IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.27327 of 2013 and
M.P.Nos. 1 and 2 of 2013 & 1 of 2014

M/s. Aruna Constructiosn (India) Ltd.,
Rep. By its Director,
Mr. M.P. Purushothaman,
No.693, Mount Raod,
Chennai - 600 006. ...Petitioner

v.

The Government of Tamil Nadu,
Rep. By its Secretary,
Revenue Department,
Fort St. George,
Chennai - 600 009. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuing a Writ of Certiorarified Mandamus calling for the records of the respondent in G.O. (Ms) No.361, Revenue [LD1 (1)] Department, dated 19.09.2013 and quash the same and consequently direct the respondent to assign the land situated in S.No.421 of St. Thomas Mount Village, Alandur Taluk, Kancheepruam District an extent of 4 acres and 22059 sq. ft to the petitioner by collecting the price fixed by the respondent.

For Petitioner : Ms. Sneha
For Respondent : Ms. A. Mathumathi,
Special Govt. Pleader

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in G.O. (Ms) No.361, Revenue [LD1(1)] Department, dated 19.09.2013, to quash the same and consequently directing the respondent to assign the land situated in S.No.421 of St. Thomas Mount Village, Alandur Taluk, Kancheepruam District, measuring an extent of 4 acres and 22059 sq. ft to the petitioner by collecting the price fixed by the respondent.

2. It is the case of the petitioner that the respondent in the proceedings seeking for assignment of the land measuring an extent of 4 acres and 22059 sq. ft rejected the case of the petitioner by the impugned order dated 19.09.2013.

3.1 Ms. Sneha, learned counsel appearing for the petitioner submitted that the short issue involved in the present Writ Petition is that the authority, who had passed the impugned order, has not heard the petitioner and that the enquiry was conducted by some other officers. The petitioner has stated that the personal hearing was given to them in the year 2011 before the different officer and the impugned order has been passed in the year 2013 by a different officer before whom the petitioner had never appeared and put-forth their case. On this sole ground, the learned counsel appearing for the petitioner stated that the impugned order is liable to be set aside in view of the ratio laid down by the Hon'ble Supreme Court in the following Judgments:-

(i) AIR 1959 Supreme Court 309 [Gullapalli Nageswara Rao and others v. A.P. State Road Transport Corporation and another] wherein the Hon'ble Supreme Court held as follows:-

> " ... 31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure. ....."

(ii) 2011 (2) SCC 258 [Automotive Tyre Manufacturers Association v. Designated Authority and others] wherein the Hon'ble Supreme Court held as follows:-

> " ... 83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even

> written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli [AIR 1959 SC 308], if one person hears and other decides, then personal hearing becomes an empty formality.
>
> 84. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly.

3.2 . Following the ratio laid down by the Hon'ble Supreme Court in the above referred judgments, this Court in an unreported Judgment dated 20.12.2011 made in W.P.No.20518 of 2011 held that when the impugned order passed by the authority without hearing the parties and when the enquiry was conducted by some other authority, the same would violate the principles of natural justice.

3.3. Further, the learned counsel appearing for the petitioner submitted that the revision filed by the petitioner is also pending before the respondent and since the issues involved in both the proceedings are common, the respondent may be directed to dispose of both the matters simultaneously.

4. Ms.A.Mathumathi, learned Special Government Pleader appearing for the respondents submitted that the respondent had passed the order only after taking into consideration the merits of the matter and therefore, the order is liable to be sustained. Further, the learned Special Government Pleader submitted that though the respondent's predecessors had conducted the enquiry in the year 2011, the respondent had passed the order only after taking into consideration the enquiry conducted by the respondent's predecessors.

5. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and also taking into consideration the Judgments relied upon by the learned counsel for the petitioner, it is clear that the respondent, who had passed the impugned order dated 19.09.2013 has not heard the petitioner before passing the order. Personal hearing was given to the petitioner in the year 2011 and the enquiry was conducted by the respondent's predecessors and therefore, the the order passed by the respondent is clearly against the ratio laid down by the Hon'ble Supreme Court and this Court, in the Judgments cited supra.

6. Following the ratio laid down by the Hon'ble Supreme Court, the impugned order dated 19.09.2013 is liable to be set aside. Accordingly, the same is set aside and the matter is remitted back to the respondent for fresh consideration. The respondent is directed to decide the matter afresh after giving an opportunity of hearing to the petitioner along with the pending revision filed as against the cancellation of patta, within a period of eight weeks from the date of receipt of a copy of this order.

With these observations, the Writ Petition is Allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Rj

To

The Secretary,
Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai – 600 009.

+1cc to Mr.B.K.Girish Neelakantan, Advocate, S.R.No.41070
+1cc to the Government Pleader, S.R.No.41427

W.P.No.27327 of 2013 and
M.P.Nos. 1 and 2 of 2013 & 1 of 2014

MJB(CO)
KKV/22/12/2020