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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.05.2022

Coram

THE HONOURABLE MR. JUSTICE R.MAHADEVAN
and
THE HONOURABLE MRS. JUSTICE S.ANANTHI

Writ Petition No.12265 of 2022
and
W.M.P.No.11735 of 2022

Mettu Bungalow Residents Welfare
Association represented by its
Secretary Mr.Manikandan,
Plot No.97, Mettu Bungalow,
Kadambadi, Nagapattinam,
Nagapattinam District.

..Petitioner

Vs.

1.The District Collector/Collectorate,
Nagapattinam District.

2.The Commissioner,
Nagapattinam Municipality,
Nagapattinam District.

3.Varalakshmi
D/o.Dharmalingam

4.Savithri
D/o.Dharmalingam

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records from the second respondent pertaining to the impugned order passed in Na.Ka.No.8956/96/F1 dated 23.03.2022 and to quash the same and consequently, direct the respondents 1 and 2 as not to interfere with the peaceful possession and enjoyment of the compound wall constructed by the petitioner association on the eastern boundary of Mettu Bungalow housing sites situated in Mettu Bungalow Nagar, Kadambadi, Nagapattinam.



For Petitioner : Mr.K.M.Subrahmaniam

For Respondents : Mr.A.Selvendran
Special Government Pleader [R1 & R2]

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ORDER

[Order of the court was made by R.MAHADEVAN, J.]

The prayer made in this writ petition is to issue a writ of certiorarified mandamus, to call for the records from the 2nd respondent pertaining to the order passed in Na.Ka.No.8956/96/F1 dated 23.03.2022, quash the same and consequently, direct the respondents 1 and 2 not to interfere with the peaceful possession and enjoyment of the compound wall constructed by the petitioner association on the eastern boundary of Mettu Bungalow housing sites situated in Mettu Bungalow Nagar, Kadambadi, Nagapattinam.

2.It is the case of the petitioner association, which is a registered body under the Tamil Nadu Societies Registration Act, there are about 97 housing plots in Mettu Bungalow and the buildings have been constructed with the municipal approval and the members of the petitioner Association are living in the houses along with their families. The petitioner further averred that prior to the formation of the Mettu bungalow layout, in the immediate eastern portion, the Maraimalainagar housing layout was formed and number of houses have been constructed by the individual owners and also by the Tamil Nadu Housing Board. However, there is no connection between the Maraimalainagar housing sites and the Mettu bungalow residential area, as per the layout formed and the residents of the Mettu bungalow have been living without any disturbance from any quarters. While so, the owners of the Mettu Bungalow housing sites proposed to construct the compound wall on the eastern and southern side of the mettu Bungalow, within the stipulated boundary line. However, one Dharmalingam, who has recently purchased 2 plots in Maraimalainagar housing area, and his daughters / respondents 3 and 4 herein, who have purchased vacant sites in Mettu bungalow layout, are causing unnecessary problems and creating hindrances in the construction of the compound wall. Hence, the petitioner association made a complaint to the police, which was unattended. In the mean while, as per the order dated 08.03.2022 passed in WP.No.5238 of 2022 filed by the third respondent, the second respondent without conducting any enquiry, issued a notice dated 23.03.2022, to the petitioner association, calling upon them to demolish the constructed portion of the compound wall. Aggrieved over the same, the petitioner association has preferred this writ petition with the aforesaid prayer.



3. Heard Mr.K.M.Subrahmaniam, learned counsel appearing for the petitioner and Mr.A.Selvendran, learned Special Government Pleader appearing for respondents 1 and 2 and also perused the documents enclosed in the typed set of papers.

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4. It is seen that what was impugned herein is the notice dated 23.03.2022, issued by the second respondent under section 182(1) of the Tamil Nadu District Municipalities Act, 1920, calling upon the petitioner association to remove the constructed portion of the compound wall. Admittedly, the said notice was issued pursuant to the order dated 08.03.2022 passed in WP.No.5238 of 2022, wherein, this court has disposed of the said writ petition, after recording the submissions of the learned Government Advocate appearing for the respondents therein that 'based on the representation of the petitioner therein, who is the third respondent herein, action has been taken and since the respondents 1 and 2 have already initiated action, the same will be properly carried forward as per the rules and regulations'. However, without issuing any notice and conducting any enquiry, the second respondent issued the impugned final notice to the petitioner Association, which is arbitrary, illegal and in violation of the principles of natural justice.

5. Therefore, this court, in order to provide an opportunity to the petitioner association, directs them to submit their detailed explanation / objection, along with supportive documents, to the notice impugned herein, treating it as show cause notice, before the second respondent, within a period of two weeks from the date of receipt of a copy of this order. On such submission, the second respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, respondents 3 and 4 as well as any other interested parties, within a period of four weeks thereafter.

6. With the aforesaid directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm/mp



To

1.The District Collector/Collectorate,
Nagapattinam District.

2.The Commissioner,
Nagapattinam Municipality,
Nagapattinam District.

+lcc to Mr.K.M.Subrahmaniam, Advocate SR. No. 31116

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SRII (CO)
PR (02/06/2022)