

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.629 of 2020

S.P.Shanmugasundaram .. Appellant

Vs

1.The Commissioner,
Town and Country Planning,
No.807, Anna Salai,
Chennai-02.

2.The Member Secretary,
Coimbatore Local Planning Authority,
Corporation Commercial Building,
Sivananacolony,
Coimbatore - 641 012.

3.The Chairman cum District Collector,
Coimbatore Local Planning Authority,
Coimbatore.

4.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 20.11.2019 passed in W.P.No.28729 of 2018.

Prayer in WP. 28729/2018 :- This Writ Petition has been filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent by proceedings made in Roc.Lr.No.7972/2013/GR dated 07.09.2018, to quash the same and to consequently direct the respondents to realign the Scheme Road by accepting the land to be gifted by the petitioner. Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent by proceedings made in Roc.Lr.No.7972/2013/GR dated 07.09.2018, to quash the same and to consequently direct the

respondents to realign the Scheme Road by accepting the land to be gifted by the petitioner.

For Appellant : Mr.V.Perumal

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

We have heard learned counsel for the appellant at length and we find that with regard to a plan being finalized in terms of the Tamil Nadu Town and Country Planning Act, 1971 (for short, "the 1971 Act"), proceedings were undertaken and on the suggestions made by the petitioner, certain modifications were carried out and the plan was approved by the Director of the Town and Country Planning under Section 29 of the 1971 Act.

2. Later on, invoking the powers under Section 33 of the 1971 Act, the same has been cancelled, which came to be challenged before this Court by the petitioner by filing W.P.No.11165 of 2013. A learned Single Judge, allowed the writ petition on 30.01.2015, holding that the said exercise had been carried out without giving an opportunity to the petitioner and therefore, the matter deserves to be considered once again. The order is extracted herein under:

"Heard both sides and perused the materials placed on record.

2.The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for records relating to the impugned order passed by the first respondent in and by his proceedings in No.25353/08/DP2 dated 05.09.2012, and quash the same and consequently direct the 1 st respondent to approve the variation plan in the Scheme Road under Section 33 of the Town and Country Planning Act.

3.The petitioner challenges the order dated 05.09.2012 by virtue of the variation in realignment plan which was sanctioned in favour of the petitioner was cancelled without notice to the petitioner. The petitioner is the owner of the property situated in S.F.No.304/1 in Coimbatore which falls under the Saravanampatti Detailed Development Plan No.5. This plan was approved by the first respondent on 09.08.1994 and published in the Tamil Nadu Government Gazette on 05.07.2006. In terms of the approved plan there is 60 feet Detailed Development Road called as DD Road which was

proposed to be formed in S.F.No.304/1. The petitioner objected to that because his property would be affected and applied for variation and realignment of the proposed plan. His request was considered and order to that effect was passed by the first respondent on 06.11.2009. Subsequently, that order was cancelled by the respondent without notice to the petitioner.

4. In the counter affidavit filed by the second respondent, the above facts have been admitted. But, they would state that the order dated 06.11.2009 is a preliminary order and after which a notification was published under Section 27 of the Town and Country Planning Act, inviting objections and suggestions in writing from any persons aggrieved.

5. Therefore, it is agreed that the impugned order has been passed. However, the petitioner has not been issued with any notice before passing the impugned order. The petitioner was not heard in the matter and the so called objections which were received were not made known to the petitioner. Therefore, the impugned order is in violation of the principles of natural justice.

6. This writ petition is allowed and the impugned order is set aside. The first respondent is directed to issue notice to the petitioner, afford opportunity of personal hearing to the petitioner and permit the petitioner to peruse all the objections which is said to have been received after the notification was issued in the Gazette in terms of Section 27 of the Town and Country Planning Act. Thereafter, after perusal of those objections, the petitioner is entitled to submit a fresh representation setting out as to how those representations / objections are not tenable. Thereafter, the first respondent shall conduct enquiry and afford an opportunity of personal hearing to the petitioner and pass orders on merits and in accordance with law. The above exercise shall be carried out within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed."

3. It is pursuant to the said directions that an order which was impugned before the learned Single Judge came to be passed by the Commissioner on 7.9.2018. While considering the

submissions raised, on facts, the Commissioner observed that if the request of the petitioner is accepted, then 60 feet wide Detailed Development Plan Scheme road will be formed in a "Z" shape resulting in traffic congestion and, therefore, in order to ensure an uninterrupted traffic mobility in a straight fashion, the request made by the petitioner deserves rejection. It was observed that an individual inconvenience cannot be made the basis for overlooking the larger public interest, as the re-alignment, as suggested by the petitioner, would greatly affect the viability in terms of seamless transportation and hence, the Detailed Development Plan Scheme deserved to be retained in the present shape.

4. Questioning the said order of the Commissioner of Town and Country Planning, the appellant approached this Court by filing writ petition, which has been dismissed on 20.11.2019 holding that reasonable opportunity has been given and since no public has objected to the variation, after considering the objections of the representatives of the Government Department, the impugned order was passed by the first respondent, and moreover there is no balance of convenience in favour of the appellant. Aggrieved by the same, the present appeal is filed.

5. At the very outset, we may point out that the writ jurisdiction of the High Court under Article 226 of the Constitution of India should not be ordinarily invoked for deciding such a disputed question of fact. It requires fact finding and consideration of any additional facts that may be required, more particularly, in a case of this kind which involves the question of alignment of road, where learned counsel for the appellant contends that he is still prepared to offer land in order to facilitate the alignment of the road in a way it does not cause any inconvenience and at the same time also saves the interest of the appellant.

6. We are, therefore, of the opinion that the writ petition itself should not have been entertained by the High Court, as we find that Section 80 of the 1971 Act provides for a remedy in this regard. The appellant, therefore, ought to have approached the competent authority in terms of Section 80 questioning the correctness of the order passed by the Commissioner of Town and Country Planning and also placing such facts that would necessitate any transformation in the Scheme or otherwise as suggested by the appellant, where it is open to the appellant to negotiate his grievances.

7. We, therefore, dispose of this appeal with liberty to the appellant to approach the competent authority under Section 80 of the 1971 Act and in case, such a revision is preferred before the competent authority within fifteen days from today, the same shall be considered and disposed of in accordance with

law, preferably within a period of three months thereafter without being influenced by the dismissal of the writ petition before the Writ Court. No costs. Consequently, C.M.P.No.8731 of 2020 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Bbr

To

- 1.The Commissioner,
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BR (CO)
GN (26/08/2020)

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