

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.21932 of 2016
and
W.M.P.No.18774 of 2016

S.Nirmala .. Petitioner
Vs.

1. The Director of Town and Country Planning,
No.807, Anna Salai,
Chennai-600 002.
2. The Deputy Director of Town and Country Planning,
Thanjavur District,
Thanjavur.
3. The Commissioner,
Mayiladuthurai Municipality,
Mayiladuthurai 609 001,
Nagapattinam District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the impugned proceedings issued by the third respondent in Na.Ka.No.1714/2013/F1, dated 21.04.2016 and quash the same.

For petitioner : Mr.G.Sankaran

For respondents: Mr.S.N.Parthasarathy,
Govt. Advocate for RR-1 & 2
Mr.P.Srinivas for R-3

ORDER

(The Order of the Court was made by M.Venugopal, J)

Heard both sides.

2. The petitioner has filed the above Writ Petition praying

for issuance of a Writ of Certiorari to call for the records relating to the impugned proceedings issued by the third respondent in Na.Ka.No.1714/2013/F1, dated 21.04.2016 and quash the same.

3. According to the Petitioner, her family is residing in the house constructed in the land comprised in T.S.No.300, having an extent of 1992 Sq.Ft. with ground floor and first floor. Her husband Sethuraman had expired in the year 2000 when the petitioner was 32 years old, leaving herself and her minor daughter Sridevi as legal heirs. The house property is a joint family property purchased by her father-in-law Ramakrishnan in the year 1978. After the death of her husband, there was a partition in the family in the year 2004 as per Partition Deed in Document No.1178, dated 14.08.2004 (on the file of Sub-Registrar, Mayiladuthurai), based on which, the house property in T.S.No.300 was allotted to the petitioner.

4. The stand of the Petitioner is that since the house building became old and dilapidated, she decided to repair and re-construct the building and to construct another floor to eke out livelihood on rental basis. One Nallusamy being the neighbour, filed a Civil Suit in O.S.No.263 of 2011 on the file of District Munsif Court, Mayiladuthurai, wherein interim order was granted in his favour. In Civil Miscellaneous Appeal No.1 of 2012, the learned Principal Sub-Judge, Mayiladuthurai reversed the order of the trial Court on 21.09.2012. The said Nallusamy projected Writ Petition No.33417 of 2014 before this Court, wherein orders were passed on 25.03.2015, directing the Third Respondent to take appropriate legal action on merits and in accordance with Law, within a statutory period prescribed under the provisions of the Tamil Nadu Town and Country Planning Act, 1971.

5. At this stage, learned counsel for the Petitioner submits that the Petitioner filed an application seeking for plan approval and building permission to the Third Respondent-Municipality on 10.02.2015. However, it was returned on 18.02.2015 because of certain discrepancies. Consequently, in view of the order passed in the Writ Petition, the Third Respondent issued proceedings in Form-I, dated 20.03.2015 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, to stop construction and to dis-continue the usage of the building where the petitioner is residing with her daughter.

6. It comes to be known that the petitioner filed an application to the Second Respondent/Deputy Director of Town and Country Planning, Thanjavur, seeking permission and approval by submitting copy of the plan and other required particulars and for retention of the land and building and for continuance of use of the land and building. The said application was made on 10.04.2015 after receipt of notice, dated 20.03.2015 from the Third Respondent. The application submitted by the Petitioner was processed and she was issued with a notice, dated 06.04.2015

by the Third Respondent by pointing out certain discrepancies calling upon her to rectify and re-submit the same. On 06.04.2015, the Third Respondent issued another proceedings in Form-II under Section 85 read with Sections 56 and 57 of the Act, 1971, to lock and seal the premises. Hence, the Petitioner was perforced to project W.P.No.14212 of 2015 assailing the notice, dated 06.04.2015 issued by the Third Respondent.

7. In this connection, the Learned Counsel for the Petitioner brings it to the notice of this Court that interim order was granted in W.P.No.14212 of 2015 on 08.06.2015 in favour of the petitioner and subsequently, on 23.06.2015, the Writ Petition was disposed of by referring to the fact that an appeal petition is pending before the Second Respondent/Deputy Director of Town and Country Planning, Thanjavur, which was re-submitted and the Third Respondent had forwarded the particulars to the Second Respondent on 04.06.2015. In short, this Court directed the Second Respondent to number the Appeal preferred by the Petitioner, of course, if the papers are in order and to pass necessary orders and to dispose of the Appeal within the statutory prescribed period. If the Petitioner filed any application/petition seeking an interim relief of stay, then, the Second Respondent/Deputy Director of Town and Country Planning, Thanjavur, is to pass orders on the said application/petition within a period of two weeks. Till such time, this Court directed that status-quo shall be maintained.

8. The grievance of the petitioner is that though limited time was stipulated, the second respondent had issued proceedings, dated 01.12.2015 calling upon the petitioner to produce further particulars including separate Patta after sub-division in respect of the land measuring an extent of 218.06 Sq.Mtr. belonging to the petitioner out of the joint family property to an extent of 412 Sq.Mtr. As such, the petitioner is required to produce separate Patta after sub-division of the property which belongs to her with Town Survey Records.

