,
No.4, S.C.B. Plot No.43, Loco
Works Road, Jawahar Nagar,
Chennai – 82.

... Petitioner

Vs.

1.Slum Clearance Board,
rep by its Chairman,
Kamarajar Salai,
Triplicane,
Chennai – 5.

2.State of Tamil Nadu,
rep by its Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai – 9.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in Proc.No. LA1(3)/6193/99 dated 01.03.2004 passed by the 1st respondent and quash the same and further directing the respondents to issue the sale deeds and patta of the lands allotted by the respondents in S.No.105/2, Agaram Loco Works, Chennai – 82, (declared as Slum Area in G.O.Ms.No.225, Labour (Housing) Department dated 28.09.1972) in favour of the members of the petitioner's association.

W.P.Nos.11393 of 2004:

Sri Prasanna Vinayagar Devasthanam,
Rep. by its Secretary,
Mr.T.Visvesaiah,
No.4-L, Palavayal Road,
Agaram,
Chennai – 82.

... Petitioner

Vs.

1.Tamil Nadu Slum Clearance Board,
rep by its Chairman,
Kamarajar Salai,
Triplicane, Chennai – 5.

2.Agaram Loco Works Tamil Nadu Slum Clearance
Board Residents Welfare Association,
Rep. by its President,
Mr.Varadarajan,
No.7/4, Loco Works Road,
Agaram, Chennai – 82.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the proceedings No. LA1(3)/6193/99 dated 01.03.2004 on the file of the 1st respondent, quash the same in so far as it relates to rejection of exemption under Section 29 of the Tamil Nadu Slum Area (Improvement and Clearance) Act, 1971 and direct the 1st respondent to grant exemption of the land in T.S.No.105/2, Block No.3, Jawahar Nagar, Agaram, Chennai – 82, from the provisions of the Section 29 of the Tamil Nadu Slum Area (Improvement and Clearance) Act, 1971.

For Petitioners : Mrs.R.T.Shyamala
(in WP Nos.4422 & 8441 of 2004)

Mr.P.Paramasivados
(in WP No.11393 of 2004)

For R1 : Mr.R.Neelakandan
Additional Advocate General
Assisted by Mr.Babu Muthu Meeran
(in all WPs)

For R2 : Mr.S.Ravichandran
Additional Government Pleader
(in WP Nos.4422 & 8441 of 2004)

Mrs.R.T.Shyamala
(in WP No.11393 of 2004)



COMMON ORDER

The Writ of Mandamus has been instituted to direct the respondents to issue the sale deeds and patta of the lands allotted by the respondents in S.No.105/2, Agaram Loco Works, Chennai – 82, declared as Slum Area G.O.Ms.No.225, Labour (Housing) Department dated 28.09.1972 in favour of the members of the petitioner's Association.

2. The writ petitioner is the Agaram Loco Works Slum Clearance Board Residential Welfare Association. The petitioner / Association is registered under the Tamil Nadu Societies Registration Act, 1975. The petitioner states that the Government issued G.O.Ms.No.1117, Housing and Urban Land Development Department dated 27.06.1979, the Government of Tamil Nadu decided to grant conditional patta to the persons, who all are in occupation of the Slum Clearance areas before 30.06.1977 on payment of the costs fixed by the authorities. Accordingly, all the members of the petitioner-Association were allotted lands in the year 1983. A lease cum sale agreement was entered into between the members of the petitioner / Association and the Slum Clearance Board. The EMI fixed for each plot allotted to the Slum dwellers were also paid by the members of the



petitioner / Association. The Slum Clearance Board handed over the lease cum sale agreement to the members of the petitioner-Association and also issued 'No Objection Certificate' (NOC) for obtaining MES, Bank Loans, Metro Water Connection, Building Construction, etc. It had been informed that the sale deed has been executed in favour of the members of the petitioner-Association after 5 years. The petitioners have constructed houses and residing there for more than 50 years. While so, the Slum Clearance Board has not executed sale deed in favour of the members of the petitioner-Association. The Association made several representations from the year 1999 onwards.

