

In the High Court of Judicature at Madras

Dated: 11.06.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.16554 of 2015 and
M.P.No.1 of 2015

D.Ramamoorthy

..Petitioner

Vs.

1. The Commissioner
Kancheepuram Municipality,
Kancheepuram

2. The Tahsildar,
Kancheepuram Taluk,
Kancheepuram.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, calling for the records in Na.Ka.No.4778/2014/F2 dated 18.05.2015 on the file of the 1st Respondent and quash the same and consequently direct the 2nd Respondent to issue patta based on the G.O.Ms.No.854 Revenue Department dated 30.12.2006.

For Petitioner : Mr.B.Manoharan

For Respondent
No.1 : Mr. G.B.Rajesh

For Respondent
No.2 : Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

O R D E R

[Order of the Court was Delivered By
M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records of

the Notice in Na.Ka.No.4778/2014/F2 dated 18.05.2015 on the file of the 1st Respondent/Commissioner, Kanchipuram Municipality, Kanchipuram and to quash the same. Further, he has prayed for passing of consequent order by this Court in directing the 2nd Respondent/Tahsildar, Kancheepuram Taluk, Kancheepuram to issue patta based on G.O.Ms.No.854 Revenue Department dated 30.12.2006.

2.With the consent of both sides, the main Writ Petition itself has been taken up for final disposal.

3.According to the Petitioner, he hails from a poor family running his life from and out of the income in the petition mentioned tea stall run by him and further he is residing there itself. Further more, he is residing at the same premises for more than three decades, considering the fact that the area occupied by him is only 400 Sq.Ft. and in fact the 1st Respondent/Commissioner, Kancheepuram Municipality, Kancheepuram had assessed the property tax and he is also paying property tax as early as from the year 1989-1990 till date.

4.It is the case of the Petitioner that he was provided with electricity service connection during the year 1990 and also a family card was issued to him from the year 1993. Moreover, the 2nd Respondent/Tahsildar, Kancheepuram had also issued a residence certificate in favour of his son on 20.11.1995. Also a Voter Identity Card was issued in his favour in the said address. However, in the year 2004-2005 he lived with his son at T.Nagar, Chennai - 17 for a shorter duration so as to assist him in his xerox shop and resettled in the said address.

5.The Learned Counsel for the Petitioner submits that the Petitioner approached the 2nd Respondent/Tahsildar, Kancheepuram Taluk, Kancheepuram for issuance of Patta in terms of ingredients of G.O.Ms.No.854 Revenue Department dated 30.12.2006 as early as 2007 onwards and all his efforts proved futile. Moreover, it is represented on behalf of the Petitioner that the 1st Respondent/Commissioner, Kancheepuram Municipality, Kancheepuram had issued notice dated 18.05.2015 in person on 03.06.2015 in a selective manner directing them to vacate the place on the ground of traffic problem. Moreover, the Authorities had issued Notice to the selective residents on their street and infact, the Petitioner approached in person and showed all the documents to prove his possession for more than three decades, but, the Respondent officials orally informed that as per oral instruction of some political persons notice was issued and advised him to approach a Court of Law.

6.The primordial stand of the Learned Counsel for the Petitioner is that the notice dated 18.05.2015 issued by the 1st

Respondent is an Illegal, Arbitrary and Unconstitutional one.

7.The Learned Counsel for the Petitioner projects an argument that the 2nd Respondent/Tahsildar, Kancheepuram Taluk, Kancheepuram had failed to note that he himself had issued Residence Certificate in the year 1995, but, failed to issue Patta to the Petitioner as per Government Order.

8.Yet another argument advanced on behalf of the Petitioner is that the 1st Respondent/Commissioner, Kancheepuram Municipality, Kancheepuram had failed to note the fact that the Petitioner is occupied only about 400 Sq.Ft., for more three decades and without causing any kind of inconvenience to the public or to the traffic and without considering the Government Order mechanically at the behest of some political persons had issued Impugned Notice dated 18.05.2015.

9.Per contra, it is the submission of the Learned Special Government Pleader for the 2nd Respondent that the petitioner had put up a building measuring an extent of 6.6 mtr x6.7mtr = 44.22 Sq.Mtr. at Ward No.3, Block No.1289, Pilyar Palayam Krishnan Street, causing obstruction to the traffic and public by encroaching the same and infact, he was required to remove the offending building / construction within 15 days from the date of receipt of the Notice. He was further informed that if he fail to remove the offending building as per Section 339 of Tamilnadu District Municipalities Act with the assistance of Municipality office employees, the same would be removed and the cost incurred there on would be recovered in terms of ingredients of Section 340 (1) of the Tamilnadu District Municipalities Act from the Petitioner and also as per Rules before the Court of Law, a case would be filed.

10.At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner on 09.08.2007 had addressed a Representation to the 2nd Respondent/Tahsildar, Kancheepuram Taluk, Kancheepuram praying for issuance of Patta in terms of G.O.No.854 Revenue Department dated 30.12.2006 in respect of his residence at 3A/5A, Krishnan Street, Pillayarpalayam, Kancheepuram.

11.It cannot be gainsaid that the Petitioner cannot encroach an extent of 44.22 Sq.Mtr., by putting up a building within Municipal Limits in Ward No.3, Block No.1289, Pilyar Palayam Krishnan Street, disturbing traffic and causing inconvenience to the Public and therefore in the considered view of this Court, he was rightly issued with the Impugned Notice dated 18.05.2015 by the 1st Respondent/ Commissioner, Kancheepuram Municipality, Kancheepuram (Although the said notice was purportedly received on

03.06.2015 by the Petitioner) and the same does not call for any interference because of the reason that there is no infirmity or irregularity or patent illegality in the Eye of Law. Viewed in that perspective the Writ Petition fails.

12. In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. Consequently connected Miscellaneous Petition is closed. Before parting with the case, this Court very pertinently points out that the Petitioner claims that he belongs to a poor family and he is a hapless person having no land even for house site. As such, this Court in the interest of Equity, Fair Play Justice, Good Conscience and even as a matter of prudence directs the Concerned Authorities to take into sympathetic consideration the plight of the Petitioner and to explore the possibility of providing an alternate site to him atleast for his basic need of shelter. This exercise by the Concerned Authorities can be undertaken by them in a humane fashion and also in a dispassionate manner, untrammelled and uninfluenced with any of the observations made by this Court in this Writ Petition.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ssd

To

1. The Commissioner
Kancheepuram Municipality,
Kancheepuram

2. The Tahsildar,
Kancheepuram Taluk,
Kancheepuram.

1 cc to Mr.G.B.Rajesh , Advocate Sr.No.28203
2 cc to Mr. B.Manoharan, Advocate Sr.No.28298
1 cc to Government Pleader.Sr.No.28450

W.P.No.16554 of 2015 and
M.P.No.1 of 2015

svi(co)
pmk.24.6.2015