

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.24355 of 2015
and MP.No.1 of 2015

1. R.Vasanti Ram Narayan

2. S.R.Nanda Kishore

3. S.Nadarajan

4. Kanagalakshmi Ramadoss

5. T.Udaya Raj

6. T.Rajalakshmi

7. S.C.Raghuraman

8. V.Kuberan

9. Usha Narayanan

10.V.Anantha Nageswaran

11.N.Amirthavalli

12.Radha Venugopalan

13.M.Ganesh Mohan

14. K.Sriraman

15.K.Bhooma

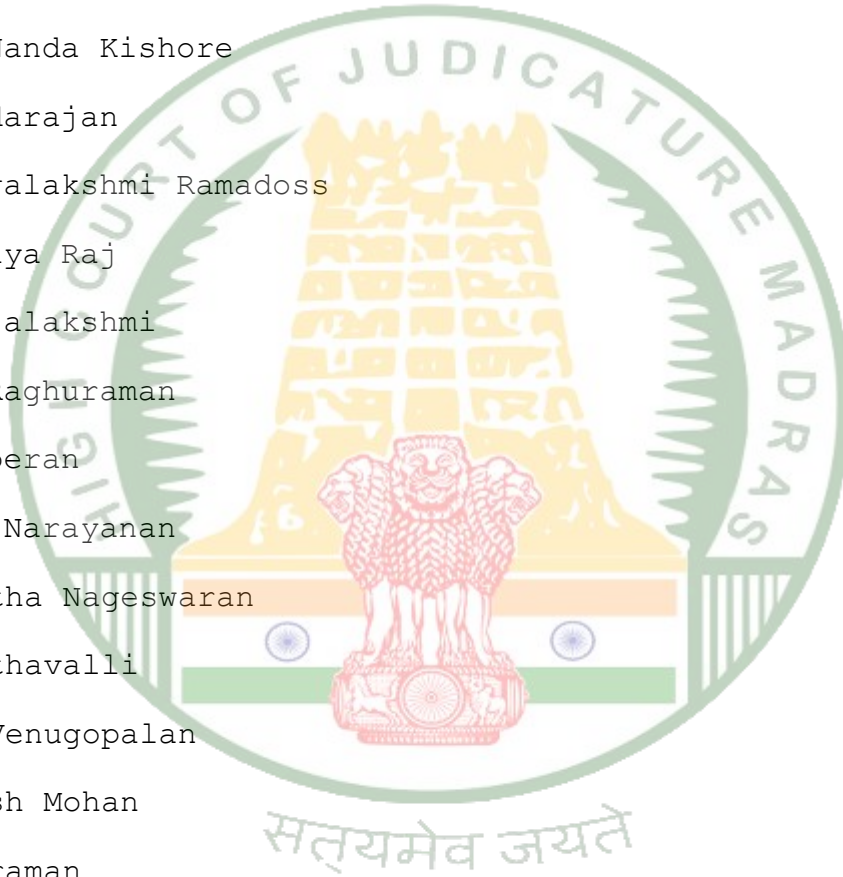
16.Padma Rajagopalan

17.Revathy Raghunathan

18.V.Padmaja

19.K.Leela Jyothi

20.V.B.Anand



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21.V.Mala Sankar

22.L.Neelakantan

23.Vijayalakshmi

24.Srinivasan Sridharan

25.S.Shreedharan

26.D.Gnanasekaran

... Petitioners

[Petitioners 3,5,7 to 26 are rep. by their
power of attorney holder
S.R.Nanda Kishore, 2nd petitioner herein

4th petitioner is rep. by her
power of attorney holder,
R.Vasanti Ram Narayan, 1st petitioner herein

6th petitioner is rep. by her
power of attorney holder,
S.R.Nanda Kishore, 2nd petitioner herein]

Vs.

1. The Member Secretary,
Chennai Metropolitan Development Authority,
"Thalamuthu Natarajan Building",
No.1, Gandhi Irwin Road, Egmore,
Chennai-600 008.

2. The Executive Officer,
Madambakkam Town Panchayat,
Chennai-600 073.

...Respondents

PRAYER: Writ petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorarified Mandamus calling for the records relating to
order No.R1/7936/2013 dt. 28.02.2015 of 1st respondent
communicated vide letter dt. 30.03.2015 of 2nd respondent and
quash the same with a direction to the respondents to accord
reclassification as applied for by the petitioners.

For Petitioner	:	Mr.V.Ramesh for M/s.Sampathkumar and Associates
For Respondents	:	Mr.P.Tamilmani (for R1) Mr.R.Ravichandran (for R2)

ORDER

The petitioners have come up with the present writ petition for issuance of a writ of certiorarified mandamus to quash the order of the first respondent dated 28.02.2015 and communication of the 2nd respondent dated 30.03.2015 and to direct the respondents to accord re-classification.

2. According to the petitioners, they are the owners of the lands in various Survey Numbers situated at Madambakkam Village, Tambaram Taluk. Some of the lands have been classified as primary residential zone with 24 feet wide approach road and the remaining lands fall under agricultural zone. They applied for re-classification of the lands to the first respondent through the second respondent on 25.04.2013 from agricultural zone to primary residential zone.

3. The grievance of the petitioners is that the first respondent without conducting enquiry and providing an opportunity of personal hearing, rejected their applications on the ground that the site does not have proper public road.

4. The case of the petitioners is that the entire property has access pursuant to the gift deeds executed in favour of the second respondent and hence they are entitled for reclassification.

