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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.22473 OF 2021

G.Gajendran

... Petitioner

-Vs-

1. The District Collector,
Office of the District Collectorate,
Chenglept Region,
Chenglepet.
2. The Director,
Directorate of Town and Country Planning,
C.M.D.A. Office Complex, 2nd & 3rd Floor,
E & C Market Road,
Koyambedu, Chennai - 600 107.
3. The Deputy Director of Town and Country Planning,
Chenglepet Region,
124, G.S.T. Road,
Chenglepet.
4. The Special Officer / Block Development Officer,
Kattakulathur Panchayat Union,
Kattakulathur,
Chenglepet District.
5. A.Kabilan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pending on the file of the first respondent vide Proceeding Na.Ka.No.237/2021/Se.Ma.3 dated09.2021 (signed on 06.09.2021) and quash the same and consequently direct the first to fourth respondents to conduct enquiry after giving due opportunities to the parties and pass appropriate reasoned orders on the petitioner's representation dated 22.04.2021.



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For Petitioner : Mr.N.R.Elango Senior Advocate
for Mr.P.C.Harikumar

For Respondents : Mr.V.Manoharan,
Additional Government Pleader
for R1 to R3
Mr.K.Tippu Sulthan,
Government Advocate for R4
Mr.V.Chandrasekaran for R5

O R D E R

The prayer sought for herein, is for a writ of Certiorarified Mandamus calling for the records pending on the file of the first respondent vide Proceeding Na.Ka.No.237/2021/Se.Ma.3 dated09.2021 (signed on 06.09.2021) and quash the same and consequently direct the first to fourth respondents to conduct enquiry after giving due opportunities to the parties and pass appropriate reasoned orders on the petitioner's representation dated 22.04.2021.

2. In respect of some landed properties at various survey numbers in Nallambakkam Village, there is an inter se claim made by both the petitioner as well as the fifth respondent.

3. However in the year 2018, it seems that, the plan approval has been given by the Planning Authority, i.e., second and third respondents.

4. Subsequently, when an objection was raised by the petitioner claiming title over the property, for which, the plan permission was given to the fifth respondent, it seems that, based on the oral instruction given by the second respondent, the third respondent in April 2021 suspended the said plan permission given in favour of the fifth respondent.

5. Subsequently, the petitioner had given a complaint on 22.04.2021 to the first respondent stating that, the petitioner is the owner of the property or he is claiming title over the property against the fifth respondent and in this regard, even though the plan permission already given was suspended since the fifth respondent was trying to make construction, the said order, i.e., the suspension order made against the fifth respondent in favour of the petitioner shall be made absolute and for seeking such a prayer, the petitioner made request on 22.04.2021 to the first respondent.



6. When the said representation was not immediately taken up for consideration, the petitioner approached this Court by filing W.P. No. 13812 of 2021, where the learned Judge of this Court by order dated 12.07.2021 passed the following order:

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"4. Recording the aforesaid submissions made by the counsel for the parties, without expressing any opinion, this court is inclined to direct the second respondent to consider the petitioner's objection, dated 22.04.2021 and pass appropriate orders on merit in accordance with law after providing opportunities to the fourth respondent as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of copy of this order. In view of the above, status quo as on today will remain in force and the same shall be maintained by both the parties."

7. Pursuant to the said order passed by the Writ Court as referred to above, the first respondent has sent a communication to the petitioner that the fifth respondent fixing the date of hearing as 27.08.2021.

8. On that day, though the fifth respondent appeared, on behalf of the petitioner, already an E-mail communication had been sent on 24.08.2021 requested the first respondent to receive his letter and vakalat on behalf of the petitioner and also the petitioner requested the first respondent to direct the fifth respondent to furnish the reply or document if any filed by the fifth respondent to the counsel of the petitioner and thereafter, the petitioner may be given to file a rejoinder and therefore, accordingly, he requested for an adjournment.

9. However, the first respondent since there has been an order already passed by the Writ Court dated 12.07.2021, where a time bound direction was given to dispose of the complaint of the petitioner within eight weeks period, refused to give such adjournment sought for by the petitioner through his communication dated 24.08.2021 and accordingly, proceeded to dispose of the said complaint and that is how, the order impugned dated 06.09.2021 was passed, whereby the complaint of the petitioner was rejected.

10. Challenging the said order dated 06.09.2021, this Writ Petition has been filed.

11. Heard Mr.N.R.Elango, learned Senior counsel appearing for the petitioner who pointed out that, apart from the merits of the case, since both the petitioner as well as the fifth respondent claimed title over the property in question, when the



complaint was given and the same was directed to be considered and decided, of course within the time frame, by the orders of the Court, when a specific query has been raised by the petitioner by sending the E-mail Communication dated 24.08.2021 to furnish the document if any filed by the fifth respondent, so that, the petitioner can give his reply or rejoinder, the same ought to have been considered and granted by the first respondent. However without considering the same, the first respondent proceeded to pass an order, where the prime reasons stated by the first respondent to reject the complaint is that, the document namely Document No.3365 of 2013 which is nothing but the settlement document made by the father of the petitioner to and in favour of the petitioner, through which, the petitioner claimed title over the property was already declared to be a fraudulent document by the concerned Register of the Registration Department and that has triggered or influenced the first respondent District Collector to come to the conclusion that, the complaint made by the petitioner is untenable and accordingly, since the complaint of the petitioner was rejected. The said reason given by the first respondent District Collector in the order impugned behind the back of the petitioner without giving proper opportunity of being heard to the petitioner despite the request made in this regard is untenable. Therefore, on that ground, the learned Senior counsel seeks indulgence of this Court.

