

In the High Court of Judicature at Madras

Dated: 12.02.2015

Coram:

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

W.P.No.3636 of 2015

P.Chinnaiyan @ Venkatesan .. Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Secretariat,
Chennai-600 009.

2.The Director,
Town and Country Planning,
Anna Salai,
Chennai-600 002.

3.The Deputy Director,
Town and Country Planning,
Sathuvachari,
Vellore District.

4.The Executive Officer,
Selection Grade Panchayat,
Sholinghur,
Vellore District.

5.V.P.Nagaraj

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Mandamus, directing the Respondents 1 to 3 to entertain the implead petition dated 23.12.2014 filed by the Petitioner and hear the same on merits and thereby dispose of the main appeal dated 09.09.2014 presented by the fifth Respondent which is pending on the file of the Respondents 1 to 3 immediately.

For Petitioner : Mr.B.Gopala Krishnan

For Respondent : Mr.P.S.Siva Shanmugasundaram
Nos.1 to 4 Special Government Pleader

O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioner has preferred the present Writ Petition praying for passing of an order by this Court in directing the Respondents 1 to 3 to entertain the impleading petition dated 23.12.2014 filed by him and to hear the same on merits and thereby to dispose of the main Appeal dated 09.09.2014 filed by the Fifth Respondent.

2.According to the Learned counsel for the Petitioner, the Third Respondent/Deputy Director, Town and Country Planning, Sathuvachari, Vellore District is purposely refusing to take on file the impleading petition dated 23.12.2014 filed by him and further, the Fifth Respondent taking advantage of the interim order of the status-quo is continuously prolonging the appeal proceedings according to his own whims and fancies.

3.In effect, the plea projected on the side of the Petitioner is that unless his impleading petition dated 23.12.2014 is allowed, the appeal filed by the Fifth Respondent cannot be disposed of. Therefore, it is just and necessary that the present Writ Petition filed by him seeking for passing of an order by this Court in directing the Respondents 1 to 3 to entertain his impleading petition dated 23.12.2014 is to be allowed by this Court to prevent aberration of justice and in furtherance of substantial cause of justice.

4.Earlier, Petitioner had filed Public Interest Litigation in W.P.No.22693 of 2014 against the District Collector, Vellore District and other authorities, seeking a relief of Mandamus in directing the Respondents 1 to 4 to consider his representation dated 05.06.2014 and to direct the Respondents 1 to 4 therein to demolish the unauthorised construction put up by the Fifth Respondent in Survey Nos.645/2B, 645/1A, Plot Nos.31, 32, 26, 27, Annadhana Chathiram Road, Kondapalayam, Sholinghur Village, Vellore District immediately.

5.This Court on 21.08.2014 in the Writ Petition (in W.P.No.22693 of 2014) in para 2 had passed the following order:

" ..2.The representation of the petitioner dated 05.06.2014 against the alleged unauthorised construction by respondent No.5 is directed to be disposed of by the respondents 1 to 4, within one month from today, by a speaking order and after notice to all concerned parties and in case, any infraction is found and the allegations are correct, to take action in accordance with law, within a period of two months thereafter."

6.Since no fruitful action was taken by the authorities concerned (notwithstanding the fact that the copy of the order dated 21.08.2014 in W.P.22693 of 2014 was communicated to the concerned authorities), the Petitioner issued a contempt notice which was acknowledged by the authorities and later, projected Contempt Petition No.3013 of 2014 before this Court and in view of the fact that, one of the parties had challenged the notice before this Court and obtained interim orders in W.P.No.26214 of 2014 dated 25.09.2014, the contempt was closed as not maintainable on 06.11.2014.

7.When that be the fact situation, it appears that the Writ Petition filed by the Fifth Respondent (in W.P.26214 of 2014 as Petitioner) was disposed of by this Court on 25.09.2014 with the following observations:

"... 4.Since the appeal as stated above is still pending, this Writ Petition cannot be entertained. However, the first respondent is directed to consider the appeal filed by the petitioner dated 09.09.2014 and pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. As the stay petition is also pending, which is maintainable under Section 80-A (3) of the Tamil Nadu Town and Country Planning Act, 1971, the first respondent is directed to pass orders in the stay petition, within a period of two weeks from today. Till orders are passed in the stay petition, status-quo as on today shall be maintained by both the parties.

5.The writ petition is disposed of with the above direction."

8.The main grievance of the Petitioner is that the Fifth Respondent had never obtained any planning permission to construct Kalyana Mandapam in the property in question and in fact, he has put up unauthorised construction without obtaining any planning

permission or approval from the Competent Authority and therefore, he is causing inconvenience to the public.

9. At this juncture, the Learned counsel for the Petitioner submits that the Petitioner presented his impleading petition dated 23.12.2014 in person and also through registered post to the Respondents 1 to 3 and further, that the Third Respondent/Deputy Director, Town and Country Planning, Sathuvachari, Vellore District (Appellate Authority) had refused to entertain his impleading petition in the 'Appeal' dated 09.09.2014 filed by the Fifth Respondent before the First Respondent under Section 80 A(3) of the Tamil Nadu Town and Country Planning Act, 1971 which was forwarded to the Third Respondent.

