

Muthamizh Nagar Weaker Sections Welfare Sangham Vs. Government of Tamil Nadu

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Court : Chennai

Decided On : Apr-09-2013

Judge : The Honourable Mr. Justice P.R.Shivakumar

Appellant : Muthamizh Nagar Weaker Sections Welfare Sangham

Respondent : Government of Tamil Nadu

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

09. 04.2013 CORAM THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR Writ Petition No.37616 of 2007 Muthamizh Nagar Weaker Sections Welfare Sangham, rep., by its Secretary, Mr.M.K.Alauddin. .. Petitioner Vs. 1.The Government of Tamil Nadu, rep., by its Secretary to Government, Forest Department, Fort St.George, Chenna

009. 2.The Tamil Nadu Slum Clearance Board, rep.,by its Chairman, Kamarajar Salai, Chenna

005. 3.The Special Commissioner and Commissioner for Land Administration, Ezhilagam, Chepauk,Chenna

005. 4.The District Collector, Kancheepuram District, Kancheepuram. 5.The Tahsildar, Tambaram, Chennai ... Respondents Prayer:- Writ petition has been

filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the notification of the first respondent dated 24.1.2007 in G.O. Nilai No.51 Revenue Ni.Mu.5 Dept. and by the issue of a certiorarified mandamus or any other appropriate writ order or direction to quash that notification dated 24.1.2007 and consequentially, forbear the respondent from any way interfering with the occupation of the families of the members of the petitioner Association in survey Nos.479/2 in 5 acres 485 in 5 acres 511 in 4acres 528 in 5 acres 535 in 5 acres 536 in 8 acres 537 in 25 acres, 538 in 5 acres, 539 in 5 acres and 540 in 5 acres totaling to 72 acres. For Petitioner : Mr.M.Kalyanasundaram Senior Counsel for Mr.G.Sethuraman For Respondents 1, 3 to 5: Mr.M.S.Ramesh Addl. Govt. Pleader For Respondent -2 : Mr.N.Doraikannan O R D E R Muthamizh Nagar Weaker Sections Welfare Sangham (hereinafter referred to as 'the petitioner-Sangham) has brought forth this Writ Petition under Article 226 of the Constitution of India with the following prayer:- " that this Court may be pleased to call for the entire records relating to the notification of the first respondent dated 24.1.2007 made in G.O. Nilai No.51 Revenue (Ni.Mu.5) Department and for issue of a certiorarified mandamus or any other appropriate writ order or direction to quash that notification dated 24.1.2007 and consequentially, to forbear the respondent from any way interfering with the occupation of the families of the members of the petitioner-Sangham in survey Nos.479/2 in 5 acres, 485 in 5 acres, 511 in 4acres, 528 in 5 acres, 535 in 5 acres, 536 in 8 acres, 537 in 25 acres, 538 in 5 acres, 539 in 5 acres and 540 in 5 acres totaling to 72 acres".

2. It is the contention of the petitioner-Sangam that the residents of the abovesaid area belonged to weaker section of the Society, like platform vendors, tailors, coolies, daily wage workers etc., and most of them were displaced from Tondiarpet area a decade back when the platform vendors were evicted; that the District Collector asked them to occupy any poramboke land; that accordingly, the members of the petitioner-Sangam occupied the area concerned in the Writ Petition in Perambakkam Panchayat and put up huts and small buildings for their living; that in recognition of their occupation, the documents like B memos, Ration Cards were issued, besides providing electricity service connection, water and drainage facilities etc., and that now, the Tamil Nadu Slum Clearance Board has

