

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.28122 of 2004

H.Abbas

... Petitioner

Vs.

1.The State of TamilNadu represented by
its Secretary to Government,
Urban and Rural Development Department
Fort St. George,
Chennai - 600 009

2. Udhagamandalam Municipality,
represented by its Commissioner,
Udhagamandalam,
The Nilgiris.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of B.A.No.37 of 2003, dated 25.11.2003 on the file of second respondent and quash the same and consequently direct the 2nd respondent to forward the application of petitioner as per section 217-C of the Tamil Nadu District Municipalities Act and direct the first respondent to grant approval for construction of the building on application forwarded by second respondent within the time that may be fixed by this Court.

For Petitioner : Mr.B.Ramamurthy

For Respondents: Mr.V.Jayaprakash Narayanan,
Special Govt. Pleader

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O R D E R

The prayer in the Writ Petition is for the issuance of a Writ of Certiorarified Mandamus calling for the records of B.A.No.37 of 2003, dated 25.11.2003 on the file of second respondent and quash the same and consequently direct the 2nd respondent to forward the application of petitioner as per section 217-C of the Tamil Nadu District Municipalities Act and direct the first respondent to grant approval for construction of the building on application forwarded by second respondent within the time that may be fixed by this Court.

2.The case of the petitioner is that the petitioner had submitted an application seeking permission for construction at a house site at Survey No.3169 with an extent of 2200 sq.ft. at Udhagamandalam Town, The Nilgiris District to the second respondent Municipality. The second respondent by the impugned order dated 25.11.2003 in Ka.Vi.No.37/2003/9, rejected the request of the petitioner for construction of the building on the sole ground that the plot of the petitioner situated at town Survey No.3169 is only 42 metres from the burial ground.

3.The impugned order further states that as per the Development Control Rules, no building construction can be permitted within 90 metres from the burial ground and therefore, on that ground the request of the petitioner was rejected and the impugned order was passed by the second respondent.

4.Heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents.

5.The learned counsel for the petitioner would contend that under Section 217-DD of the Tamil Nadu District Municipalities Act, 1920, the grant of a licence by the authorities in certain cases are governed. On receipt of an application filed for construction or re-construction of any residential building on any land, under Section 217-C of the said Act; it shall be considered by the authorities and on satisfaction that the grant of licence will not result in the deterioration of scenic beauty or destruction of the environment and eco-system, he may grant a licence subject to such terms and conditions, as he may think fit to impose or refuse to grant licence. In the said Section, there is a proviso, which reads thus:-

"Provided that a licence shall not be refused unless the applicant has been given an opportunity of making his representation".

6.The learned counsel appearing for the petitioner, by heavily relying upon the said proviso would contend that the application had been rejected vide impugned order, without giving any opportunity even to make a representation by the petitioner. The learned counsel for the petitioner would further submits that the impugned order would run contra to the said proviso as has been mentioned above. For these reasons, the learned counsel would say that the impugned order would not stand on the legal scrutiny and therefore it has to be quashed.

7.Per contra, the learned Special Government Pleader for the respondents would contend that Rule 4 of the Tamil Nadu District Municipalities (Hill Stations) Building Rules, 1993,

speaks about the requirements for a site to grant approval for construction of building. The learned Special Government Pleader relied upon the Rule 4(7), which reads as follows :-

"(7) No site, which is situated within a distance, of 90 metres from a place used as burning or burial place or ground shall be used for the construction of any building without the previous approval of the Government 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 building or burial place or ground shall be reconstructed, or added to, without the previous approval of the Government".

8.The proviso to Rule 7 of the said Rules also says 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 Government. The learned Special Government Pleader further submits that, in view of the said submission, especially Rule 7 of the said Rules, as referred to above, since the house site of the petitioner situated only at 42 metres from and out of 90 metres range from the burial ground as has been mentioned in the Rules, the rejection order made by the second respondent is perfectly valid and need not requires any interference.

9.The point that arises for consideration in this Writ Petition is as follows :-

- 1.Whether the plot belonging to the petitioner is within the 90 metres from the burial ground or not? and
- 2.Whether any permission has been granted by the second respondent for any other parties in the locality within the 90 metres radius from the burial ground?

10.The above referred two points are the matters to be considered and decided by the authorities, i.e. the second respondent. At any rate, 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 Government, as per Rule 4(7) of the said Rules.

11. Be that as it may. As a matter of fact, the learned counsel for the petitioner has pointed out that, as envisaged in proviso to Section 217-DD of the Act, neither an opportunity by way of representation nor notice was given to the petitioner, for the alleged objection on the part of the second respondent for the approval and on the sole ground,

that the house site is situated within 90 metres from the burial ground, the impugned order has been passed.

12. The law is well settled that the licence shall not be refused unless the applicant has been given an opportunity of making his representation. Here, in the instant case, no opportunity was given to the petitioner for making his representation, as contemplated under the provisions to Section 217 DD of the said Act. Hence, on this sole ground the impugned order is liable to be quashed and accordingly the same is quashed.

13. Since the impugned order has been quashed, the matter is remitted back to the respondents, especially the second respondent, to give a relief, i.e., a reasonable opportunity to be provided under the proviso to Section 217-DD of the said Act. The petitioner is directed to give a fresh representation to the respondents ventilating his grievances within a period of one week from the date of receipt of a copy of this Order. On such receipt of the representation, the second respondent shall consider and pass appropriate orders on the same, within a period of three months thereafter. It is needless to point out that the consideration of the representation of the petitioner shall be strictly done in accordance with the Act and Rules framed thereunder.

14. With these directions, the Writ Petition is allowed to the limited extent as indicated above. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of TamilNadu represented by
Urban and Rural Development Department
Fort St. George,
Chennai - 600 009
2. The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam, The Nilgiris.

+ 1 cc to Mr.B.Ramamurty, Advocate Sr.60625

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