

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE
WA.No.1006/2017

C.Govindan
Rep. By his son
and Power Agent, G.Baskaran ...Appellant / Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by the Chief Secretary,
St. George Fort, Chennai 600 009.
- 2.The Chief Secretary,
Department of Revenue Administration,
Secretariat, St.George Fort, Chennai 600 009.
- 3.The Secretary,
Department of Municipal Administration,
Secretariat, St.George Fort, Chennai 600 009.
- 4.The Collector,
Chennai District, Chennai- 600 003.
- 5.The Collector, Thiruvallur,
Thiruvallur District, Pin 602 001
- 6.The Director,
Directorate of Country & Planning,
807, Annasalai, Chennai -600 002
- 7.The Deputy Director,
Directorate of Country and Planning,
124, G.S.T. Road, Chengalpet-1
Chengalpet District.
- 8.The Tahsildar,
Madhavaram Taluk,
Madhavaram,
Chennai 600 060
- 9.The Zonal Officer, Zone III,
Corporation of Chennai, Madhavaram,
Chennai 600 060 .. Respondents / Respondents

For Appellants : Mr.R.Sreethar
For R1 to R8 : Mr.R.Vijayakumar, AGP
For R9 : Mr.Selvasekaran

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in the writ petition in WP.No.3755 of 2016 order dated 23.02.2017 by the learned Single Judge.

Prayer in W.P.3755 of 2016:

Praying for a Writ of Mandamus, seeking a direction to the 5th, 6th, 7th, 8th, 9th Respondents to pay Rs.25,00,00,000/- (twenty Five Crores) to petitioner as compensation for the physical and mental agumies and monetary loss caused to the petitioner by their willful mistakes of including odai.Poramboke land in the DTCP approved layout 9/75.

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, the writ appeal is taken up for final disposal. Mr.R.Vijayakumar, learned Additional Government Pleader, accepts notice on behalf of official respondents and Mr.C.Selvasekaran, learned Standing Counsel accepts notice on behalf of 9th respondent.

2 The facts leading to the filing of this writ appeal has been narrated in detail and in extenso in the impugned order passed in the writ petition in WP.No.3755 of 2016 and therefore, it is unnecessary to re-state the facts once again.

3 The grievance expressed by the appellant / petitioner is that his father is an innocent purchaser of plot No.219 in the year 1982 in the survey No.1174/3A in the so-called Directorate of Town and Country Planning (DTCP) approved layout 9/75, and later on came to know that in the approved layout "odai poramboke", lands in Survey No.1173 have been included and he has purchased a part of the said land and since the concerned Revenue officials had committed an error, he prayed for compensation and also initiated civil litigations against the encroachers and he succeeded in series of litigations in OS No.91 of 1991 and O.S.No.1328 of 1997 against encroachers of the said land and though, he has succeeded in both suits, on account of delay on the part of authorities, he has not been able to realize the fruits of the decree.

4 The learned appearing for appellant / petitioner would submit that immediately after the inclusion of Odai poramboke in the approved layout, the appellant / petitioner submitted series of representation. Since, no response is forthcoming, he was constrained to approach this Court by filing a writ petition and it came to be dismissed solely on the ground that the same was hit by delay and laches.

5 According to the learned counsel appearing for the writ petitioner / appellant, the reasons assigned in the impugned order is per se unsustainable for the reason that admittedly a portion of property / Odai Poramboke land have been included in the approved layout for which the concerned officials are liable to pay compensation and hence prays for setting aside the impugned order with a further direction to the respondents to pay compensation.

6 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader has invited the attention of this Court to the counter affidavit filed in support of the writ petition and would submit that the appellant / petitioner on the very same issue filed several litigations in WP.No.16885/2007, WP/No.4338/2012, WP No.16885 of 2007, 24442/2012 and contempt petition No.1081 of 2013 and even as per his own version, he became aware of the said mistake even in the year 1992 and without immediately approaching the Court, he has filed a writ petition, by claiming compensation in the year 2006 and therefore, his claim is hit by laches and prays for dismissal of the writ appeal.

7 Mr.V.Selvasekaran, learned Standing Counsel appearing for the 9th respondent has drawn the attention of this Court to the counter affidavit and would submit that the belated approach on the part of the appellant / writ petitioner for claiming compensation is per se unsustainable and prays for dismissal of this writ appeal.

8 The appellant / writ petitioner in paragraph Nos.11 & 12 of the affidavit filed in support of the writ petition had averred as follows and it is relevant to extract the same :

"11.With the strength of these documents alone (residential certificate with fake plot No.220-A, Kisthu and the B-Memo issued by the revenue/municipal officials for survey No.1173/odai/Promboke), Umarani filed O.S.No.91/91 in the DMC Ponneri stating that she had encroached the Odai /Poramboke land which has Survey No.1173 and asked for permanent injunction restraining my father and my father's men from interfering into her peaceful possession of that Odai / Poramboke land.

12. In that suit my father prayed the Hon'ble Court for the appointment of Surveyor to find out whether there is survey No.1173/Odaipagudhi / Poramboke in inside my father's DTCP Approved plot. Mr. Moorthy, the Taluk Surveyor, Madhavaram was appointed by the Court to survey my father's DTCP approved plot. After surveying my father's plot with the above stated boundaries, that Revenue Official gave the report (23.05.1992) that, the back portion of my father's DTCP approved plot is a poramboke land which contains the survey No.1173. He provided a FMB Map depicting that the survey No.1173 passes through my father's plot situated in the Survey No.1173/3A part, Plot No.219 in the so called DTCP Approved layout 9/75. While my father was made to fight litigations with private parties he was also stabbed on his back by the 8th and 9th respondents."

9 Admittedly, the father of the writ petitioner / appellant became aware of the wrong encroachment in the year 1992 and without immediately approaching the Court, availed the common law remedy to get the compensation and submitted series of representations and though, it is contended by the learned counsel appearing for the appellant / petitioner that on account of not getting any proper response, he was constrained to approach this Court belatedly, the fact remains the petitioner failed to approach the competent authority with in a reasonable time and that apart, the adjudication with regard to the liability on the part of the official respondents to pay compensation or the quantum, involves adjudication and disputed question of fact which require necessary pleadings for oral and documentary evidence.

10 Even for the sake of arguments, this Court accepts the submission made by the learned counsel appearing for the appellant / petitioner that on account of no response on the part of the official respondents in spite of representations submitted the appellant / petitioner had belatedly approached this Court, he should have approached at the earliest point of time with regard to the no response on the part of the concerned official respondents and he failed to do so.

11 The learned Judge has taken note of the fact and rightly reached the conclusion that the claim made by the writ petitioner is hit by delay and laches.

12 This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent or infirmity attached to the said findings and finds no merit in this writ appeal. Accordingly, the Writ appeal is dismissed confirming the order .

13 In the result, the writ appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is

also dismissed. The cost imposed on the appellant/writ petitioner by the learned Single Judge for a sum of Rs.5,000/- (Rupees five thousand only), is set aside in the light of the facts and circumstances.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The State of Tamil Nadu,
Represented by its Chief Secretary,
St. George Fort, Chennai 600 009.
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Department of Revenue Administration,
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 9. The Zonal Officer, Zone III,
Corporation of Chennai, Madhavaram,
Chennai 600 060
- +1 CC to Mr. R. Sreedhar, advocate sr 61161.

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SVI (CO)
SP(15/09/2017)

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