



W.A.No.3212 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P. DHANABAL

W.A.No.3212 of 2024

and

C.M.P.No.24878 of 2024

M.Alli

... Appellant

Vs.

- 1.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 35.
- 2.The Secretary,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 35.
- 3.The Executive Engineer & Principal Administrator,
Tamil Nadu Housing Board,
Anna Nagar Division,
Chennai - 101.



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4.V.A.Joy (died)

5.Shahar Banu

6.Philomina Joy

7.Sweeth Prils

8.Sona Prashant

9.Antony Vazhappilly Joy

... Respondents

*[R4 (died) is substituted by the respondents 6 to 9
as LRs of deceased R4 vide order of Court dated
20.09.2024 in CMP No.29478 of 2023 in
WA SR.No.94156 of 2022]*

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 03.08.2022 made in W.P.No.3176 of 2019 on the file of this Court.

For Appellant	:	Mr.R.Subramaniam for Mr.M.Govindarajan
For R1 to R3	:	Mr.P.S.Raman Advocate General assisted by Mr.D.Veerasekaran Standing Counsel
For R6 to R9	:	Mr.V.Raghavachari Senior Counsel for Mr.U.Venkatesan
R4	:	died



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J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge dated 03.08.2022 in W.P.No.3716 of 2019, dismissing the writ petition filed by the appellant for issuance of a Writ of Certiorari to quash the notification dated 18.01.1990 and subsequent allotment order dated 18.05.1990 and handing over of possession dated 27.11.1990 in favour of 4th respondent.

2.The facts of the case admitted and as borne out from records have been narrated by the learned Single Judge while dismissing the writ petition with a cost of Rs.1,00,000/-. Originally, the grandmother of the appellant namely Lakshmi Ammal filed a suit against the Housing Board in O.S.No.2163 of 1990 for declaration of title and permanent injunction in respect of the property in S.No.175/3A, Kodungaiyur Village, Chennai, measuring an extent of 2340 sq.ft. The facts admitted are : (i) that the suit property was acquired along with vast extent by Government for Tamil Nadu



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Housing Board and possession was handed over to Tamil Nadu Housing Board, ii) that entire lands were developed by TNHB, (iii) that TNHB developed the land and a commercial plot including the subject land was put to public auction and allotted to 4th respondent. It is also admitted that acquisition proceedings were not challenged. Though the suit was decreed by the VI Assistant City Civil Court, Chennai, by judgment and decree dated 02.04.2002 on an erroneous ground that the plaintiff had prescribed title by adverse possession, the Housing Board preferred an Appeal in A.S.No.85 of 2003 and the said Appeal was allowed by the Appellate Court on 21.03.2012 upholding the claim of the Housing Board that the property belongs to Housing Board. After the decree by trial Court, the appellant got a settlement deed in her favour from her grandmother by a document dated 20.09.2002. It is admitted that the Second Appeal filed by Lakshmi Ammal in S.A.No.939 of 2014 was also dismissed by this Court on 15.09.2014. A Special Leave Petition came to be filed by Lakshmi Ammal challenging the judgment in Second Appeal in S.A.No.939 of 2014 and the Special Leave Petition was also dismissed by the Hon'ble Supreme Court on 19.09.2016.



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3. Quite surprisingly, the said Lakshmi Ammal, the grandmother of appellant, thereafter filed a writ petition in W.P.No.27704 of 2012 for issuance of a Writ of Mandamus to consider her representation for allotment of a portion of the land in S.No.175/3A. The said writ petition was later dismissed as withdrawn by order of this Court dated 01.04.2014. Thereafter, one N.Indirani, claiming to be the legal heir of Lakshmi Ammal, filed a writ petition in W.P.No.3746 of 2014 for similar relief. The said writ petition was dismissed on 07.03.2018. An appeal in W.A.No.1136 of 2018 filed by N.Indirani was also dismissed by a Division Bench of this Court by order dated 10.05.2018.

4. After two rounds of litigation by grandmother of appellant and one N.Indirani as legal heir of Lakshmi Ammal, the present appellant came forward with a fresh writ petition for cancellation of the allotment made in favour of 4th respondent.



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5.It is to be noted that the appellant suppressed material facts regarding the disposal of the Civil Suit and the earlier writ petitions and questioned the allotment in favour of 4th respondent relying upon the judgment and decree of Civil Court in O.S.No.463 of 1992 filed by the 4th respondent claiming permanent injunction. The learned Single Judge, apart from holding that the writ petition itself is liable to be dismissed on the ground of delay and laches, considering the finality in the civil proceedings initiated by the grandmother of appellant under whom the appellant now claims title on the basis of the settlement executed by her, dismissed the writ petition. Apart from successive litigations which had culminated against the predecessor-in-interest of appellant, the petitioner who is just an encroacher filed the present writ petition without any *bona fides*, just to protect her unlawful possession of a valuable property.

6.The appellant's grandmother namely Lakshmi Ammal executed a settlement deed during the pendency of the civil proceedings. Therefore, the settlement deed itself is hit by *lis pendens*. Assuming for a moment, the settlement deed is valid despite Section 52 of the Transfer of Property Act,



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having regard to the findings of the Civil Court holding that the appellant's predecessor-in-title has not established her title and that her possession is just an encroachment, the appellant has no right to challenge the allotment or sale of the property in favour of the 4th respondent. The appellant has in fact no *locus standi*. Even before this Court, the appellant has suppressed material facts. While enclosing the papers in respect of the suit filed by the 4th respondent and the judgment in the suit originally filed by the appellant's grandmother in O.S.No.2163 of 1990, the appellant carefully did not divulge the judgment and decree of the Appellate Court as well as the orders in the previous writ petitions filed in relation to the same property by Lakshmi Ammal and another lady who claimed as legal heir of Lakshmi Ammal.

7.In the said circumstances, this Court, having regard to the conduct of the appellant, dismisses this Writ Appeal with a cost of Rs.10,000/- (Rupees Ten Thousand only), payable in addition to the cost imposed by the Writ Court.

8.Therefore, the appellant has to comply with the direction of the



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learned Single Judge by paying a sum of Rs.1,00,000/- awarded as cost by the learned Single Judge in the writ petition, apart from a sum of Rs.10,000/- which is now imposed as cost in this Writ Appeal. The cost of this Writ Appeal shall be paid to the Housing Board within a period of four weeks from this date. Since it is now admitted that the appellant's predecessor-in-title and the appellant were in possession of the property without any right for a long period, we direct the State Housing Board to file a suit for recovery of damages for use and occupation of the property by the appellant, as the property is a valuable property. Consequently, connected miscellaneous petition is closed.

9.Post the matter after four weeks for reporting compliance.

(S.S.S.R., J.) (P.D.B., J.)
20.11.2024

mkn
Internet : Yes
Index : Yes
Neutral Citation : Yes

To

1.The Managing Director,



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Tamil Nadu Housing Board,
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Chennai - 35.

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S.S. SUNDAR, J.
and
P. DHANABAL, J.



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