3. The petitioner states that the lands allotted to the petitioners by the Slum Clearance Board originally belonged to Sri Prasanna Vinayagar Temple of Agaram and the said land was declared as slum area vested with the Slum Clearance Board. Admittedly, the land was not acquired from the Temple and it was allotted in favour of the members of the petitioner-Association, even without acquiring the land under the provisions of the Land Acquisition Act. The Sri Prasanna Vinayagar Temple land is a private land and therefore, the land can be allotted only after acquisition. Though



the Temple during the relevant point of time was ready to receive the compensation, there is no reason whatsoever for the Slum Clearance Board to execute the sale deed in favour of the petitioners. The Temple claimed ownership over S.No.105/1 and the District Collector, Chennai sent proposals to the Government for transferring the lands in favour of the Slum Clearance Board. The said Sri Prasanna Vinayagar Temple moved to the City Civil Court for eviction of the petitioners. The allotment was made through the members of the petitioner-Association in they year 1983 and they have constructed building and residing their for the past several years. Therefore, the 1st respondent is bound to execute the sale deed of the members of the petitioner-Association.

4. The learned counsel for the petitioners mainly contended that the area was declared as slum area. Accordingly, the first respondent-Board allotted the said land in favour of the members of the petitioner-Association, who were already in possession of the said land even before such allotment. The irregularity, if any committed by the first respondent cannot be a ground to eject the members of the petitioner-Association from the subject property. The land was considered as slum area, since the members of the



petitioner-Association are in occupation of the said land even before the declaration. Therefore, the Slum Clearance Board ought to have cleared the impediments to execute the Sale Deed in favour of the members of the petitioner-Association.

5. The writ petitioner-Association has filed another writ petition in WP No.8441 of 2004, challenging the proceedings of the Tamil Nadu Slum Clearance Board dated 01.03.2004, wherein the Slum Clearance Board has decided to drop the Scheme partly in respect of TS No.105/2 and refund the amount of land cost collected from the allottees. The said proceeding is also under challenge.

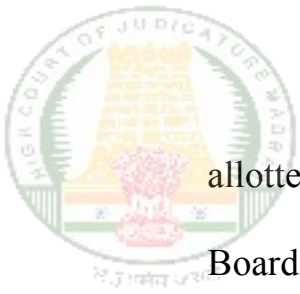
6. Sri Prasanna Vinayagar Devasthanam also filed WP No.11393 of 2004, challenging the very same proceedings of the Chairman, Slum Clearance Board dated 01.03.2004 and further direction is sought for to grant exemption of the land in TS.No.105/2, Block No.3, Jawahar Nagar, Agaram, Chennai – 82, from the provisions of the Section 29 of the Tamil Nadu Slum Area (Improvement and Clearance) Act, 1971.



7. It is not in dispute between the parties that the members of the petitioner-Association were in occupation of the subject land prior to passing of the Government Order declaring the particular area as slum area.

After declaration by the Government, the land occupied by the members of the petitioner-Association were allotted by the Tamil Nadu Slum Clearance Board and lease-cum-sale agreement was entered into by fixing the land cost. The land cost was paid by the members of the petitioner-Association. However, the temple claimed that the land was not acquired and therefore, the allotment is illegal and the Slum Clearance board has no authority to allot the land belongs to the temple without acquiring the land by following the procedures as contemplated under law.

8. The learned Additional Advocate General appearing on behalf of the Slum Clearance Board made a submission that a portion of the land has been declared as Slum Clearance Board without acquiring the said portion with due process of law. Since the allotment was made without acquiring the land, the Slum Clearance Board considered all the facts and circumstances and dropped the Scheme partly in respect of TS.No.105/2 and had taken a decision to refund the amount of land cost collected from those



allottees. Since the proceedings are under challenge, the Slum Clearance Board was not in a position to repay the land cost as per the decision taken by them.

9. The allotment orders issued pertaining to the Temple land in TS.No.105/2 were cancelled forthwith and the money collected from 28 beneficiaries towards the land cost was directed to be refunded to them. Therefore, the Scheme was partly dropped only in respect of the land belongs to the Temple. The decision was taken after examining all the relevant factors. The Tamil Nadu Slum Clearance Board during the commencement of the Scheme was hopeful of getting the land from the temple administration or from the Commissioner, Hindu Religious and Charitable Endowments Department. Due to the prolonged litigation between the Slum Clearance Board Resident Welfare Association and Temple management, the chances of transfer of land in TS.No.105/2 to the Board became not possible. The plea of the allottees to acquire the land under the Land Acquisition Act is also not possible considering the financial implications to the Board. Therefore, the Board has weighed all the grounds and took a decision to drop the Scheme partly and cancelled the



allotments in respect of 28 beneficiaries made in the temple land.

