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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.6103 of 1999 and 79 of 2004

W.P.No.6103 of 1999

Punithavalli

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Slum Clearance Board,
5, Kamarajar Salai, Chennai – 5.

2. The Executive Officer,
Tamil Nadu Slum Clearance Board,
Division-III, Chennai – 39.

3. The Estate Officer,
Tamil Nadu Slum Clearance Board,
Vyasarpadi, Chennai – 39.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, 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, register the same before SRO, Sembiam, Perambur.

For Petitioner : Mr.S.Rajendra Kumar

For Respondents : Mrs.G.Thilagavathi, Senior Counsel
for Mr.B.Balaji, SC for TNSCB (TNUHD)

W.P.No.79 of 2004

Punithavalli

... Petitioner



Vs.

1. The Chairman,
Tamil Nadu Slum Clearance Board,
5, Kamarajar Salai, Chennai – 5.

2. The Executive Officer,
Tamil Nadu Slum Clearance Board,
Division-III,
Vyasarpadi, Chennai – 39.

3. The Estate Officer,
Tamil Nadu Slum Clearance Board,
Vyasarpadi, Chennai – 39.

4. Mrs.Kamalam
[impleaded vide order dated 16.06.2009
in WPMP.No.319 of 2009]

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling 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.

For Petitioner : Mr.S.Rajendra Kumar
For R1 to R3 : Mrs.G.Thilagavathi, Senior Counsel
for Mr.B.Balaji, SC for TNSCB (TNUHD)
For R4 : Mr.R.Manickavel

COMMON ORDER

The Writ Petition in W.P.No.6103 of 1999 has been filed to direct the respondents 2 and 3 to execute a Sale Deed in favour of the petitioner on the stamp papers purchased and produced by her, register the same before SRO,



Sembiam, Perambur.

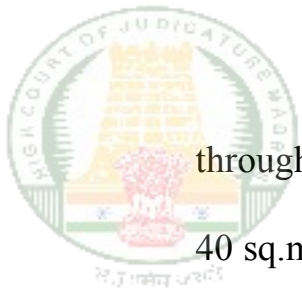
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2. The order dated 23.06.2003 passed by the Tamil Nadu Slum Clearance Board (renamed as Urban Habitat Development Board) restricting the allotment of housing plot to the petitioner from 87.50 sq.mtrs to 47 sq.mtrs is under challenge in W.P.No.79 of 2004. In other words, the revised allotment granted by the Tamil Nadu Slum Clearance Board by order dated 23.06.2003 has been challenged mainly on the ground that the petitioner was originally allotted housing plot measuring 87.50 sq.mtrs and the she had paid the land cost in entirety on 08.09.1995 and thereafter, the impugned order has been passed.

3. The learned counsel for the petitioner would submit that the original allotment was granted under the scheme to provide allotment to the encroachers of the land and the petitioner was residing in the subject land measuring 87.50 sq.mtrs. Considering the fact that the petitioner has encroached upon the land measuring 87.50 sq.mtr, the entire portion was allotted in her favour by the Tamil Nadu Slum Clearance Board vide order dated 14.05.2003 and the said order was subsequently came to be modified

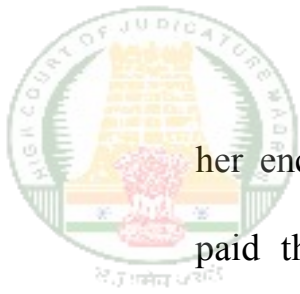


through the impugned order by reducing the extent of the housing plot to 40 sq.mtrs.

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4. The learned counsel for the petitioner would say that after the payment of land cost and on receipt by the Tamil Nadu Slum Clearance Board, they are estopped from issuing the revised allotment order, which is against the regulations and the impugned order infringed the right of the petitioner. The petitioner has commenced construction in the housing site and due to the civil suit instituted by the 4th respondent / smt. Kamalam, further construction has been stopped. The suit ended in favour of the petitioner and therefore, the petitioner is entitled to succeed in the present Writ Petition also. The petitioner would submit that the Tamil Nadu Slum Clearance Board, considering the occupation of the petitioner in the house plot, allotted the same and now they cannot turn around and revise the extent of plot for the purpose accommodating the 4th respondent and therefore, the very action is untenable.

