

(2010) 09 MAD CK 0368

In the Madras High Court

Case No : W.A. No's. 1513 to 1515 of 2001 and C.M.P. No. 13465 of 2001

Ranasingh @ Paldurai

APPELLANT

Vs

A. Veeraraghavan and Others

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 — Section 11, 2, 3, 45, 46

Citation : (2011) 2 MLJ 331

Hon'ble Judges : R. Banumathi, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : M. Venkatachalapathi for M. Sriram, for the Appellant; K. Elango, Y. Bhuvanesh Kumar (TNSCB), K. Chelladurai (TNHB) and M. Dhandapani, for the Respondent

Judgement

R. Banumathi, J.—These writ appeals arise out of the order dated 3.8.2001 made in W.P. Nos. 13668, 15165 and 15115 of 1995, whereby the learned single Judge dismissed the writ petitions filed by the Appellant-Ranasingh and quashed the proceedings of Tamil Nadu Slum Clearance Board (in short, "TNSCB") allotting portion of the Community Hall and the adjacent land to the Appellant. Learned single Judge directed the TNSCB and Appellant-Ranasingh to pay cost of Rs. 2,500/- each to the writ Petitioner-Veeraraghavan in W.P. No. 15115 of 1995.

2. Since all the writ appeals arise out of common order and the issue involved in all these writ appeals is one and the same, all the writ appeals were taken up together and disposed of by this Common Judgment. For convenience, the parties are referred as per their array in W.A. No. 1513 of 2001.

3. Brief facts are that C.I.T. Nagar was earlier developed under Open Developed Plots Scheme and later converted into Madras Urban Development Project as per G.O. Ms. No. 928, Housing and Urban Development Department dated 30.9.1982. TNSCB along with the scheme at the time of formation of TNSCB, the property was handed over to the Tamil Nadu Housing Board (in short, "TNHB").

Appellant was an allottee for Plot No. 150, CIT Nagar, Madras-35 with an extent of 92 square metres was allotted to him by the Chairman, TNSCB in his Proceedings No. E6/23202/95 dated 31.8.1995. Case of TNHB is that Community Hall in question was constructed in the year 1956 and it is meant for public purpose. TNSCB was informed about the same and Chairman was asked to withdraw the allotment wrongfully made by TNSCB in favour of Appellant.

4. When it was brought to the notice of the Board that Appellant herein was not residing in Plot No. 150, CIT Nagar and further knowing that it is only a Community Hall and that Appellant has given a false statement that he is residing in the said plot, Show cause notice Na.K. No. 19009/E6/1995 dated 26.3.1997 was issued to the Appellant calling upon him to explain within seven days of receipt of the show cause notice as to why allotment made to him should not be cancelled. Instead of responding to the show cause notice, Appellant had filed O.S. No. 4095 of 1997 challenging the show cause notice and the said suit came to be dismissed for default, Appellant had filed W.P. No. 13668 of 2005 for restraining Executive Engineer, TNHB and Chairman, TNHB from interfering with the possession and enjoyment of the Appellant and from interfering with the rights pursuant to the allotment to the Appellant with regard to Plot No. 150, CIT Nagar, MUDP Scheme. One Veeraraghavan filed W.P. No. 15115 of 1995 to quash the allotment in Plot No. 150 made in favour of Appellant by TNSCB by the proceedings No. E6/23202/95 dated 1.8.1995. Appellant had also filed W.P. No. 15165 of 1995 seeking for Police protection regarding possession and enjoyment of the property in Plot No. 150, CIT Nagar, Chennai-35.

5. Resisting the Writ Petitions, TNHB filed counter contending that Plot No. 150, CIT Nagar is Community Hall for public purpose and that it never belonged to TNHB. It was further averred that Appellant already owns a house and he is not eligible for allotment.

6. Accepting the contention of TNHB, the learned single Judge held TNHB made it clear that the land has not been transferred to TNSCB and that TNSCB has nothing to do with the same. Learned single Judge further held that Appellant already owns a house and is not eligible to be allotted any land much less any portion of the Community Hall and its adjacent land.

