

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 22814 of 2011

Suseela

..Petitioner

vs

1.The District Collector,
District Collector Office,
Erode.

2.The President
Ingur Panchayat
Chennaiimalai Union,
Perundurai Taluk,
Ingur, Erode District 638 058.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorarified Mandamus, to call for the records pertaining to the second respondent order dated 28.07.2011 and quash the same and consequently direct the second respondent herein to approve the building plan and assess house tax for the petitioner's building in Old S.No. 911 and new S.No.583/3 situated within the Registration district of Erode, Sub Registration district of Perundurai, Erode District, Perundurai Taluk, Ingur village.

For Petitioner : M/s.S.Yogalakshmi

For Respondents : Mr.J.Rameshwar for R1

Additional Government Pleader

Mr.L.P.Shanmuga Sundaram for R2

Special Government Pleader

ORDER

This Writ Petition has been filed, seeking for issuance of Writ of writ of Certiorarified Mandamus, to call for the records pertaining to the second respondent order dated 28.07.2011 and quash the same and consequently direct the second respondent herein to approve the building plan and assess house tax for the petitioner's building in Old S.No. 911 and new S.No.583/3 situated within the Registration district of Erode, Sub Registration district of Perundurai, Erode District, Perundurai Taluk, Ingur village.

2.The case of the petitioner, the petitioner's husband purchased a vacant site measuring an extent of 2200 sq.ft., in Old Survey No.911 and new Survey No.583/3 situated in the Registration District of Erode, Sub Registration District of Perundurai on 30.03.1999 from one Chellammal for valid consideration and registered the same as document No.719 of 1999 on the file of the Sub Registrar, Perundurai. From the date of purchase, the petitioner and her husband were in the peaceful possession and enjoyment of the said property. However, on 16.06.2006, the petitioner's husband applied to the second respondent herein for getting permission to construct building in the above mentioned property and also paid the prescribed fees of Rs.9,080/- to the second respondent/ Village President, who is the Executive Authority. The second respondent/ Executive Authority also accorded permission to construct the building within a period of one year i.e., 16.06.2006 to 15.06.2007. However, due to personal inconvenience and family crisis, the husband of the petitioner could not complete the constructions within the time stipulated. Later, the husband of the petitioner completed the construction of the building in the year 2010 and thereafter, the husband of the petitioner made a representation on 26.04.2010 to the second respondent, to assess and levy the house property tax. The second respondent, in turn directed the husband of the petitioner to get no objection certificate from the concerned department and also renewal of the construction of the building, so that Door Number of the building will be given and thereafter, tax will be levied. The husband of the petitioner made a representation dated 10.05.2010 to the Taluk Development Officer, Chennimalai (Union), Chennimalai requested to levy tax and he also narrated the reasons for the delay in completing the construction of the building and he also expressed willingness to pay necessary fee for delayed construction and towards renewal of the same. However, the Taluk Development Officer, Chennimalai, by proceedings dated 10.05.2010 communicated to the petitioner's husband that as per provisions of the Panchayat Act, 1994, the second respondent has the power to approve the construction and levy tax and he directed him to approach the second respondent. Since as against the inaction of the second respondent, the petitioner's husband made a representation on public grievance day to the first respondent/ District Collector on 07.06.2010 and the said representation was forwarded to the second respondent for appropriate action. Thereafter, still there was no action forthcoming from the second respondent, the petitioner's husband filed Writ Petition before this Court, wherein, the second respondent was directed to consider the representation and pass appropriate orders. However, by proceedings dated 28.07.2011, the second respondent rejected the representation. Aggrieved by

the said proceedings, the petitioner has come forward with the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that at first instance the second respondent has approved the planning permission for construction on 16.06.2006 prescribing the period of one year within which the construction has to be completed. However, due to certain unavoidable circumstances, the construction could not be completed and in the meantime, the husband of the petitioner also expired and on completion of the construction, the petitioner approached the second respondent, requesting to assess and levy the property tax. But, the second respondent without considering the representation of the petitioner in proper perspective, rejected the representation, which cannot be sustained in law. The learned counsel would point out that as per Rule 25 of the Tamil Nadu Panchayat Building Rules, 1997, the second respondent ought to have forwarded the application for grant of approval of construction to the Joint Director or Deputy Director of Town and Country Planning and without doing so, the second respondent has straight away rejected the representation. Therefore, the learned counsel would urge this Court to set aside the impugned order.

4. The learned Additional Government pleader appearing for the respondent would submit that this Court may set aside the order of the second respondent and permit the petitioner to submit a fresh application before the second respondent, if the said application is filed, the same would be forwarded to the Joint Director for grant of approval.

5. Admittedly, the second respondent has approved the planning permission, for construction on 16.06.2006 prescribing the period of one year within which the construction has to be completed. However, due to certain unavoidable circumstances, the construction could not be completed and in the meantime, the husband of the petitioner also expired and on completion of the construction, the petitioner approached the second respondent, requesting to assess and levy the property tax. But, the second respondent has rejected the representation on the ground that the petitioner building exceeds 4000 sq.ft., over which, the second respondent has no authority. It is pertinent to note that under Rule 25 of the Tamil Nadu Panchayat Building Rules, 1997, a person who is intending to construct, re-construct, add or alter, he shall follow the provisions of the multi storied building and Public Building Rules, 1973, issued under the Tamil Nadu District Municipalities Act, 1920, provided that the Executive Authority shall not grant approval for construction,

re-construction, addition, alteration of such building without consulting the concerned Joint Director or Deputy Director of Town and Country Planning. When that being so, in this case, the second respondent without forwarding the application to the Town and Country Planning Authority, he himself taken a decision and rejected the request of the petitioner. In such circumstances, this Court is of the view that the impugned order is unsustainable one and the same is liable to be set aside. The petitioner is now permitted to make an application for approval of the construction of multi storied building, directly to the Joint Director or Deputy Director of the Town and Country Planning. On such application being made by the petitioner, the concerned Joint Director/ Deputy Director of the Town and Country Planning is directed to consider the same and pass appropriate orders in accordance with law within a period of six weeks from the date of receipt of copy of this order.

6. Accordingly, the present writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
District Collector Office,
Erode.

2.The President
Ingur Panchayat
Chennaiimalai Union,
Perundurai Taluk,
Ingur, Erode District 638 058.

+1 cc to M/s.M.Guruprasad,Advocate Sr.No. 73719
+1 cc to M/s.L.P.Shanmugasundaram,Advocate Sr.No. 73992
+2 cc to The Government Pleader Sr.Nos.74665 and 73526

AKM/31.10.19/4P-7C /

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