

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.No.191 of 2018

and

C.M.P.No.1333 of 2018

N.Raman
represented by his Power Agent
T.R.Sahadevan
S/o.Ramasamy
No.5 and 6, Baby Nagar,
First Main Road Extension,
Velacherry, Chennai - 600 042.

.. Appellant/Petitioner in
W.P.No.11119/2016

Vs

1.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

2.The Assistant Engineer/Assistant
Executive Engineer,
Town Planning Approval Section,
Regional Office South,
Greater Chennai Corporation,
115, Dr.Muthulakshmi Salai,
Adyar, Chennai - 600 020.

3.The Deputy Director of Town Planning,
Chengalpattu Region,
GST Road, Chengalpattu.

4.The Tahsildar,
Velacherry,
Chennai - 600 113.

.. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.12.2017 passed in W.P.No.11119 of 2016 passed by this Court.

For Appellant : Mr.L.Chandrakumar
for Mr.M.Gnanamoorthy
For Respondents : Mr.A.Nagarajan,
Standing Counsel [R1 & R2]
Mr.A.N.Thambidurai
Special Government Pleader [R3 & R4]

JUDGMENT

[Judgment of the Court was made by **M.SATHYANARAYANAN, J**]

By consent, the writ appeal is taken up for final disposal.

2. Mr.A.Nagarajan, the learned Standing Counsel, accepts notice on behalf of respondents 1 and 2 and Mr.A.N.Thambidurai, the learned Special Government Pleader, accepts notice for respondents 3 and 4.

3. The facts leading to this litigation have been narrated in detail and in extenso in the impugned order passed in the writ petition, which is the subject matter of this appeal. Therefore, it is unnecessary to restate the facts once again except to cull out the facts for the purpose of disposal of this writ appeal.

4. The Power of Attorney agent of the appellant has filed W.P.No.11119 of 2016 stating among other things that his Principal viz., N.Raman S/o.K.Natesan is the absolute owner of the landed property admeasuring an extent of 55 cents comprised in Old Survey No.317/1 Part, T.S.No.1/1, Block No.189, Velacherry Village, Chennai and his Principal has obtained approval for the plots comprised in said Survey Number vide LPDM/DTP No.26/70 and by virtue of the Power of Attorney, he is authorised and empowered to deal with the plots. It is further stated that the father of the Principal had purchased the property by way of a registered sale deed bearing document No.1433/1962 dated 04.06.1962 registered on the file of office of Sub-Registrar, Saidapet and after his demise, appellant/writ petitioner had succeeded to the said estate. The grievance expressed by the appellant/writ petitioner is that, he has sought for sub-division approval of Door No.T.S.No.1/128, Block No.189, Plot No.Nil, Bhuvaneshwari Ngar, Velacherry, Chennai - 600 042 and the Town Planning Section - South Region of Greater Chennai Corporation vide communication

dated 25.02.2016 made in W.D.C.No.SD/WDCN/13/00056/2016 has requested furnishing of the following particulars:

<i>Sl.No.</i>	<i>Description</i>	<i>Remarks</i>
1	To furnish the following document duly Notarized	2. Suit pending in court regarding the proposed land with Chennai Corporation to the clarified. 3. Proposed site subdivided before 31.12.1989 evidence to be furnished.
2	It is requested to clarify the following	1. The following document to be furnished. a) GPA document 472/2011 b) GPA cancel document 8405/2014 c) settlement documents 4719/2012 & 4849/2012 d) settlement cancel deed 2706/2015 f) sale deed 7045/2015

The same was also furnished. However, the Executive Engineer, Town Planning Approval Section now the Greater Chennai Corporation viz., the second respondent vide impugned order dated 06.04.2016 has returned the application for planning/building permission in respect of the said plot, on the ground that 'the proposed site was falling in the community Hall purpose earmarked site as per the approved layout LPDM/DTP No.152/1973 and as such it could not be considered.'

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5. Mr.L.Chandrakumar, the learned counsel appearing for appellant, has invited the attention of this Court to page No.56 of the typed set of documents and would submit that the appellant/writ petitioner, alleging encroachment on

the part of third party, has submitted a representation dated 28.05.2015 by enclosing all the relevant documents as to the right, title and possession in respect of the said property and further invited the attention of this Court to page No.60 of the typed set of documents wherein patta has been granted by the Tahsildar, Velacherry Taluk, Chennai - 600 113 on 27.07.2015 and also invited the attention of this Court to sub-division plan granted by Corporation of Chennai and in the light of the documents of sterling quality, it is not open to the second respondent to reject the request for planning/building permission on the ground that the site is reserved for public purpose. It is the further submission of learned counsel appearing for appellant/writ petitioner that the learned Judge, without actually dealing with the factual aspect, has erroneously concluded that the Tahsildar, without authorisation, has issued the patta on 27.07.2015 and also ordered departmental proceedings against the concerned Tahsildar and challenging the same, the Tahsildar, Velacherry Taluk, Chennai - 600 113, has also filed an appeal in W.A.No.1811 of 2017 and obtained interim orders and hence, prays for interference.

6. Per contra, Mr.A.N.Thambidurai, the learned Special Government Pleader, appearing for the respondents 3 and 4, would submit that the learned Judge has taken note of the fact that despite the communication of the District Revenue Officer, Zonal Officer 13, Zone - XIII, Corporation of Chennai,

Adyar, Chennai, dated 26.05.2015, the Tahsildar, has issued the patta on 27.07.2015 which was signed on 27.07.2015 and as such, the patta is of no help to the appellant/writ petitioner and would also point out that though it is the claim of the appellant/writ petitioner that the Corporation has issued the sub-division plan, no documents have been enclosed in his earlier representation dated 28.05.2015 and no such averment has also been made in the affidavit filed in support of the writ petition and would further aver that the Honourable Supreme Court, in a catena of decisions, has also held that once a land is reserved for public purpose, it cannot be afforded for any other purpose and taking note of the same, the learned Judge, has rightly, dismissed the writ petition and prays for dismissal of this writ appeal, with costs.

7. This Court has considered the rival submissions and perused the materials placed before it.

8. A perusal of the materials placed before this Court would *prima facie* indicate that the appellant/writ petitioner has been issued with a patta by the Tahsildar, Velacherry Taluk, Chennai, on 27.07.2015 and it is also the specific claim of the appellant/writ petitioner that the Corporation of Chennai themselves had issued sub-division plan, in respect of the site in question and as such there cannot be no impediment on the part of the official of

Corporation of Chennai to consider the request for issuance of planning/building permission.

9. In the light of the above facts and circumstances, in the considered opinion of this Court, the impugned order dated 06.04.2016, is merely returning the application submitted for planning/building permission and as such, it is open to the appellant/writ petitioner to represent the same in the form of a detailed representation/response by enclosing all the relevant and authenticated documents including the alleged sub-division plan granted by Zonal Officer, Zone-XIII of Greater Chennai Corporation to the second respondent within a period of two weeks from the date of receipt of a copy of this order and the second respondent, upon receipt of the same, shall grant an opportunity of personal hearing to the appellant/writ petitioner and thereafter, consider the said representation on merits and in accordance with law and pass orders, within a period of six weeks from the date of entertainment of the representation and communicate the decision taken to the appellant/writ petitioner. The appellant/writ petitioner, till the disposal of the representation to be submitted, by the second respondent shall not create any third party rights in respect of the site in question and shall not alter the physical features also.

The writ appeal stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.N., J] [P.R.M., J]
09.04.2018

gm

To

- 1.The Commissioner,
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