12. However, Mr.V.Chandrasekaran, learned counsel appearing for the fifth respondent on instruction would submit that, the fifth respondent obtained plan approval sometime in 2018, pursuant to which, construction had been undertaken, all of a sudden, only in the year 2021, the petitioner made a complaint and based on which, the plan approval given in favour of the fifth respondent was suspended. Subsequently, when this complaint was given before the first respondent, who had given two opportunities to both the petitioner as well as the fifth respondent and in both the time, only the fifth respondent appeared, however, the petitioner has not chosen to appear. Even the last hearing date dated 27.08.2021 only the fifth respondent appeared but the petitioner did not appear except the E-mail communication referred to above. Therefore, because of the time bound direction given by this Court, the first respondent District Collector proceeded to decide the matter on merits, where incidentally the document No.3365 of 2013 was taken as one of the ground to reject the claim of the petitioner and that is not the only criteria to reject the claim of the petitioner. Therefore, absolutely there is no infirmity in the said order passed by the first respondent which is impugned herein. Hence, the learned counsel appearing for the fifth respondent seeks dismissal of this Writ Petition.



13. Heard Mr.V.Manoharan, learned Additional Government Pleader appearing for the Official respondents who also wants to sustain the order impugned.

14. I have considered the said submissions made by the learned counsel appearing for parties and have perused the materials placed before this Court.

15. The only prime grievance of the petitioner as projected by the learned Senior counsel is that, on 27.08.2021, already the request of the petitioner dated 24.08.2021 was available with the first respondent and therefore, based on which, an opportunity of being heard should have been given to the petitioner with relevant document if any filed by the fifth respondent on furnishing the same to the petitioner.

16. Apart from the said ground, this Court also finds that, the only reason cited by the first respondent for not giving such opportunity by making an adjournment is that, the eight weeks period given by the Writ Court to dispose the complaint of the petitioner from 12.07.2021, i.e., from the date of the order. However, if we perused the order passed by the Court which has already been quoted herein above, the eight weeks period starts only from the date of receipt of a copy of this order,

17. The copy of the order itself made ready only in the first or second week of August 2021. Therefore, subsequent to that only, the order could have been reached the first respondent. Therefore, misinterpreting the time frame given by this Court, hurriedly the first respondent decided to proceed the matter by rejecting the plea made by the petitioner to give one more opportunity and for that reason, this Court feels that, the order impugned can be interfered with for the limited purpose of remitting the matter back to the first respondent for reconsidering the issue by giving one more opportunity to the petitioner and on that day, it is open to the petitioner to make his case by producing whatever documents available with him to establish his claim over the title of the property in question.

18. In that view of the matter this court is inclined to dispose of this Writ Petition with the following orders:

(i) That the impugned order is hereby quashed and the matter is remitted back to the first respondent for reconsideration.

(ii) while reconsidering the same, the first respondent shall give separate intimation to both the



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petitioner as well as the fifth respondent fixing the date of hearing and on that day, the petitioner as well as the fifth respondent shall appear without any default and produce whatever documents available in this regard with them. In this regard, if any new documents are produced either of the parties, the same shall be exchanged between the parties in front of the first respondent and after having gone through the same, if any rejoinder or reply is to be filed either by the petitioner or by the fifth respondent, such opportunity also of course by giving a short adjournment be given by the first respondent to the parties and after giving such fair opportunity of being heard, the first respondent shall proceed to pass final order on the complaint of the petitioner.

(iii) The needful as indicated above shall be undertaken by the first respondent within a period of eight weeks from the date of receipt of a copy of this order.

19. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Office of the District Collectorate,
Chenglept Region,
Chenglepet.
2. The Director,
Directorate of Town and Country Planning,
C.M.D.A. Office Complex, 2nd & 3rd Floor,
E & C Market Road,
Koyambedu, Chennai - 600 107.
3. The Deputy Director of Town and Country Planning,
Chenglepet Region,
124, G.S.T. Road,
Chenglepet.



4. The Special Officer / Block Development Officer,
Kattakulathur Panchayat Union,
Kattakulathur,
Chenglepet District.

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+1cc to Mr.P.C.Harikumar & Associates, Advocate, S.R.No.1321

+1cc to the Government Pleader, S.R.No.1650

W.P.No.22473 of 2021

KK (CO)
RLP (28/02/2022)