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C.R.P.No.1331 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1331 of 2024

K.Ganesan

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Society,
Public Distribution System,
Triplicane City Co-operative Society Ltd.,
Triplicane, Chennai – 600 005.

2.The Secretary to Government,
Food and Co-operative Department,
Fort St.George, Chennai.

3.The Tamil Nadu Slum Clearance Board,
Rep. by its Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chennai.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal made in I.A.No.3 of 2023 in O.S.No.3666 of 2018 on the file of the XIV Assistant City Civil Court, Chennai, dated 14.12.2023 by allowing this civil revision petition.

For Petitioner : Mr.Thenmozhi.R

For Respondents : Ms.Amirtha,
Government Advocate



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ORDER

Challenging the impugned fair and decreetal order, dated 14.12.2023

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in I.A.No.3 of 2023 in O.S.No.3666 of 2018 passed by the learned XIII Assistant Judge, XIV Assistant City Civil Court at Chennai, the present civil revision petition has been filed by the petitioner/plaintiff.

2.The 2nd defendant/1st respondent herein filed petition in I.A.No.3 of 2023 to summon letter correspondence and communication to the Government Institution i.e, Corporation of Chennai. These documents are necessary for putting forth the case. At the stage of defendant evidence, these documents sought for. Finding reason and requirement of the documents is necessary for the case, the trial Court vide impugned fair and decreetal order, dated 14.12.2023 allowed the petition summoning of documents, which is now resisted by the petitioner/plaintiff.

3.The learned counsel for the petitioner/plaintiff submitted that the petitioner purchased property from one Bhuvaneshwari who was the original allottee. The Tamil Nadu Slum Clearance Board allotted the property to Bhuvaneshwari who constructed house in the ground floor measuring 250



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sq.ft out of 740 sq.ft leaving remaining open spaces of 490 sq.ft tiled house and obtained no objection certificate in all the Departments namely Corporation, Chennai Metropolitan Water Supply and Sewerage Board and Electricity Board and other regulatory authority. These documents produced along with the plaint. When the petitioner/plaintiff was out of station, the 1st respondent herein put up construction in the vacant portion of the petitioner's property. For this reason, the civil suit in O.S.No.3666 of 2018 filed. She further submitted that in the plaint, the plaintiff stated about the allotment of land to Bhuvaneshwari and the petitioner acquired the property of 740 sq.ft from Bhuvaneshwari. The petitioner was cross examined in detail by the defendants. At the stage of defendant evidence, the interim application filed and allowed by the trial Court. Summoning of documents is nothing but to defeat the cross examination of the petitioner/plaintiff and to fill up lacuna in the case of the defendants. Hence, she prays for setting aside the impugned fair and decreetal order, dated 14.12.2023.

4.Ms.Amirtha, learned Government Advocate appearing for the respondents/defendants refuted and objected the contention of the petitioner



even at the stage of filing written statement. In the 2nd defendant's written statement in para 5, 6 & 7, it is clearly stated that the plot No.41 to the extent of 780 sq.ft belongs to the Tamil Nadu Slum Clearance Board and a portion of it was allotted to one Ellammal. After her demise, her only son inherited the property and he survived with his Bhuvaneshwari and children. Thereafter, the Tamil Nadu Slum Clearance Board changed the allotment in the name of Bhuvaneshwari. Then she obtained No Objection Certificate for construction of house, electricity connection, water and drainage connection and constructed 250 sq.ft out of 780 sq.ft. She further submitted that remaining portion of 530 sq.ft is classified for public purpose and a public toilet was constructed by Corporation of Chennai. The Tamil Nadu Civil Supplies Corporation's Amudham Ration Shop HA025 functioning at Gandhi Nagar, Sathya Moorthy Street. Similarly, Triplicane Cooperative Society's (TUCS) ration shop HC048 functioning at Mannar Mudali Street, Vadapalani. The Tamil Nadu Civil Supplies Corporation requested the Corporation of Chennai to allot shop for the activities of Food and Consumer Protection Department. The Corporation unanimously passed resolution *vide* Resolution No.312 of 2013, dated 22.05.2013 for demolition of



existing public toilet and grant permission to construct new shops for Food and Consumer Protection Department. On 09.02.2016, the Managing Director of 2nd defendant requested the Corporation of Chennai to allot one shop for Public Distribution System, accordingly the ration shop HC048 shifted to schedule property. Similarly, Amudham Ration Shop HA025 also shifted to schedule property. The schedule property belongs to the Corporation of Chennai, previously classified as public toilet.

5.She further submitted that the Tamil Nadu Slum Clearance Board has not executed any sale deed either to Ellammal or her son Mani or her daughter-in-law Bhuvaneshwari since the land belongs to Corporation of Chennai. The averments made in the plaint would confirm that the superstructure of 250 sq.ft was purchased by the petitioner/plaintiff, hence, the plaintiff's has got no rights for remaining portion of the land 530 sq.ft. To prove the Corporation land, resolution was passed by the Corporation of Chennai. Thereafter, the Corporation of Chennai allotted lands to the 2nd defendant for shifting of shop. For this purpose, these documents are necessary which the trial Court had rightly considered and allowed the



petition. Hence, the objection of the petitioner is not sustainable. In any event, even in the impugned order, the trial Court held that the documents cannot be discarded at this stage, admissibility or otherwise can be decided at the time of marking of document. Hence, she sought for dismissal of the revision.

6.Considering the submissions and on perusal of the materials, it is seen that summoning of document from the Chennai Corporation is essential in view of the specific stand of the respondents/defendants that the land belongs to Corporation of Chennai allotted to the Tamil Nadu Slum Clearance Board for public purpose. After a resolution, the property was handed over to the 2nd respondent and thereafter, construction put up. Now Amudham Ration Shop HA025 by the Tamil Nadu Civil Supplies Corporation is functioning there. Similarly, Triplicane Cooperative Society's (TUCS) ration shop HC048 functioning at Mannar Mudali Street, Vadapalani. In the written statement, this defence clearly raised by the 1st respondent/2nd defendant at the first instance. Now, the case is at the stage of the defendant evidence.



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7. In view of the above, the impugned fair and decreetal order, dated 14.12.2023 in I.A.No.3 of 2023 in O.S.No.3666 of 2018 passed by the learned XIII Assistant Judge, XIV Assistant City Civil Court at Chennai is in order and the same is hereby confirmed.

8. Accordingly, this civil revision petition stands dismissed. The observations made herein is only for the purpose of disposing the present civil revision petition. The trial Court uninfluenced with the observations made herein, shall decide the suit on its own merits in accordance with law.

No costs.

21.06.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes

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M.NIRMAL KUMAR, J.



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To
The XIII Assistant Judge,
XIV Assistant City Civil Court at Chennai.

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