

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-8-2014

CORAM

THE HONOURABLE MR. SANJAY KISHAN KAUL, THE CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

WRIT PETITION No. 6039 of 2011

and

M.P.Nos.1 of 2011 and 1 and 2 of 2014.

A. Narayanan

.. Petitioner

VS

1. The Chief Secretary
Government of Tamilnadu
Secretariat, Chennai 600 009
2. The Managing Director
Tamilnadu Slum Clearance Board
Chennai 600 005
3. The Secretary to Government
Department of Housing & Urban
Development
Chennai 600 009
4. The Secretary to Government
Home Department
Secretariat, Chennai 600 009
5. The District Collector
Kanchipuram Collectorate
Kanchipuram
6. The Additional Secretary & Mission
Director (JNNURM)
Ministry of Housing & Urban
Poverty Alleviation
Government of India
116-G Wing, Nirman Bhavan
New Delhi 110 108

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to discontinue the ill-conceived JNNURM Project (BSUP) under progress at Perumbakkam Phase I & II by applying 'Precautionary Principle' so that it can be remodeled as a compact project of not more than 5000 houses and identify and acquire various pieces of Government land within and outside the city which may have been under illegal occupation by individuals/others and undertake smaller sustainable R&R projects for the remaining people who may need to be resettled at such pieces of land after undertaking due consultations, socio-economic mapping and after ensuring maintenance of basic services and rehabilitation packages on a continued basis so as to

ensure that constitutional and fundamental rights of the citizens, especially that of vulnerable sections such as women and children are not violated in any manner.

For Petitioner : Mr.J.Saravanavel
For Respondents : Mr.S.T.S.Moorthy
Government Pleader
for R1, 3, 4 & 5
Ms.R.Janaki for R2
Mr.R.Achuthan
SCCG for R6

ORDER

(Order of the Court was made by THE HON'BLE THE CHIEF JUSTICE)

The petitioner claiming to be a social activist seeks to file the present Public Interest Litigation for rehabilitation of slum-dwellers.

2.It may be noticed at the inception itself that there is a Tamil Nadu Slum Clearance Board which deals with the matter in issue under the Tamil Nadu Housing and Urban Development Department and it is not in dispute that the resettlement and rehabilitation schemes have been implemented and are being implemented. A reading of the petition shows that in the view of the petitioner, the said schemes are not planned as the petitioner wanted them to be.

3.However, this is a matter purely within the policy domain where the elected Government would decide the mode and manner of resettlement and not any individual activist. The petitioner in a nutshell would prefer a more in situ development process of rehabilitation whether the encroachers/slum-dwellers are rehabilitated in the same area rather than in a different area. This, in our view, is once again a matter of policy issue as both the methods are known and whether one is preferred over the other in a given situation is for the authorities to decide. This would also in turn depend on whether alternate land is available for purposes of such rehabilitation.

4.The petitioner has referred to various meetings held and the minutes of High Level Committee meetings to submit that the Government itself realises the problem of a large scale rehabilitation in one area as it poses both law and order problems and the issue of requisite facilities.

5.Counter affidavits have been filed by the respondents. The Housing and Urban Development Department/third respondent in it's affidavit states that the matter pertains to rehabilitation of slum families living in objectionable locations like water-course, poramboke, etc., which cannot be improved in situ alone and the shifting has to be to non-objectionable areas. In furtherance of this objective, construction of 44,870 tenements in Chennai, Madurai and Coimbatore was taken up as part of the Jawaharlal Nehru National Urban Renewal Mission and the resettlement schemes at Kannagi Nagar and Semmencheri are two such schemes within the Chennai City. There is of course a dispute about the quality of rehabilitation

petitioner seeks to paint a grim picture, while on the other hand the respondents submit that all necessary facilities are available like electricity and water and not only that, separate anganwadi centres are provided and education facilities at all levels are available and even private schools and private colonies have come up in large numbers in the same area with adequate transport services. The tenements constructed by the Tamil Nadu Slum Clearance Board are keeping in mind the spaces available and the plinth area of the tenement is 390 sq. ft. with the hall, bed room, kitchen alcove, balcony, separate bath and toilet. Each block is to have a lift with all backup generator facilities, firefighting equipment as per norms and each block is divided into two with twelve tenements in one floor for better ventilation.

6. Learned Government Pleader has also brought a set of photographs to show the situation at site. A perusal of the photographs in fact shows that really what is required to be done is for the tenement occupants to maintain the area better with some element of civic sense. The existence of various facilities including ration shop, ICDS, primary schools, higher secondary schools are all quite apparent along with the bus stops in the area. The issue also is as to whether the occupants of these tenements can be said to be better off than where they were earlier living? In our view, the answer to the same is in the negative.