7. Learned senior counsel for Appellant submitted that entire block of land was allotted to TNSCB and the TNSCB in pursuant to the scheme allotted to various slums dwellers and therefore to single out the community hall and to say that the same has been retained by the TNHB is per se not correct and the learned single judge ought not to have accepted the ipse dixit of Appellant- Writ Petitioner in W.P. No. 15115 of 1995. It was further submitted that plea of TNHB that Noon meal scheme centre was allowed to function in the Community hall was not substantiated. It was further argued that u/s 46(2) of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, any dispute as to whether any property, assets, rights and liabilities stand transferred to and vested in the Board, the dispute shall be referred to the decision of the Government and the

decision of the Government is final. It was further argued that in exercise of judicial review, Court cannot perform the function of the statutory authorities and in support of the said contention, reliance was placed upon Union of India and Anr. v. Bilash Chand Jain and Anr. 2009 (1) Scale 154.

8. Reiterating that the property belongs to TNSCB, learned Counsel for TNSCB submitted that wherever there is slum or slum area, by virtue of Section 46(1) the same is transferred to TNSCB by statutory transfer and the learned single judge did not advert to the statutory transfer u/s 46(1). It was further argued that in CIT Nagar, there was existence of "slum area" inclusive of plot No. 150 and by virtue of the statutory transfer to Plot No. 150 vested with the TNSCB and it allotted plot No. 150 to the Appellant Rana Singh. It was further argued that when it was brought to the notice of the Board that the Appellant is not residing in plot No. 150, show cause notice was issued to the Appellant calling upon him to explain as to why the allotment should not be cancelled and therefore TNSCB cannot be faulted.

9. Drawing our attention to the files and relevant Government Orders, the learned Counsel for TNHB submitted that the land in T.S. No. 15/2 was Community hall, which was in use till 1982 and after 1982, the same was converted as Noon meal Centre. It was further argued that community hall was in existence for public purpose. There is no question of statutory transfer to TNSCB and the learned single judge rightly held that the property belongs to TNHB.

10. Mr. K. Elango, learned Counsel for the 1st Respondent in W.A. No. 1513 of 1995 submitted that the allotment was made to the Appellant hastily within three days of his request and having regard to the fact that the community hall was in existence for public purpose, the learned single Judge rightly dismissed the writ petition filed by the Appellant in W.P. No. 13668 of 1995 and rightly quashed the allotment made in favour of the Appellant.

11. The Tamil Nadu Slum Areas (Improvement & Clearance) Act, 1971 was enacted to provide for the improvement and clearance of slums in the State of Tamil Nadu. As per Section 45 of Tamil Nadu Slum Clearance (Improvement & Clearance) Act, with effect from the date of the establishment of the Tamil Nadu Slum Clearance Board, the Tamil Nadu Housing Board shall cease to exercise any function under the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act XVII of 1961), in respect of matters dealt with under the Tamil Nadu Slum Areas (Improvement & Clearance) Act and in particular, the improvement of the slum area, the clearance of a slum area and the re-development of a slum clearance area. u/s 46 of the Act, all properties, assets, rights and liabilities of the State Housing Board shall stand transferred to Slum Clearance Board. Section 46 reads as under:

Transfer of certain assets and liabilities of the State Housing Board to the Board.
- (1) All property assets, rights and liabilities of the State Housing Board shall,

insofar as such property, assets, rights and liabilities are relatable immediately before the date of the establishment of the Board to the improvement of the slum area, the clearance of the slum area and the re-development of the slum clearance area, stand transferred to and vested in the Board.

(2) (a) If any dispute arises whether any property, assets, rights and liabilities stand transferred to and vested in the Board under Sub-section (1), the dispute shall be referred to the decision of the Government and their decision shall be final.

(b) Before giving any decision on any such dispute the Government shall give an opportunity to the State Housing Board and to the Board to make representations.

12. The contention of the Appellant is that as per the provisions of Tamil Nadu Slum Areas (Improvement & Clearance) Act, 1971, all properties, assets, rights and liabilities of the State Housing Board in respect of the slum area, the clearance of a slum area and redevelopment of a slum clearance area is transferred to and vested in the Slum Clearance Board. According to the Appellant, there was existence of slum in C.I.T. Nagar and slum area is inclusive of plot No. 150 and by virtue of statutory transfer, the same came under the control of TNSCB.

13. The learned single Judge formulated the point for determination i.e., whether the community hall and adjacent land comprised in T.S. No. 15/2 Block No. 52 Mambalam village is owned by Tamil Nadu Housing Board or by the Slum Clearance Board. Further case of Appellant is that u/s 46(2)(a) if any dispute arises as to whether any property, assets, rights and liabilities stands transferred to and vested in the Board the dispute shall be referred to the Government and their decision shall be final. It was further argued that u/s 46(2)(a), there is a statutory mandate to refer the dispute to the Government and while so exercising judicial review Court cannot perform the statutory function of the authority. Contention of Appellant is that in exercising judicial review, the learned single judge was not right in taking upon the task of the statutory authority.

