

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.10.2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.40950 of 2016
and
W.M.P.No.34914 of 2016

K.Meera Reddy

... Petitioner

Versus

1. The Secretary to Government,
Housing and Urban Development
Department, Fort St. George,
Chennai 600 009.
2. The Member Secretary,
Mamallapuram Local Planning Authority,
Marketing Complex,
Mamallapuram-603 104.
3. The Commissioner,
Urban Development Department,
No.807, Anna Salai,
Chennai-600 002.
4. The Executive Officer,
Thiruporur Panchayat,
Thiruporur.
5. The District Forest Officer,
Chenglepet Division,
Kancheepuram District-631 501.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the 5th respondent with reference to his NOC issued in their letter No.C.No.5214/15D dt. 26.08.2016 and quash the condition No.4 alone and further directing the respondents 1 to 4 to receive the application for reclassification given on 03.07.2013 by the petitioner which was returned on 11.11.2013 by the 2nd respondent for want of NOC from the 5th respondent and to reclassify the

petitioner's land in Survey No.253/2D2 and 253/3B2 measuring an extent of 0.60.5 hectares in Kanakappattu Panchayat, Thiruporur Taluk.

(Prayer amended as per Court order dt:26/09/2018 by VBDJ in WMP.29543/2018 in WP.No.40950/2016)

For Petitioner	: Mr.S.Sundaresan
For Respondents	: Mr.A.N.Thambidurai, Special Government Pleader for R1 to R3
	Mr.P.V.Selvakumar, Standing Counsel for R4
	Mr.Bala Ramesh Addl. Govt. Pleader for R5

ORDER

This writ petition has been filed challenging the order passed by the 5th respondent dated 26.08.2016 in respect of condition No.4.

2. The case of the petitioner in brief is as follows :-

The petitioner is the owner of land measuring 0.60.5 hectares in Survey Nos.253/2D2 and 253/3B2, in Kanakappattu Village, Thiruporur Taluk, Chengalpet Division, Kancheepuram Dt. He has purchased the land in the year 2013, the above land was classified as agricultural land, which is situated adjacent to the Illalur Reserved Forest of Thiruporur range, it is not located near to any wild life Sanctuary, National Park or Biosphere Reserve. The neighbouring landowners were granted permission to reclassify the land from agriculture land to residential sites, and they have developed house sites, and also constructed the houses therein. Now, the petitioner has filed an application for reclassification of his land as house site on 03.07.2013 to the respondents 1 to 4. After receipt of the application, the 2nd respondent asked the petitioner to furnish various details regarding the property and directed him to get No Objection certificate from Tahsildar, Thiruporur and Executive Officer, Thiruporur. The petitioner also obtained No Objection certificate from the 4th respondent. Thereafter, the 2nd respondent directed the petitioner to obtain No Objection certificate from the Forest department as the land is situated near to the Illalur Forest. Even though there is no provision for getting No Objection certificate from the Forest Department, as the 2nd respondent insisting for No Objection certificate, the petitioner approached the 5th respondent to issue No Objection certificate. The petitioner also submitted all the required particulars. Thereafter, now the 5th respondent issued No Objection certificate imposing 13 conditions, out of which, 4th condition imposed by the 5th respondent, requires that the applicant should ensure, there is a sufficient open space kept

vacant between the petitioner's land, and reserved forest boundary, as per statute, and as per board standing orders, and no activities are allowed upto 2 chain distance from the Reserved Forest Boundary. Now, challenging the above said condition, the present Writ Petition has been filed by the petitioner.

3. The petitioner originally sought for Writ of Mandamus directing the respondents to reclassify the land, now amended the prayer challenging the condition No.4 for issuing No Objection certificate by the 5th respondent.

4. The 5th respondent has filed a counter affidavit stating that the above said condition has been imposed as per clause 38 (iii) of Standing order of the Board of Revenue, and it has been imposed in the broader aim of ensuring protection of environment and some developmental activities have been happened in vicinity of Reserved Forests. It is the fundamental duty of the petitioner as per Art.51(A) (g) of Constitution of India to ensure that protection and improvement of environment including forests, lakes, rivers and wildlife and the above condition has been imposed to ensure that environment is protected.

5. The 2nd respondent filed counter affidavit stating that as per the circular issued by Wildlife Warden, Guindy, Children's Park, Chennai, the No Objection certificate is sought from the Forest department.

6. Mr.S.Sundaresan, learned counsel appearing for the petitioner submitted that the condition imposed by the 5th respondent is per se illegal, either the Forest Act or any other statute require that no activities are allowed upto 2 chain, (which is equivalent to 132 ft.) distance from the Reserved forest boundary. Even Clause 38 of the Board Standing Orders referred by the respondents is only relates to assignment of reserved forest lands, which is no way applicable for reclassification of land.

7. Per contra, the learned counsel for 5th respondent has submitted as per clause 38(iii) of Board Standing Order, no activities upto boundary of the reserved forest is permitted, and a vacant of 41.2 meters by 60.4 meters of land should be left unassigned between the reserved forest, and the land sought to be assigned. Hence, the same condition is also applicable for reclassification.