9. The Learned Counsel for the Petitioner proceeds to point out that the Petitioner, after receipt of the proceedings, dated 01.12.2015 from the Second Respondent, submitted an application to the Third Respondent seeking for sub-division of land based on Town Survey and to issue separate Patta in January 2016 and pursuant to the same, on payment of necessary charges, the Surveyor from the Third Respondent/Mayiladuthurai Municipality had inspected the premises and made measurements for the purpose of sub-division of land and for issuance of Patta. However, no further action had been taken by the Third Respondent in this regard. The Petitioner sent a representation to the Second and Third Respondents on 11.03.2016 stating that she had complied with all the legal requirements except sub-division of land and assignment of Town Survey Number, which is pending with the Third Respondent. Apart from that, she had made another representation on 25.04.2016 to the respondents.

10. The Learned Counsel for the Petitioner strenuously takes an emphatic stand that the impugned proceedings of the Third Respondent, dated 21.04.2016, is ex-facie illegal and arbitrary one and the same is liable to be quashed because of the reason that the said order has been passed without considering the factual and documentary aspects pertaining to the sub-division of land with assignment of Town Survey Number, which is pending for consideration before the Third Respondent/Municipality.

11. Yet another plea taken on behalf of the Petitioner is that the Surveyor of the Third Respondent had made an inspection and surveyed the land in March 2016, and no further orders are passed in the subject matter in issue and the impugned order dated 21.04.2016 was passed for non-production of the same sub-division records and Town Survey Records, which are pending consideration with the Third Respondent. Viewed in that perspective, the impugned proceedings of the Third Respondent, dated 21.04.2016 is liable to be set aside by this Court in the interest of justice.

12. The Learned counsel for the Petitioner further submits that when the Statutory Appeal filed by the Petitioner for plan approval and permission in terms of the ingredients of Section 49 of the Tamil Nadu Town and Country Planning Act, 1971, read with Section 56(3) of the Act, is pending consideration before the Second Respondent and when this Court had earlier passed an order in the Writ Petition giving direction for disposal of the Appeal by the Second Respondent, then issuance of impugned proceedings by the Third Respondent for lock and seal is an illegal one.

13. Per contra, it is the submission of the Learned Government Advocate appearing for Respondents 1 and 2 that the Petitioner, after seeking more time, had submitted particulars on 11.03.2016 and subsequently, the second respondent-Deputy Director of Town and Country Planning made scrutiny of the documents submitted by the Petitioner, found some discrepancies and addressed a communication, dated 15.06.2016 requiring additional particulars in connection with the approval of planning permission, such as, (i) Stability Certificate with Structural Engineer's Signature, (ii) Certificate from the Tahsildar mentioning that the subject property is not in water course and (iii) Topo Plan. In fact, the Petitioner has not submitted the relevant particulars sought for by the Second Respondent and that the application of the Petitioner seeking to approve the planning permission, is pending before the Second Respondent.

14. The Learned Counsel for the Third Respondent/Municipality contends that the petitioner, on

22.09.2015, submitted an application addressed to the First Respondent and it was perused and before being forwarded to the First Respondent, various particulars that were required for processing the application, were sought for by means of proceedings, dated 01.12.2015 of the Second Respondent. In spite of receipt of the said proceedings, dated 01.12.2015, the petitioner did not choose to submit the same for a long time, notwithstanding the fact that she had sought time for submission of the particulars through the communications dated 23.12.2015 and 14.03.2016 respectively. However, nothing tangible has come out from her side. Hence, the Second Respondent, by letter dated 17.03.2016, required the petitioner to submit the particulars which were already called for, within 30 days, failing which the proposal for relaxation of the Rules will be returned without any orders. In spite of the time being granted, the petitioner had not submitted the required particulars and as such, the impugned proceedings, dated 21.04.2016 came to be issued.

15. Learned Counsel for the Third Respondent further points out that as on date, the petitioner submitted the required particulars only on 25.05.2016, and the same were forwarded to the First Respondent through the Second Respondent for passing necessary orders and that the matter is now pending before the First Respondent/Director of Town and Country Planning, Chennai. In the meanwhile, the Petitioner has approached this Court and filed the present Writ Petition.

16. Considering the respective contentions addressed on either side and also this Court, taking note of the fact that as on date, the Appeal preferred by the Petitioner is pending consideration before the First Respondent/Director of Town and Country Planning, Chennai, this Court, at this stage, simpliciter, without expressing any opinion on the merits and de-merits of the matter and also not delving deep into the same, directs the First Respondent to dispose of the Appeal of the Petitioner in a fair, just, unbiased and dispassionate manner, within a period of four weeks from the date of receipt of a copy of this order, of course, by adhering to the principles of natural justice. It is open for the Petitioner to raise all factual and legal pleas before the First Respondent, who shall meet out the same at the time of passing final orders on the said Appeal. It cannot be gain-said that the final orders to be passed by the First Respondent, must be a reasoned and speaking one, after taking note of the pleas projected by the Petitioner. In case the Petitioner requires oral/personal hearing, that also shall be considered by the First Respondent and later orders shall be passed within the above time limit stipulated by this Court. The Petitioner is directed to lend her unstinted co-operation and assistance to the First Respondent in disposing of the pending Appeal.

17. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

CS

To

1. The Director of Town and Country Planning,
No.807, Anna Salai, Chennai-600 002.
2. The Deputy Director of Town and Country Planning,
Thanjavur District, Thanjavur.
3. The Commissioner, Mayiladuthurai Municipality,
Mayiladuthurai 609 001,
Nagapattinam District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No. 81284

W.P.No.21932 of 2016

NMI (CO)
GN(18/12/2018)



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