

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2017

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.18605 of 2011

1.P.Saraswathy (Died)

2.L.Periyanayagi

3.P.Visalakshi

4.P.Swaminathan

5.P.Natarajan

6.P.Kanakarajan

... Petitioners

(P-2 to P-6 are substituted
as LRS of deceased P-1: P.Saraswathy (died)
as per Order dated 30.08.2012
in MP.1/2012 in WP.18599 & 18605/2011)

Vs

1.The State of Tamil Nadu,
rep. by its Secretary,
Department of Housing & Urban Development,
Secretariat, Chennai-9.

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai-3.

3.The Executive Engineer,
Zone-9,
Corporation of Chennai,
Saidapet, Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records of the third respondent in his Proceedings in Letter No.3/2011-12 dated 26.07.2011 and quash the same.

For Petitioners : Mr.D.Ravichander
For Respondents : Mr.T.N.Rajagopalan
Special Government Pleader
for R1

Ms.Karthika Ashok for R2 & R3

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner (since deceased) claims to be the owner of Plot No.108, Door No.13, North Avenue, Sri Nagar Colony, Saidapet, Chennai-15 - T.S.No.12/12, Block No.4, Venkatarapuram, Adyar Village in pursuance to the registered sale deeds dated 29.11.1998 and 15.04.1999 read with the enjoyment Certificate dated 13.02.2001. Sale deeds have been executed by one Mr.K.Kannappan. The deceased first petitioner obtained planning permission on 15.12.2000 and carried out the construction thereon.

2. A show cause notice dated 01.10.2003 was issued to the deceased first petitioner seeking to cancel the planning permission and the building permit in respect of the property in question predicated on the prima facie view that the vendor of the deceased first petitioner, Mr.K.Kannappan did not have title or enjoyment over the property and thus, the documents produced for obtaining the planning permission lack legal sanctity, as no title was conveyed to the deceased first petitioner. It is alleged in the show cause notice that the land originally belonged to one Dr.N.Ramamurty, who made a settlement in the name of his sons, Thiru.R.Balakrishnan and Thiru.R.Ravi vide settlement deeds dated 29.01.1976 and 02.02.1976. It is alleged that the land was covered under the Urban Land Ceiling Act as per the order passed by the Commissioner of Land Reforms dated 30.04.1981. The land is alleged to have been taken over and handed over to the Tahsildar on 15.12.1982. It is further alleged that the deceased first petitioner had not produced any layout plan or approved sub-division, nor did she produce the parent documents to prove the history of the plot and its existence prior to 05.08.1975. The only two documents produced were the sale deeds and the enjoyment Certificate dated 13.02.2001, and the said Certificate was also found not signed by the then Tahsildar concerned and was thus alleged to be a false Certificate.

3. The deceased first petitioner responded to this show cause notice vide letters dated 05.10.2003 and 21.10.2003 respectively. However, an adverse order was passed on

15.10.2003 predicated on the non-furnishing of reply, which order was set aside in W.P.No.29992 of 2003 vide order dated 28.10.2003.

4. On the matter being remitted back to the Commissioner, Corporation of Chennai who had issued the show cause notice, objections were filed by the deceased first petitioner. But ultimately, an adverse order on merits was passed on 09.11.2004. The deceased first petitioner, thereafter, preferred an appeal before the Secretary to Government, Department of Housing and Urban Development/respondent No.1 on 07.12.2004.

5. It is the case of petitioners 2 to 6 (legal representatives of the deceased first petitioner who have since been impleaded as such) that while the appeal was still pending, the deceased first petitioner received the impugned notice dated 26.07.2011 under Section 56 read with Section 85 of the Town and Country Planning Act, 1971 for locking, sealing and demolition on account of the planning permission having been withdrawn and thus, the construction having become an unauthorised one.

6. It is this notice which is assailed in the present petition.

7. The typed set of documents further show that apparently, the Collector of Chennai had sought to interchange the Town Survey Number of the acquired portion from T.S.No.12/13 to T.S.No.12/12 vide proceedings dated 27.02.2004. These proceedings were assailed by the deceased first petitioner before the Principal Secretary, Revenue Department, State of Tamil Nadu and in terms of the order dated 20.12.2007 (G.O.Ms.No.765), it was opined as under:-

"5.The Government have examined the above report of Special Commissioner and Commissioner of Land Reforms in detail. The Collector has passed orders in the proceedings No.J5/8838/2003 dated 27.2.2004 interchanging the location of T.S.No.12/12 and 12/13 vice versa to suit the Urban Land Ceiling proceedings and to uphold the notifications issued under the Urban Land (Ceiling and Regulation) Act, 1978 without giving an opportunity to the petitioner, Tmt.P.Saraswathi which is contrary to the natural justice. The Government therefore consider that it is necessary to cancel the above proceedings of the Collector of Chennai. Accordingly, the Government cancel the proceedings of the Collector of Chennai No.J5/8878/2003 dated 27.8.2004.

