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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

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THE HON'BLE MR.JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.3229 of 2022

R.M.Niranjana Kumar

.. Petitioner

-vs-

1. Government of Tamil Nadu
rep.by its Secretary to Government
Housing & Urban Development Department
Secretariat, Chennai 600 009
2. Corporation of Chennai
rep.by its Commissioner
Ripon Building
Chennai 600 003
3. The Executive Engineer
Corporation of Chennai, Zone IX
Unit 25, Division 124
No.1, Lake Area 4th Cross Street
Nungambakkam, Chennai 600 034
4. Arulmighu Kabaleeswarar Temple
rep.by its Joint Commissioner
Hindu Religious and Charitable Endowment Board
North Mada Street, Mylapore,
Chennai 600 004
5. The Tahsildar
Mylapore-Triplicane Taluk
Chennai 600 004
6. The Managing Director
Tamil Nadu Tea Plantation Corporation Ltd.,
(TANTEA) Registered Office
(A Government of Tamil Nadu Undertaking)
TANTEA Complex, Orange Grove Road,
Coonoor 643 101, The Nilgiris



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7. The Zonal Officer, Zone-IX
Greater Chennai Corporation
No.1, 4th Cross Street
Lake View Road
Chennai 600 034

8. Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maligai
No.1, Gandhi Irwin Road
Chennai 600 008

.. Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for entire records pertaining to the Impugned Order vide Z.O.IX.C.No.00848/2022 dated 08.02.2022 issued by the third respondent herein, quash the same and forbear the Respondent Nos.1, 2, 3, 7, 8 from interfering with the petitioner to conduct his occupation and business at TANTEA Tea shop in No.5, Ramakrishna Mutt Road, Mylapore, Chennai 600 004 with an extent of 233 sq.ft without any intervention and hindrances.

For Petitioner	::	Mr.Sricharan Rangarajan for Mr.K.Gowthamkumar
For Respondents	::	Mr.K.V.Sajeev Kumar Special Government Pleader for RR1 & 5 Mr.K.Raja Shrinivas for RR 2, 3 & 7 Mr.N.R.R.Arun Natarajan Special Government Pleader for R4 Mrs.C.Sumathy for R8 CMDA

ORDER

(Order of the Court was made by T.RAJA, J.)

Mr.R.M.Niranjana Kumar has again come to this Court challenging the correctness of the impugned order dated 08.02.2022 passed by the Executive Engineer, Zone IX, Greater Chennai Corporation, on the limited ground that when the petitioner earlier came to this Court with Writ Petition No.20107 of 2021 seeking issuance of a mandamus under Article 226 of the Constitution of India to forbear the Commissioner, Greater Chennai Corporation and the Executive Engineer, Zone IX, Greater Chennai Corporation, the respondents 2 & 3 herein from in any way interfering with the petitioner's shop portion



WEB COURT

situated at No.5, Ramakrishna Mutt Road, Mylapore, Chennai, particularly, by way of locking and sealing or demolition of the same, pending final determination by the respondents 2 & 3 of the revised plan dated 22.07.2021 filed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department managing Arulmighu Kapaleeswarar Temple, Mylapore, Chennai, the fourth respondent herein under Section 9 of the Town and Country Planning Act, this Court, after considering the contentions raised by the parties, by order dated 30.11.2021, directed the third respondent herein to pass orders on the regularisation application filed by the fourth respondent dated 29.11.2021, within a period of three months after affording ample opportunity to the necessary parties. However, learned counsel appearing for the petitioner submitted that the third respondent, by the impugned order dated 08.02.2022, citing a reason that the planning permission dated 29.11.2021 submitted by the Joint Commissioner, Arulmighu Kapaleeswarar Temple having been considered and returned as unapproved on 31.12.2021, has wrongly rejected the request, that clearly shows that the authorities are not even prepared to hear the petitioner. Therefore, the impugned order is liable to be set aside by directing the third respondent to rehear the matter by giving reasonable opportunity, as per the order dated 30.11.2021 passed by this Court in Writ Petition No.20107 of 2021.

2. Mr.K.Raja Shrinivas, learned Standing Counsel appearing for the Greater Chennai Corporation, drawing our notice to the impugned order dated 08.02.2022 stating that as per the revenue records the land in question has been specified as water body and even as per the Second Master Plan of the Chennai Metropolitan Development Authority, the land in question also falls under institutional zone and therefore no commercial activity was allowed, as per the Tamil Nadu Combined Development and Building Rules, 2019, submitted that the complaint made by the learned counsel for the petitioner before this Court that the impugned order has been passed without application of mind is incorrect.

3. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the fourth respondent submitted that the land in question admittedly belongs to the Arulmighu Kapaleeswarar Temple, which is also leased out to Tamil Nadu Tea Plantation Corporation Limited (TANTEA), a Government of Tamil Nadu Undertaking for running their business. Moreover, the Additional Secretary (Technical), Housing and Urban Development Department vide order dated 10.06.2021 has also clearly and categorically admitted that the land belongs to the Arulmighu Kapaleeswarar Temple coming under the H.R. & C.E. Department. Therefore, refusing the planning permission on the ground that it is a water body is unacceptable.



4. It is at this stage, Mr.K.Raja Shrinivas, learned Standing Counsel appearing for the Greater Chennai Corporation, drawing our notice to paragraph-6 of the impugned order, indicated to us that in fact one Mr.B.Thiruvassagam on behalf of the petitioner herein and Mr.G.Ravikumar, Assistant, Arulmighu Kapaleeswarar Temple attended the personal hearing held on 04.02.2022 on behalf of the Joint Commissioner, Arulmighu Kapaleeswarar Temple and thereafter only, the impugned order dated 08.02.2022 has been passed.

5. But the learned counsel appearing for the petitioner emphatically pleaded that when this Court, by order dated 30.11.2021, directed the third respondent to consider the case of the petitioner after giving ample opportunity, the third respondent, after issuing the notice dated 01.02.2022 fixing the date of hearing on 04.02.2022, has passed the impugned order on 08.02.2022 without giving any opportunity. That clearly shows that the direction of this Court vide the order dated 30.11.2021 has not been complied with.

6. Since the learned counsel appearing for the petitioner has been airing his grievance before us that had there been a reasonable opportunity granted, the petitioner would have been in a better position to convince the third respondent by placing the relevant documents, without going into the merits, we set aside the impugned order and remand the matter back to the third respondent to rehear the same afresh. Needless to mention that the third respondent-Executive Engineer, Zone IX, Greater Chennai Corporation shall issue notice to the parties, namely, the petitioner, the fourth respondent-Temple, the fifth respondent-Tahsildar, as he has indicated that the land in question is a water body, within a period of two weeks from the date of receipt of a copy of this order and after giving them reasonable opportunity, the third respondent shall pass appropriate orders on merits and in accordance with law within a period of eight weeks therefrom. The order of status quo granted by this Court shall continue till then. With this observation, the writ petition stands disposed of. Consequently, W.M.P.Nos.3366, 3367, 3369 of 2022 are closed. However, there is no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

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2. The Commissioner
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+1cc to Mr.K.Gowthamkumar, Advocate SR.No.12226
+1cc to Government Pleader SR.No.12135

W.P.No.3229 of 2022

PMK(CO)
GMY(28/03/2022)