

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.08.2016

Coram:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.P.Nos.30264 of 2015

and

M.P.No.1 of 2015

Sobha Limited (formerly known as Sobha Developers Ltd.)
A Public Limited Company
Having Regional Office at
5th Floor, 'Polyhose Towers'
Formerly SPIC Annexe Buildings
Door No.86-88, Anna Salai
Guindy, Chennai-32, represented by its
Senior Manager Legal : M. Sudhakar ... Petitioner

Vs

1.The District Collector-cum-Inspector of Panchayats, Kancheepuram.
2.Mammallapuram Local Planning Authority
Represented by its Member Secretary
Shopping Complex, Five Rathas Road
Mammallapuram, Kancheepuram District.
3.The Block Development Officer (Village Panchayat)
Thiruporur, Kancheepuram District.
4.The President
Pudupakkam Panchayat
Pudupakkam Village, Thiruporur Taluk
Kancheepuram District.
5.The President
Kelambakkam Panchayat, Kelambakkam village
Thiruporur Taluk
Kancheepuram District. ...Respondents

Prayer : This writ petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records of the 5th Respondent vide order, dated 24.8.2015 passed in respect of the development of the lands situated in Survey Nos.261/1A2B and 261/1A2C of Pudupakkam Revenue Village and set aside the same and further direct the 5th Respondent not to proceed further with the final notice, dated 11.7.2015 of the 5th

Respondent till the appeal filed by the petitioner is disposed of by the 1st respondent.

For Petitioner : M/s.R. Subramanian
For Respondents
No.1 to 3 : Mr.V. Jayaprakash Narayanan
For Respondent No.4 : No appearance
For Respondent No.5 : Ms.S.Deepika

O R D E R

Heard the learned counsel, appearing on behalf of the petitioner, as well as the learned counsels, appearing for the respondents.

2.This writ petition has been filed, praying that this Court may be pleased to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 5th Respondent, dated 24.8.2015, in respect of the development of the lands, situated in Survey Nos.261/1A2B and 261/1A2C of Pudupakkam Revenue Village, and set aside the same, and direct the fifth respondent not to proceed with the final notice, dated 11.7.2015, till the appeal filed by the petitioner is disposed of by the 1st respondent.

3.The petitioner company, which is a Public Limited Company, is carrying on business in the field of construction and the development of residential and commercial buildings. The petitioner had purchased the land, in Survey Nos.29/1A2B, 29/1A2C, 261/1A2B and 261/1A2C, measuring about 6 acres in extent.

4.The lands are situated in Pudupakkam Revenue Village, Thiruporur Taluk, Kancheepuram District. The petitioner had purchased the lands in the above mentioned survey numbers by way of a sale deed, dated 8.8.2007, registered as Doc.No.8176/2007, at the Office of the Sub Registrar, Thiruporur. The patta for the entire extent of 6 acres, had been issued to the petitioner, in Patta No.2396, showing that the lands are situated in Pudupakkam Revenue Village. The land tax for the entire extent of 6 acres is being paid to the Village Administrative Officer, Pudupakkam. The lands in question are within the local planning area of Mammallapuram Local Planning Authority.

5.It had been further submitted that, after the purchase of the lands in question, a planning permission had been obtained from the Directorate of Town and Country Planning, Chennai, for the construction of multi-storeyed buildings, vide its order, dated 5.1.2012. The said order had been issued, under the provisions of the Tamil Nadu

Town and Country Planning Authority Act, 1971. The petitioner had also paid the appropriate charges, as per law.

6.The Directorate of Town and Country Planning, Chennai, had directed the petitioner to approach the Mammallapuram Local Planning Authority for obtaining the necessary sanction. The Mammallapuram Local Planning Authority had sanctioned the approved drawing and had also directed the petitioner to gift 60 cents of land to Pudupakkam Village Panchayat, towards the Open Space Reservation Area.

7.Accordingly, the petitioner had executed a gift deed, dated 13.1.2012, registered as Doc.No.328 of 2012, at the Office of the Sub Registrar, Thiruporur. Thereafter, the Member Secretary of Mammallapuram Local Planning Authority had directed the petitioner to remit the infrastructure and amenity charges. On payment of the said charges, the Member Secretary of Mammallapuram Local Planning Authority, had sanctioned the proposed Development and Plan, vide his order, dated 4.7.2012. He had further directed the petitioner to approach the President, Pudupakkam Panchayat, for further course of action.

