

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2020

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.9268 of 2018

and

W.MP.Nos.11069 & 11071 of 2018

Saradeuz

rep. by its Proprietor R.Rajkiran.

... Petitioner

Vs

1.The Competent Authority(Southern Region)

Archaeological Survey of India,
Chennai Circle, Fort St. George,
Chennai- 600 009.

2.The National Monuments Authority,

Rep. by its Member Secretary,
Ministry of Culture, Govern. of India,
No.24, Tilak Marg, New Delhi-110 001.

... 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 of the 2nd respondent in its order dated 06.07.2016 in F.NO.2-8/476/2015-NOC/NMA and the records of the 1st respondent in the consequential order dated 01.08.2016 in F.NO.242/NMA/CA(TN)/2015/1984, quash the same and consequently direct the 1st and 2nd respondent to grant permission to the Petitioner to erect construction in plot Nos.2C, 1B, 2B, 3B, 1A and 2A of Survey No.336 (part) Perumbakkam Village St., Thomas Mount Panchayat Union, Shollinganallur Taluk, Kanchipuram District.

For Petitioner

: Mr. A.Jenasenan

For Respondents

: Mr. G.Karthikeyan,
Assistant Solicitor
General of India

ORDER

1.This Writ Petition has been been filed in the nature of Certiorarified Mandamus, calling for the records of the 2nd respondent in its order dated 06.07.2016 in F.NO.2-

8/476/2015-NOC/NMA and the records of the 1st respondent in the consequential order dated 01.08.2016 in F.NO.242/NMA/CA(TN)/2015/1984, and grant permission to put up constructions of flats and commercial exploit the same.

2. The petitioner appears to have purchased lands in Survey No.336 (part), Plot Nos.1A-6A, 1B-6B and IC-5C, Perumbakkam Village, St. Thomas Mount Panchayat Union, Shollinganallur Taluk, Kanchipuram District. The petitioner is a developer of plots. Consequently, he wanted to put up constructions the said property and exploit the same on commercial basis. In the Writ Petition, in the typed set of papers, a rough plan has been enclosed giving details of the plots which the petitioner planned to put up. He had also put up five constructions in 6 plots. Sometime in the year 2015, the petitioner came to know that the property actually fell within the purview of a Protected Areas under the Archaeological Survey of India (ASI) namely, monument. As per the Ancient Monuments and Archaeological Sites and Remains Act, 1958, no construction is allowed within the prohibited distance from the monuments. However, constructions are permitted within a regulated distance from the monument, subject to obtaining No-Objection certificate (NOC) given by the Archaeological Survey of India by the Competent Authority (Southern Region) namely the first respondent herein. The petitioner claims ignorance of the fact that the property fell within the regulated zone from the monument. In this case, the subject matter of the site is Megalithic Cists and Cairns site. The importance of the site is that it is a site where burials had taken place during 1000 BCE. It is claimed it has a high historic and archaeological value. The petitioner also claims that local panchayat had given a necessary permission for putting up constructions. The petitioner, in view of the facts, approached the respondents herein for obtaining the No-Objection certificate. After due process, the impugned order came to be passed. By the impugned order, permission was granted to put up construction in the plots in which constructions had not been put up, but permission has been rejected for the plots over which construction has been put up. The ratio therein has been questioned by the learned counsel for the petitioner stating that the said order has been passed illogically, since both the areas come within the regulated zone and grant of No-Objection certificate in areas where construction has been put up and refusing permission for areas where construction has already been put up, cannot be sustained by the Court. The learned

counsel states that the denial of permission, merely because construction has been put up, cannot be a ground for rejection of the representation. He stated that the entire area purchased by him fell within the regulated zone.

