

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 26.09.2019

PRONOUNCED ON 03.10.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition Nos.27990 of 2018 and 28248 of 2019
M.P.Nos.32561 & 26086 of 2019 in W.P.No.27990 of 2018
M.P.Nos.27921 to 27924 of 2019 in W.P.No.28248 of 2019

K.V.T.Homes and Estates Pvt. Ltd.,
Rep. By its Managing Director K.V.Thiruppathaiah,
S/o Kattari Venkatasubbiah,
No.26, First Floor, 'AI' Block,
8th Main Road,
Santhi Colony, Anna Nagar,
Chennai - 600 040. ... Petitioners in W.P.No.27990 of 2018

Mrs.Minnala ... Petitioner in W.P.No.28248 of 2019

Vs

1.The District Revenue Officer,
Kancheepuram District,
Kancheepuram - 631 504.

2.The Revenue Divisional Officer,
Tambaram,
Chennai - 600 045.

3.The Tahsildar,
Tambaram Taluk,
Tambaram,
Chennai 600 045.

4.J.Suresh

5.Krishnaveni

6.Pushpa

7.Minnala

8.Ambika

9.D.Ganesan

10.D.Raman

...Respondents in W.P.27790 of 2018

1.The Member Secretary,
Chennai Metropolitan Development Authority,
(C.M.D.A), Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

2.The Commissioner,
St. Thomas Mount Panchayat Union,
Chitlapakkam,
Chennai - 600 064.

3.The District Collector,
Kancheepuram,
Cheyyar - Kancheepuram Road,
Thaiyar Kulam,
Kancheepuram - 631 501.

4.The District Revenue Officer,
Kancheepuram,
Cheyyar,
Kancheepuram Road,
Thaiyar Kulam,
Kancheepuram - 631 501.

5.The Revenue Divisional Officer,
Tambaram, Taluk Office,
Complex, Chennai - 600 045.

6.The Tahsildar,
Tambaram,
Taluk Office, Complex,
Chennai - 600 045.

7.M/s.K.V.T Homes and Estates Pvt., Ltd.,
Rep. By K.V.Thiruppathaiah,
Managing Director,
No.26, First Floor,
AI Block, 8th Main Road,
Shanthi Colony, Anna Nagar,
Chennai - 600 040.

8.Mr.K.V Thiruppathaiah,
S/o Late Mr.K.Venkatasubbiah,
No.26, 1st Floor, AI Block,
8th Main Road, Shanthi Colony,
Anna Nagar, Chennai - 600 040.

...

Respondents in W.P.No.28248 of 2019

Prayer in W.P.No.27990 of 2018:- This writ petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 1st respondent viz., DRO Kancheepuram Kancheepuram District namely the impugned order dated 18.09.2018 in Ni.Mu.No.9451/2018/N3 and quash the same consequentially direct the first respondent to issue patta to the petitioner.

Prayer in W.P.No.28248 of 2019:- This writ petition is filed under Article 226 of the Constitution of India for a writ of certiorari calling for the records and to quash (a)the proceedings in Lr.No.D3/14625/2019 dated 05.09.2019 issued by the first respondent and (b)Consequentially, the order of the second respondent Na.Ka.6673/2019/A dated 06.09.2019 revoking the Planning Permission No.157/2019 and Planning Permission No.160/2019 as directed by the first respondent in Lr.No.D3/14625/2019 on the ground is mala fide and violative of Article 21 of the Constitution of India.

