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W.P.Nos.23304 of 2021 and 3209 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.23304 of 2021 & 3209 of 2022
and W.M.P.Nos.24573 of 2021 & 3354, 3357 of 2022

1. G.Parvathy
2. K.Amutha alias Amuthavalli ... Petitioners in both
W.Ps.

Vs.

1. The Chairman
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Near Vivekananda House,
Ayothiya Nagar, Triplicane,
Chennai, Tamil Nadu – 600 005.

2. G.Gangadharan alias Gangadurai
3. V.Sakunthala ... Respondents in
W.P.23304/2021

1. The Chairman
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Near Vivekananda House,
Ayothiya Nagar, Triplicane,
Chennai, Tamil Nadu – 600 005.

2. The District Registrar,
Office of the District Registrar,
Office of the SRO Sembiam,
Rajaji St., JCK Nagar,
Hanumanthai, Tamilnadu-603 001.



W.P.Nos.23304 of 2021 and 3209 of 2022

3. The Sub Registrar of Sembiam,
Office of the Sub Registrar Sembiam,
No.340, Paper Mills Road,
Jagannathan Colony,
Perambur, Chennai – 600 011.

4. G.Gangadharan alias Gangadurai
5. V.Sakunthala
6. G.Devi
7. Chandrakala

... Respondents in
W.P.3209/2022

Prayer in W.P.No.23304 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to allot the plots in Nos.8,49,53 & 54, Red Hills Road, Makkaram Thottam, Kolathur, Chennai-600 099, in favour of the legal heirs of the petitioners' late husband Govindhan and to execute sale deed for the same.

Prayer in W.P.No.3209 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the allotment cum sale certificate issued by the first respondent in favour of the fourth and sixth respondents vide Document No.1550 of 2018 and 1551 of 2018 dated 19.04.2018 herein and quash the same and consequential sale deed executed by the fourth and sixth respondents in favour of the seventh respondent in Document No.736 of 2021 and 737 of 2021 dated 25.02.2021 on the file of the Sub Registrar office, Sembiam to be declared as null and void.

In W.P.No.23304 of 2021



WEB COPY



W.P.Nos.23304 of 2021 and 3209 of 2022

For Petitioners : Mr.S.Sundaresan
For Ms.S.Ambigai
For Respondents
For R1 : Mr.S.Karthikeyan
Standing Counsel
For R2 & R3 : Mr.T.S.Kani

In W.P.No.3209 of 2022

For Petitioners : Mr.S.Sundaresan
For Ms.S.Ambigai
For Respondents
For R1 : Mr.S.Karthikeyan
Standing Counsel
For R2 & R3 : Mr.S.Arumugam
Government Advocate
For R4 to R6 : Mr.T.S.Kani
For R7 : Mr.T.Murugamanickam,
Senior Counsel
For Mr.B.Gopalakrishnan

COMMON ORDER

The writ petition in W.P.No.23304 of 2021 has been filed for direction directing the first respondent to allot the plots in Nos.48,49,53 & 54, Red Hills Road, Makkaram Thottam, Kolathur, Chennai-600 099, in favour of the legal heirs of the deceased Govindan and to execute sale deed for the same. The writ petition in W.P.No.3209 of 2022 has been filed challenging the allotment cum sale certificate issued by the first respondent in favour of the fourth and sixth respondents vide Document Nos.1550 & 1551 of 2018 dated 19.04.2018



W.P.Nos.23304 of 2021 and 3209 of 2022

and subsequent sale deed executed by the fourth and sixth respondents in favour of the seventh respondent in Document Nos.736 & 737 of 2021 dated 25.02.2021 and to declare the same as null and void.

2. The issues involved in both the writ petitions are one and the same and therefore, this Court is inclined to pass a common order in both the writ petitions. The parties are referred to as per their ranking in W.P.No.3209 of 2022.

3. The first petitioner got married to one Govindan and gave birth to three children. The fourth respondent is the son, fifth respondent and second petitioner are their daughters. They were in possession and enjoyment of the property at Door Nos.34 & 53, Red Hills Road, Makkaram Thottam, Kolathur, Chennai. The door Nos.34 & 35 consists of four plots viz., plot Nos.48, 49, 53 & 54. They had constructed building consisting of four portion of houses and two shop portions.

4. According to the petitioners, after demise of the said Govindan, the fourth respondent has attempted to allot the said plots in



W.P.Nos.23304 of 2021 and 3209 of 2022

his favour with the office of the first respondent, as if he is only the legal heir of deceased Govindan. Therefore, the petitioners and fifth respondent filed suit as against fourth and first respondents in O.S.No.11926 of 2009 on the file of the XV Assistant City Civil Court, Chennai, for permanent injunction as against the first respondent not to allot or issue sale certificate in respect of the subject property in the name of the fourth respondent, in the event of any allotment or sale deed. The suit was dismissed by the judgment and decree dated 02.12.2011, on the ground that in respect of the subject property, the fourth and fifth respondents were found to be eligible for allotment. But, they were not issued any allotment order till 2017.

