

(2010) 12 MAD CK 0205
In the Madras High Court
Case No : W.A. (M.D) No. 556 of 2010

R. Ashok

APPELLANT

Vs

Susila Jeyaraj and The Executive Engineer, Tamil Nadu Slum
Clearance Board

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 8(5)

Citation : (2010) 12 MAD CK 0205

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : S. Subbiah, for the Appellant; N. Murugesan, Advocate for R1 and M. Boominathan, for R2, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Being aggrieved by the order in W.P.(MD) No. 971/2010 directing the 2nd Respondent-Tamil Nadu Slum Clearance Board to execute the sale deed as per the original allotment order dated 25.04.1992, Appellant a third party to the Writ Petition has filed this Appeal.

2. Tamil Nadu Government had launched a project "Slum Clearance Improvement Programme" to regularise the portion of the land encroached by the slum dwellers by means of lease cum sale agreement. In Madurai Bibikulam Indira Nagar was taken under this scheme. Old Plot No. 60 with an approximate extent of 121.98 sq. mtrs was allotted to the 1st Respondent by the allotment order dated 25.04.1992. As per the conditions of the allotment, 1st Respondent has to pay the tentative land cost fixed by the Tamil Nadu Slum Clearance Board [TNSCB] i.e. Rs. 9,149/- which was directed to be paid commencing from 01.04.1992 at the rate of Rs. 88/- per month for 15 years. Case of 1st Respondent is that she had paid the entire amount and therefore, she is entitled to get the sale deed. It is averred that Appellant is only a tenant under the 1st Respondent and has no semblance of right in the property allotted to the 1st

Respondent.

3. Earlier in W.P.(MD) No. 3555/2008 filed by the 1st Respondent, 2nd Respondent-TNSCB was directed to execute the sale deed. Being aggrieved by the order in W.P.(MD) No. 3555/2008, Appellant filed Writ Appeal in W.A.(MD) No. 818/2008. In the said Writ Appeal, Advocate-Commissioner was appointed and TNSCB had taken a stand that the sale deed could be executed only for an extent of 44.76 sq. mtrs which is in occupation of the 1st Respondent. However, W.A.(MD) No. 818/2008 filed by the Appellant came to be dismissed by an order dated 18.11.2009. In spite of issuance of legal notice, TNSCB did not come forward to execute the sale deed for the extent of 121.98 sq. mtrs as per the allotment order. Therefore, the 1st Respondent has filed W.P.(MD) No. 971/2010 seeking for Writ of Mandamus directing TNSCB to execute the sale deed in her favour as per the original allotment order dated 25.04.1992 to an extent of 121.98 sq. mtrs.

4. In W.P.(MD) No. 971/2010, TNSCB took a stand that the order of allotment was issued only to an approximate measurement of the property and the said allotment is only temporary and not a final one and the 1st Respondent has leased out a portion of the property to the Appellant which is still pending adjudication. TNSCB took a stand that they are ready to execute the sale deed for an extent of 44.76 sq. mtrs which is in possession and enjoyment of the 1st Respondent.

5. Referring to the order of allotment, learned single Judge held that having come to the decision that 1st Respondent has been in possession of 121.98 sq. mtrs and having passed the order of allotment with respect to the said extent of the property, TNSCB cannot deny the rights of 1st Respondent to have the sale deed executed for the entire extent of 121.98 sq. mtrs. Learned single Judge directed the TNSCB to inform the balance sale consideration to be paid by the 1st Respondent measuring an extent of 121.98 sq. mtrs and also directed them to execute the sale deed upon the receipt of balance sale consideration. Being aggrieved by the order in W.P.(MD) No. 971/2010, Appellant who is the third party to the Writ Petition has filed this Writ Appeal. Case of Appellant is that in the earlier proceedings in W.P.(MD) No. 3555/2008 confirmed in W.A.(MD) No. 818/2008, 1st Respondent had obtained the relief for the execution of sale deed only to an extent of 44.76 sq. mtrs under her occupation and while so, the Writ Petition filed for the same relief is not at all maintainable under law.

6. Mr. S. Subbiah, learned Counsel for Appellant contended that the learned single Judge ought to have taken note of the approved lay out and the measurement thereon for old Plot No. 60 and ought to have directed the TNSCB to execute the sale deed only for an extent of 39.95 sq. mtrs. It was further contended that the Writ Court ought to have kept in view the report of the Advocate-Commissioner and that the 1st Respondent is entitled for 39.95 sq. mtrs, but she is in occupation of 44.76 sq. mtrs and that 2nd Respondent is ready to regularise the said occupation and while so, learned single Judge was

not right in directing the execution of sale deed for the entire extent of 121.98 sq. mtrs as per the allotment order which was only tentative.

7. Taking us through the earlier proceedings, Mr. N. Murugesan, learned Counsel for 1st Respondent submitted that Appellant who is only a tenant under 1st Respondent had no legal or factual ground to maintain this Writ Appeal. Learned Counsel for 1st Respondent would further contend that 2nd Respondent-TNSCB measured the property on 27.08.2010 and confirmed that an extent of 119.20 sq. mtrs available and as per the demand notice issued by the TNSCB [30.08.2010], 1st Respondent has also paid further sum of Rs. 2,33,499/- and all steps for execution of sale deed was completed and while so, Appellant has filed this frivolous appeal only to defeat the lawful rights of the 1st Respondent.

