

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.10.2018

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P.No.21862 of 2018

and

W.M.P.Nos.25636 & 25637 of 2018

T.T.Ganesan

... Petitioner

..Vs..

1.The Principal Secretary / Managing Director,
Tamil Nadu Housing Board,
No.493, Nandanam, Anna Salai,
Chennai - 600 035.

2.The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
Yercadu Road, Hasthampatti,
Salem - 7.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his Letter No. LA2/15404/2008, dated 26.06.2018, quash the same and consequently direct the respondents to issue No Objection Certificate to the petitioner in respect of the lands situated in Old S. Nos.209/2, 209/2F and 209/2B, new survey number 209/2D, as per the TK 35/8A/86, dated 28.10.1996, clubbed and demarked as survey number 209/2A, and Town Survey Field No.149, Tiruchengode Village, Post & Taluk - Namakkal District, measuring an extent of 1.01 Acres (101 Cents) of land.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.Vivekavanan for R1
Mr.R.V.Balaji for R2

O R D E R

The Writ Petition has been filed challenging the order passed by the 1st respondent dated 26.06.2018, wherein the request of the petitioner to provide a No Objection Certificate was refused.

2. The grievance of the petitioner is that, the petitioner is a co-owner of the land in Old Survey Nos.209/2, 209/2F and 209/2B, new Survey No.209/2D. Earlier, the above lands were sought to be acquired by the 1st respondent, for Tamil Nadu Housing Board, the 2nd respondent herein, and notification under Section 4(1), of the Land Acquisition Act, 1894, and a declaration under Section 6 of the said Act, in respect of the lands of the petitioner and others has also been issued. Challenging the aforesaid notification, the petitioner and other co-owners have filed a Writ Petition before this Court in W.P.No.9984 of 1986 and this Court, by an order dated 26.11.1996, allowed the Writ Petition by setting aside the Land acquisition proceedings.

3. Further, the case of the petitioner is that challenging the order in W.P.No.9984 of 1986 dated 26.11.1996, the Government of Tamilnadu, Housing and Urban Development, Chennai and the Special Tahsildar, Land Acquisition, Namakkal, Salem District have filed a Writ Appeal in W.A.No.201 of 2005. The Division Bench of this Court by Judgment dated 17.02.2016 dismissed the Writ Appeal as infructuous. Thereafter, the petitioner submitted a representation before the respondents on 16.12.2014, for issuance of No Objection Certificate. Since the same was not considered, the petitioner filed W.P.No.34274 of 2014, wherein this Court by an order dated 22.12.2014, directed the respondents therein to consider the said representation. Thereafter, the 1st respondent vide proceedings dated 28.05.2015 refused to provide no objection certificate. Challenging the proceedings dated 28.05.2015, the petitioner has filed a Writ Petition, viz., W.P.No.16150 of 2015. This Court, by an order dated 02.11.2015, allowed the Writ petition, thereby setting aside the order passed by the 1st respondent and directed the 1st respondent to issue No Objection certificate to the petitioner within a period of six weeks. Since the order was not complied with, the petitioner filed a Contempt Petition No.153 of 2016 wherein, this Court passed an order dated 22.02.2016, directing the petitioner to approach Housing Board and provide necessary documents to prove his ownership and on furnishing all the documents, the 1st respondent, herein was directed to verify the same and pass orders. For useful reference, the said order is extracted as follows:

"Faced with this situation, the learned counsel for the petitioner submits that the petitioner is ready and willing to produce all the documents to prove that he is the rightful owner of the extent, which is owned by him. Since a stand has been taken by the respondent-Housing Board that the property is a joint property, the

petitioner should produce all documents, proving his right/title/interest over the property like patta, adangal, the encumbrance certificate for the said property for a minimum period of 12 years, and other documents, which may be in his possession, to show that he is the rightful owner of the property and the extent, over which, he claims ownership.

4. In consequence, the petitioner approached the 1st respondent by producing all the documents, but, once again, the petitioner's request was rejected by the 1st respondent by an order dated 26.06.2018, on the ground that the petitioner did not obtain No Objection Certificate from two of the co-owners namely, Vijayakumar and Prabhu, apart from that, the review petition filed by the Housing Board against order passed in the writ appeal is also pending. Now, challenging the said order, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner would contend that as per the order passed in the Contempt Petition No.153 of 2016, petitioner has produced all the documents as directed by this Court, including No Objection Certificate from all the other co-owners. Despite same, the 1st respondent has passed an impugned order rejecting the request of the petitioner on frivolous grounds. That part, the review petition referred in the impugned order has been filed recently with a petition to condone the delay and so far, no order has passed in the review application.

6. Per contra, the learned counsel for the respondents would contend that, the petitioner is one of the co-owners in respect of Survey No.209/2D the total extent of land is 2.84 acres. The petitioner is claiming No Objection Certificate only in respect of 1.01 acres and for that, the petitioner has to prove his title over the property, especially, when there are other co-owners. The petitioner, as per the order passed by this Court in Contempt Petition No.153 of 2016 dated 22.02.2016, did not produce all necessary documents to establish his title. In such circumstances, the request of the petitioner could not be considered.

7. I have considered the rival submissions on either side and perused the documents placed on record.

8. Admittedly, the impugned order dated 26.06.2018 has been passed on the ground that the petitioner did not obtain No Objection Certificate from two of the co-owners, namely Mr.Vijayakumar and Mr.Prabhu and the Review Petition [in SR stage, condone delay] in C.M.P.No. 14626 of 2017,

filed by the Spl.Tahsildar, Salem is pending. Mere pendency of the above revision petition which has been filed with enormous delay, cannot be a reason for refusing No Objection Certificate. In respect of the contention of the learned counsel for the respondent that even though the total extent is 2.84 acres, the petitioner being one of the co-owners of the property is claiming a larger extent of 1.01 acres and without establishing his title over the extent claimed by him, no objection certificate cannot be granted. I find some force in the said contention of the learned counsel for the respondent. Earlier, this Court in Contempt Proceedings, taking note of the fact that there are some other co-owners, directed the petitioner to produce all the documents in order to prove and establish his title. Therefore, it is necessary to hear other co-owners also before granting No Objection Certificate to the petitioner. In such circumstances, the impugned order dated 26.06.2018, is set aside and the matter is remanded back to the 1st respondent. The 1st respondent is directed to issue notice to petitioner as well as to the other co-owners of the property in respect of survey No.209/2D and after hearing all the necessary parties, the 1st respondent is directed to pass suitable orders within a period of twelve weeks from the date of receipt of copy of this order.

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

kkn / ssd

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Secretary / Managing Director,
Tamil Nadu Housing Board,
No.493, Nandanam, Anna Salai, Chennai - 600 035.
- 2.The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
Yercadu Road, Hasthampatti, Salem - 7.

+1cc to Mr.C.Prakasam , Advocate SR.No. 73334
+1cc to Mr.Vivekavanan , Advocate SR.No. 73233
+1 CC TO GOVERNMENT PLEADER SR.NO. 73907

W.P.No.21862 of 2018

and

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ASK(06/12/2018)