



W.P.No.27945 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM:

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

W.P.No.27945 of 2019
and W.M.P.No.27532 of 2019

Malliga

...Petitioner

-Vs -

1. Tamil Nadu Slum Clearance Board,
Rep. by its Chairman,
No.5, Kamaraj Salai,
Chennai – 600 005.

2. E.Nandagopal

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and Mandamus, to call for the records of the first respondent in respect of the impugned order passed by the first respondent vide proceedings bearing No.9308/2009/E5 dated 04.04.2019 and quash the same and consequently direct the first respondent to execute the sale deed in favour of the petitioner herein for plot No.301, Door No.303, 15th Cross Street, Block No.5, T.S.No.1, T.P.Chatiram, Aminjikarai, Chennai – 600 030, measuring of an extent of 204 sq.ft. (19 sq.mt) in Jyothiammal Nagar Part-2 schedule within a time frame.



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For Petitioner : Mr.K.Venkateswaran

For Respondents

For R1 : Mr.G.Venkatesan

For R2 : Mr.K.Balaji

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 04.04.2019, thereby rejecting the claim made by the petitioner seeking cancellation of allotment of house plot in favour of the second respondent and consequently direct the first respondent to execute the sale deed in favour of the petitioner.

2. The case of the petitioner is that originally a vacant site ad measuring 204 sq.ft., at Plot No.301, Door No.303, 15th cross street, Block No.5, T.S.No.1, T.P. Chatiram, Aminjikarai, Chennai – 600 030 was allotted in favour of the petitioner's father by an order dated 28.01.1986 by the first respondent. He was paying the monthly installments to the plot regularly. While being so, he died on 03.09.1993 leaving behind the petitioner and his wife as his legal heirs. The petitioner's mother also died on 19.02.2010 and the petitioner is being surviving legal heir, she had started paying the monthly installment to the



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first respondent. Subsequently, she came to know that the said plot was sold out in favour of the second respondent by her father. According to the petitioner, whatever the documents produced by the second respondent are fabricated one and her father never executed any sale deed in favour of the second respondent. Without considering same, the first respondent cancelled allotment made in favour of her father, based on the sale deed executed in favour of the second respondent on 07.12.1990.

3. The government also passed order in G.O.Ms.No.804, Housing and Urban Development Department, dated 23.09.1993, that the encroachers, who had purchased the plots from the allottees, are not remitting the installments due to the Board, for the reason that the lease-cum-sale agreement were not executed with them, that the arrears of installments could not therefore, be collected with the result the arrears have accumulated to several lakhs and that most of the encroachers have purchased the plots from the original allottees, though they had no right to sell them.



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4. After allotment in favour of the second respondent, the first respondent issued no objection certificate and executed lease-cum-sale agreement in favour of the second respondent. The second respondent had obtained electricity service connection and the said property was assessed to property tax. Even then, the first respondent interfered with the peaceful possession of the subject property by the second respondent. Therefore, the second respondent had filed suit in O.S.No.14656 of 1996 and the said suit was subsequently dismissed for default.

5. While being so, on 17.10.1996, the second respondent was served with notice for cancellation allotment on the complaint lodged by the petitioner's mother. It was challenged by way of suit in O.S.No.8574 of 1997 on the file of the XVIII Assistant Judge, City Civil Court, Chennai, as against the first respondent, for declaration declaring that the notice issued by the first respondent dated 17.10.1996 as null and void and for permanent injunction. The said suit was decreed by the judgment and decree dated 06.02.2002. Even then, the first respondent issued another show cause notice dated 07.01.2008, to the second respondent.



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6. After submitted explanation, the second respondent challenged the said show cause notice by way of Writ Petition before this Court in W.P.No.2079 of 2008 and the same was allowed and also directed the first respondent to consider the explanation submitted by the second respondent and pass orders. The first respondent on perusal of explanation submitted by the second respondent passed order dated 24.03.2009, thereby allotment was issued in favour of the second respondent by an order dated 15.04.2009.

7. Aggrieved by the same, the petitioner and her mother filed Writ Petition in W.P.No.7682 of 2009 and this Court by an order dated 28.09.2011 allowed the writ petition. Feeling aggrieved by the same, the second respondent filed Writ Appeal in W.A.No.361 of 2012 and the Hon'ble Division Bench of this Court by an order dated 24.10.2017, modified the order and directed the first respondent herein to conduct enquiry and pass order afresh after permitting the petitioner as well as the second respondent to produce the materials to sustain their contention. Accordingly, the first respondent had conducted detailed enquiry after giving opportunity of hearing to the petitioner as well as the second



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respondent and concluded that the documents produced by the second respondent are genuine and confirmed the allotment of plot in favour of the second respondent by an order dated 04.04.2019. Aggrieved by the same, the petitioner filed the present writ petition.

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

9. On perusal of records revealed that during the enquiry conducted by the first respondent, the witness to the sale deed, which was executed by the petitioner's father in favour of the second respondent dated 07.12.1990, was examined and he confirmed the sale deed executed in favour of the second respondent.

10. It is also seen that, the petitioner's mother had left the matrimonial home along with the petitioner and thereafter her father had executed the sale deed in favour of the second respondent. Thereafter, he had fell ill and he was admitted into hospital and died. After his demise, the petitioner and her mother came into picture and questioning the sale



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deed which was executed by her father in favour of the second respondent. In fact, from the date of sale the second respondent is in possession and enjoyment of the said plot by constructing house. Therefore, the second respondent has been in continuous occupation even till today, in the subject property since the date of purchase.

11. The specific contention of the petitioner is that the alleged sale deed was executed on 07.12.1990 and subsequently, there was a sale agreement between her father and the second respondent on 25.03.1995. When the sale deed itself executed on 07.12.1990, no need to execute any agreement for sale that too on 25.03.1995. On perusal of documents revealed that the sale deed dated 07.12.1990 was executed by her father in favour of the second respondent. Whereas, the lease-cum-sale agreement dated 25.03.1995, was executed by the first respondent in favour of the second respondent. The petitioner's father was not even party to the said agreement. The first respondent had entered into lease-cum-agreement for sale with the second respondent based on the sale deed dated 07.12.1990, which was executed by the petitioner's father in favour of the second respondent.



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12. Further there is no evidence to show that the petitioner's father and her mother had paid the monthly installments relating to the subject property. Only in the year 1995, the petitioner's mother had paid a sum of Rs.200/- as transfer fee of the plot, when the action was taken to cancel the allotment of the subject property in favour of the second respondent. In fact, the petitioner failed to challenge the judgment and decree dated 06.02.2002, passed in O.S.No.8574 of 1997, when the civil Court declared the show cause notice issued by the first respondent as null and void.

13. In view of the above discussions, this Court finds no infirmity or illegality in the order passed by the first respondent and the writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

01.04.2024

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



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To
WEB COPY

1. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamaraj Salai,
Chennai – 600 005.



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G.K.ILANTHIRAIYAN. J.

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