W.P.No.27990 of 2018:-

For Petitioner : Mr.B.Nedunchezhiyan

For Respondents 1 to 3 : Mr.K.Ravikumar,
Additional Government Pleader

For 7th Respondent : Ms.K.Jayasudha

For Respondents 4 to 10 : No Appearance

W.P.No.28248 of 2019:-

For Petitioner : Ms.K.Jayasudha

For 1st Respondent : Mr.S.Thiruvengadam,
Additional Government Pleader

For Respondents 2 to 6 : Mr.K.Ravikumar,
Additional Government Pleader

For 7th Respondent : Mr.B.Nedunchezhiyan

For 8th Respondent : No Appearance

COMMON ORDER

The subject matter of these two writ petitions is 30 cents of land, 5 cents in S.No. 42/3A and 25 cents in S.No. 42/3B at Perumbakkam Village, presently under Tambaram Taluk. On petition of one Suresh s/o Jaganathan dated 0.03.2017 given to

the Tasildar Shozinganallur requesting to cancel the patta of the land in S.No.42/3 extent of 30 cents issued in the name of KVT Foundation, the Tasildar has enquired the matter. On perusal of the documents produced by the said Suresh and the report of the Revenue Inspector, the tasildar had traced the title of the property as under.

2.The land held by one Chitirai s/o Chinnakutti was sold by her to Alamelu w/o Duraisamy. The said Alamelu has settled the property to Saraswathi w/o Chakkaravarthi who in turn has sold it to Damodaran s/o Duraisamy. In the year 1986-87 during UDR survey number 42/3 extend of 30 cents had been sub divided into S.No. 42/3A 25 cents. Patta given to Raman s/o Duraisamy in patta number 957 and S.No. 42/3B 0.05 cents given to Ganesan s/o Devarayan in patta number 151. These two persons were found non existents and never in possession of the said land. The legal heirs of Damodaran who purchased the land from Saraswathi are the real owners of the property. While so in the computer register the said land wrongly stood in the name of KVT Foundation under patta No. 3470 and 3468 respectively as if it has purchased the land through Raman and Ganesan. When notice was sent to KVT foundation to participate in the enquiry, they failed to turn up for the enquiry. Hence, based on the sale deed executed by Saraswathi in favour of Damodaran vide document No. 781/1972 and based on the legal heir certificate of Damodaran along with the affidavit sworn before Commissioner of Oath, the Tasildar vide his proceedings dated 23/08/2017 has cancelled the patta issued in the name of KVT Foundation and order to issue patta in the name of Tmt. Krishnaveni, Tmt Pushpa, Tmt. Minnala and Tmt. Ambika the legal heirs of late.Damodaran.

3.KVT Foundation aggrieved by the above order passed by the Thasildar vide proceedings dated 23/08/2017, had filed appeal before the Revenue Divisional Officer, Tambaram. In the said appeal, the Revenue Divisional Officer after enquiry, vide his order dated 18.04.2018 disposed the appeal, observing that the error in wrong inclusion KVT Foundation is due to the mistake while enumerating under UDR scheme. Therefore, the Tasildar does not have power to order the cancel the patta and change patta in the name of Tmt. Krishnaveni and others. Holding that the petitioner Suresh ought to have applied to the District Revenue Officer who is the competent authority for carry out the error, reversed the finding of the Tasildar and directed the petitioner to approach District Revenue Officer and till then, the patta shall stand in the name of Ganesan and Raman.

4. Aggrieved by the above order of the Revenue Divisional Officer, the petitioner Suresh has preferred appeal before the District Revenue Officer on 14/05/2018. The District Revenue Officer has summoned the parties on 31/07/2018, 14/08/2019 and 28/08/2019. The appellant Suresh alone has participated in the enquiry. The respondent KVT Foundation did not appear. District Revenue Officer has thereafter concluded the enquiry by confirming the finding of the Tasildar that the name of Raman and Ganesan has been wrongly entered in the 'A' register and 10 (1) Chitta. Subsequently, based on the erroneous entry, further change in patta in the name of KVT Foundation has occurred. Hence, through his proceedings dated 18/09/2018 set aside the order of the Revenue Divisional Officer dated 18/04/2018 and restored the order of the Tasildar dated 23/08/2017.