7. Three sets of tenements have already come up and the fourth set is under construction now. This is stated to be the biggest one. It serves no purpose to stall the construction of these tenements which are to be utilised for rehabilitation.

8. The affidavit filed by the Tamil Nadu Slum Clearance Board/second respondent also supports the stand of the respondents setting out the amenities and infrastructure facilities. The relevant paragraphs are under:-

"6. I state in respect of paragraphs 7 to 12 of the petition filed by the petitioner are incorrect since the slum clearance board already construction 15656 tenements and now 8046 tenements are under construction at Kannagi Nagar Okkiyakduraipakkam. Most of the building blocks are four storied (ground + 3) and few blocks are two storeyed (ground +1) and three storeyed (ground+2). At Semmenchery 6764 houses were constructed and allotted to Tsunami victims and shelter less poor people. The Semmenchery tenemental scheme is a plotted development scheme with two storeyed (Ground + 1) housing unit measuring an extent of 242 sq. ft. Each comprising a multipurpose hall, separate toilet and bath, hall and kitchen respectively. The following amenities and infrastructural facilities are provided for the welfare of the rehabilitated slum dwellers.

1. B.T Road,
 2. Storm water drain,
 3. Street lights,
 4. Nursery school 8 Nos.
- (it is pertinent to state that spaces is earmarked for three more school)
5. Primary school 1 No.
 6. High School 1 No.
 7. Ration shops 4 Nos.
 8. Convenient shops 45 Nos.
 9. Police outpost (Separate spaces earmarked for Police Station)
 10. 30 bedded Primary Health Centre 1 No.
 11. Community Hall and Vocational Training Centre 4 Nos.
 12. Parks and CPS
 13. Vermi composed shed
 14. Water supply arrangements
 - a) Sump and pump room 1 Million litre capacity
 - b) Public fountains 250 Nos.
 15. Sewage 1.4 MLD
 16. Cremation and buried ground 1 No.
 17. Space reserved for religious & other public purpose 4 Nos."

"9. I state that the amenities provided by the Tamil Nadu Slum Clearance Board such as roads, storm water, drain and street light etc have to be handed over to the local body for future maintenance as per the Government Order. In spite of this the Slum Clearance Board has been maintaining the water supply arrangements and sanitary arrangements since the inception of the scheme shirking the responsibility."

9. It has been further averred that people resettled were not having houses of their own and were living in thatched roof/huts under unhygienic conditions, frequently affected by fire and flood. The very purpose of schemes is to provide care and shelter for people with basic amenities. Insofar as in situ development is concerned, it has been averred that acquiring land within the city limits is a herculean task as there is no vacant land available within the city limits or near the areas which would be soon coming within the Corporation limits. A categorical averment has been made in para 11 "There is no alternate land available nearer to the existing slums. Hence, it is inevitable to resettle the people to provide permanent, pucca shelter to the poor and to make slum free city."

10. The aforesaid material shows that the Government is alive to the need of rehabilitation of slum dwellers through long term schemes. The averment shows that their aim is to have a slum free city with rehabilitation by 2023. We would expect the Government to make all endeavour towards this objective and ensure proper maintenance of the rehabilitated areas with adequate facilities, if they do not already exist. We do feel that the

continuous maintenance of the areas is an important part as otherwise there is deterioration in the construction. Education and employment facilities in nearby areas are also necessary as otherwise it is noticed in different parts of the country that the people hand over/sell the tenements to come back to original locations if they are unable to get bread and butter near the rehabilitated areas. If there are certain thought processes within the Government enriched by the past experience of rehabilitation as has been pointed out by the learned Counsel for the petitioner, they would certainly form material for on-going future rehabilitation.

11. We thus dispose of the writ petition in the aforesaid terms. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar (CS-II)
Dated: 03.09.2014

//True Copy//

K. Kannappan
For Sub Assistant Registrar
9/9/2014

nsv
To:

1. The Chief Secretary
Government of Tamilnadu
Secretariat, Chennai 600 009
2. The Managing Director
Tamilnadu Slum Clearance Board
Chennai 600 005
3. The Secretary to Government
Department of Housing & Urban
Development
Chennai 600 009
4. The Secretary to Government
Home Department
Secretariat, Chennai 600 009
5. The District Collector
Kanchipuram Collectorate
Kanchipuram
6. The Additional Secretary & Mission
Director (JNNURM)
Ministry of Housing & Urban
Poverty Alleviation
Government of India
116-G Wing, Nirman Bhavan
New Delhi 110 108

- + 1 cc to M/s. J. Saravenavel, Advocate SR.39339
- + 1 cc to M/s. R. Achuthan, Advocate Sr.39321
- + 1 cc to Government Pleader Sr.39348

WP No.6039 of 2011

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