

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.31597 of 2016

M/s Olympia Merlin Developers Pvt.Ltd.,
rep by its Director
Old No.7, New No.13
I Floor, Srinivasa Avenue Road
Ramakrishna Nagar, R.A.Puram
Chennai 600 028 ... Petitioner

-vs-

1. The Member Secretary
Mamallapuram Local Planning Authority
Five Ratha Commercial Complex
Mamallapuram
Kancheepuram District
2. The Director
Tamilnadu Town and Country Planning Department
Anna Salai
Chennai 600 002
3. The Tahsildar
Taluk Office Complex
Tiruporur Taluk ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the first respondent dated 19.07.2016 in Na.Ka.No.220/2016 Ma.Oo.Thi.Ku and quash the same and consequently direct the first respondent to renew the planning permit nos.136/2011 dated 6.8.2012 and 19/2012 dated 27.8.2012 and also to grant the revised planning permit and building permit for addition/alternation for constructing a resort block, in the sanctioned plan under the planning permit nos.136/2011 dated 6.8.2012 and 19/2012 dated 27.8.2012.

For Petitioner :: Mr.AR.L.Sundaresan
Senior Counsel for
Mr.K.J.Parthasarathy

For Respondents :: Mr.R.Govindasamy
Special Government

Pleader for R1 Mr.M.Elumalai
Government Advocate
for R2 & 3

ORDER

M/s Olympia Merlin Developers Private Limited, proposing to develop the subject property, had applied to the respondents herein for planning and building permits to construct the multi-storeyed buildings in the land comprised in Survey Nos.136/1A, 136/1B1B, 136/8B, 137/1 to 137/66, 67B, 68 to 88, 89A, 89B, 90 to 93, 95, 96, 97 and 144 in Thiruvidanthai village, Tiruporur Taluk, Kancheepuram District and in Survey Nos.67/13B, 13C, 13D, 16A, 18A1, 18A2, 18B, 73/4A, 4B, 4C in Kovalam village, Sholinganallur, Kancheepuram District. After considering the genuine request of the petitioner, the planning and building permits were granted by the first respondent bearing Nos.136/2011 dated 6.8.2012 and 19/2012 dated 27.8.2012. Adding further, the learned senior counsel for the petitioner submitted that immediately after obtaining the building permit, the petitioner commenced the construction work in the subject property. However, they were unable to complete the construction work within the time frame determined by the building permit. Therefore, they have again applied to the respondents herein on 14.7.2015 seeking renewal of the building permit bearing Nos.136/2011 dated 6.8.2012 and 19/2012 dated 27.8.2012. In the meanwhile, W.P.Nos.24707 & 24708 of 2014 were filed by Mr.M.Bright Kennedy and Mr.Rathinavathy Masilamani and six others respectively, seeking a direction to the respondent therein to rectify some of the mistakes in the FMB sketches for the property comprised in Survey No.136, Thiruvidanthai village, Tiruporur Taluk, Kancheepuram District, showing the subject property as Survey No.136/1B1B and to restore the status of the property as per the documents and revenue records before the implementation of the UDR scheme and also to survey the property by using the sophisticated instruments with a further direction to furnish a copy of the survey report to the petitioners therein. The petitioner herein was also arrayed as the tenth respondent in the aforementioned writ petitions. This Court, by order dated 9.3.2015, disposed of the said writ petitions holding, in paragraph-8, as follows:-

"8. In the light of the above, without going into the merits of the petitioners' contention, there will be a direction to the 8th respondent, namely, the Thasildar, Tiruporur Taluk, Kancheepuram District to

consider the petitioner's representation dated 18.8.2014 after notice to the petitioner as well as the respondents 9 and 10 and after hearing both the parties in person and receiving their written representation/objection, on prima facie enquiry, if the 8th respondent is of the opinion that there are serious disputes relating to the question of title, the parties have to approach the Civil Court for remedy, the authority is directed to pass appropriate orders accordingly or else the 8th respondent shall consider the representation of the petitioners and pass appropriate orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of the said order."

Aggrieved thereby, Mr.M.Bright Kennedy represented by his power agent Mr.R.Rajasekaran filed Writ Appeal No.513 of 2015 limiting his prayer only to survey the property by using the sophisticated measuring instrument and thereby the other reliefs sought for in W.P.No.24707 of 2014 were given up. Considering the limited prayer sought for by the writ petitioner therein, the Hon'ble Division Bench, by order dated 3.6.2015, directed the eighth respondent therein, namely, the Tahsildar, Tiruporur Taluk, the third respondent herein to do the survey and measurement of the property with the help of sophisticated instrument, after arranging the same from the central office and after affording an opportunity of hearing to all the parties concerned, within a period of four weeks.

2. Continuing his arguments, the learned senior counsel submitted that the inspection was completed by the Tahsildar, Tiruporur on 9.7.2015. However, the first respondent, by letter dated 12.8.2015, informed the petitioner that their application for renewal of the permit can be considered only after knowing the status of the case pending before this Court. Adding further, he submitted that when the inspection was already made by the Tahsildar and the subject property was also measured and the exercise directed to be completed by the Division Bench was fully complied with, the pending application seeking renewal of the building permit deserves to be considered, in terms of Section 50 of the Tamil Nadu Town and Country Planning Act, 1971. The learned senior counsel further submitted that along with the renewal application, the petitioner has also move another application for modification of the building permit. Hence they have to be considered within a reasonable time to be fixed by this Court.