8. I have heard and considered rival submissions and perused the records carefully. Earlier, this Court appointed Mr.J.Rajasuriya as an Advocate Commissioner to inspect the area and to file a report. The Advocate Commissioner also filed a detailed report, which is also considered by this Court.

9. The petitioner has only sought for reclassification of land from agricultural land to house site. Since the lands were situated nearby reserved forest, the 2nd respondent by way of abundant caution directed the petitioner to obtain No Objection certificate from the 5th respondent Forest Department.

Admittedly, there is no statutory provision to restrict that no activities should be permitted between 132 ft. from the reserved forest. Whereas the forest department only relying upon clause 38(iii) of the Revenue Board standing orders, which reads as follows :-

"(iii) Land in the vicinity of reserved forests : Assignment should not made from land which adjoins a reserved forest or an unreserved block of 2.59 kilo metre or more until the Collector has consulted the District Forest Officer considered any objection, he may have to its assignment. Assignment of land should not be made right upto the boundary of reserved forests, but a belt of vacant land 40.2 metres by 60.4 metres wide should be left unassigned between the reserve boundary and the land to be assigned."

10. A perusal of the above standing order, it is seen that it is only applicable for the assignment of land adjacent to reserved forest, which is no way applicable for reclassification of land. Apart from that, it is also submitted that the neighbouring lands have already been reclassified as house sites without any such conditions. Considering the fact that there is no law prohibiting any activities within the distance of 132 ft. from the reserved forest, the petitioner cannot be insisted to abide by the condition.

11. In the said circumstances, the impugned condition 4 of the impugned order passed by the 5th respondent alone is set aside, and the petitioner is directed to comply with the other conditions imposed by the 5th respondent. Thereafter, the 2nd respondent is directed to consider the petitioner's application and pass suitable orders on merits and in accordance with law. Further, the warrant issued to Mr.J.Rajasuriya, Advocate Commissioner is discharged.

12. In the result, this writ petition is allowed with the above directions. No costs. Consequently, connected WMP is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Secretary to Government,
Housing and Urban Development
Department, Fort St. George,
Chennai 600 009.

2. The Member Secretary,
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Marketing Complex,
Mamallapuram-603 104.

3. The Commissioner,
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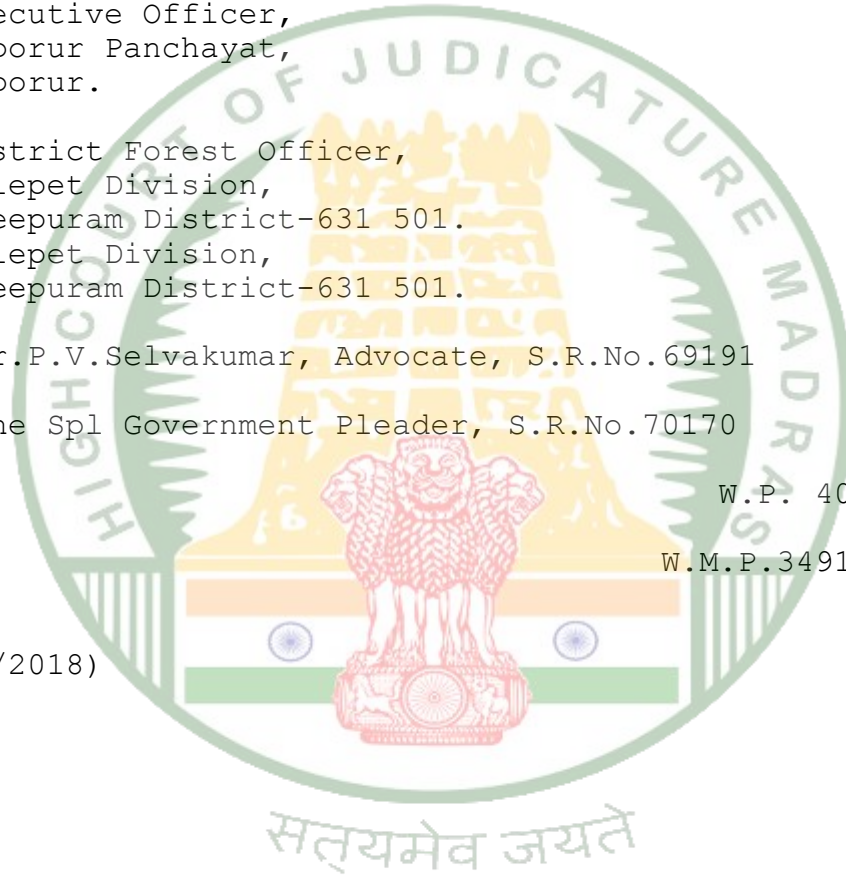
5. The District Forest Officer,
Chenglepet Division,
Kancheepuram District-631 501.
Chenglepet Division,
Kancheepuram District-631 501.

+1cc to Mr.P.V.Selvakumar, Advocate, S.R.No.69191

+1cc to the Spl Government Pleader, S.R.No.70170

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GSP (27/11/2018)



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