

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.Nos.13864 of 2012 & 32544 of 2014
& M.P.Nos.2 of 2012 & 1 of 2014

W.P.Nos.13864 of 2012

Go. Atheyaman

... Petitioner

Vs.

1. The District Revenue Officer,
Dharmapuri.
2. The Revenue Divisional Officer,
Dharmapuri.
3. The Tahsildhar, Dharmapuri.
4. M.G.Kannan
Salem South, Salem,
Salem District.

... Respondents

W.P.No.32544 of 2014

Vallalar Illam
Registration No.5/67,
Represented by its Secretary
Mr.M.G.Kannan @ P.G.S.Kannan,
No.4/300, B.P.Chari Gardens,
Kurinji Nagar, Nallampalli Via.,
Dokkubothna Halli P.O.,
Dharmapuri-636 807.

... Petitioner

Versus

1. The District Social Welfare Officer,
Dharmapuri District.

WEB COPY

2. The Tahsildar,
Dharmapuri Taluk,
Dharmapuri District.

3. Go.Athiyaman

... Respondents

Petition in W.P.No.13864 of 2012 filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records in Proceedings No.Ni.Mu.3999, dated 30.03.2004 on the file of the third respondent and of the 2nd respondent in D.Dis.52/08 (A-1) dated 18.12.2009 and of the 1st respondent in Na.Ka.No.3981/2010 (u.2) dated 28.01.2012 and quash the same as illegal, incompetent and unconstitutional.

Petition in W.P.No.32544 of 2014 filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records which culminated in issuing the proceedings in Na.Ka.No.16259/2014/B4 dated 19.09.2014 on the file of the second respondent, quash the same and consequently, direct the second respondent to renew/grant building licence for the Vallalar Manavar Destitute Home situated in the land comprised in Survey No.566/2B and 598/A1 of Palayampudur Village, Dharmapuri Taluk and District within a time to be stipulated by this Court.

For Petitioner in : Mr.V.Raghavachari
W.P.13864 of 2012

For Petitioner in : Mr.T.Sellapandian
W.P.32544 of 2014

For respondents in : Mr.S.Pattabiraman,
W.P.No.13864 of 2012 Government Advocate for R1 to R3

Mr.T.Sellapandian for R4

For respondents in : Mr.S.Diwakar,
W.P.No.32544 of 2014 Additional Government Pleader for
R1 & R2

Mr.V.Raghavachari for R3

COMMON ORDER

It appears that there is a dispute between two brothers. W.P.No.13864 of 2012 has been filed by the petitioner, who is the third respondent in W.P.No.32544 of 2014, challenging the order passed by the Tahsildar, Dharmapuri, refusing to issue joint patta in his name and the fourth respondent. W.P.No.32544 of 2014 has been filed by the petitioner challenging the order passed by the second respondent and for a consequential direction to renew the building licence in view of the pendency of W.P.No.13964 of 2012. Thus, both the writ petitions have been taken up together and disposed of by way of this common order.

2. Mr.V. Raghavachari, the learned counsel appearing for the petitioner in W.P.No.13964 of 2012 and the third respondent in W.P.No.32544 of 2014, submitted that the order passed by the Tahsildar is one without notice. The Tahsildar has passed the order dated 11.12.2009 refusing to issue joint patta to the brothers by concluding that the Will, based on which the fourth respondent claimed a right, was registered and there is no contra evidence to hold that the Will is not genuine. He further submitted that the other sisters of the petitioner have not been heard while passing the order dated 11.12.2009. Thus, the order impugned has to be set aside.

3. Mr.T.Sellapandian, learned counsel appearing for the petitioner in W.P.32544 of 2014 and the fourth respondent in W.P.No.13864 of 2012, submitted even as per the impugned order, the petitioner is in possession of the destitute home. The learned counsel further submits that renewal of building licence is mandatory to get the grand-in-aid and it has nothing to do with the pendency of writ petition. As regards the hearing of one of the other legal heirs is concerned, one sister and her husband have no objection for grant of renewal of building licence. The fourth respondent has belatedly filed the appeal before the District Revenue Officer, Dharmapuri against an order passed in the year 2004. The refusal of grant of joint patta is therefore correct and it does not call for any interference by this Court. It is for the petitioner to approach the civil Court. Therefore, the learned counsel for the petitioner prayed for allowing the writ petition.

4. On a perusal of the order passed by the District Revenue Officer, Dharmapuri, dated 28.01.2012 it is clear that the other legal heirs, who are sisters of the petitioner and the fourth respondent, have not been heard. It is the specific case of the petitioner in W.P.No.13864 of 2012 that his name also has to be included in the patta in respect of the destitute home. While so, in all fairness, the District Revenue Officer, Dharmapuri, ought to have issued notice to the fourth respondent and other legal heirs before passing the order of rejection. On that ground, the order impugned

dated 28.01.2012 is set aside and the writ petition in W.P.No.13864 of 2012 is allowed. The first respondent is directed to issue notice to all the legal heirs, including the sisters of the petitioner and the fourth respondent. The entire process shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

5. In view of the order passed in W.P.No.13864 of 2012 and the submissions made by both the counsel, the order impugned in W.P.No.32544 of 2014 is also set aside and the same is allowed. However, the first respondent is directed to issue order renewing the building licence in favour of the institution, as there is no objection by the writ petitioner in W.P.No.13864 of 2012 for allowing W.P.No.32544 of 2014. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Revenue Officer,
Dharmapuri.
- 2.The Revenue Divisional Officer,
Dharmapuri.
- 3.The Tahsildhar,
Dharmapuri.
- 4.The District Social Welfare Officer,
Dharmapuri District.

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.46915

+lcc to Mr.T.Sellapandian, Advocate, S.R.No.47178

+1 cc to Mr.T.Sellapandian, Advocate, sr.47179 (28/09/2015)

W.P.Nos.13864 of 2012 & 32544 of 2014

EV(CO)

CA(23/09/2015)