5. Thereafter, the petitioners and fifth respondent filed writ petition before this Court in W.P.No.3083 of 2012, forbearing the first respondent from allotting or issuing sale deed in favour of the fourth respondent without considering the petitioners. However, the said writ petition was withdrawn by them on 07.04.2014. Though the petitioner made several representation not to allot the subject property in favour of the fourth and fifth respondents, the first respondent without considering their objections raised by the petitioners, allotted a portion of the subject



W.P.Nos.23304 of 2021 and 3209 of 2022

property viz., in respect of plot Nos.48 & 54 and executed sale deeds in favour of the fourth and sixth respondent, who is none other than the wife of the fourth respondent. However, the petitioners and the respondents 4 to 6 are in joint possession and enjoyment of the subject property. The petitioners being the legal heirs of the deceased Govindan, they are also entitled for allotment as such they submitted representation before the first respondent seeking allotment of the subject property in their favour. It was not considered as such, the petitioners filed the writ petition in W.P.No.23304 of 2021 for direction directing the first respondent to allot the subject property in their favour.

6. After allotment, sale deeds were executed in favour of the respondents 4 & 6 herein vide document Nos.1550 & 1551 of 2018, dated 19.04.2018, by the first respondent, in respect of plot Nos.48 & 54. Thereafter, the respondents 4 & 6 had executed sale deeds in favour of the seventh respondent in respect of plot Nos.48 & 54 vide documents Nos.736 & 737 of 2021 dated 25.02.2021. Therefore, the petitioners challenged the sale deed executed in favour of the respondents 4 & 6 by the first respondent and also the sale deed executed in favour of the seventh respondent by the respondents 4 & 6 in W.P.No.3209 of 2022.



W.P.Nos.23304 of 2021 and 3209 of 2022

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7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. On perusal of records revealed that the first respondent viz., Tamil Nadu Slum Clearance Board had taken Chennai Makkram Thottam Scheme and the eligibility list was prepared for the beneficiaries residing therein and sketch was prepared and approved by the Chennai Metropolitan Development Authority on “as is where is” condition. Accordingly, plots were regularized and allotted for the welfare of slum dwellers residing therein. The door Nos.34 & 35 consists of four plots viz., plot Nos.48, 49, 53 & 54. As per the eligibility list of the Executive Engineer of the first respondent, the plot Nos.48 & 54 were stand in the name of the fourth respondent and plot Nos.49 & 53 were stand in the name of the fifth respondent.

9. Thereafter, the plot Nos.48 & 54 were joined together and allotted in favour of the fourth respondent by an order dated 06.01.2017, to an extent of 90 sq.mt., for residential purpose and 22 sq.mt., for commercial purpose. Accordingly, the sale deeds were executed in favour of the fourth respondent and his wife viz., sixth respondent herein.



W.P.Nos.23304 of 2021 and 3209 of 2022

Though the fifth respondent's name was found in the eligibility list, neither allotment order nor sale deed executed in favour of the fifth respondent, in respect of the plot Nos. 49 & 53. Further, the petitioners name were not found in the eligibility list and they were not allotted any of the plot. Therefore, the suit filed by the petitioners in O.S.No.11926 of 2009 was dismissed.

10. Subsequently, the petitioners and fifth respondent filed writ petition before this Court in W.P.No.3083 of 2012 for the very same relief and the same was also dismissed as withdrawn by an order dated 07.04.2014. That apart, without even any allotment order or sale deed in her favour, the first petitioner had executed settlement deed, as if she has $\frac{1}{4}$ th share in the subject property, in favour of the fifth respondent's daughter vide registered document No.3549 of 2010. Likewise without even any allotment in respect of plot Nos.49 & 53, the fifth respondent had executed settlement deed in favour of the second petitioner, who is none other than own sister, vide registered document No.3550 of 2010 dated 30.04.2010. Based on which, the second petitioner sought for allotment in respect of plot Nos.49 & 53 in her favour.



W.P.Nos.23304 of 2021 and 3209 of 2022

11. The learned counsel appearing for the respondents 4 to 6 submitted that the first petitioner, after demise of her husband Govindan, had relationship with one Adhikesavalu and gave birth to two male children. The second petitioner after her marriage, she is living with her husband separately. Therefore, both the petitioners are not residing in the subject property. After demise of the said Adhikesavalu, the first wife of the said Adhikesavalu had driven out the first petitioner and as such by showing some mercy and sympathy, the fourth respondent permitted the first petitioner to live in a portion of the subject property. Thereafter, the first petitioner arranged marriage to her son born through the said Adhikesavalu, with the daughter of the fifth respondent and they got married. Thereafter, the fifth respondent had executed settlement deed in favour of the second petitioner in respect of $\frac{1}{4}^{\text{th}}$ share of the subject property registered vide document No.3550 of 2010, as if the subject property was allotted in her favour. On the basis of the settlement deed revenue records were mutated in the name of the petitioners.

