

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.21506 & 21507 of 2013
and
MP.Nos.1 of 2013 (2 MP.s),
2 of 2013 (2 M.Ps) & 3 of 2013

Vijaya Vaidyanathan ...Petitioner in WP.No.21506 of 2013
Uma Ramanathan ...Petitioner in WP.No.21507 of 2013

Vs

1. State of Tamilnadu
rep. by the Secretary to Government Housing
and Urban Development Department ,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Tahsildar
Mylapore Triplicane Taluk, Greeways Road
Raja Annamalaipuram, Chennai-28.
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
No.8, Gandhi Irwin Road ,
Egmore, Chennai-8.
4. S.Gunasekaran ... Respondents in both petitions

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records comprised in the show cause notice dated 13.5.2013 bearing Letter NO. B1/ 6243/13 issued by the 3rd respondent and all proceedings pursuant thereto and quash the same as being arbitrary illegal and in violation of the provisions of the Tamilnadu Town and Country Planning Act 1971 and consequently direct the 3rd respondent to refrain from taking any steps towards seeking to cancel or taking any steps towards cancelling the planning permission issued by it to the petitioner vide PP B/Spl. Bldgs/015 A to C/2012 in Lr. No. B1/4588/2011 dated 25.1.2012.

For Petitioners in both W.Ps. : Mr.Harshavardhan Ganesan
for R.Parthasarathy

For Respondents in both W.Ps : Mr.R.S.Selvam
Government Advocate for R1 to R3

Mr.K.Sathish
for M/s.Profexs Associates for R4

C O M M O N O R D E R

The show cause notice issued by the respondents in proceedings dated 13.05.2013 is under challenge in these writ petitions.

2. The learned counsel appearing for the petitioners states that the impugned show cause notice has been issued with reference to the cancellation of the planning permission issued in favour of the writ petitioners in proceedings dated 25.01.2012. The learned counsel appearing for the petitioners brought to the notice of this Court that even before the issuance of the show cause notice, the building completion certificate was issued by the competent authority and therefore, the very issuance of the show cause notice passed is untenable. The completion certificate was issued on 06.03.2013 itself. Thus, very procedure adopted is improper in respect of the title and ownership in relation to the property in question. The respondents have no jurisdiction to adopt the same in respect of the title and ownership. The several litigations pending between the competent Civil Court of law and the authorities are no way connected with such disputes. Thus, the impugned show cause notice is liable to be set aside.

3. The learned Government Advocate appearing on behalf of the respondents disputed the said contention on the ground that the writ petitioners have challenged the show cause notice issued in proceeding dated 13.05.2013. In the show cause notice, the respondents stated that one Thiru.S.Gunasekar in his letter dated 08.04.2013 informed that the Patta issued in favour of the Tvl.Uma Ramanathan (writ petitioner in WP.No.21507 of 2013) and Vijaya vaidyanathan (writ petitioner in WP.No.21506 of 2013) has been cancelled by the revenue officials and requested for cancellation of planning permission given by the Chennai Metropolitan Development Authority (CMDA) in the name of the representing Thiru.Uma Ramanathan and Vijaya Vaidyanathan.

4. The show cause notice had been issued with reference to the complaint submitted by one Mr.Gunasekaran. Therefore, there is no irregularity in respect of the issuance of the show cause

notice and it is left open to the writ petitioners to submit their objection / explanation to the authorities competent enabling them to consider the merits and demerits and take a decision in accordance with law.

5. This Court is of an opinion that the writ petitions have been filed challenging the very show cause notice. The show cause notice was issued, undoubtedly based on the complaint. Therefore, the authorities competent are bound to conduct an enquiry in order to cull out the truth and take a decision and pass orders on merits and in accordance with law. This Court in the present writ petition cannot adjudicate the merits and demerits, more specifically, under Article 226 of the Constitution of India. Such merits and demerits are to be adjudicated by the respective parties by producing all necessary documents and by adducing evidences being required. This being the procedures to be adopted, this Court cannot adjudicate the merits and demerits in the present writ petition.

6. No writ proceedings can be entertained against the show cause notice in a routine manner. The judicial review against the show cause notice is certainly limited. A show cause notice can be challenged, if the same has been issued by an incompetent authority having no jurisdiction or competency or if an allegation of malafides are raised or if the same is in violation of the statutory rules in force. Even in case of raising an allegation of malafides, the authority against whom such an allegations are raised is to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal grounds, no writ proceedings can be entertained against the show cause notice.

7. Intermittent intervention in statutory proceedings are not desirable. Such intermittent interventions will cause prejudice to the completion of the statutory proceedings initiated by the competent authorities by invoking the provisions of the Act. Unless there is a legal ground to interfere, the High Courts must allow the authorities competent to proceed with the enquiry and conclude the same by providing opportunity to all the persons concerned. This being the scope of the proceedings, the High Courts must be cautious while entertaining the writ against the show cause notice. Stalling the statutory proceedings on the show cause notice will certainly affect the effective and efficient implementation of the Statutes concern. Thus, in the event of any established legal grounds, no writ proceedings shall be admitted against the show cause notice. The Hon'ble Supreme Court also time and again emphasized that writ against the show cause notice cannot be entertained in a casual manner.

8. The learned counsel appearing for the petitioners states that after issuance of the show cause notice, building completion certificate has been issued in favour of the writ petitioners. However, all such factors are to be considered by the competent authorities and the decision is to be taken by providing opportunity to all the parties concerned.

9. In this view of the matter, the writ petitioners are at liberty to submit fresh representation / explanation setting out all facts and details and the documents, if any required, to the respondents, enabling them to conduct an enquiry and the respondents shall conduct an enquiry by affording opportunity to all the parties concerned and take a decision and pass orders on merits and in accordance with law. Such an exercise shall be done by the respondents as early as possible, since the issues are pending for the past about 5 years.

10. With the above observations, the writ petitions stand disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sk
To

1. The Secretary to Government Housing and Urban Development Department , Secretariat, Fort St. George, Chennai-600 009.
2. The Tahsildar, Mylapore Triplicane Taluk, Greeways Road Raja Annamalaipuram, Chennai-28.
3. The Member Secretary, Chennai Metropolitan Development Authority, Thalamuthu Natarajan Maaligai, No.8, Gandhi Irwin Road , Egmore, Chennai-8.

+1cc to the Government Pleader, S.R.No.72424

W.P.Nos.21506 & 21507 of 2013
and MP.Nos.1 of 2013 (2 MP.s),
2 of 2013 (2 M.Ps) & 3 of 2013

SS(CO)
CS/13/11/2018