

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2016

CORAM

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.21066 of 2016
and
W.M.P.No.18027 of 2016

V.Velayudham

.. Petitioner

vs

Assistant Engineer
Town Planning Approval Section
Regional Office South
Greater Chennai Corporation
115, Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.

.. Respondent

Petition filed under Article 226 of the Constitution of India, praying this Court for the issuance of a writ of certiorarified mandamus to call for the records of the respondent pertaining to his impugned order in WDC No.PPA/WDCN13/02287/2016 dated 13.06.2016; to quash the same and to further direct the respondent to grant planning permission following the due process of law.

For Petitioner Mr.V.Anand

For Respondent Mr.P.V.Selvakumar
for Chennai Corporation

ORDER

The petitioner has challenged the order passed by the respondent dated 13.06.2016 directing him to produce gift deed in favour of the Corporation for further process of his application dated 11.04.2016 seeking permission for demolition and reconstruction of the existing building, on the ground that the petitioner's proposed plot comes under road alignment.

2. The case of the petitioner is that he is the owner of the property having inherited plot No.4B comprised in R.S.No.44/1 Part, T.S.No.7/2 and 8/2, Block No.18 measuring about 1 ground and 1356 sq.ft in Nagendra Nagar, Velachery Main Road, Velachery, Chennai 600 042 by virtue of settlement deed dated 24.12.2010 settled by his father in his favour and in favour of his three brothers. Since there is an old existing

super structure in the said property, the petitioner submitted an application dated 11.04.2016 to the respondent seeking permission for demolition and reconstruction of the said property. However, the respondent vide the impugned letter dated 13.06.2016 informed the petitioner to produce gift deed in favour of the Corporation for processing his application as the said plot comes under road alignment. The said order is being challenged before this Court in this writ petition.

3. When the matter is taken up for hearing today, Mr.V.Anand, learned counsel appearing for the petitioner would submit that the petitioner is ready to keep the space vacant for the purpose of road widening and that he will not make any construction in the said portion. He has also filed an affidavit to that effect before this Court, today.

4. In this regard, learned counsel for the petitioner also would rely upon the judgment of this Court passed in W.P.No.30070 of 2015 dated 26.10.2015, wherein this Court directed the petitioners therein to file an affidavit of undertaking before the Chennai Corporation to the effect that they will not put up any construction in the portion ear marked for road extension and also to surrender the requisite portion of the property, if the same is required for road widening, without prejudice to their right to claim compensation.

5. Heard Mr.P.V.Selvakumar, learned Standing counsel appearing on behalf of the respondent-Chennai Corporation. Though he oppose this petition, he agrees that an order has been passed by this Court under similar circumstances.

6. A perusal of the order passed by this Court in W.P.No.30070 of 2015 dated 26.10.2015 would reveal that, this Court had directed the respondent-Chennai Corporation to process the application of the petitioners therein, after getting an affidavit of undertaking from them. The relevant paragraph reads as follows:

"4. The approach of the respondents, in insisting upon execution of a Gift Deed, in anticipation of road widening, cannot be found fault with. The respondents have, in fact, correctly done so, keeping in view, the developmental activities to be undertaken in future. However, according to the petitioners, the portion in respect of which the Gift Deed is sought to be executed, falls in the midst of the property and only when prospective proposals are made, such claim can be resorted to. Further, in paragraph Nos. 5 & 6 of the affidavit filed in support of the writ petition, the petitioners have stated thus:

"5. The petitioners further submit that it is pertinent to state at this juncture that the demand of gifting the portion falls in the midst of the above said property which at any stretch of imagination cannot be made or demanded and only when prospective proposals are made, such claim can be resorted to and also in the teeth of the fact that unless it is essentially required, the petitioners state that despite such a direction and being a person with a practical approach of public domain express their willingness and also undertake to handover the requisite portion if the process commences for road widening without any reservation whatsoever. In fact, further undertakes that they will not put up any construction in the area earmarked for road widening and to the said alleged extent in anticipation of road widening.

6. The petitioners further submit that the above assurance to handover vacant possession in case of road expansion and for the purpose of such developmental activities to be required by the statutory authority shall without any reservation and protest be acquired and the petitioners would be satisfied with whatever adequate compensation is to be disbursed. Further, they specifically undertake that not to put up any construction in the proposed road widening area. It is on the basis of this affidavit of undertaking, the respondents may be directed to sub-divide the aforesaid property."

In view of the above assurance given by the petitioners, the interest of the respondents is protected. Hence, the writ petition is disposed of directing the petitioners to file an affidavit before respondents 1 to 3, undertaking not to put up any construction, in the portion earmarked for road expansion and also to surrender possession of requisite portion of the property, if it is required for road widening, without prejudice to their rights to claim compensation. The said affidavit of undertaking shall be filed by the petitioners within a period of one week from the date of receipt of a copy of this order. On receipt of the same, respondents 1 to 3 shall consider and process the application of the petitioners, for subdivision approval, in the light of the affidavit of undertaking to be submitted by the petitioners and in accordance with law, within two

weeks thereafter. No costs. Connected M.P. is closed."

7. Today, Mr. Anand, learned counsel representing the petitioner has filed an affidavit before this Court, sworn to by the petitioner, undertaking to accept acquisition of the portion of the property, which is the subject matter of development falling within the road alignment proposed by the Corporation. Para No.2 of the affidavit filed by the petitioner reads as follows:

"2. I submit that I have made a specific averment in paragraph 3 of my affidavit that I am ready to accept acquisition of the portion of our property, subject matter of development falling within the road alignment proposed by the Corporation. In furtherance thereof, I am filing this affidavit of undertaking. I hereby undertake that I am ready and willing to hand over the requisite portion for road widening as and when the process for it commences. I will be satisfied with the adequate compensation that would be dispersed in accordance with law. I also undertake that I would not object to the acquisition as such."

8. In view of the fact that the petitioner had undertaken not to make any construction and agrees to handover the portion of the property, in case of road widening, there shall a direction to the petitioner to file an affidavit of undertaking in the prescribed format before the respondent- Chennai Corporation to the effect that he will not make any construction and handover the possession of property, in case the same is required for road widening. On receipt of such an undertaking from the petitioner, the respondent shall consider and process the application filed by the petitioner dated 11.04.2016, seeking to demolish and reconstruct the building in question which is pending on its file, on merits and in accordance with law, within a period of four weeks from the date of receipt of filing of such an undertaking.

9. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vj2

To

The Assistant Engineer
Town Planning Approval Section
Regional Office South
Greater Chennai Corporation
115, Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.

2 ccs to Mr.P.V. Sudhakar, Advocate, Sr. 36541
1 cc to Mr.P.V. Selvakumr, Advocate, Sr. 36570

W.P.No.21066 of 2016

SCD (CO)
kkk 1/7



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