12. That apart, after execution of sale deed in favour of the fourth and sixth respondents by the first respondent, within a period of three years, they had executed sale deed in favour of the seventh



W.P.Nos.23304 of 2021 and 3209 of 2022

respondent on 25.02.2021 registered vide document Nos.736 & 737 of

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13. The learned Senior Counsel appearing for the seventh respondent submitted that the seventh respondent is a bonafide purchaser of the plot Nos.48 & 54, which were originally allotted in favour of the fourth respondent and subsequently executed sale deed in favour of the respondents 4 & 6. Further the first respondent by the circular dated 12.01.2022, relaxed the condition of not to sell the plot which was allotted to the allottee within a period of ten years from the date of the sale deed.



W.P.Nos.23304 of 2021 and 3209 of 2022

14. On perusal of the circular dated 12.01.2022 revealed that, it was issued only on 12.01.2022, thereby relaxed the condition that the allottees can sell their plots without waiting for ten years period. But the sale deed was executed by the first respondent in favour of the respondents 4 & 6 only on 19.04.2018, vide document Nos. 1550 & 1551 of 2018, in respect of the plot Nos.48 & 54. Thereafter, on 25.02.2021, the respondents 4 & 6 had executed sale deed in favour of the seventh respondent. At the time of execution of sale deed, there was a condition that they should not execute any sale deed for the period of ten years from the date of the sale deed executed in their favour. In fact, the circular was came into force only on 15.12.2021. Therefore, both the sale deeds cannot be sustained and both are liable to be set aside.

15. Insofar as plot Nos.49 and 53 are concerned, both were stand in the name of the fifth respondent, who is the beneficiary in the eligibility list of the Executive Engineer of the first respondent. But, without any allotment order and without any sale deed executed in her favour, she had executed settlement deed in favour of the second petitioner. However, the first petitioner had executed settlement deed as if she has $\frac{1}{4}^{\text{th}}$ share in the subject property in favour of the fifth respondent's



W.P.Nos.23304 of 2021 and 3209 of 2022

daughter vide registered document No.3549 of 2010. Further the fifth respondent had also executed settlement deed in favour of the second petitioner as if, she has $\frac{1}{4}^{\text{th}}$ share in the subject property, vide document No.3550 of 2010. But the petitioners had never been allotted the plot Nos.49 & 53. Whereas the name of the fifth respondent was found in the eligibility list prepared by the Executive Engineer of the first respondent in respect of the plot Nos.49 & 53. Therefore, without any title and with any allotment order, the first petitioner and the fifth respondent had executed settlement deed vide document Nos.3549 and 3550 of 2010, in favour of the fifth respondent's daughter and the second petitioner respectively. Further, so far the said plots were not allotted to anybody, though the name of the fifth respondent found in the eligibility list. Therefore, both the settlement deed registered vide document Nos.3459 & 3550 of 2010 cannot be sustained and it is liable to be quashed.

16. Admittedly, the petitioners and the respondents 4 & 5 are the legal heirs of the deceased Govindan. Originally the said Govindan was in possession and enjoyment of the subject property. He got married the first petitioner and thereafter they gave birth to the second petitioner and the respondents 4 & 5. The said Govindan died in the year 1988 and all



W.P.Nos.23304 of 2021 and 3209 of 2022

legal heirs are in continues possession and enjoyment of the subject property from the year 1981. Therefore, the first respondent by their orders dated 31.08.1993 and 08.12.1993, allotted the plot Nos.49, 53 & 48, 54 in favour of the fourth and fifth respondents respectively. Though the allotment order was issued in favour of the fourth respondent only on 06.01.2017, all the legal heirs are in possession and enjoyment of the subject property from the year 1981.

17. Further by the circular dated 12.01.2022, the first respondent relaxed the condition of not to sell the subject property which was allotted to the allottee within a period of ten years from the date of execution of sale deed issued by the first respondent. In fact the subsequent purchaser viz., seventh respondent, after purchasing a portion of the subject property, put up construction.

18. Considering the above facts and circumstances, this Court is inclined to pass the following orders :-

(i) the sale deeds which were executed by the respondents 4 & 6 in favour of the seventh respondent vide document Nos.736 & 737 of 2021, dated 25.02.2021, in respect of plot Nos.48 and 54 are declared as null and void.



W.P.Nos.23304 of 2021 and 3209 of 2022

(ii) the settlement deeds executed by the first petitioner and fifth respondent in favour of the fifth respondent's daughter and the second petitioner respectively, vide document Nos. 3549 & 3550 of 2010 are declared as null and void.

(iii) the first respondent is directed to allot the plot Nos. 49 & 53 and execute the sale deeds in favour of the fifth respondent herein, on payment of necessary cost, if not already paid, within a period of two weeks from the date of receipt of a copy of this Order.

19. With the above directions, both the Writ Petitions are disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

24.06.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
rts

To

1. The Chairman
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Near Vivekananda House,
Ayothiya Nagar, Triplicane,
Chennai, Tamil Nadu – 600 005.



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W.P.Nos.23304 of 2021 and 3209 of 2022

G.K.ILANTHIRAIYAN. J,

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W.P.Nos.23304 of 2021 & 3209 of 2022
and W.M.P.Nos.24573 of 2021 & 3354, 3357 of 2022

24.06.2024