

IN THE HIGH COURT OF JUDICATURE AT MADRAS
D A T E D : 24.02.2021
C O R A M
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.12505 of 2010
and
M.P.Nos.1 & 2 of 2010

Thiruvalluvar Nagar Podhunala Mandram
Rep. by its President Mr.P.Ramasamy
No.46, Thiruvalluvar Nagar,
Mogappair,
Chennai - 600 037.

... Petitioner

Vs

- 1.Tamil Nadu Housing Board
Rep. by its Managing Director,
Nandanam, Chennai.
- 2.The Executive Engineer,
Tamil Nadu Housing Board,
Anna Nagar Division,
Thirumangalam,
Chennai - 600 101.
- 3.State of Tamil Nadu
Rep. by the Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George, Chennai - 600 009.
(R-3 impleaded as per order dated 22.10.2019
made in WMP.No.29673/2019 in
W.P.No.12505 of 2010 by VBDJ)

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the second Respondent passed in Letter No.Aa.Na.Ka.Ko/Survey/1407/10, dated 01.04.2010 and quash the same and consequently direct the Respondents to allot Plot No.T23 in Survey No.189, measuring an extent of 720 sq.ft. in Anna Nagar West Extension of Tamil Nadu Housing Board, Anna Nagar Division, Chennai - 600 101 in favour of the Petitioner Association.

For Petitioner : Mrs.P.V.Rajeswari

: For Respondents: Mr.R.Bharathkumar

for R1 and R2

Ms.Radhika for R-3

Government Advocate

O R D E R

The Writ Petitioner challenges the order dated 01.04.2010 rejecting the Petitioner's request for allotment of Plot T23 for use as a temple, and the consequential action indicated therein.

2. The Writ Petitioner asserts that Plot T23 is in a residential lay out developed by the Tamil Nadu Housing Board and that the residents of the colony constructed a temple thereon called Navasakthi Vinayakar Temple, which is in use from the year 1981. It is further asserted that representations were submitted for allotment of aforesaid plot to the association representing the residents of that locality from the early 1980s. In response to a representation of 28.06.1996, an endorsement was made by an official of the Tamil Nadu Housing Board to allot this plot for use as a temple. In spite of such endorsement, the said plot was not allotted to the resident's association. Instead, by impugned order dated 01.04.2010, the request for allotment was rejected. More importantly, even without providing an opportunity of hearing to the Petitioner Association, the Petitioner Association was called upon to remove the temple within one week from the date of receipt of the notice and was put on notice that in the event of default, the Tamil Nadu Housing Board would take steps in that regard.

3. The learned counsel for the Petitioner contends that the impugned order is liable to be quashed on the ground of violation of principles of natural justice inasmuch as no prior notice was issued as regards the threatened demolition. In addition, the learned counsel for the Petitioner contends that the Government has the power to modify the lay out scheme and permit a housing plot to be used for purposes of a temple as evidenced by such use being permitted in the same locality.

4. The learned standing counsel for TNHB, on the other hand, submits that this plot was earmarked for a housing plot as per the scheme and, therefore, it is not possible to allot the same

for use as a temple. He also points out that a suit in O.S.No.11001 of 1992 was filed on behalf of the temple administration committee of the same Navasakthi Vinayagar Temple. The said suit was dismissed for default on 10.02.1997. Consequently, he contends that the present writ petition is not maintainable and that either an appeal should have been filed or steps should have been taken to restore the suit.

5. In light of the rival contentions, the first issue to be examined is whether the writ petition is liable to be rejected on the ground that the earlier suit was dismissed for default. Upon perusal of the cause title in the plaint of the said suit, it appears that the suit was filed in the name of the Navasakthi Vinayakar Temple Administration committee, represented by Thiru.K.Arumugam, Secretary. The present writ petition is filed in the name of the Thiruvalluvar Nagar Podhunala Mandram, represented by his President, Mr.P.Ramasamy. Thus, although the same interest is canvassed in both proceedings, it does not appear that the Petitioner herein and the Plaintiff therein are the same. Moreover, the said suit was not dismissed on merits but was dismissed for default. Although there is some merit in the contention of the learned standing counsel for the Tamil Nadu Housing Board that the averments in the plaint of the said suit and the relief prayed for therein are reasonably similar to those in the present writ petition, I am not inclined to reject this writ petition entirely on that ground both because a subsequent order is challenged herein and also because there was no adjudication on merits in the suit.

6. With regard to the merits of the present writ petition, the undisputed position is that Plot T23 is a housing plot as per the relevant scheme of the Tamil Nadu Housing Board. To that extent, the rejection of the representation of the writ petitioner cannot be faulted. However, the Tamil Nadu Housing Board proceeded to take consequential action in the same communication by calling upon the Petitioner to remove or demolish the temple within one week. It is clear from the documents on record that the temple has been in existence from the early 1980s. Especially in light of the said undisputed position but even otherwise, the Tamil Nadu Housing Board should have issued a notice to the Petitioner Association, provided a reasonable opportunity and followed due process before calling upon the Petitioner Association to remove or demolish the temple and, in default thereof, threaten to carry out such demolition. On this basis, I am inclined to interfere with the impugned order dated 01.04.2010.

7. As a result, the impugned order dated 01.04.2010 is quashed as regards the direction to the Petitioner Association to remove the temple within a period of one week from the date

of receipt thereof. Nonetheless, it is open to the Tamil Nadu Housing Board to initiate action in accordance with law if it is intended to take any action to remove or demolish the temple. Equally, it is open to the Petitioner Association to make a representation to the Government and the Tamil Nadu Housing Board in relation to the re-classification of Plot T23 and, if successful, to seek re-consideration of the allotment thereof to the Petitioner Association.

8. This writ petition is disposed of on the above terms. Consequently, connected miscellaneous petitions are closed. There will be no order as to costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

rrg

To

- 1.The Managing Director,
Tamil Nadu Housing Board
Nandanam, Chennai.
- 2.The Executive Engineer,
Tamil Nadu Housing Board,
Anna Nagar Division,
Thirumangalam,
Chennai - 600 101.
- 3.The Secretary to Government,
State of Tamil Nadu
Housing and Urban Development Department,
Secretariat, Fort St. George, Chennai - 600 009.

+1 cc to M/s.P.V.Rajeswari Advocate sr11244
+1 cc to Mr.R.Bharathkumar Advocate sr11535
+1 cc to the Government Pleader sr11568

W.P.No.12505 of 2010

rsv(co)
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