attempted to take over the land by removing the buildings put up by the members of the petitioner-Sangam, which prompted them to seek legal remedy. 3. The further contention of the petitioner-Sangam is that in the previous rounds of litigation in the form of Writ Petitions, orders were passed not to disturb their possession without following the procedures provided by law; that the then Forest Officials took steps to evict the members of the petitioner-Sangam from the said lands on the premise that the land came within the boundaries of the Reserve Forest; that aggrieved by the same, a Public Interest Litigation was initiated in W.P.No.24282 of 2005 and an order of interim injunction was obtained in the said Writ Petition; that in the meanwhile, the Government transferred the said lands to the Tamil Nadu Slum Clearance Board for constructing a multi storeyed building for the tsunami affected people and for providing accommodation to the encroachers evicted from the Buckingham Canal; that thereafter, the Tamil Nadu Slum Clearance Board, by virtue of the Government Order passed in G.O.Ms.No.51, Revenue Department, dated 4.12.2007, took steps to remove the huts and buildings put up by the members of the petitioner-Sangam and that the same was the cause of action for approaching this Court with the present Writ Petition for the abovesaid relief.

4. The Writ Petition is opposed by the respondents contending that all the unauthorized occupants of the land allotted to the Tamil Nadu Slum Clearance Board for development into multi storeyed building for being allotted to the eligible slum dwellers (Weaker Section of the Society) were evicted; that while all other encroachers were evicted, the members of the petitioner-Sangam, nearly 45 families, who had occupied three acres of land, comprised in S.No.437 (part) alone stuck on to their occupation consequently and resisted the attempts made by the Authorities concerned so far to evict them for the beneficial scheme to put up a multi storeyed building for the slum dwellers and that the present Writ Petition is nothing but one of the attempts to get that preferential treatment than the others, who were similarly situated. It is the further contention of the respondents that the recognition of the claim of the petitioner-Sangam to allow its members to continue to occupy the encroached land will result in the act of the Government being stamped as "discriminatory" besides allowing the members of the petitioner-Sangam to be hindrance and stumbling block to the welfare measures floated by

the State, which had earned acclamation of the Hon'ble Supreme Court on earlier occasion.

5. Mr.M.Kalyanasundaram, the learned Senior Counsel arguing for the counsel for the petitioner would submit that though the Writ Petition happened to be filed in respect of the total extent of 72 acres, since the encroachment made in respect of the other area, excepting three acres of land comprised in S.No.537 (part) have been removed and in major part of those portions, multi storeyed building are being constructed, the petitioner-Sangam restricts its claim of the relief in respect of three acres. It is the further argument made by the learned Senior Counsel that three acres of land can be separated from the rest of the land and excluded from the scheme without any detriment to the scheme and on that hence the petitioner-Sangam is justified in seeking such an exemption and a deferential treatment for the petitioner-Sangam vis-a-vis other persons, who have been evicted from the area encroached by them. The learned Senior Counsel also contended that the efforts made by the Government and the Tamil Nadu Slum Clearance Board to evict the petitioner were stopped, because of the opposition made by the major political parties, which also lead to the passing of number of Government Orders directing issuance of patta to the occupants of poramboke land for a minimum period and that in view of the same, the members of the petitioner-Sangam are entitled to the benefit of the said Government Orders and hence, they should be allowed to retain the land.

6. Per contra, the contention raised by the learned Additional Government Pleader for the Official Respondent and Mr.N.Doraikannan, the learned Standing Counsel for the Tamil Nadu Slum Clearance Board, viz., the second respondent herein is that the total extent of 46.65.0 hectares was earmarked for the project of development into multi storeyed building for the use of slum dwellers (Weaker section society) and when the people occupying the other area were evicted, the members of the petitioner-Sangam occupying the small piece of land should not be allowed to claim preferential treatment which will be a hindrance to the implementation of the project. It is their further contention that when similar Writ Petitions were filed, this Court chose to dismiss the same by a detailed order giving direction to the Government and to the Tamil Nadu Slum Clearance Board

to give them alternative accommodation in their multi storeyed building to be developed; that the encroachers evicted from the land earmarked for the Slum Clearance Board should be allotted residential units in the multi storeyed building to be constructed and that till then, they should be given alternative accommodation with immediate effect.

