



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.[MD].No.62 of 2011
and
M.P.(MD)No.1 of 2011

P.Sukarnao : Appellant

Vs.

The Commissioner,
Sivagangai Municipality,
Sivagangai Town,
Sivagangai District. : Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 09.12.2010, made in W.P.(MD)No.8989 of 2010.

Prayer in WP(MD). 8989/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS, for enforcement of resolution dated 12.2.2010 in resolution No. 301 passed by council by the Sivagangai Municipality (formed U/S 322 of Tamil Nadu District Municipality Act, 1920 and consequently directing the respondent to sanction the building plan as already submitted by the petitioner dated 14.8.2009.

For Appellant : Mr.P.Paranthaman
For Respondent : Mr.P.Srinivas

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J.]

This Writ Appeal is directed against the order passed by the Writ Court, dated 09.12.2010, made in W.P.(MD)No.8989 of 2010.

2. The case of the appellant before the learned Single Judge was that the property bearing Old Survey No.31, now at Town measured Kottakudi Group T.S.No.104 and in earlier V.L.T.No.51 at Block 4 originally belonged to one Govindhasamy Naidu, Periyasamy Thevar, Verrasamy Naidu, Vellai Konar and his legal heirs and Alamelu Ammal. One Sowthamani has purchased the



property from the above said persons and she was in possession and enjoyment of the same from the date of purchase. She approached the respondent for plan approval to construct shops, stocks and stores in the said property. On 16.09.1981 the respondent granted permission to construct the shops, stocks and stores. After getting plan approval, a dispute arose between the vendor of the appellant, viz., Sowthamani and the respondent. The said Sowthamani has paid tax to the respondent periodically and she has also laid a suit in O.S.No.196 of 1982 before the learned District Munsif, Sivagangai, seeking the relief of declaration and permanent injunction. The said suit was decreed as prayed for. Aggrieved over the same, the Municipality has preferred an appeal in A.S.No.146 of 1983, which was dismissed.

3. While so, the appellant purchased the property in question from Sowthamani, by registered sale deed No.241/1991, dated 28.03.1991. After purchase, he has paid tax as claimed by the Municipality and approached the respondent for getting plan approval for construction of shops in the said property on 14.08.2009. However, the respondent refused to grant permission since the property belongs to Weekly Market Road of Sivagangai Municipality. Hence, the appellant filed a Writ Petition before this Court in W.P.(MD)No.9394 of 2009. But the said Writ Petition was dismissed, as against which, Writ Appeal was filed. A Division Bench of this Court, by judgment dated 11.12.2009, disposed of the Writ Appeal by giving liberty to the appellant to prefer an appeal and on filing such appeal, the same shall be entertained by the Council. Pursuant to the order, he filed an appeal before the Council and the Council also passed a resolution on 12.02.2010, granting plan approval. However, the respondent forwarded the resolution to the Government for clarification. Hence, the Writ Petition.

4. When the matter came up for hearing before the learned Single Judge, it was represented on the side of the respondent that an appeal memorandum was filed before the Secretary, Municipal Administration and Water Supply Department, on 09.04.2010, to set aside the resolution. Therefore, the learned Single Judge dismissed the Writ Petition holding that no Mandamus could be issued, since appeal is pending against the very same resolution, which is sought to be enforced by the appellant. However, liberty was given to the appellant to renew his request after the final order is passed by the Government. Challenging the same, the appellant is before this Court with the present appeal.

5. Today, when the matter was taken up for consideration, the learned counsel for the appellant submitted that admittedly, an appeal was filed before the Council, pursuant to the order passed by this Court, invoking the provision under Section 322 of the Tamil Nadu District Municipalities Act, 1920 and on appeal, the



Council passed a resolution dated 12.12.2010 granting plan approval to the appellant. Thereafter, clarification was sought for from the Government with regard to the resolution passed by the Council and absolutely, no appeal is pending before the Government, as stated by the respondent. Only on a wrong representation, the Writ Petition came to be dismissed by the learned Single Judge by observing so.

6. We have also heard the learned counsel for the respondent on the above said submission made by the learned counsel for the appellant. However, he is not in a position to confirm as to whether any appeal is pending or not.

7. In view of the fact that the matter is of the year 2010 and now, almost 6 years had lapsed, the respondent is directed to consider the claim of the appellant and pass appropriate orders, granting plan approval, on merits and as per law, within a period of six weeks from the date of receipt of a copy of this judgment, if there is no other legal impediment, provided, no appeal is pending.

8. The Writ Appeal is disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To
The Commissioner,
Sivagangai Municipality,
Sivagangai Town,
Sivagangai District.

+2cc to Mr.P.Paranthaman, Advocate SR.No.1853
+1cc to Mr.P.Srinivas, Advocate SR.No.1956

SML

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JUDGMENT MADE IN
W.A.[MD].No.62 of 2011
Dated: 10.01.2017