8.It has been further stated that on collecting the building licence fee, the President of Pudupakkam Village Panchayat had granted the licence, for the construction of the buildings, vide his proceedings, dated 13.7.2012. When the major portion of the construction of the building had been completed and after a lapse of more than two years from the date of the approval granted by the Mammallapuram Local Planning Authority, the President of Kelambakkam Village Panchayat had sent a letter, dated 21.8.2014, stating that the Survey Nos.261/1A2B and 261/1A2C of Sathankuppam, which is a hamlet of Pudupakkam Village, comes under the jurisdiction of Kelambakkam Village Panchayat, and therefore, he had directed the petitioner to comply with Rules 3 and 4 of the Tamil Nadu Panchayat Building Rules.

9.The petitioner had sent a reply, dated 9.9.2014, stating that the building was constructed, based on the approval granted by the Directorate of Town and Country Planning and the Mammallapuram Local Planning Authority, and after paying the necessary fees to Pudupakkam Village Panchayat, as directed by the Mammallapuram Local Planning Authority.

10.The petitioner had also sent a letter, dated 24.9.2014, to the Mammallapuram Local Planning Authority, with regard to the letter issued by the President, Kelambakkam Village Panchayat. The petitioner has also sent a letter, dated 25.9.2014, to the Assistant Director,

Panchayats, Kancheepuram, and has requested him to direct the Pudupakkam Village Panchayat to transfer the funds due to Kelambakkam Village Panchayat. The Assistant Director, vide his letter, dated 27.9.2014, had directed the Block Development Officer, Thiruporur, to enquire into the matter and to submit a report.

11.While so, the President of Kelambakkam Village Panchayat has passed the impugned order, for the demolition of the building in question stating that the construction was unauthorised in nature. The petitioner has also been directed not to occupy or use the premises in question. Further, the President of Pudupakkam Village Panchayat has also issued a letter, dated 17.7.2015, claiming that the land in Survey No. 261 falls within the jurisdiction of Pudupakkam Village, as per the revenue records.

12.In such circumstances, the petitioner had preferred an appeal against the order of the President, Kelambakkam Village Panchayat, dated 11.7.2015, passed under Rule 34(3) of the Tamil Nadu Panchayats Building Rules, 1997, read with Section 205 of the Tamil Nadu Panchayats Act, 1994. The appeal, dated 23.7.2015, had been filed before the District Collector-cum-Inspector of Panchayats, Kancheepuram. The said appeal is pending disposal, on the file of the District Collector, Kancheepuram.

13.In such circumstances, the petitioner has preferred the present writ petition.

14.In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on perusal of the records available, it is noted that there is a dispute between Pudupakkam Village Panchayat and Kelambakkam Village Panchayat, in respect of the portion of the land, in Survey No.261.

15.It is also noted that a direction has been issued, by this Court, in W.P.No.28480 of 2008, by an order, dated 23.11.2009, directing the Secretary to Government, Rural Development Department, Fort St. George, Chennai, to resolve the territorial dispute between the two Panchayats, after obtaining a report from the District Collector, Kancheepuram. A similar order has been passed, by this Court, in W.P.No.30880 of 2015, which is connected with this writ petition, by an order, dated 08.08.2016.

16.It is also noted that the fifth respondent in the present writ petition has issued a Final Notice, on 11.7.2015, under Rule 34 of the Tamil Nadu Panchayats Building Rules, 1997, stating that the petitioner had committed breach of Rules 3 and 4 of the Tamil Nadu Panchayats Building Rules,

1997, by not getting prior permission from Kelambakkam Village Panchayat, for the construction of residential building in the land and property comprised in Survey Nos.261/1A2B and 261/1A2C of Sathankuppam Village, which is a hamlet of Pudupakkam Village Panchayat.

17.It has also been stated that necessary charges had not been paid by the petitioner before the construction of the building in question. It has also been stated that the petitioner shall not occupy and use the premises, in any manner. If the petitioner does not fulfil the requirements of the Rules 3 and 4 of the Tamil Nadu Panchayats Building Rules, 1997, within a period of 15 days from the date of receipt of a copy of the said notice, necessary steps would be taken to demolish the structure, after seizing and sealing of the said premises.

