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In the High Court of Judicature at Madras

Dated : 25.6.2018

Coram :

The Honourable Mr. Justice T.S. SIVAGNANAM

Review Application No.110 of 2015 in W.P.No.3637 of 2011

1. The Divisional Engineer (H),
Chennai Metropolitan Plan,
Division-1, No.78, Real
Diamond Buildings, Anna
Salai, Guindy, Chennai-32.
2. The Special Deputy Collector (LA),
Tamil Nadu Urban Development
Project III, No.15, M.G.Nagar
Main Road, Chennai-56.
3. The Assistant Divisional Engineer,
CMDP, Division No.1, Guindy,
Chennai-32.

...Applicants

Vs

A.Kalasha

...Respondent

REVIEW APPLICATION under Order XLVII Rule 1 read with Section 114 of the Civil Procedure Code against the order dated 10.8.2011 made in W.P. No.3637 of 2011.

Writ Petition filed under Article 226 of the constitution of India for issue of mandamus to forbearing them from demolishing the petitioner's building namely house and ground bearing premises No. 75, Medavakkam Main Road, Surendar Nagar, Adambakkam, Chennai 600 088.

For Applicants : Mr.R.P.Pratap Singh, GA
For Respondent : Mr.V.Kannan

ORDER

Heard both.

2. This review application has been filed by the applicants seeking to review the order and direction issued in W.P.No.3637 of 2011.



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3. The said writ petition was filed by the respondent herein/writ petitioner seeking to forbear the applicants herein from demolishing his building, which is a house property situated at door No.75, Medavakkam Main Road, Surendra Nagar, Adambakkam, Chennai-88. The writ petitioner's case was that he purchased the property by a registered sale deed dated 30.6.2006 and that he has been in possession ever since the date of purchase. The revenue records were mutated by the Adambakkam Municipality and the town survey field register revealed the name of the writ petitioner as the registered holder of the said property.

4. While so, it was alleged that the applicants herein attempted to demolish the writ petitioner's property based upon the notice issued by the second applicant herein dated 20.11.2009 stating that the land was required for the purpose of road widening. This Court, while entertaining the writ petition, granted an order of status quo on 15.2.2011. A counter was filed, which appeared to have been not well drafted and bereft of particulars. On perusal of the averments set out therein, this Court came to the conclusion that the applicants herein cannot dispossess the petitioner from the property in question without resorting to the procedure established by law. Only on that ground, the writ petition was allowed making it clear that it was open to the applicants herein to proceed in accordance with law after issuance of notice to the writ petitioner.

5. The review application has been filed contending that the notice under Section 15(2) of the Highways Act was served on the writ petitioner, that he was given an opportunity to appear for an enquiry on 30.12.2009, that the writ petitioner lodged his objections, that the objections forwarded to the Highways Department were ultimately rejected and that the Government issued a Government Order in G.O.Ms.No.268 dated 13.8.2010 under Section 15(1) of the said Act acquiring the land in question for widening the road.

6. It is further contended that even though the writ petitioner's name was not found in the town survey field register, the notice was issued to him and he also received the same. Further, the writ petitioner appeared for the enquiry, lodged his objections and an opportunity was given to the petitioner.

7. These facts, which are now pointed out before this Court in this review application, were not placed before this Court when the writ petition was heard. Thus, if the averments set out in the grounds of revision are found to be correct, then this Court will have to decide as to whether those facts were suppressed at the time of filing the writ petition by the writ



petitioner. Hence, the writ petition should be heard afresh and the order dated 10.8.2011 requires to be recalled.

8. In the result, the review application is allowed and the order passed in W.P.No.3637 of 2011 dated 10.8.2011 is recalled and is accordingly set aside. The writ petition is restored to the file of this Court with a direction to the review applicants/respondents in the writ petition to file a comprehensive counter affidavit and contest the matter on merits.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

- 1.The Divisional Engineer (H),
Chennai Metropolitan Plan,
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CMDP, Division No.1, Guindy,
Chennai-32.

Copy to

The Section officer
VR Section, High Court, Madras 104

+1 CC to Mr.V. Kannan, Advocate sr 34843.

Rev.Appln.No.110 of 2015
in W.P.No.3637 of 2011

KS(CO)
SP(05/07/2018)