

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.31839 of 2019

V.Krishnalakshmi

... Petitioner

-Vs-

1.The Commissioner

Pallavaram Municipality Chromepet
Chennai 600 044

2 .THE Chennai Metropolitan Development

Authority Represented by its
Member Secretary Thalamuthu Natrajan
Building No.1 Gandhi Irwin Road Egmore
Chennai 600 008. (R2 impleaded by the order
of this Court dated 04.06.2020) Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned ntice in K.M No. 44 / 19 / F2 dated 23.09.2019 issued by the respondent quash the same and consequently direct the respondent to approve the planning permission submitted by the petitioner in respect of land in T.S. No. 21 Nemilicheery Village Pallavaram Taluk Kancheepuram District.

For Petitioner : Mr.R.Bharanidharan

For Respondent : Mr.P.Srinivas - for R1

Mr.S.Thiruvengadam - for R2

O R D E R

The present writ petition has been filed challenging the impugned communication received from the first respondent dated 23.09.2019, wherein the planning permission sought for by the petitioner has been rejected on the ground that the subject property has been categorised as 'water body'.

2. The case of the petitioner is that the subject property is situated in Plot Nos.8A and 8B in S.No.84/2, Nemilichery village, Pallavaram Taluk and it was assigned by proceedings

dated 23.10.1992 in favour of one K.Raju Pillai. The assignment was made in terms of R.S.O.21 with certain terms and conditions. It is stated that the said Raju Pillai was in possession and enjoyment of the property and he also constructed a house in the said property in the year 2007. It is the further case of the petitioner that he executed a Settlement Deed dated 27.09.2000 in favour of his son. It is seen from the records that the Town Survey Register reflects the name of the said Raju Pillai and Patta was also issued in his name.

3. Son of Raju Pillai died on 23.04.2016 leaving behind his wife, two daughters, son and his mother as his legal heirs. They wanted to sell the subject property. The petitioner purchased the property through a Registered Sale Deed dated 19.06.2019. The petitioner wanted to develop the property and hence he applied before the first respondent seeking for approval of the Planning Permission. The same was rejected by the first respondent on the ground that the subject property is classified as a 'water body'. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Mr.R.Bharanidharan, learned counsel for the petitioner submitted that the land in S.No.84 has been classified as a village site as early as in the year 1970 itself. The learned counsel submitted that based on the possession and occupation of the property in the said survey number, assignment was made in terms of R.S.O.21 on payment of the cost of the land by the concerned assignee. The learned counsel, by bringing to the notice of this Court all the relevant documents, submitted that the property can never be construed as a water body and there is no record available to substantiate the same. The learned counsel therefore submitted that the impugned communication has been issued by the first respondent without any application of mind and the same requires the interference of this Court and a direction must be issued to the first respondent to approve the planning permission submitted by the petitioner.

5. Mr.P.Srinivas, learned Standing Counsel appearing on behalf of the first respondent submitted that the Master Plan prepared by C.M.D.A., has specifically categorised the subject property as a water body. Therefore the first respondent cannot approve any planning permission unless the C.M.D.A. modifies the Master Plan with regard to the subject property.

6. In view of the specific stand taken by the first respondent this Court impleaded the second respondent viz., C.M.D.A., by order dated 04.06.2020.

7. Mr.S.Thiruvengadam, learned counsel appearing on behalf of the second respondent C.M.D.A., submitted that the Master Plan has been prepared and given effect. Learned counsel submitted that the C.M.D.A., follows a detailed procedure for preparation of Master Plan and even invites objections from the land owners before the Master Plan is prepared. The learned counsel further submitted that the Master Plan is prepared based on the Revenue Records and based on various satellite images. The learned counsel submitted that if at all the petitioner is aggrieved by the categorisation of the subject property as a water body, an appropriate application can be made by the petitioner under Section 32 of the Town and Country Planning Act, 1971 and the application will be considered by C.M.D.A., and appropriate orders will be passed. Based on the orders passed by C.M.D.A., the first respondent can thereafter consider the planning approval submitted by the petitioner.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. A careful perusal of the documents that have been filed along with the writ petition shows that the subject property was originally classified as a village site. Various persons were in occupation of the property and therefore the Government thought it fit to assign the plot in favour of the occupants on payment of the cost of the land. Pursuant to such a decision, the assignment was made in favour of one Raju Pillai by an order of assignment dated 23.10.1992. It is also seen that the property tax was assessed by the first respondent and the said Raju Pillai had also obtained a Planning Permission from the first respondent for construction of house in the year 2007. Extract from the Town Survey Register also reveals the fact that the Patta stood in the name of the vendor of the petitioner. Even in the Town Survey Register, the subject property is only shown as a site.

10. Therefore there is overwhelming material to come to a prima facie conclusion that the subject property was always treated to be a site and there is no document to show that it was ever treated as a water body.

11. The entire confusion seems to have arisen due to the categorisation of the subject property as a water body in the Master Plan submitted by C.M.D.A. Since C.M.D.A has shown this property as a water body, obviously the first respondent cannot grant any Planning Permission. This mistake must first be set right and only thereafter the first respondent can proceed to consider the approval for Planning Permission.

12. In view of the above discussion, there shall be a direction to the petitioner to submit an application before the C.M.D.A., seeking for modification of the entry with respect to the subject property. The petitioner is directed to submit all the relevant documents along with the application. The C.M.D.A., on receipt of the application, shall take into consideration the documents submitted by the petitioner as well as the Revenue Records and shall pass appropriate orders in exercise of its powers under Section 32 of the Town and Country Planning Act, 1971. The final orders shall be passed within a period of twelve weeks from the date of receipt of the application from the petitioner. Based on the orders passed by the C.M.D.A., the first respondent Municipality shall thereafter consider the approval of the application for Planning Permission submitted by the petitioner.

13. This Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

KST

To

1.The Commissioner, Pallavaram Municipality Chromepet
Chennai 600 044

2 .The Member Secretary, Chennai Metropolitan Development
Authority, Thalamuthu Natrajan Building No.1 Gandhi Irwin
Road Egmore, Chennai 600 008.

W.P.No.31839 of 2020

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