8. We have considered the submissions of learned Counsels and perused the materials on record.

9. The point falling for consideration is whether 1st Respondent is entitled to get the sale deed executed to an extent as per the original allotment order dated 25.4.1992 and whether the learned single Judge was right in directing the 2nd Respondent-TNSCB to execute the sale deed as per the original allotment order.

10. Admittedly, by the allotment order dated 25.04.1992, old Plot No. 60 with an extent of 121.98 sq. mtrs was allotted to the 1st Respondent with a condition to pay Rs. 9,141/-, payable at Rs. 88/- per month commencing from 01.04.1992 for 15 years. 1st Respondent is also said to have paid the amount. In Na. Ka. No. A8/707/91 dated 25.03.1996, 2nd Respondent had issued "no objection certificate" to the 1st Respondent to get the service connection. On 27.10.2003, 2nd Respondent also issued "no objection certificate" in Na. Ka. No. 707/91/A5 to the 1st Respondent to obtain housing loan to construct the house in the property allotted to her. By Challan No. 42708, 1st Respondent is also said to have paid a sum of Rs. 500/- towards survey charges.

11. In W.A.(MD) No. 818/2008, TNSCB took a stand that even though, 1st Respondent was initially allotted 121.98 sq. mtrs that was only tentative and as per the lay out the actual measurement made at the time of inspection, the actual area of the plot which is in occupation of the 1st Respondent was 44.76 sq. mtrs and that TNSCB is willing to execute the sale deed in respect of 44.76 sq. mtrs subject to the payment of the remaining sale consideration. In W.A. (MD) No. 818/2008, Advocate-Commissioner was appointed and referring to the Commissioner's report, the Division Bench has observed that the actual extent of land in occupation of the 1st Respondent is 44.76 sq. mtrs.

12. Laying emphasis upon the Commissioner's report filed and the observations of the Division Bench in W.A.(MD) No. 818/2008, the learned Counsel for Appellant forcibly contended that as per the lay out approved by the Director of Town and Country Planning, 1st Respondent is entitled to 39.95 sq. mtrs whereas she is in occupation of 44.76 sq. mtrs and when the TNSCB is ready to regularise the occupation to the above said extent of 44.76 sq. mtrs, the Appellant cannot

insist for execution of sale deed for the extent of 121.98 sq. mtrs as per the original allotment order which was only a tentative.

13. Reiterating the earlier stand, Mr. M. Boominathan, learned Counsel for 2nd Respondent-TNSCB has also submitted that the original allotment order for 121.98 sq. mtrs was only a tentative. It was further submitted that since the 1st Respondent has leased out a portion of the property to one Ashok and lis is pending adjudication and the same has not reached the finality, TNSCB is ready to execute the sale deed to an extent of 44.76 sq. mtrs which is in actual possession and enjoyment.

14. As rightly pointed by the learned single Judge that TNSCB had made the allotment to the 1st Respondent to an extent of 121.98 sq. mtrs on being satisfied that she was in enjoyment of the said extent. In the said order of allotment, there is nothing to indicate that the extent of property was tentatively arrived at by the 2nd Respondent. In fact, as pointed out earlier, for the old Plot No. 60 [121.68 sq. mtrs], "no objection certificate" was issued to the 1st Respondent to obtain service connection as well as to raise the housing loan for the construction of house. For the extent allotted to the 1st Respondent as per the lease cum sale agreement, she has also paid the amount. By the order dated 30.08.2010, 2nd Respondent has also issued a demand notice calling upon the 1st Respondent to pay further sum of Rs. 2,33,499/- for the extent of 119.20 sq. mtrs which the 1st Respondent has also paid.

15. According to 1st Respondent, she has let out a portion to the Appellant and only in his capacity as tenant, Appellant is in occupation. In the Writ Petition, 1st Respondent has also referred to the Rent Control Original Petition [R.C.O.P. No. 44/2008] filed by the Appellant u/s 8(5) of the Tamil Nadu Buildings (Lease and Rent) Control Act and the same was allowed directing the Appellant to pay the rent directly to 1st Respondent. According to Appellant, he is in occupation of the portion of the property and is selling the ornamental fish/golden aquarium and also nursery plants and that he is in occupation of 1017 sq.ft. Of course, Appellant has filed the suit against the 1st Respondent in O.S. No. 988/2007 on the file of District Munsif Court, Madurai Town for Permanent Injunction. When we have put a specific question to the learned Counsel for Appellant as to what is the right of the Appellant to be in occupation and claim right, the learned Counsel for Appellant was not able to substantiate the stand of the Appellant. Appellant has neither produced any allotment order nor document to show payment of the amount. In our considered view, Appellant does not seem to have any semblance of right over the property. If at all, the Appellant has got any right, it is for the Appellant to establish his right in the Civil Court. There is no basis for the stand of TNSCB that the original allotment order is only a tentative and that 2nd Respondent is ready to regularise the occupation of 1st Respondent to an extent of 44.76 sq. mtrs. Having issued the allotment order for an extent of 121.98 sq. mtrs and "no objection certificate" for obtaining electricity and housing loan and having collected the amount for the entire

extent, it is not open to the TNSCB to resile from the original allotment order. We do not find any infirmity in the order of the learned single warranting interference and the Writ Appeal is liable to be dismissed.

16. In the result, the Writ Appeal is dismissed. Consequently, connected M. Ps. are closed. No costs.