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10. The learned counsel appearing on behalf of Sri Prasanna Vinayagar Temple made a submission that negotiations were done between the parties. The Temple was in the process of evicting the encroachers from the land belongs to the temple. If at all the Slum Clearance Board has made an erroneous allotment without acquiring the land, the allottees have to sue the Slum Clearance Board as they have no contractual relationship with the Temple Administration. Sri Prasanna Vinayagar Temple is not coming under the jurisdiction of the Hindu Religious and Charitable Endowments Department. The Management of the temple was not willing to sell the land to the Slum Clearance Board and, it is maintaining the Temple land for the purpose of deriving income for the benefit of the Temple. The temple has got an order from the High Court of Madras on 04.09.2002 in C.R.P.Nos.2704 of 1998, 204, 228, 267, 393 and 405 of 1999 allowing the eviction of some of the tenants. The temple made an application under Section 29 of the Tamil Nadu Slum Act to evict the slum dwellers, who all are not willing to pay rent as fixed by the Temple Administration. Therefore, the Temple Administration has taken steps to collect the rent



from the occupants for the benefit of the temple.

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11. Considering the facts and circumstances, a preliminary issue to be considered by this Court is, whether the members of the petitioner-Association can maintain the writ petition in respect of the relief to execute the Sale Deed, which is an individual cause. Each members of the petitioner-Association has entered into a separate lease cum sale agreement with the Slum Clearance Board and based on the lease cum sale agreement such a member has paid instalments to the Board. Therefore, the execution of Sale Deed has to be done individually based on the terms and conditions stipulated in the lease cum sale agreement.

12. In the present case, the members of the petitioner-Association cannot seek any such execution of Sale Deed in favour of the members by filing a single writ petition and such relief cannot be construed as a common cause. Since these writ petitions are pending for more than 18 years, this court is not inclined to dismiss the petitions merely on such technical grounds as it will lead to further prolongation of the issues, which would cause prejudice to the parties to the litigation.



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13. On merits, it is not in dispute that the Government declared area occupied by the Slum Dwellers as slum areas. After declaring the Scheme, the Tamil Nadu Slum Clearance Board allotted the said land in favour of the members of the petitioner-Association and entered into a lease cum sale agreement. After entering into the lease cum sale agreement, the Slum Clearance Board negotiated the issues with the Temple Authorities in respect of the land belongs to the Temple in TS.No.105/2. The Temple land was not acquired by the Government and the Temple is the owner of the land in TS.No.105/2. The Temple Authorities were not willing to sell the land to the Tamil Nadu Slum Clearance Board. They want to retain the land, by collecting the rent and utilise the land for the welfare of the Temple. No steps were taken to acquire the land by the Government. The Slum Clearance Board was also not interested in acquisition proceedings, since it involves monetary implications to the Board. Considering the financial implications, the Board has not initiated steps to acquire the land. The Temple Management has filed eviction proceedings and obtain orders in respect of few occupants. Under those circumstances, the Slum Clearance Board passed the order in proceedings dated 01.03.2004, dropping the



Scheme partly in respect of TS.No.105/2 and decided to refund the land cost to the allottees. Consequently, the allotment orders issued pertaining to the Temple land in TS.No.105/2 were cancelled and money collected from 28 beneficiaries towards land cost was directed to be refunded. The said proceedings are also under challenge in these writ petitions. The Temple also challenged the said proceedings. They have sought for a direction to grant exemption from the Scheme.

14. Considering the complex circumstances put forth by the parties to the *lis* on hand, this Court is of the considered opinion that the members of the petitioner-Association are in occupation of the Temple land for several years. The Slum Clearance Board without even acquiring the land or purchasing the land from temple, made allotment irregularly with the fond hope that they can negotiate with the Temple Authorities. However, the negotiation failed and the portion of the land remains with the ownership of the Temple. Since litigations were going on, the Slum Clearance Board considered the acquisition of the land and such proposal was also not materialised on account of financial implications involved. The Board was not willing to pay compensation in the event of initiation of land acquisition



proceedings. Thus the Slum Clearance Board took a decision and dropped the Scheme partly in respect of 28 beneficiaries and further decided to repay the land cost paid by those beneficiaries. Since the writ petitions are filed, the Board was not in a position to repay the land cost during the relevant point of time. By virtue of an interim order granted in all these writ petitions, the members of the petitioner-Association are continuing in possession of the land. The Temple though obtained orders of eviction in respect of few allottees, such order has not been implemented on account of pendency of the present writ petitions.

15. Mere pendency of the writ petitions would not confer any right on the encroachers or illegal occupants to continue to be in possession of the land belongs to the Temple. Litigious occupations or keeping the issues pending for years together would not be a ground to claim relief by the litigants, merely on the ground of delay.