5. The learned Senior Counsel, Mrs.G.Thilagavathi, appearing on behalf of the Tamil Nadu Slum Clearance Board would oppose the contention by stating that the petitioner was originally allotted in the housing plot under



her encroachment to an extent of 87.50 sq.mtrs. Admittedly the petitioner paid the land cost. However, such an allotment was made prior to the finalization of the housing scheme implemented for the benefit of the encroachers in that locality. All the beneficiaries were encroachers and a scheme a formulated to identify the encroachers and to allot housing plots for their benefits. Thus, it was a beneficial and concessional scheme introduced by the Government and the eligible encroachers were identified through the Corporation of Chennai and based on the list submitted, the Tamil Nadu Slum Clearance Board granted allotments to the individuals. The case of the petitioner was also considered under the scheme and initially, the allotment was issued to occupy the land measuring 87.50 sq.mtrs. After approval of the scheme, the Tamil Nadu Slum Clearance Board found that the plot was allotted excessively to the petitioner, since the allotted land of 87.50 sq.mtr is falling under two different schemes, i.e., Kannagi Nagar and Dr.Ambedkar Nagar. When the entire extent of 87.50 sq.mtrs. of land is falling under two different schemes and the Tamil Nadu Slum Clearance Board found that the 4th respondent is also an eligible member to get housing plot under the scheme, they have divided the plot into two and allotted the higher extent of land of 47.00 sq.mtrs to the petitioner and 40.50 sq.mtrs to the 4th respondent.



6. The learned Senior Counsel would submit that the initial error, which had occurred was unintentional and due to the non-approval of the schemes at that point of time. Since the mistake was committed by the Tamil Nadu Slum Clearance Board unintentionally and before finalization of the revised layout of the Kannagi Nagar and Dr.Ambedkar Nagar, the impugned order has been passed and therefore, such mistakes cannot be a ground to take undue advantage for the purpose of sustaining the original allotment order granted in favour of the petitioner to an extent of 87.50 sq.mtrs.

7. The learned counsel for the 4th respondent would submit that the 4th respondent is also an eligible beneficiary and she had approached the authorities for allotment of land. Since the mistakes committed by the Tamil Nadu Slum Clearance Board was identified, a revised allotment order was issued allotting 40.50 sq.mtrs to the 4th respondent and the land cost had already been paid by the 4th respondent also. Therefore, she may be permitted to occupy the said portion and to construct house.

8. Heard the learned Senior Counsel for the petitioner as well the learned counsel for the respondents.



9. No doubt, on facts, the petitioner could be able to establish that the original allotment in favour of the petitioner was made allotting 87.50 sq.mtrs. Admittedly the petitioner paid the land cost. Therefore, in normal circumstances, she would be eligible to occupy the entire extent of the land measuring 87.50sq.mtrs. However, in the present case, the Tamil Nadu Slum Clearance Board subsequently found that they have committed a mistake in allotting the entire extent of 87.50 sq.mtrs in favour of the petitioner even before the approval of the layout scheme by the competent authorities. After approval of the layout scheme, the Tamil Nadu Slum Clearance Board found that the plot allotted to the petitioner is falling under two different schemes and therefore, the 4th respondent is also eligible to get a housing plot in that area. Such a administrative mistake cannot be taken as a ground for sustaining the original allotment, since in the event of allotting the entire portion in favour of the petitioner, the rights of the 4th respondent will be denied. The scheme to provide house site to the encroachers is a concessional scheme and it is not a sale of property. The encroachers were given the benefits to occupy the portion of the land under their encroachment by formulating a scheme which is a welfare scheme, thus such concessions extended by the Government cannot be claimed as an absolute right.



Therefore, the petitioner and the 4th respondent are selected as eligible beneficiaries for the purpose of allotment of house site under the schemes.

After approval of layout, the allotment was made under two different schemes and thus, they have divided the plot allotted in favour of the petitioner and consequently allotted one portion of the plot to the 4th respondent and the other portion to the petitioner. The action of the Tamil Nadu Slum Clearance Board is to be construed as based on the principles of equity and fair play. All the beneficiaries must be given the concession extended by the Government, since they have been selected as beneficiaries and more so, they all are encroachers. Allotting the encroached land to the encroachers by the Government itself is a concession extended and therefore, the petitioner cannot claim the entire plot measuring 87.50 sq.mtrs as a right.

10. In view of the facts and circumstances, the order impugned was issued in order to mitigate the circumstances arose on account of the certain mistake occurred due to the non-approval of the schemes at the time of grant of allotment to the petitioner. Thus, this Court is not inclined to interfere with the order impugned. However, the land costs paid by the petitioner in excess is directed to be refunded by the Tamil Nadu Slum Clearance Board along with interest at the rate of 6% per annum from the date of payment of land



cost till the date of repayment and consequently, the respondent / Tamil Nadu Slum Clearance Board is directed to execute sale deed in favour of the petitioner and the 4th respondent with reference to the respective housing plot allotted to them under the schemes. The said exercise is directed to be completed within a period of three months from the date of receipt of a copy of this order. Both the petitioner and the 4th respondent are directed to co-operate for execution of the documents and to complete the formalities in all respects.

11. With these directions, these Writ Petitions stand disposed of.

No costs.

11.01.2024

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Index : Yes

Speaking order

Neutral Citation : Yes

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