14. There is no quarrel over the well settled principle that the High Court itself cannot perform the functions of statutory authority. But we find that the facts are writ large that the property in T.S. No. 15/2 was not transferred to the TNSCB and that it was retained by the TNHB and it cannot be said that the learned single judge has performed the functions of a statutory authority.

15. Let us elaborate upon the same by referring to the provisions of Tamil Nadu Slum Areas (Improvement & Clearance) Act. As per Section 2(k) of the Act, "slum area" means any area declared to be a slum area under Sub-section (1) of Section 3. As per Section 2(1), "Slum clearance area" means any slum area declared to be a slum clearance area u/s 11. Section 2(n) explains "work of improvement" in relation to any building in a slum area.

16. Case of TNSCB is that CIT Nagar, Madars was developed under Open Development Park Scheme and later converted into Metropolitan Development Project as per G.O. Ms. No. 928, Housing and Urban Development Department dated 30.9.1982. Further case of TNSCB is that there was a community hall once upon a time in plot No. 150 and the same became defunct and layout was prepared in "as is and where is condition" and the same was also approved by MMDA and the plot in question belonged to TNSCB.

17. Per contra, case of TNHB is that it was the original owner of T.S. No. 15/2 and it has put up community hall. T.S. No. 15/2 part is an extent of 4 grounds and 876 sq.ft. As contended by TNHB, the above said land in T.S. No. 15/2 measuring an extent of 4 grounds and 876 sq.ft., was registered under City Improvement Trust and later the same has been converted as TNHB and hence the property belongs to TNHB. TNHB has further averred that the Community Hall in question was constructed even in the year 1956 and the same was meant for public purpose.

18. As pointed out earlier, as per Section 46(1), the statutory transfer of assets and liabilities of Housing Board to the Slum Clearance Board is only in respect of such property relatable to the improvement of the slum area, clearance of the slum area and re-development of the slum clearance area. When there was a community hall in T.S. No. 15/2, it cannot be said that by virtue of operation of Section 46(1) the same was transferred to TNSCB by statutory transfer.

19. TNSCB admits existence of community hall in T.S. No. 15/2. But, in the letter dated 27.9.1995, Chairman, TNSCB has stated that there was community hall once upon a time and it became defunct and later layout was prepared in "as is and where is condition" and T.S. No. 15/2 was assigned plot No. 150. Absolutely, there is no material to show that the community hall had become so defunct. The writ Petitioner in W.P. No. 15115 of 1995 and other public have repeatedly made representations to the Housing Board and reiterated the existence of the community hall and requested TNHB to renovate the same.

20. The learned single Judge referred to G.O. Ms. No. 920 dated 30.9.1982 and G.O. Ms. No. 804 dated 23.9.1993 and held that those two Government Orders would clearly show that the disputed land has been allotted to the TNSCB on its formation. Learned senior counsel for the Appellant has submitted that those two Government Orders have no relevance to the subject matter in issue and those two Government Orders would not in any manner show that the property in question is the property of the Housing Board.

21. Having regard to the submissions, we have directed the learned Counsel for the Housing Board to produce the relevant Government Orders and the file. We have perused G.O. Ms. No. 928 dated 30.9.1982. By perusal of the said G.O., it is seen that the Chairman, Slum Clearance Board has written to the Government about the merits of the bringing upon development plan and areas under Madras Urban Development Project and requested the Government to pass orders to that

effect. Though the learned single Judge referred to G.O. Ms. No. 928, dated 30.9.1982, we do not find much relevance of the said G.O. to the subject matter.

22. So far as G.O. Ms. No. 804, Housing and Urban Development Department dated 23.9.1993 provides for a cut-off date for regularisation of encroachment. As per the said G.O., the Government accepted the proposal of TNSCB and directed that all the encroachments by the persons which were in existence on 30.6.1977 (modified as 31.3.1991 in G.O. Ms. No. 804) be regularised in relaxation of existing orders and directed the land cost be collected on the Tamil Nadu Urban Development Project pattern. The cut-off date for regularisation was on 31.3.1991. As pointed out earlier, the community hall was in existence in T.S. No. 15/2 and the Appellant could not have been in possession of the said community hall. As rightly contended by the learned Counsel for the Housing Board, that allotment was made to the Appellant in violation of G.O. Ms. No. 804 dated 23.9.1993.

