

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE R.SUBBIAH

WP.No.24462 of 2015
and
M.P.Nos.1 and 2 of 2015

Srinivasan,
S/o.Thiruvenkadam,
163, GST Road, Guduvanchery,
Kancheepuram District

... Petitioner

Vs

1. The District Collector,
Kancheepuram
2. The Executive Engineer,
Public Works Department,
Kancheepuram.
3. The Deputy Director Town Planning,
Chengalpattu.
4. The Executive Officer,
Nandhivaram,
Guduvanchery Town Panchayat,
Kancheepuram
5. Mahesh, S/o. Deivasigamani
60, Periyar Ramasamy Street,
Guduvanchery, Kancheepuram

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of certiorarified mandamus to call for the records on the file of the first respondent in proceedings No.28281/2013/A1 dated 13.05.2015 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondent not to permit conversion of agricultural land for commercial purposes.

For Petitioner : Mr.V.Raghavachari
For Respondents 1 to 3 : Mr.S.V.Durai Solaimalai
Additional Government Pleader
For Respondent-4 : Mr.N.Srinivasan
For Respondent-5 : No Appearance

O R D E R

The Writ Petition has been filed seeking to call for the records on the file of the first respondent in proceedings No.28281/2013/A1 dated 13.05.2015 and quash the same as illegal.

2. The case of the petitioner is that he is the owner of the property in Survey Nos.57/2 and 65/1A of Guduvanchery, Madampakkam Road. He is cultivating in the said land and derives his income. The fifth respondent is the owner of the property in Survey No.63/1B2 and he got the property by way of a settlement deed, executed by his parents. The said property is located on the South of the petitioner's land.

3. The further case of the petitioner is that the Guduvancherry lake is separated from the petitioner's land by a road and the property of the fifth respondent. Survey No.63/1B over which commercial structure is sought to be raised belong to the fifth respondent. The adjoining property belong to the petitioner in Survey Nos.65/1A and 57/2. A water channel is located on the either side of the road. As soon as the sluice is open, water flows through the channel to the petitioner's land and it is the primary source of irrigation. While so, the fifth respondent herein without obtaining permission for conversion of wet lands into housing site, had attempted to put up structure. Hence, the petitioner lodged a complaint and also filed a Writ Petition No.20738 of 2013 before this Court and the same is pending consideration. While so, the District Collector passed the impugned order, thereby granted 'no objection certificate' for conversion of agricultural land for commercial purposes. According to the petitioner, no enquiry was conducted inviting the agriculturalist to offer their opinion; Unfortunately, no safeguards had been made for free movement of water from the channel to the agricultural lands; The District Collector failed to appreciate that the Writ Petition is already pending on the very same subject and ought to have awaited its result; Already, agricultural operations have become tough due to failure of monsoon, expansion of cities

and lesser number of persons available for doing agricultural work; the State is under obligation to redeem the life of the farmers; the District Collector has passed the impugned order without securing the opinion of the Town and Country Planning authorities & had the authorities been heard, there would have been a likelihood of the planning authorities hearing the affected parties in turn. Hence, the petitioner has come up with the present Writ Petition to quash the impugned order passed by the District Collector.

4. In the counter affidavit filed by the third respondent, in paragraphs 4 and 5, it has been stated as follows:-

4."It is submitted that the Director of Town and Country Planning, Chennai vide Roc.No.24935/10 GR dated 07.03.2011 while insertion of new Sec.47 (A) (copy enclosed) in the Tamilnadu Town and Country Planning Act, 1971 with regard to conversion of wet land into other purposes, the following guidelines reads as follows.

The Government has amended the Tamilnadu Town and Country Planning Act, 1971 which came into effect on the 1st day of January 2011 by inserting a new Section 47(A) to control the development of land in an area other than planning area and sub Section (3) of the said section enables for prior concurrence of the District Collector while converting wet land into other uses. Also, Sub Section (3) provides for prescribed guidelines to be framed for this purpose."

In this regard, the following guidelines have been suggested by this department while shall be followed while according concurrence for conversion of wet land.

5. It is submitted that inspection to be made by the District Collector with Regional Deputy Director and other officials as the Collector deems necessary and give his / her inspection report.

(i) The Surrounding development around the proposed site has to be taken into consideration.

(ii) Details on the assured irrigation source / ayacut.

(iii) Present status of cultivation and

for how long cultivation is not being carried out.

(iv) It should be ensured that due to forming of layout or construction of buildings, the irrigation canals and distribution channels are not obstructed and affected. Thereby depleting ground water level, inundation of nearby areas, problems of sanitation and waste water disposal does not arise.

5. The learned counsel for the petitioner has invited the attention of this Court to the fact that while issuing the 'No Objection Certificate', the District Collector has imposed a condition in Clause II, stating that if any objection is received, the 'No Objection Certificate' issued to the fifth respondent would be cancelled. In this regard, the learned counsel for the petitioner submitted that the petitioner has already given an objection dated 15.07.2013. Since the said objection was not considered, the petitioner filed a Writ Petition No. 20738 of 2013 before this Court and the same is pending consideration. In such circumstances, the District Collector ought to have given an opportunity to the petitioner and other agriculturalist and thus, he sought for setting aside the impugned order.

6. Though notice was served to the fifth respondent and his name also appears in the cause list, he has not chosen to appear before this Court either in person or through a counsel.

7. The only contention of the petitioner is that he gave an objection dated 15.07.2013 along with other agriculturists and since the same was not considered, he filed a Writ Petition in W.P.No.20738 of 2013 and pending the same, the impugned order has been passed and hence the same is liable to be quashed.

8. Since the grievance of the petitioner is that the impugned order has been passed without hearing the petitioner and the other agriculturalists, I am of the opinion that the matter could be remitted back to the second respondent for passing orders afresh after hearing the petitioner and other agriculturalists including the fifth respondent.

9. In view of the same, the impugned order is set aside and the matter is remitted back to the second respondent for passing orders afresh on merits and in accordance law, after hearing the petitioner and other agriculturalists including the fifth respondent within a period of six weeks from the date of receipt of a copy of this order.

10. With the above direction, the Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srn

To

1. The District Collector,
Kancheepuram
2. The Executive Engineer,
Public Works Department,
Kancheepuram.
3. The Deputy Director Town Planning,
Chengalpattu.
4. The Executive Officer,
Nandhivaram,
Guduvanchery Town Panchayat,
Kancheepuram.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.6779
+1cc to Mr.N.Srinivasan, Advocate, S.R.No.6251
+1cc to the Government Pleader, S.R.No.6547

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and

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RV(CO)
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