7. It is also contented on behalf of the respondents that in view of the disposal of the batch of Writ Petitions on 23.11.2012 by the learned Single Judge (Hon'ble Mr.Justice K.K.Sasidharan), the present Writ Petition is also bound to be disposed of in line with the above said order passed by the learned Single Judge in W.P.Nos.1105 of 2012 batch, when similar claims were made in respect of other areas covered by the scheme. The learned Single Judge came to the conclusion that the encroachers of the land earmarked for the development of multi storeyed building by the Slum Board for allotment to the eligible persons cannot be allowed to stick on to that encroachment and they are liable to be evicted and that at the same time their interest should also be safeguarded by issuing necessary directions. Accordingly, the learned Single Judge, while disposing of the Writ Petitions issued the following directions:- " i) The Tamil Nadu Slum Clearance Board is directed to provide alternative accommodation to the petitioners in any of the tenements, either constructed in the adjacent land at Perumbakkam Village or in any other residential projects, subject to production of proof of their occupation; ii) The petitioners are directed to prove their possession of the land/hut in question by producing anyone of the documents like ration card, electricity card or voter's identity card. iii) The application for allotment should be made before the Secretary, Tamil Nadu Slum Clearance Board, Circle II, Chennai, on or before 15th December, 2012; iv) The Tamil Nadu Slum Clearance Board is directed to process the applications taking into account the documents; and issue allotment letters to the eligible applicants on or before 31st December, 2012; v) The allottee should be given alternative accommodation immediately. They should be given ten days time from the date of handing over the alternative accommodation to vacate and handover vacant possession of the subject land/houses/huts, to the Tamil Nadu Slum Clearance Board. vi) The petitioners who are not in possession of the valid documents referred to above to prove their occupation will be given thirty days time from today or from the date of rejection of their claim to vacate their

houses/huts/land." 8. As contended by the learned Additional Government Pleader for the respondents 1, 3 to 5 and the learned Standing Counsel for the second respondent/Tamil Nadu Slum Clearance Board, this Court is of the view that minority members of the petitioner-Sangam who alone are able to continue their possession of the land encroached by them, whereas, majority people have already been evicted and they have been given allotment orders in the apartments now being constructed by the Tamil Nadu Slum Clearance Board, cannot be allowed to continue to occupy the same and allowing them to continue to occupy the same will amount to treating the occupants of the three acres of the land alone differently from the erstwhile occupants of the other major extent of land, and on that ground alone, the prayer of the petitioner-Sangham deserves to be rejected. But at the same time, as directed by the learned Single Judge in the earlier batch of Writ Petitions, the interest of the petitioner-Sangham should also to be protected by issuing similar directions to the respondents. Accordingly, the present Writ Petition is also disposed of by issuing following directions to the Tamil Nadu Slum Clearance Board:- " i) The Tamil Nadu Slum Clearance Board is directed to provide alternative accommodation to the petitioner-Sangham in any of the tenements, either constructed in the adjacent land at Perumbakkam Village or in any other residential projects, subject to production of proof of their occupation; ii) The petitioners are directed to prove their possession of the land/hut in question by producing anyone of the documents like ration card, electricity card or voter's identity card. iii) The application for allotment should be made before the Secretary, Tamil Nadu Slum Clearance Board, Circle II, Chennai, on or before 07.05.2013. iv) The Tamil Nadu Slum Clearance Board is directed to process the applications taking into account the documents; and issue allotment letters to the eligible applicants on or before 21.05.2013. v) The allottee should be given alternative accommodation immediately. They should be given ten days time from the date of handing over the alternative accommodation to vacate and handover vacant possession of the subject land/houses/huts, to the Tamil Nadu Slum Clearance Board. vi) The petitioners who are not in possession of the valid documents referred to above to prove their occupation will be given thirty days time from today or from the date of rejection of their claim to vacate their houses/huts/land." No costs. Index :Yes/No 09.04.2013 Internet :Yes/No To 1)The

Government of Tamil Nadu, rep., by its Secretary to Government, Forest Department, Fort St.George, Chenna

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