5. This order has prompted KVT Foundation to file W.P. 27990/2019 on the ground that no notice was issued to them by the District Revenue Officer before passing the order dated 18/09/2018. Hence, the impugned order is against the principle of natural justice. It is contented that, no notice was issued to them on the dates mentioned in the impugned order and same could be verified by calling the records. Their vendors were not summoned to verify the title. No physical inspection of the property was carried by the Tasildar. The petitioner in W.P. 27990/2019 traces his title over the property as below:-

"The land in Survey Number 42/3A, measuring to an extent of 5 cents out of 30 cents, originally belonged to 9th respondent, and patta issued by the 3rd respondent, bearing patta No.151 stood in his name and as such the 9th respondent was sole and absolute owner of the land in Survey Number 42/3A measuring 5 cents out of 30 cents to V.Parangusam, Son of Venugopal vide sale deed date 26.05.2003 bearing document No.3073 of 2003 on the file of S.R.O. Tambaram and as such the said V.Parangusam sold the said land in Survey No.42/3A measuring 5 cents out of 30 cents to K.V.Thiruppathaiah, son of late K.Venkatasubbaiah vide sale deed dated 21.10.2005 bearing document No.8525 of 2005 on the file of S.R.O. Tambaram and as such the said K.V.Thiruppathaiah was sole and absolute right and title in respect of the land in Survey Number 42/3A with all powers of alienation. Thereafter, the said land in

survey No.42/3A as share capital was brought into KVT Homes a partnership firms and later the partnership firm was converted into company called Kvt Homes Pvt Ltd., and later vide order of this Court merged with the petitioner company and another 25 cents land originally belonged to one Raman, son of Duraisamy, and patta issued by the Zonal Deputy Tahsildar, Tambaram Taluk, bearing patta No.957 stood in his name and as such the 10th respondent was sole and absolute owner of the land in Survey Number 42/3B he sold to one Annadurai, son of Vellai by way of sale deed dated 13.12.1993 bearing document No.1025 of 1993 on the file of S.R.O., Tambaram. The petitioner further submit that the said V.Annadurai sold the said land in Survey No.42/3B measuring 25 cents out of 30 cents to K.V.Thiruppathaiah, son of late K.Venkatasubbaiah vide sale deed dated 14.09.2006 bearing document No.3559 of 2006 on the file of S.R.O., Tambaram and as such the said K.V.Thiruppathaiah was sole and absolute right and title in respect of the land in Survey No.42/3B with all powers of alienation. Thereafter the said land in survey no.42/3B as share capital was brought into KVT Foundation a partnership firm and later the partnership firm was converted into company called KVT Foundation Pvt., Ltd., and later vide order of this Hon'ble Court merged with the petitioner company. "

6.Considering the averments made in the affidavit, this court on 25/10/2018 has granted interim stay of the District Revenue Officer order dated 18/09/2018. Meanwhile, based on the District Revenue Officer order, the legal heirs of Damodaran have obtained layout approval for the subject property on 06/02/2019 from the Commissioner, St.Thomas Mount Panchayat Union.

7.While so, W.P.No.28248/2019 is filed by Smt.Minnala D/o Damodaran (mother of Suresh) alleging that Thiru. K.V.Thiruppathaiah the representative of KVT Foundation has demolished the compound wall of the subject property put up by the legal heirs of Late Dhamodaran and at the instance of the first respondent letter dated 05/09/2019, the second respondent has arbitrarily withdrawn the layout plan on 06/09/2019 granted

to them, without due notice.

8.Smt. Minnala in her petition W.P. 28248/2019 has traced her title over the property as under:-

"Subject property originally belonged to Mrs.Saraswathi Ammal W/o.Chakravarthi, settled in her favur by her mother, Mrs.Alamelammal by settlement deed registered as document No.2317/1962 dated 23.08.1962 at the office of SRO, Tambaram. The said Mrs.Saraswathi Ammal sold the subject property to the petitioner's father, by sale deed dated 09.03.1972 registered as doc No.781/1972 at the office of SRO, Tambaram and Mr.Dhamodaran was in possession and enjoyment of the subject property. Mr.Dhamodaran, father of petitioner, died intestate on 15.08.1982 leaving behind petitioners and 12 other as legal heirs. The petitioner along with other legal heirs of Late Mr.Dhamodaran inherited the subject property under the Hindu Succession Act, 1956 and were in possession and enjoyment of the suit schedule property since then."

