

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.6854 of 2012
and MP.Nos.1 & 2 of 2012

R.V.Gopalan,
"Kadal Nagai"
No.99, 'O'Block
Ganapathy Colony,
Annanagar,
Chennai - 600 102.

.. Petitioner

Vs

- 1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai.
- 2.The Secretary,
Housing & Urban Development,
Government of Tamil Nadu,
Secretariat, Chennai.
- 3.The Director of Town & Country Planning,
807, Anna Salai,
Chennai - 600 002.
- 4.The Deputy Director of Town &
Country Planning,
10 A, Williams Road, Cantonment,
Trichy - 1.
- 5.The Inspector of Town Planning,
Nagapattinam.
- 6.The District Collector,
Nagapattinam District,
Nagapattinam.
- 7.The Municipal Commissioner,
Nagapattinam Municipality,
Nagapattinam.

8.The Tahsildar,
Nagapattinam Taluk,
Nagapattinam.

9.The Village Administrative Officer,
Nagapattinam Taluk,
Nagapattinam.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent vide G.O.(2D)No.60 dated 17.02.2009 and quash the same as suffering from infirmities and consequently direct the 2nd respondent herein to lift the ban on construction of buildings around / on a radius of 300 feet from T.S.No.710 as specified in G.O.(2D) No.60 dated 17.02.2009 as the same adversely affects the right of putting up buildings and other construction in the petitioner's survey numbers T.S.No.705, 707, and 708.

For Petitioner : Mr.T.V.Ramanujam, Senior Counsel
for Mr.M.Naraayanaswamy

For Respondents: Mr.R.Rajeswaran
Special Government Pleader

ORDER

Heard Mr.T.V.Ramanujam, learned Senior Counsel appearing on behalf of Mr.M.Naraayanaswamy, learned counsel on record for the petitioner and Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents.

2. The petitioner has filed this Writ Petition challenging the Government Order in G.O.(2D) No.60 dated 17.02.2009, in and by which the petitioner's request for reclassification of his property in Survey Numbers T.S.Nos.705 and 708 within the limits of Nagapattinam Municipality had been granted, but with a condition that, to a distance of 300 feet from the boundary of T.S.No.710, it should be declared as a "No Construction Zone".

3. The learned Senior Counsel appearing for the petitioner submits that though the Government appears to have sanctioned the petitioner's request, yet has taken away what has been granted, by imposing a Ban which is unreasonable. Several contentions have been raised by the learned counsel for the petitioner to state that the impugned order is wholly unreasonable and arbitrary. Factually to substantiate the contentions, reference was made to the report submitted by the

Revenue Officials contending that there has been no burial done in Survey No.710/1 for over fifteen years. Further, the learned counsel referred to the certificate issued by the local Village Administrative Officer dated 16.12.2009, who also states that there is no such burial ground near the petitioner's land comprised in Survey Numbers T.S.Nos.705, 706, 707 and 708. It has been further argued by the learned Senior Counsel that no inspection was conducted; the petitioner was not afforded an opportunity to put forth his case when factually there is no burial done in the said land, the question of imposing a Ban on construction would be arbitrary and unreasonable and also would amount to depriving the petitioner of his property rights in a manner not known to law.

4. The learned Special Government Pleader elaborately referred to the factual matrix and referred to the counter affidavits filed by the fourth and seventh respondents. It is submitted that the Government, taking into consideration the provisions of the Tamil Nadu Panchayat Building Rules 1997, has imposed the Ban and there is no illegality in the impugned Government order.

5. As rightly pointed out by the learned Senior Counsel for the petitioner, the rules which would be applicable to the instant case would be Tamil Nadu District Municipalities Building Rules 1972 and the relevant rule would be Rule 6(5). The said rule reads as follows :

"6.Sites - (5) : No site, which is situated within a distance of 90 metres from a place used, as a burning or burial place or ground shall be used for the construction of any building without the previous approval of the Health Officer and no building intended for human habitation shall be built within 90 metres of such burning or burial place or ground unless such burning or burial place or ground was closed for burning of corpses and remained so closed for a period of not less than five years.

Provided that no existing building situated within 90 metres from any burning or burial place or ground shall be reconstructed, or added to, without the previous approval of the Health Officer."

6. In terms of the above rule, though there is an embargo that there is no site which is situated within the distance of 90 metres from the place which is used as a burning or burial place for any construction without the previous approval of the Health Officer. Similarly, under the proviso

in respect of the existing buildings, reconstruction cannot be made or further development cannot be effected without the previous approval of the Health Officer. Thus, the said rule does not impose Ban to regulate development. However, the core issue would be as to whether the place is used as a burial or burning place and whether it is in existence as on date or has been closed for a period of not less than five years? The documents placed in the typed set of papers shows that the Revenue Officials has certified that there is no burial done for nearly fifteen years. On the other hand, the petitioner would state that the land in question viz., the Survey Number T.S.No.710 is not a burial ground and even in the counter affidavit filed by the fourth respondent, it is admitted that there is presence of some Samathi in South-East side of T.S.No.705. Thus, it appears that the impugned order imposing a Ban on construction has been passed without due application of mind, and taking into consideration the relevant factors, the authorities having agreed for reclassification of the petitioner's lands should have taken a more pragmatic approach and ensuring that the facts are properly assessed and thereafter an order should have been passed. However, this has not been done, resulting in erroneous Ban being imposed on the petitioner's land while passing the impugned Government Order. Thus, the case requires a reclassification.

7. In the light of the above discussion, the Writ Petition is allowed and the impugned order is quashed insofar as it imposed Ban on construction upto a distance of 300 feet and the matter is remitted back to the sixth respondent, who shall direct the officials to inspect the lands in question, examine the factual position and submit a report to the third respondent, which shall be considered by the second respondent and fresh order shall be passed on merits and in accordance with law, considering the report submitted by the authorities, including the concerned Health Officer, since he is a competent authority as mentioned in Rule 6(5) of the Tamil Nadu District Municipalities Building Rules, 1972. The above direction shall be complied with within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ds/dn

To :

- 1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai.
- 2.The Secretary,
Housing & Urban Development,
Government of Tamil Nadu,
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- 3.The Director of Town & Country Planning,
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- 9.The Village Administrative Officer,
Nagapattinam Taluk,
Nagapattinam.

+lcc to Mr.M. Narayanaswamy, Advocate, S.R.No.2722

+lcc to the Government Pleader, S.R.No.2614

W.P.No.6854 of 2012

PA(CO)
EU(28/01/2016)