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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI, J.

W.P.No.11880 of 2009

S. Sekar
herein represented by his
Power of Attorney agent
S. Umamaheswari
Plot Nos.8 (part and 9(part),
Guru Dakshnamurthy Nagar,
Thiruvarur.

...Petitioner

Vs

1. The Deputy Director of Town & Country Planning,
Tanjavur Region,
No.7, South Street, Ganapathy Nagar,
Medical College Road,
Thanjavur -613 001.

2. The Commissioner of Municipality,
Thiruvarur Municipality,
Thiruvarur.

3. K. Varadarajan

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ in the nature of certiorarified mandamus call for the records pertaining to the impugned notice dated 6.12.2007 and impugned order Na.Ka.No.3285/2007 F1/ dated 31.12.2007 of the second respondent and quash the same and direct the first respondent to grant approval for the revised boundary of the plots and construction put up thereon as per approval plan vide Ka.Ma.No.119/2007/F1 dated 17.07.2007 of the second respondent and or issue any other appropriate writ or orders or direction.



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For Petitioner : Mr. K.S. Ganeshbabu

For Respondents: Mrs. K. Bhuvaneswari,
AGP for R1 and R2
Mr. G. Govindarajan for R3

O R D E R

Writ Petition is filed by the petitioner to issue a writ in the nature of certiorarified mandamus call for the records pertaining to the impugned notice dated 6.12.2007 and impugned order Na.Ka.No.3285/2007 F1/ dated 31.12.2007 of the second respondent and quash the same and direct the first respondent to grant approval for the revised boundary of the plots and construction put up thereon as per approval plan vide Ka.Ma.No.119/2007/F1 dated 17.07.2007 of the second respondent.

2. Learned counsel for the petitioner submitted that petitioner is the owner of the property bearing plot Nos.8(part) and 9(part), Guru Dakshnamurthy Nagar, Thiruvavur comprised in T.S.No.550/1A & 2A/1B total extent of 1800 sq.ft. and the said property was purchased by the petitioner as vacant land by way of two sale deeds dated 3.01.1994 and 5.06.2000, registered as document No.6 of 1994 and 1298 of 2000 in the office of Sub-registrar, Tiruvavur from Veeramani and Vivekanandam respectively.

3. In order to put up a construction, the petitioner applied for the approval for the construction with the second respondent by paying the necessary charges and the second respondent had duly granted the approval for the construction by its order dated 17.07.2007. The learned counsel for the petitioner averred that as per the approved plan, the petitioner had constructed the property by spending his hard earned money from abroad and his family members are residing therein and let out a portion and also obtained the electricity connection to the said property.

4. The learned counsel for the petitioner further averred that the 3rd respondent was the key person in putting up original lay out in the said property and all the plots were under the control of the 3rd respondent and whoever buys and sells plots and putting up construction first should approach him and only through him every thing should take place in the said layout and already the 3rd respondent had constructed a shop in his plot in the said lay out using for commercial purpose.



5. However, the petitioner purchased the above said property and obtained the planning permission from the respondent municipality without contracting the third respondent and therefore out of jealousy he gave representation against the petitioner with an ulterior motive. At the instigation of the 3rd respondent, the second respondent directed the petitioner to furnish the copies of certain documents. Though the petitioner submitted the relevant documents to the second respondent, however the second respondent cancelled the planning permission against which the present Writ Petition is filed.

6. Learned counsel for the petitioner would submit that once planning permit to the property in favour of the petitioner is granted, that planning permission cannot be cancelled and in support of his contention learned counsel relied upon the decision of this Court in W.P.12613 of 2010 dated 8.10.2012, the relevant portion of which is extracted below:

" 10. It is well settled law that nobody can take advantage of his own wrong. The cancellation of the planning permission of the petitioner therefore is totally arbitrary. If the respondents were negligent in not looking into as to whether the lay out permission was sanctioned or not, it is not permissible now to cancel the lay out plan already sanctioned after the building is completed.