9.Alleging that the District Revenue Officer has arbitrarily had directed the Commissioner, St.Thomas Panchayat Union to revoke/cancel the planning permission without hearing the persons interested. In turn, the Commissioner has also without notice acted upon the direction of the first respondent and revoked the planning permission dated 06/09/2019. Hence, on the ground of arbitrariness and violation of natural justice principle, Minnala has filed the petition.

10.In this case, both the rival parties contend that the orders impugned were passed behind their back and no opportunity was given before passing the orders. The files produced by the learned Additional Government pleader indicates that the petitioner in W.P.No.27990 of 2019 has received notice for hearing on 28/08/2018. No notice for previous hearing served to him. The District Revenue Officer and The Commissioner of Panchayat Union who has passed the orders impugned in W.P.No.28248 of 2019 had obviously not conducted any enquiry before passing the order of cancelling the planning permission. It has been passed taking note of the interim order passed by

this court in W.P.No.17990/2019 dated 25/10/2018. Further, the learned counsel appearing for the petitioner in W.P.No.28248 of 2019 produced a communication of the present District Revenue Officer who took charge after his predecessor retired, recalling the order dated 18/09/2018 restoring the status quo as on 18/04/2018 and wait till the parties to settle the dispute in the writ petitions pending.

11.On hearing the counsel appearing on either side and perusing the records, this Court is of the view that, there is a clear finding by the revenue officials that at the time of UDR scheme, some error has crept and suddenly from the name of Saraswathi, patta has been transferred to Raman and Ganesan. This issue has to be resolved by the authority who has made wrong entry and cannot be a dispute to be resolved through writ petitions. Since, the parties allege orders were passed behind their back without proper notice, it is suffice to direct the District Collector, Kanchipuram to appoint any one of the District Revenue Officer under his jurisdiction (except the one who has passed the order dated 18.09.2018 of withdrawing the order impugned in W.P.No.27990 of 2018) to decide after affording fair opportunity to the parties concerned on the appeal preferred by Suresh challenging the order of Revenue Divisional Officer, Tambaram dated 18/04/2018.

12.On receipt of notice, the parties shall attend the enquiry without fail. Despite notice, if parties fail to attend the enquiry, they shall not at later point of time plead violation of natural justice principle. The District Revenue Officer who hear the appeal petition shall preferably complete the enquiry and pass orders within 10 weeks from the date of receipt of a copy of this order. Till then, status quo as on 18/04/2018 shall be maintained. Registry is directed to send copy of this order forthwith to the District Collector, Kanchipuram for expeditious implementation of this order.

13.In the result, both the writ petitions are disposed of with the directions as stated above. No costs. Consequentially connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

jbm

To

1.The District Revenue Officer,
Kancheepuram District,
Kancheepuram - 631 504.

2.The Revenue Divisional Officer,
Tambaram,
Chennai - 600 045.

3.The Tahsildar,
Tambaram Taluk,
Tambaram, Chennai 600 045.

4.The Member Secretary,
Chennai Metropolitan Development Authority,
(C.M.D.A), Gandhi Irwin Road,
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5.The Commissioner,
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8.The Tahsildar,
Tambaram,
Taluk Office, Complex,
Chennai - 600 045.

+2cc to Mr.B.Nedunchezhiyan, Advocate SR.No.83288, 83289

+2cc to Ms.K.Jayasudha, Advocate SR.No.84714

+1cc to Government Pleader SR.No.85481

W.P.Nos.27990 of 2018 & 28248 of 2019

PP(CO)
GMY(15/10/2019)