

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P.No.36797 of 2016 and
WMP.Nos.31629, 33713, 33714 and 38454/2016

M/s.Alliance Projects,
Partnership Firm,
Plot No.A, Door No.36/1,
Gandhi Mandapam Road,
Kotturpuram, Chennai-85.

.... Petitioner

Vs.

1. The Revenue Divisional Officer,
Ambattur Taluk Office, Ambattur.

2. The Tahsildar,
Ambattur Taluk Office,
Ambattur.

3. The Deputy Tahsildar,
Ambattur Taluk Office,
Ambattur.

4. N.Satheesh

.... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records pertaining to the order No.Na.Ka.No.1412/2015/A2 dated 08.09.2016 passed by the 1st respondent and quash the same as illegal and arbitrary.

For Petitioner : Mr.S.Sethuraman

For Respondents : Mr.S.Rajeswaran,

Special Government Pleader
for R1 to 3

Mr.S.Viswanathan for R4

O R D E R

The Writ Petition is filed, challenging the order No.Na.Ka.No.1412/2015/A2 dated 08.09.2016 passed by the 1st respondent and quash the same as illegal and arbitrary and as against the principles of natural justice.

2. The case of the petitioner is that they are the absolute owner of the property measuring around 6 acre 53 cents in Korattur Village, Chennai. They purchased the above said properties by Sale Deed dated 05.09.2005 from M/s.Asha Nivas, Social Welfare Centre. Pursuant to the sale deed, the patta has

been transferred in their name. While so, during 2014, the petitioner found a notice in the construction site of the petitioner in Korattur Village issued by the District Collector, Madurai, stating that one Mr.P.Ramamurthy, P.Ramasubramanian, R.Palanikumar, V.Natarajan and P.Sivaperumal Author and Trustees of Inpros Charitable Trust have filed a suit for appointment of Commissioner for sale of the lands in survey number 590 measuring an extent of 37 cents and in S.No.592 measuring an extent of 58 cents in Korattur Village. The said suit in O.S.No.45/2014 was filed to grant permission to Mr.P.Ramamurthy for executing Nayagam's Will for sale of the 'A' Schedule properties in the suit by appointing an Advocate Commissioner to supervise the sale.

3. On verification, they came to know that the 1st plaintiff Mr.Ramamurthy has filed O.P.No.583/2009 before this Court for grant of Probate of Will dated 05.04.2006 alleged to have been executed by one Mr.P.Nayagam, who had bequeathed several properties including the land in Survey Nos.590 and 591 at Korattur Village which belonged to the petitioner herein and the said Original Petition was allowed by this Court by order dated 26.11.2010. Subsequently, the petitioner filed a impleading petition to implead themselves in the suit in O.S.No.45 of 2014. After few adjournments, they came to know that the main suit itself was withdrawn. The petitioner has also filed an application for revocation of the probate granted in O.P.No.583/2009 with regard to the properties purchased by him in S.Nos.590 and 591 at Korattur Village and the same is yet to be numbered.

4. In the meanwhile, one Mr.Satish claims to be the owner of the said lands has made a representation to the 1st respondent for cancellation of patta given in the name of the petitioner in respect of the Survey Nos.590 and 591 at Korattur Village. Based on the same, the 1st respondent has issued a notice dated 29.07.2015 to the petitioner calling upon him to be present for an enquiry on 06.08.2015. But, on that day, when the Law Officer of the petitioner visited the office of the 1st respondent, she was asked to meet the 3rd respondent Deputy Thasildar Mr.Manikandan in the office of the Tahsildar, Ambattur. But, it was informed that the 1st respondent is not available and the enquiry would be held on some other day.

5. While so, the 1st respondent issued a letter without date in the month of August, 2015 bearing No.Na.Ka49/2015/C1 intimating the enquiry date as on 20.08.2015. On the said date also, the Deputy Tahsildar informed that the 1st respondent is not available. When things stood thus, the 1st respondent, without granting an effective opportunity to represent the case, on the basis of the documents furnished by the 4th respondent, issued an order dated 30.12.2015, cancelling the patta granted to the petitioner in respect of the Survey Nos.590 and 591 in Korattur Village. Aggrieved over the same, the petitioner preferred a Writ Petition in W.P.No.5936/2016 and after hearing both sides, this Court set aside the order dated 31.12.2015 passed by the 1st respondent and directed the 1st respondent to

conduct a fresh enquiry after giving an opportunity of personal hearing to the petitioner as well as the 4th respondent and other necessary parties, if any and pass appropriate orders on merits within a period of eight weeks from the date of receipt of a copy of that order.