3. At this juncture, it is also stated that my learned predecessor, to verify the situation, had directed the petitioner to give a fresh representation to the respondents and that they may reconsider the entire issue once again. The petitioner stated that already a representation dated 18.11.2019 had been given to the respondents herein.
4. In view of the above facts, without going into the merits of the case and since no order has been passed by the respondents on the representation dated 18.11.2019 and even if any orders are to be passed on merits, it would only be appropriate that Mandamus is issued to the respondents, particularly the first respondent to consider the representation dated 18.11.2019, invite the petitioner and give him an opportunity of personal hearing and then reexamine the entire issue and pass final order. The petitioner may also, if they deem necessary give a fresh copy of representation dated 18.11.2019 at any rate, on or before 31.01.2020 before the appropriate authorities and thereafter, after following the due procedure, the first respondent may pass orders on or before 28.02.2020.
5. With these observations, though the writ petition has been filed in the nature of Writ of Certiorari/Mandamus, this writ petition is disposed of. No costs. Consequentially, connected Miscellaneous Petitions are closed. The authorities are to pass orders on the representation dated 18.11.2019 without being prejudiced / influenced by their earlier orders. They may re-consider the representation of the petitioner afresh and pass orders.

s/d-
Assistant Registrar (J)

True Copy

Sub-Assistant Registrar

jrs

To

1.The Competent Authority(southern Region)
Archaeological Survey of India,
Chennai Circle, Fort St. George,
Chennai- 600 009.

2. The Member Secretary,National Monuments Authority,
Ministry of Culture, Govern. of India,
No.24, Tilak Marg, New Delhi-110 001.

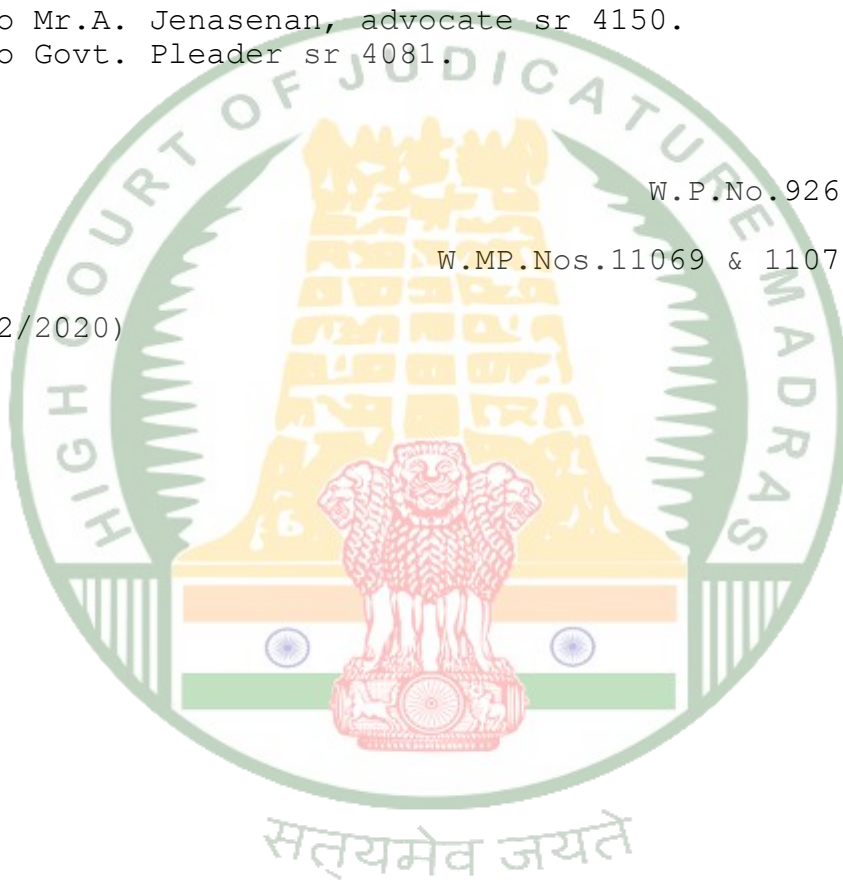
+2 CC to Mr.A. Jenasenan, advocate sr 4150.

+1 CC to Govt. Pleader sr 4081.

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SP(12/02/2020)



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