23. Learned Counsel for 1st Respondent in W.A. No. 1513 of 2001 has submitted that the Appellant already owns a house and therefore the learned Counsel for the 1st Respondent in W.A. No. 1513 of 2001 has submitted that the TNSCB has made allotment hastily without adverting to the mandatory requisites. It was submitted that as per G.O. Ms. No. 804 dated 23.9.1993, only such of the slum dwellers who do not own house sites or sites elsewhere and have been residing in slum on or before 30.6.1997 will be eligible for the grant of L.C.S. agreement under Madras Urban Development Project. As rightly contended by the learned Counsel for the Respondents, the Appellant, who owns a house and residing at Jafferkhanpet is not eligible for the grant of L.C.S. agreement.

24. The hasty manner in which the allotment was made by the TNSCB is also relevant to be noted. By perusal of the allotment order (dated 31.8.1995) it is seen that the application was made by the Appellant on 28.8.1995 and within three days the allotment was made. As rightly pointed out by the learned single Judge, it was nothing but an attempt on the part of the Appellant to grab a portion of the land belonging to the Housing Board by getting some orders of allotment from the then Chairman of the TNSCB.

25. In the writ petition, the TNSCB has also not chosen to file counter, but filed an elaborate counter in the Writ Appeal. In its counter, the TNSCB has averred that when two statutory bodies i.e., TNHB and TNSCB belonging to the same Government raise dispute as the ownership of the land, and as per Section 46(2) (a), dispute should be referred to the Government and the decision of the Government shall be final. As we pointed out earlier, in the writ petitions, the TNSCB has not chosen to file its counter. Deprecating the conduct of the Slum Clearance Board, the learned single judge imposed a cost of Rs. 2,500/- on the TNSCB, which we are not inclined to interfere.

26. Based upon facts and materials, the learned single judge categorically held that the property in question is the property of TNHB. Even though a definite

finding was recorded against the TNSCB and cost of Rs. 2,500/- was also imposed upon the TNSCB, it has not chosen to prefer any appeal. In such circumstances, the contention of TNSCB that the matter should be referred to the Government does not merit acceptance. The learned Counsel for TNSCB has drawn our attention to the show cause notice issued by the TNSCB dated 26.3.1997 and submitted that the TNSCB has taken appropriate steps to cancel the allotment and the learned single judge was not right in imposing cost of Rs. 2,500/- and prayed for deletion of the costs imposed upon the TNSCB. By perusal of the counter filed by TNSCB, we find that when it was brought to the notice of TNSCB that the Appellant is not residing in plot No. 150, C.I.T. Nagar and that there was only a community hall and that the Appellant has obtained allotment by making a false statement that he is residing in the said plot a show cause notice was issued to the Appellant on 26.3.1997 calling upon him to explain within seven days of receipt of show cause notice as to why the allotment made to him should not be cancelled. Without responding to the said show cause notice, the Appellant had approached the City Civil Court and filed O.S. No. 4095 of 1997 challenging the show cause notice. The said suit later came to be dismissed for default. Subsequently, the Appellant had also filed writ petition in W.P. No. 13668 of 1995 seeking for writ of a mandamus not to interfere with his possession and the allotment order. It was submitted that because of pendency of the suit as well as the writ petitions no further proceedings could be initiated against the Appellant consequent to the issuance of show cause notice dated 26.3.1997. Issuance of show cause notice in Na.. Ka. No. 19009/E6/1995 dated 26.3.1997 does not appear to have been brought to the notice of the learned single judge. In such view of the matter, we are of the considered view that imposing cost of Rs. 2,500/- on the TNSCB is not justifiable and the same is ordered to be deleted.

27. From the facts and materials, we are of the considered view that the TNHB has satisfactorily established that the property belongs to TNHB and the learned single judge rightly allowed Writ Petition No. 15115 of 1995 quashing the allotment made in favour of the Appellant and the learned single Judge was right in dismissing the writ petitions filed by the Appellant W.P. No. 13668 of 1995 and 15165 of 1995 and we do not find any reason warranting interference with the order of the learned single judge.

28. In the result, all the three writ appeals are dismissed. However, cost of Rs. 2,500/- imposed by the learned single Judge on Slum Clearance Board is deleted. There is no order as to costs in these appeals. Consequently, the connected miscellaneous petition is closed.