6. In pursuance of that order, the 1st respondent issued a letter dated 30.06.2016 fixed the enquiry on 08.07.2016 at 10.30 a.m. When the representatives of the petitioner appeared on that date, it was informed that the 1st respondent had gone out on official duty. Therefore, the petitioner submitted a letter dated 08.09.2016 requesting the 1st respondent to inform the next date of hearing. Since there was no reply, the petitioner submitted a written submission dated 27.07.2016 and was waiting an opportunity of personal hearing. But without giving any opportunity to put forth their case in person, the impugned order dated 08.09.2016 came to be passed once again cancelling the patta granted in the name of the petitioner. Hence, the present Writ Petition.

7. At this stage, it is pertinent to mention that the petitioner has also filed W.P.No.42476 of 2016 seeking to issue a Writ of Mandamus, directing the respondent therein, namely, The Sub-Registrar, Office of the Sub-Registrar, Villivakkam, to register the sale deeds pertaining to the land in S.No.590 and S.No.591 in Patta No.536, Korattur Village, Ambattur Taluk, submitted by the petitioner, without reference to the order in Na.Ka.No.1412/2015/A2 passed by the Revenue Divisional Officer, Ambattur. The same would be decided depending upon the orders to be passed in this Writ Petition.

8. Heard Mr.S.Sethuraman, learned Counsel for the petitioner, Mr.S.Rajeswaran, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.S.Viswanathan, learned Counsel for the 4th respondent.

9. On a perusal of the records, it appears that earlier, the 1st respondent, namely, the Revenue Divisional Officer, had given an opportunity of personal hearing to the petitioner on 06.08.2015 and the same was admitted in the counter filed by the 1st respondent by stating that as on that date, the 1st respondent was not available at Office as there was an urgent meeting at Collectorate. Therefore, there is no doubt that the personal hearing did not take place on that date. Subsequently, as fixed by the 1st respondent, on 20.08.2015 also, no personal hearing took place due to the non-availability of the 1st respondent in his office. But, without considering the grievance of the petitioner, on 30.12.2015, an order cancelling the patta issued to the petitioner in respect of the S.Nos.390 and 391 came to be passed. Aggrieved over the same, the petitioner filed a Writ Petition No.5936 of 2016 in which this Court while setting aside the impugned order has held as follows:

the petitioner and no proper enquiry was conducted by the 1st respondent before passing the impugned order cancelling the patta issued in favour of the petitioner. Hence, on the said ground, it would be appropriate to set aside the impugned order and to remand back the matter to the 1st respondent for consideration.

5. Accordingly, the impugned order dated 31.12.2015 passed by the 1st respondent is set aside and the matter is remanded back to the 1st respondent for fresh consideration. The 1st respondent is directed to conduct a fresh enquiry and give an opportunity of personal hearing to the petitioner as well as to the 4th respondent and other necessary parties, if any, and to pass appropriate orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this Order."

It is a clear direction of this Court to the 1st respondent that any order would be passed after giving sufficient opportunity of personal hearing to the petitioner. No doubt, this direction of this Court has not been complied with.

10. Pursuant to the direction of this Court, it appears that the 1st respondent issued a letter dated 30.06.2016 fixing the enquiry on 08.07.2016 at 10.30 a.m. and though on 08.07.2016, the petitioner's Law Officer appeared, he was informed that the 1st respondent had gone out on official duty. Therefore, the petitioner submitted a letter requesting to inform the next hearing date. Since there was no reply, the petitioner gave a written submission dated 27.07.2016. Thereafter, without giving any opportunity of personal hearing to the petitioner, the present impugned order came to be passed.

11. Considering the facts and circumstances of the matter, this Court is of the view that merely giving a written submission would not mean that a personal hearing was given and the written submission may not be equivalent to complying with the order of this Court made in Writ Petition No.5936 of 2016 dated 26.04.2016.

12. In view of the above, since there is a violation of the principles of natural justice, the impugned order dated 08.09.2016 passed by the 1st respondent is set aside in the same subject matter for second time. It is made clear that the petitioner will be given only one opportunity of personal hearing and on that day, the petitioner will appear and it is left open to the petitioner to submit his submissions either orally or written. If he does not appear, the Officer is at liberty to pass orders straightaway. Further, the 4th respondent should also be available for the enquiry. After hearing the interested parties, the 1st respondent shall pass orders on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this Order.

13. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Revenue Divisional Officer,
Ambattur Taluk Office, Ambattur.
2. The Tahsildar,
Ambattur Taluk Office,
Ambattur.
3. The Deputy Tahsildar,
Ambattur Taluk Office,
Ambattur.

+1cc to the Government Pleader SR. 13044

+1cc to M/S. S. Sethuraman, Advocate SR. 12568

W.P.No.36797 of 2016

AD(CO)
VR(08/03/2017)



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