

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.25532 of 2017

Jose Eapen,
Rep. by his Power of Attorney,
Mr.Joe Celestine.

... Petitioner

Vs.

1. Executive Officer,
Adigaratty Panchayat,
Adigaratty Village & Post,
The Nilgiris.

2. Collector of Nilgiris,
Ootacamund, Nilgiris-643 001.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records culminating in the order dated 01.04.2016 bearing reference Na.Ka.153/2016 on the file of the first respondent, and quash the same.

For Petitioner : Mr.K.F.Manavalan

For R1 : Mr.N.Srinivasan

For R2 : Mr.B.Anand,
Government Advocate

O R D E R

Heard Mr.K.F.Manavalan, learned counsel for the petitioner, Mr.N.Srinivasan, learned counsel for the first respondent and Mr.B.Anand, learned Government Advocate for the second respondent, and carefully perused the materials placed on record.

2. By consent, this writ petition is taken up for final disposal.

3. The prayer sought for in this writ petition is to quash

the order of the first respondent dated 01.04.2016 made in reference Na.Ka.153/2016.

4. According to the petitioner, he is the absolute owner of the property measuring to an extent of 05 cents in R.S.No.92/2 (327/1B) and R.S.No.638 (326/2), Adigaratty Village, Coonoor, Nilgiris by virtue of Sale Deed dated 13.07.2010.

5. It is the further case of the petitioner that the first respondent granted an approval to the petitioner for construction of his residential house. However, without any notice, the planning permission was cancelled, hence, the present writ petition.

6. The learned counsel for the petitioner submitted that the impugned order has been passed in violation of principles of natural justice and if an opportunity is given, he is ready to establish his case before the first respondent.

7. The learned Government Advocate submitted that the petitioner is having an appeal remedy available under Section 217-K of the Tamil Nadu District Municipalities Act, but without exhausting such alternate remedy, has filed this writ petition.

8. In the case on hand, the petitioner claims to be the owner of the property and he was also permitted to construct a residential house by an order of the first respondent dated 16.10.2015. The approval was cancelled on the basis of a complaint given by one Mr.K.Muruga Kambattan dated 01.04.2016. Though the impugned order states that the Assistant Director of Panchayat had inspected the area and also submitted the report, however, admittedly, the petitioner was not put on notice.

9. It is a settled law that availability of an alternate remedy is not a total bar in entertaining a writ petition. It is also well settled that if the order has been passed in violation of principles of natural justice, a writ petition is maintainable though, the petitioner has an appeal remedy.

10. Considering the facts narrated above, this Court is of the considered opinion, the impugned order is liable to be set aside on the ground, the petitioner was not afforded an opportunity. Accordingly, the writ petition is allowed, the

order impugned in this writ petition is set aside and the matter is remitted back to the first respondent. The first respondent shall pass an order afresh on merits and in accordance with law after providing an opportunity to the petitioner as well as to all the necessary parties. Such exercise shall be done within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Executive Officer,
Adigaratty Panchayat,
Adigaratty Village & Post,
The Nilgiris.
2. The Collector of Nilgiris,
Ootacamund,
Nilgiris-643 001.

+1cc to Mr.K.F.Manavalan, Advocate, S.R.No.20393
+1cc to Mr.N.Srinivasan, Advocate, S.R.No.20356
+1cc to the Government Pleader, S.R.No.21402

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GJII (CO)
CS/26/04/18

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