

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.24228/2017 & WMP.No.25603/2017

D.Sudhakaran

...

Petitioner

Versus

1.The Commissioner  
Kundrathur Panchayat Union  
at Padapai, Sriperumbudur Taluk  
Kancheepuram District.

2.J.Thirukumaran

...

Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the 1<sup>st</sup> respondent in Na.Ka.No.405/2015/A3 dated 31.08.2017 and quash the same.

For Petitioner : Mr.K.Sakthivel

For R1 : Mr.A.N.Thambidurai, Spl.GP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the 1<sup>st</sup> respondent.

2 The petitioner would state that a landed property comprised in Old Survey No.191/2 [New Survey No.412/5] admeasuring to an extent of 0826 sq.m. of Kolapakkam Village, Sriperumbudur Taluk, belonged to one Kuppusamy and it was his ancestral property and after his demise, his four sons had succeeded to the said estate and partitioned the said land among themselves and the father of the petitioner was allotted 2572 sq.ft. The petitioner would further aver that after the demise

of his father, the sons and daughter, including the petitioner herein, had executed a registered Settlement Deed in favour of their mother and since the house has become dilapidated, their mother has executed Power of Attorney dated 16.07.2014 in favour of one of the brothers, to convey the land admeasuring to an extent of 1608 sq.ft., out of the total extent of 2512 sq.ft., and the remaining extent of land was settled through a registered Settlement Deed came to be executed on the same day in favour of all sons and daughter. The sons and daughter of [late] Dakshinamoorthy, including the petitioner herein, had approached the 1<sup>st</sup> respondent for planning permission to construct a house and the 1<sup>st</sup> respondent was not inclined to grant permission for the reason as to the extent of land is only 736.50 sq.ft. According to the petitioner, the common passage to an extent of 167.50 sq.ft., shall also be taken into consideration for according permission. However, since they are without any roof over head, they are forced to construct a house measuring 150 sq.ft., in the ground floor, 300 sq.ft. in the first floor and another 300 sq.ft. in the second floor and alleging unauthorized construction, they are issued with notice dated 31.08.2017 by the 1<sup>st</sup> respondent and challenging the legality of the same, the petitioner has come up with the present writ petition.

3 The learned counsel for the petitioner has invited the attention of this Court to the typed set of documents and would submit that the 2<sup>nd</sup> respondent is enemical to the petitioner and his family and on an earlier occasion, filed WP.No.10734/2015 against the Chennai Metropolitan Development Authority, the 1<sup>st</sup> respondent herein as well as the Local Body and also against the writ petitioner herein and his sister to consider and dispose of his representation with regard to restoration of the house site comprised in Gramanatham Old Survey No.191/2 and New Survey No.412/5, covered by patta No.231 to its original condition before the development took place under section 85 of the Tamil Nadu Town and Country Planning Act, 1971 and this Court, without ordering notices to the respondents 4 and 5 therein, which include the petitioner herein, had disposed of the said writ petition on 15.04.2015 by directing the 2<sup>nd</sup> respondent therein to take appropriate action after affording proper opportunity of person hearing to all person/s concerned and in gross violation of the said order, the 1<sup>st</sup> respondent had sent the communication dated 24.08.2017 as well as the impugned communication dated 31.08.2017 informing them that the offending portion will be demolished on 06.09.2017.

4 It is the submission of the learned counsel for the petitioner that since the 2<sup>nd</sup> respondent did not comply with the above said order and failed to afford reasonable opportunity to the writ petitioner herein and the persons interested to put

forth their stand, the impugned notice is per se unsustainable and prays for quashment of the same.

5 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 1<sup>st</sup> respondent would submit that the 2<sup>nd</sup> respondent, in compliance of the order dated 15.04.2015, passed in WP.No.10734/2015, is taking action strictly in accordance with law.

6 This Court has considered the rival submissions and also perused the materials placed before this Court.

7 It is relevant to extract paragraph No.2 of the order dated 15.04.2015 made in WP.No.10734/2015, which reads thus:-

"2 On a perusal of the documents, we notice that on receipt of the petitioner's representation dated 20.12.2014, the 1<sup>st</sup> respondent had already sent a complaint to the 2<sup>nd</sup> respondent with a request to take necessary enforcement action on the construction said to have been made or in progress. It appears that after the receipt of the copy of the complaint under covering letter dated 05.03.2015, no action has been taken. Thus, the second respondent is directed to take action as early as possible, preferably, within a period of six weeks from the date of receipt of a copy of this order, after affording proper opportunity of hearing to all the concerned parties. It is further directed that the first respondent, who is represented through Mr.K.Raja Srinivas, learned standing counsel, shall take further steps to ensure that the 2<sup>nd</sup> respondent acts seriously in accordance with law and on merits."

8 A perusal of the communication dated 24.08.2017 followed by the impugned communication dated 31.08.2017 sent by the 1<sup>st</sup> respondent would reveal that the said officials, have not understood the scope and purport of the above cited order. The order specifically directs the said official to provide proper opportunity of hearing to all parties concerned and however, the 2<sup>nd</sup> respondent in the impugned notice, has informed the petitioner that the offending construction will be demolished on 06.09.2017.

9 This Court, taking into consideration of the above facts and circumstances, directs that the impugned notice dated 31.08.2017 sent by the 1<sup>st</sup> respondent shall be treated as show

cause notice for which, the petitioner is directed to submit his representation / reply along with the relevant documents has been within a period of four weeks from the date of receipt of a copy of this order and the 1<sup>st</sup> respondent, upon receipt of the same, shall put the 2<sup>nd</sup> respondent on notice and thereafter, consider and dispose of the reply of the petitioner, if any to be submitted by the 2<sup>nd</sup> respondent on merits and in accordance with law and pass orders within a further period of four weeks thereafter and communicate the decision taken, to the petitioner and the 2<sup>nd</sup> respondent herein and till such time, the 1<sup>st</sup> respondent shall defer further decision as to the removal of the offending construction put up by the petitioner herein and his relatives. It is also made clear that until the 1<sup>st</sup> respondent carries out the exercise as ordered by this Court in this writ petition, the petitioner and the persons interested, shall not create any third party rights in respect of the superstructure in question and shall not alter the physical features of the same.

10 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Commissioner  
Kundrathur Panchayat Union  
at Padapai, Sriperumbudur Taluk  
Kancheepuram District.

2.J.Thirukumaran  
S/o.Late K.Janakiraman  
No.2/132, Bajana Koil Street  
Kolapakkam, Chennai 600122.

+1 cc to the M/s.K.Sakthivel Advocate sr 65366

WP.No.24228/2017

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