18.Further, by his proceedings, dated 24.8.2015, the fifth respondent has sought the cooperation of the Block Development Officer, Thiruporur Block, Kancheepuram District, for carrying out the necessary steps, as mentioned in the final notice issued by the fifth respondent, dated 11.7.2015.

19.From the records available before this Court, it is noted that there is a dispute, in respect of a portion of the land comprised, in Survey No.261, situated in Sathankuppam Village, which is a hamlet of Pudupakkam Village Panchayat. Though a direction had been given, by this Court, by its order, dated 23.11.2009, in W.P.No.28480 of 2008, the said dispute has not been resolved between the two panchayats.

20.It is also noted that the petitioner in the present writ petition has filed an appeal before the District Collector, Kancheepuram, on 23.7.2015, challenging the final notice issued by the President, Kelambakkam Village Panchayat, dated 11.7.2015.

21.It is not in dispute that the petitioner has obtained the plan permission, from the Directorate of Town and Country Planning, Chennai, vide its order, dated 5.1.2012, under the provisions of the Tamil Nadu Town and Country Planning Authority Act, 1971. The petitioner has also paid the appropriate charges, as per law.

22.The Directorate of Town and Country Planning Authority, Chennai, has further directed the petitioner to approach the Mammallapuram Local Planning Authority, for further sanction.

23.Accordingly, the Mamallapuram Local Planning Authority had sanctioned and approved the drawing and directed the petitioner to gift 60 cents of land, to Pudupakkam

Village Panchayat, towards the Open Space Reservation Area.

24. Based on the said direction, the petitioner had gifted the land, by way of a gift deed, dated 13.1.2012, registered as Doc.No.328 of 2012, at the office of the Sub Registrar, Thiruporur.

25. As per the direction issued by the Member Secretary, Mammallapuram Local Planning Authority, the petitioner had remitted the infrastructure and amenity charges. On such payment, the necessary sanction had been granted for the proposed development and plan, vide his order, dated 4.7.2012.

26. Further, on payment of the Buildings Licence fee, the President, Pudupakkam Village Panchayat had granted the licence for the construction of the building, vide his proceedings, dated 13.7.2012. After a period of nearly two years from the date of the grant of approval, by the Mammallapuram Local Planning Authority, the President, Kelambakkam Village Panchayat has issued the impugned order, dated 24.8.2015, following the final notice issued on 11.7.2015.

27. In the given facts and circumstances of the case, this Court finds that the proceedings issued by the fifth respondent, dated 24.8.2015, pursuant to the final notice issued on 11.7.2015, cannot be sustained in the eye of law, especially, when the dispute between the two panchayats has not been resolved, by the authorities concerned, till date. Therefore, this Court finds it appropriate to set aside the proceedings of the fifth respondent, dated 24.8.2015 and accordingly, it is set aside. However, it is made clear that if the dispute between the two panchayats is resolved, by the first respondent, in W.P.No.30880 of 2015, pursuant to the direction issued by this Court, by its order, dated 08.08.2016, in W.P.No.30880 of 2015, and if it is found that a portion of the area in question falls within the jurisdiction of Kelambakkam Village Panchayat, then it may be open to the fifth respondent to make a claim, with regard to the amount to be recovered from Pudupakkam Village Panchayat.

Accordingly, the petition stands allowed with the above observations. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector-cum-Inspector of
Panchayats, Kancheepuram.

2.The Block Development Officer (Village Panchayat)
Thiruporur, Kancheepuram District.

3.The President
Pudupakkam Panchayat
Pudupakkam Village, Thiruporur Taluk
Kancheepuram District.

4.The President
Kelambakkam Panchayat, Kelambakkam village
Thiruporur Taluk
Kancheepuram District.

5.The Member Secretary
Mammallapuram Local Planning Authority
Shopping Complex, Five Rathas Road
Mammallapuram, Kancheepuram District.

1 cc to Mr.R.Bharathkumar, Advocate, sr.44987

1 cc to Mr.R.Subramanian, Advocate, sr.44904

1 cc to Government Pleader, sr.45217

W.P.Nos.30264 of 2015
and
M.P.No.1 of 2015

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kra 09.09.2016

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