6.The Special Commissioner and Commissioner of Land Reforms is requested to take necessary action in this regard."

8. The result of the aforesaid was that the interchange of the location was held to be invalid and it is the contention of the petitioners that this has what caused a confusion and the consequent proceedings against the deceased first petitioner.

9. Counter-affidavit was not filed for six years by the State Government/respondent No.1 and it is only recently on 04.01.2017 that the counter-affidavit has been filed, affirmed on 20.12.2016.

10. As recorded above, the impugned order was challenged predicated on the appeal pending and yet notice being issued. But it is now stated before us that the appeal was dismissed as far back on 03.07.2012.

11. In respect of the aforesaid, the contention of the petitioners is that some proceedings were held and the deceased first petitioner was asked to produce further documents. It is the admitted case that no further documents were filed, and the learned counsel for the petitioners state that no further documents are required to be filed and the petitioners rely only on the sale deeds and the enjoyment Certificate as well as the order passed on 20.12.2007, as it is their case that this order had not been implemented by reversing the land numbers to the original position and that order has also not been assailed by the respondents. It is also the case of the petitioners that the order of the appellate authority now sought to be propounded as passed on 03.07.2012 was never served on the deceased first petitioner and even the counter-affidavit does not show how that order was sent or served.

12. A perusal of the order dated 03.07.2012, coupled with the counter-affidavit filed by respondent No.1, leaves us with little doubt that the case propounded on the part of the respondent-authorities is, in turn, largely predicated on the fact that the land vests with the Government in pursuance to the Urban Land Ceiling proceedings, which in turn were dependent on the proceedings of the Collector of Chennai dated 27.02.2004, which had been set aside on 20.12.2007. It is another matter that this action is also sought to be justified on the ground that the deceased first petitioner was not able to establish her title even in respect of T.S.No.12/12. But that was not the basis on which the proceedings of the Commissioner were continued.

13. As far as the present petition is concerned, the limited challenge is to the impugned notice based on the plea of the

appeal not being decided. The appellate order is not specifically assailed before us, as the deceased first petitioner claimed not to have known the appellate order dated 03.07.2012. However, we are of the view that once again, calling upon that order to be assailed before us would merely be a formality in view of the elaborate submission made on the conspectus of the dispute before us. Thus, there can be little doubt that the conclusion of the proceedings before the Commissioner did not take into consideration the order passed on 20.12.2007, cancelling the proceedings of the Collector dated 27.02.2004. Thus, T.S.No.12/13 and T.S.No.12/12 remain as per the original position which existed prior to 27.02.2004 and thus, really speaking, the issue of Urban Land Ceiling cannot be mixed up with this. The moot point, however, remains as to whether the petitioners have title to T.S.No.12/12.

14. In view of the aforesaid, it is agreed that the order of the Commissioner dated 15.10.2003 and the order of the appellate authority dated 03.07.2012 be set aside and the matter be remitted back to the Commissioner to consider the issue afresh, in view of our findings given aforesaid in pursuance to the show cause notice already issued. As noted above, there is no question of further documents being filed by the petitioners. In view of the complications as to the facts, it would be appropriate for the Commissioner to give personal hearing to the petitioners and thereafter, an appropriate order be passed in accordance with law within a period of three months of the receipt of the copy of this order.

15. In the result of the aforesaid, the direction would be that the impugned notice dated 26.07.2011 also stands quashed with liberty to issue a fresh notice in case that eventuality arises after the decision is rendered by the Commissioner and further conclusion of the proceedings arising therefrom.

16. The petitioners will ofcourse not carry on any further constructions or improvements in the building during the pendency of these proceedings, as assured by the learned counsel for the petitioners.

17. The writ petition is disposed of in the aforesaid terms, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Department of Housing & Urban Development,
Secretariat, Chennai-9.
2. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-3.
3. The Executive Engineer,
Zone-9,
Corporation of Chennai,
Saidapet, Chennai.

+1cc to Ms.Karthika Ashok, Advocate, S.R.No.6678
+1cc to Mr.D.Ravichander, Advocate, S.R.No.6865
+1cc to the Government Pleader, S.R.No.6831

W.P.No.18605 of 2011

SV(CO)
CA(16/02/2017)



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