10. The Pith and Substance of the contention of the Petitioner is that the Third Respondent is purposely refusing to entertain his impleading petition dated 23.12.2014 and in reality, the said impleading petition is not taken on file as on date by the Third Respondent. Besides that, the categorical stand of the Petitioner is that the Fifth Respondent in his writ petition in W.P.No.26214 of 2014 on 25.09.2014 had obtained an order of status quo till the disposal of the stay petition and in fact, the stay petition was directed to be disposed of within a period of two weeks from 25.09.2014. Since the appeal proceedings are prolonged by the Fifth Respondent by taking advantage of the interim order of status quo which was directed to be maintained by both parties as per order dated 25.09.2014 in W.P.26214 of 2014, the Petitioner has come forward with the filing of the present Writ Petition.

11. At this stage, it is to be borne in mind that the criteria for impleadment cannot depend merely on the question whether the concerned person has an interest in the subject matter in issue and further, if he is not impleaded, then the right of the person would be affected. Also that in any pending 'Lis' before the concerned Authority, an application/petition for impleadment of a third party if it would enlarge the scope and ambit of dispute between the parties then, such person cannot be added.

12. That apart, if in pending 'Appeal proceedings' or in any given proceedings, if a prospective litigant prays for impleadment and even in his absence, if the 'Appeal' or 'pending proceedings' can be disposed of, then he need not be added because of the reason that to add a person as one of the parties or impleading him in a pending proceedings is not a 'substantive right' conferred on the said individual but 'one of procedure' and in this regard, a Court of Law is to exercise its subjective discretion by applying its judicial thinking mind.

13.It is to be noted that a person who has no direct interest in the subject matter in issue cannot be added as a party. If a person is neither a necessary nor proper party to effectively and completely adjudicate the issues concerning the pending proceedings like an appeal or so then, he cannot be added on any score. Also that, when the participation of a person in a pending appeal proceedings is not likely to serve any purpose, then the plea for impleadment must be disallowed as opined by this Court.

14.Coming to the aspect of 'Mandamus', its main function is to compel action. It neither creates nor confers power to act. To put it simply, it commands the exercise of power already existing when it is the duty of a person or authority to proceed against to act. It cannot be gainsaid that while Mandamus may require performance of duty, its command is never to act in a particular manner. Also that, the Mandamus cannot be used to substitute the judgment or discretion of Court for the authority against whom it is issued. In substance, Mandamus is a personal action and rest on the assumed fact that the concerned authority has neglected or refused to perform his duty, the performance of which is the right of the applicant.

15.At this stage, it cannot be forgotten that a 'Court of Law' cannot take a decision which in law is required to be taken by a statutory authority. Writ of Mandamus may be issued in favour of a person who establishes a legal right himself. A relief of Mandamus is not granted as of right and it is not issued as a matter of course. In short, the existence of legal right and an obligation of public authority to fulfill the same on the date of petition or the conditions precedent to seek the relief of Mandamus. Moreover, a Court of Law shall not issue direction to do something contrary to law. Even where an application is premature, for example, where no action contrary to law has yet been proposed or done, a relief of Mandamus can be refused.

16.It is not in dispute that the 'Appeal' dated 09.09.2014 filed by the Fifth Respondent is pending on the file of the Third Respondent/Appellate Authority. Also, one cannot brush aside a primordial fact that on 25.09.2014, this Court in W.P.No.26214 of 2014 had inter-alia directed the First Respondent therein to pass orders in the stay petition (filed under Section 80 A(3) of the Tamil Nadu Town and Country Planning Act, 1971) within a period of two weeks from today etc., and further, observed that till orders are passed in the stay petition, status quo as on 25.09.2014 was directed to be maintained by both parties.

17.Be that as it may and in view of the foregoing detailed qualitative and quantitative discussions, this Court is of the considered view that the Petitioner is not entitled to file the present Writ Petition before this Court seeking the relief of Mandamus praying for passing of an order by this Court to direct the Respondents 1 to 3 to entertain his impleading petition dated 23.12.2014 because of the reason that he cannot be construed either to be an affected or aggrieved person pertaining to the pending 'Appeal proceedings' dated 09.09.2014 before the Third Respondent/Appellate Authority filed by the Fifth Respondent. Moreover, in the pending appeal dated 09.09.2014 filed by the Fifth Respondent before the Third Respondent, the present Petitioner (in W.P.3636 of 2015) cannot be construed either as a proper or necessary party for an effective and efficacious disposal of the Appeal in question. In short, he is only a stranger/alien to the pending appeal proceedings dated 09.09.2014 filed by the Fifth Respondent. To put it succinctly, the Petitioner has no locus to file the impleading petition dated 23.12.2014 in the pending appeal dated 09.09.2014 filed by the Fifth Respondent. As such, it is for the concerned authority to pass an appropriate order in this regard after exercising his discretion based on the facts and attendant circumstance to the case. Viewed in that perspective, the impleading petition and also the present Writ Petition lack bona fides, in the considered opinion of this Court. Accordingly, the Writ Petition is devoid of merits and it fails.

18.In the result, the Writ Petition is dismissed leaving the parties to bear their own costs.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

DP

To

1.The Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Secretariat,
Chennai-600 009.

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2.The Director,
Town and Country Planning,
Anna Salai,
Chennai-600 002.

3.The Deputy Director,
Town and Country Planning,
Sathuvachari,
Vellore District.

4.The Executive Officer,
Selection Grade Panchayat,
Sholinghur,
Vellore District.

1 cc to Mr.B.Gopalakrishnan, Advocate, sr. 8040

W.P.No.3636 of 2015

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kk 3/3



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