3. The learned Government Advocate for the respondents 2 and 3, placing on record the copy of the proceedings dated 27.6.2016 and also taking instructions from the third respondent-

Tahsildar, who is present in the Court, submitted that although the direction issued by the Hon'ble Division Bench in W.A.No.513 of 2015 to the Tahsildar to measure the property was over, as the said measurement was done only by the Tahsildar, but not in the presence of the Assistant Director (Land Survey), he sought some more time to re-survey the property by both the Tahsildar and the Assistant Director (Land Survey) to avoid any future complications.

4. In reply, the learned senior counsel for the petitioner submitted that when the petitioner was already granted the building permits on 6.8.2012 and 27.8.2012 for a period of three years, before the expiry of the said period, as the construction could not be completed due to the huge work undertaken by the petitioner, the renewal application has been submitted, as per Section 50 of the Tamil Nadu Town and Country Planning Act, on 14.7.2015 itself. Therefore, the first respondent need not unnecessarily wait for the re-survey of the subject property to be undertaken by the third respondent along with the Assistant Director (Land Survey).

5. Again the learned Government Advocate for the respondents 2 & 3 submitted that only after completion of the re-survey of the subject property with the use of sophisticated instrument as ordered by the Hon'ble Division Bench, the third respondent-Tahsildar would be able to make his report to the first respondent to enable the first respondent to proceed further.

6. I also find merits in the submissions made by the learned Government Advocate for the respondents 2 & 3. Therefore, accepting the request made by the third respondent-Tahsildar to re-survey the subject property in the presence of the Assistant Director (Land Survey), this Court grants two weeks' time from the date of receipt of a copy of this order to the third respondent-Tahsildar to re-survey the subject property in the presence of the Assistant Director (Land Survey) concerned and to send his report thereof to the first respondent and that the first respondent shall complete the entire exercise in accordance with law within a period of ten days thereafter. Needless to mention that the result of the re-survey going to be undertaken by the Tahsildar in the presence of the Assistant Director (Land Survey) shall be without prejudice to the civil rights of the parties. With this observation, the writ petition stands disposed of accordingly. Consequently, W.M.P.Nos.27429 & 27430 of 2016 are closed. No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

ss

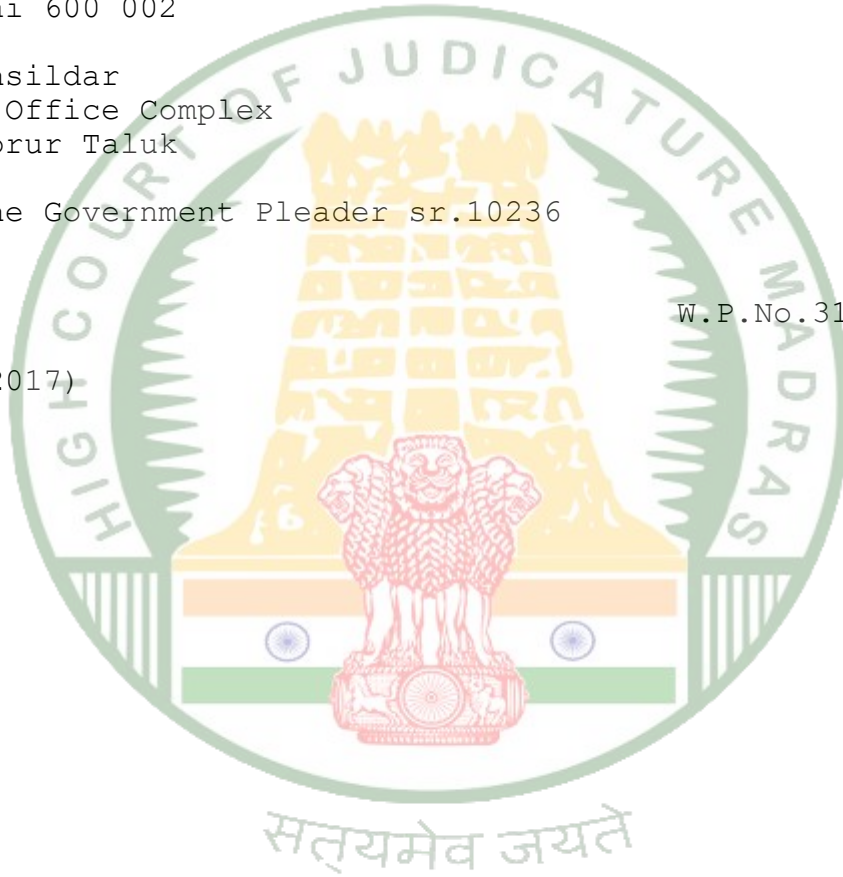
To

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+1cc to The Government Pleader sr.10236

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mp(co)
ss(13/03/2017)



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