5. In the counter affidavit filed by the first respondent, it is stated that the first respondent has returned the proposal submitted by the petitioners for the reasons that the site under reference don't have public road / access. Moreover, the second respondent has exceeded his power delegated by the CMDA in approving the sub-division.

6. Heard Mr.V.Ramesh, learned counsel for the petitioner and Mr.P.Tamilmani, learned Standing Counsel for the first respondent and Mr.R.Ravichandran, learned counsel for the second respondent and perused the materials available on record.

7. The learned counsel for the petitioners submitted that the petitioners are the owners of the lands to an extent of 23 acres and they applied to the CMDA through the local body, the second respondent herein, for conversion of agricultural lands from agricultural zone to primary residential zone during the year 2013. After paying scrutiny fee, a publication was issued, inviting objections from the general public for conversion in the news papers, Deccan Chronicle and Dina Mani on 29.06.2013.

8. The learned counsel further submitted that the petitioners have answered all the queries raised by the first respondent, but by the impugned communication dated 28.02.2015,

the proposal was returned on the only ground that the reference lands do not have proper public road and access and the sub-division approval granted by the local body was an excess of the power delegated by the CMDA in terms of extent of road width and further that the sub-division approval can be given only with regard to the dead end road only.

9. It is further contended that the additional typed set of papers from pages 1 to 28, contain the applications and receipts for payment of fee to the local body and CMDA and the approval order granted by Mr.V.Raikumar, Executive Officer, Madambakkam Panchayat Union with the consent of CMDA. The consolidated sub-division plan attached in the typed set of papers would show the existence of the road having width of 25 feet.

10. According to the learned counsel for the petitioners that in all the sub-divisions, the total extent of area is less than 1000 sq.mt. and hence there is no question of exceeding the delegation of power. It is further submitted that if the cancellation of sub-division is held to be valid, directions have to be issued to the respondents to return the various payments made by the petitioner for obtaining sub-division and re-classification and to cancel all gift deeds.

11. The learned Standing Counsel for the first respondent, by inviting my attention to the circular issued by the first respondent dated 05.02.2010, submitted that the powers have been delegated to the local bodies to issue planning permission for construction of ordinary buildings and to regularise the individual plots in an un-authorized sub-divisions up to eight plots made after 31.12.1989, but the total extent of the area shall not exceed 1000 sq.mt. and in order to get over the condition separate applications had been submitted for approval of sub divisions by the petitioners and the second respondent granted approval and hence, it shall be taken that the delegated power has been exceeded by the second respondent.

12. The relevant portion of the circular is extracted below:
"Order

In partial modification of the powers delegated previously and as per the Authority proceedings vide reference 10th cited, the Member-Secretary, CMDA under Sub-section (3) of Section 9-C of the Town and country Planning Act, 1971 (as amended) hereby delegates powers to the Commissioner, Corporation of Chennai and the Local Bodies failing within CMA as per the A.R.No.10/2010 dt. 19.01.2010, for issue of Planning Permission for construction of ordinary buildings and to regularise the individual

plots in the unauthorised sub-divisions (i.e. upto 8 plots) made after 31.12.1989.

It is also directed that while scrutinizing the proposals for issue of Planning Permission it shall be subject to the following conditions:-

(i) the plot applied for shall satisfy all the requirements, of DR.

(ii) the total extent of the originally sub-divided site shall not exceed 1000 Sq.m and

(iii) the existing building, if any, in the residuary plots shall only be ordinary buildings and not other types or categories and in case of violations noted in the residuary plots, applying disclaimer that the developments in the residuary plots shall be dealt with separately on merits.

The above delegation of powers takes effect from 19.01.2010."

13. Perusal of the materials reveal that the petitioners, who claim to be joint owners of the lands submitted separate applications on 20.05.2011 and 07.06.2011 to the second respondent to grant sub-division approval for various survey numbers less than 1000 sq.mt. The second respondent has also granted approval to the sub-divisions on 26.05.2011 and on 15.06.2011. It is pertinent to note that no proper explanation has been forthcoming from the petitioners for submitting separate applications, hence, I find force in the submission of the learned counsel for the respondent that those applications have been made to overcome the circular referred above. And the contention of the learned counsel for the petitioner that the approval does not exceed the power delegated by the first respondent and the second respondent has no substance.

14. Further, the second respondent would have received fees at the time of granting approval of sub-divisions with knowledge of the first respondent, but that cannot be a ground to hold that the approval granted by the second respondent is in accordance with law and the cancellation of the sub division would not automatically entitle the petitioners to get back the payment made to the second respondent

15. Taking note of the above facts, this Court is of the considered view that the sub-divisions have been made in violation of the Circular and I find no illegality in returning

application of the petitioner by the impugned order.

16. In such view of the matter, I find no merit in this Writ Petition. If the petitioner makes any applications for refund of the fee and for cancellation of gift deeds, they shall be considered by the respondents in accordance with law. With the above observation, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

pvs

To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
"Thalamuthu Natarajan Building",
No.1, Gandhi Irwin Road, Egmore,
Chennai-600 008.
2. The Executive Officer,
Madambakkam Town Panchayat,
Chennai-600 073.

+lcc to Mr.Sampath Kumar and Associates, Advocate SR.No.35469
+lcc to Mr.R.Ravichandran, Advocate SR.No.35248
+lcc to Government Pleader SR.No.24355

सत्यमेव जयते

WP.No.24355 of 2015

RSK(CO)
GN(14/06/2018)

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