11. The impugned order also suffers from vice of violation of principles of natural justice as the cancellation of planning permission affects the civil rights of the petitioner, therefore no order adverse to the petitioner could be passed without complying with the principles of natural justice. The impugned order is also without jurisdiction as there is no provision under the Act to cancel the planning permission after it is acted upon and construction is raised"

7. Per contra, learned counsel for the second respondent would submit that the petitioner applied for the planning permission as if he constructed the building in one plot; however the fact remains that the petitioner had purchased two plots. Suppressing the above said purchase, the petitioner obtained the planning permission. Therefore when the said defect came to the knowledge of the second respondent immediately the second respondent municipality issued a show cause notice to the



petitioner requiring him to submit his explanation. On perusal of the entire records, it was revealed that the petitioner without obtaining revised approval granted from the Town and Counter Planning Department, has constructed house and shops and therefore the earlier approval which was granted due to inadvertence, was contrary to building rules and hence the planning permission already granted by the respondent was cancelled on 17.04.2008 and the same was acknowledged by the petitioner and even after that he proceeded with the construction and therefore the impugned order was passed on 31.12.2007. Subsequently, the 3rd respondent filed a Writ petition before this Court in W.P.No.19856 of 2008 and this Court by order dated 10.02.2009 issued a direction to the first respondent therein to proceed further on the basis of the proceedings already initiated and complete the process within a period of six (6) months from the date of receipt of a copy of that order.

8. Learned counsel for the for the petitioner would submit that the 3rd respondent died and there is no instructions from the legal heirs of the third respondent pursuing the matter and he was not able to get the death certificate from the legal heirs.

9. The ownership of the property is not disputed by the 3rd respondent or the 2nd respondent. However, the fact remains that the petitioner had purchased two plots from the 3rd party and obtained planning permission. On perusal of the plan, it shows that the petitioner did not reveal details of the plots. Based on the details furnished by the petitioner on the total extent of the plot and open space, the second respondent granted approval on 17.07.2007. Thereafter, on 6.12.2007, the second respondent municipality issued a direction to furnish certificate, including documents with the approval of the first respondent. Thereafter, the first respondent sent a letter dated 20.06.2008 to the petitioner to furnish the sale deed, encumbrance certificate and copy of the approval of the lay out. Since the petitioner did not provide the particulars, the second respondent cancelled the planning permission. Thereafter, the 3rd respondent filed a Writ Petition in W.P.No.19856 of 2008 for mandamus seeking directions to the respondent 1, 2 and 3 therein to take action against the illegal construction put up by the 4th respondent therein plot nos.8 and 9. This Court in that Writ Petition issued notice to the petitioner, however the petitioner has not made appearance before this Court despite service of notice. In his absence, after hearing the parties this Court issued direction to the first respondent to proceed further and complete the process within six months from the date of receipt of a copy of that order. Though the petitioner herein was arrayed as a party in



the above said Writ Petition, however he did not choose to appear before this Court at the relevant point of time and eventually the decision in the earlier proceedings which was brought to the notice of this Court, became final, as that order was not challenged. In view of that, I am not inclined to grant any relief to the petitioner, however it appears that the directions in the earlier Writ Petition issued by this Court have not been complied with till date and hence I am inclined to grant liberty to the petitioner to appear and pursue his remedy before the first and second respondents by producing the appropriate materials and in the event of such materials produced before the respondents, the first respondent is directed to proceed further on the basis of the directions given in the earlier writ petition, after affording an opportunity to the petitioner and 3rd respondent's legal heirs. With the above direction, the writ petition is disposed of. The said Process shall be completed within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Director of Town & Country Planning,
Tanjavur Region,
No.7, South Street, Ganapathy Nagar,
Medical College Road,
Thanjavur -613 001.

2. The Commissioner of Municipality,
Thiruvarur Municipality,
Thiruvarur.

+2cc to Mr.K.S.Ganesh Babu, Advocate Sr.48121
+1cc to the Government Pleader Sr.48682
+1cc to Mr.R.Thirugnanam, Advocate Sr.49020

W.P.No.11880 of 2009

ca[co]
srg 26/08/2019