16. The right of the parties are to be determined for rendering justice to the parties. The rights of the parties at no circumstances be infringed. The delay cannot defeat justice. For example civil litigations are pending for



years together, but the Courts have to determine the rights of the parties for the purpose of granting the relief. Mere pendency of the writ petitions or benefit of the interim orders cannot stand in the way of determining the right of the parties. Therefore, long possession of members of the petitioner-Association cannot be of any avail to secure right of property for which they are not entitled as of now, since the Slum Clearance Board had already dropped the Scheme partially and not executed any Sale Deed in favour of the members of the petitioner-Association.

17. Right to property is the Constitutional Right under Article 300-A of the Constitution of India that no person shall be deprived of his property save by the Authority of Law. Therefore, the property right can be taken away only by due process of law.

18. In the present case, admittedly, Sri Prasanna Vinayagar Temple is the owner of the land in TS.No.105/2 to an extent of 9 grounds 1668 Sq.ft. The Temple is the owner of the land. The Temple land was declared as slum area and the Slum Clearance Board without acquiring the land through Government allotted the same in favour of the occupants of the Temple



land. The Slum Clearance Board has not settled the issues with the Temple Management. The land was neither purchased from the Temple Administration nor acquired by paying compensation to the Temple. Thus, the ownership even now stands in the name of the Temple.

19. The Slum Clearance Board Authorities realised their mistake subsequently and negotiated the issues with the Temple Administration. The Slum Clearance Board was not willing to acquire the land in view of the financial implications. Thus, the Slum Clearance Board dropped the Scheme partially and cancelled the allotment orders issued pertaining to Temple land in TS.No.105/2. By cancelling the allotment orders in favour of 28 beneficiaries, the Slum Clearance Board ordered to refund the land cost collected from the beneficiaries.

20. The Temple is not a party to the agreement between the members of the petitioner-Association and the Slum Clearance Board. The Temple was no way connected with the agreement between the members of the petitioner-Association and the Slum Clearance Board. The Authorities of the Slum Clearance Board negotiated with the Temple for the purpose of



purchase of the land, which failed and the said effort went in vain. The Temple continues to be the owner of the land in TS.No.105/2 measuring to an extent of 9 grounds and 1688 Sq.ft. The Temple Administration filed eviction proceedings and obtained orders from the High Court in C.R.P.Nos.2704 of 1998, 204, 228, 267, 393 and 405 of 1999.

21. This being the factum established, this Court is of the considered opinion that the members of the petitioner-Association cannot claim any relief from the Temple in respect of the Temple property. The Temple Administration has not entered into any agreement nor the members of petitioner-Association are Lessees in the Temple land. In the absence of any valid lease, the members of the petitioner-Association cannot continue to be in possession of the Temple land.

22. As far as the grievances of the members of the petitioner-Association is concerned, the Slum Clearance Board with a hope of settling the issue with the Temple, allotted the lands in favour of 28 beneficiaries of the members of the petitioner-Association. Since their efforts failed, the Slum Clearance Board had taken a decision and dropped the Scheme partly



and cancelled the allotment made in respect of the Temple land in TS.No.105/2. The land cost was also directed to be refunded.

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23. In view of the facts and circumstances, the following orders are passed:

- (1) The 1st respondent / Tamil Nadu Slum Clearance Board is directed to refund the land costs paid by the members of the petitioner-Association along with the interest at the rate of 7% per annum from the date of payment of land cost till the date of passing of the order dated 01.03.2004, within a period of eight (8) weeks from the date of receipt of a copy of this order.
- (2) The 1st respondent / Tamil Nadu Slum Clearance Board shall consider the the case of the members of the petitioner / Association for granting allotment in any ongoing scheme, subject to the eligibility of the individual members. In this regard, the members of the petitioner Association is at liberty to submit their respective applications, along with the details and the relevant documents, to the Slum Clearance Board for their clearance.



(3)The writ petitioner / Sri Prasanna Vinayagar Devasthanam in W.P.No.11393 of 2004 is at liberty to take possession of the Temple property by following the procedures as contemplated or allow the occupants to continue as Lessee and collect lease rent as the case may be, since the Temple's ownership of the subject land has not been disputed by either of the parties.

24. Accordingly, all the writ petitions are disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

11.04.2023

Jeni/Svn
Index : Yes
Speaking order
Neutral Citation : Yes



To

1. The Managing Director,
Slum Clearance Board,
Kamarajar Salai,
Triplicane,
Chennai – 5.
2. The Secretary,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George,
Chennai – 9.
3. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Triplicane,
Chennai – 5.



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W.P.Nos.4422, 8441 & 11393 of 2



S.M.SUBRAMANIAM, J.

Jeni/Svn

W.P.Nos.4422, 8441 & 11393 of 2004

11.04.2023