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W.P.Nos.28348 of 2017 and 43957 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.28348 of 2017 and 43957 of 2016

W.P.No.28348 of 2017:

1. J.Vijayakumari
2. T.Jaishankar

... Petitioners

Vs.

1. The Tahsildar,
Tondiarpet Taluk,
Corporation Community Centre,
No.473, T.H.Road,
Tondiarpet, Chennai – 600 021.
2. V.Pandurangan
3. P.Hemanathan
4. P.Madamohan

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, directing the first respondent to consider the representation of the petitioners dated 01.07.2017.

For Petitioners	: Mr.R.Baranidharan
For Respondents	:
For R1	: Mr.Naveen Kumar Government Advocate
R2 to R4	: Mr.M.Gnanasekar



W.P.Nos.28348 of 2017 and 43957 of 2016

WEB C **W.P.No.43957 of 2016:**

1. J.Vijayakumari

2. T.Jaishankar

... Petitioners

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai – 600 003.

2. V.Pandurangan

3. P.Hemanathan

4. P.Madamohan

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, directing the respondent to consider the representation of the petitioners dated 29.04.2016 in so far as the planning permission is concerned.

For Petitioners : Mr.R.Baranidharan

For Respondents :

For R1 : Mr.G.T.Subramanian

For R2 to R4 : Mr.M.Gnanasekar



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COMMON ORDER

By this common order both the writ petitions are being disposed of.

2. W.P.No.28348 of 2017 has been filed for the issuance of a Writ of Mandamus to direct the first respondent to consider the representation of the petitioners dated 01.07.2017.

3. W.P.No.43957 of 2016 has been filed for the issuance of a Writ of Mandamus to direct the respondent to consider the representation of the petitioners dated 29.04.2016 in so far as the planning permission is concerned.

4. The specific case of the petitioners is that the second respondent in the respective writ petitions has obtained a legal heir certificate dated 23.10.1991, fraudulently from the office of the Tahsildar, Tondiarpet Taluk, Chennai/first respondent in W.P.No.28348 of 2017, by suppressing the fact that the petitioners mother (T.Manoranjitham) was the first wife also a legal heir of late Mr.D.Venugopal Naicker along with the petitioner.



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5. It is submitted that on the strength of the aforesaid legal heir certificate, the private respondents in the respective writ petitions have obtained planning permissions and have proceeded with constructions, hence, W.P.No.43957 of 2016 has been filed to cancel the aforesaid legal heir certificate and the planning permission granted to the private respondents herein.

6. The second writ petition in W.P.No.2834 of 2017 has been filed for a Mandamus to direct the first respondent, Tahsildar, Tondiarpet Taluk, Chennai to cancel the legal heir certificate dated 23.10.1991 issued on account of the death of D.Venugopal Naicker.

7. The prayer in the respective writ petitions are totally opposed by the learned counsel for the private respondents stating that these writ petitions are to be disposed of on account of laches.

8. It is submitted that the legal heir certificate is dated 23.10.1991 and almost after a lapse of 25 to 26 years, these writ petitions have been



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filed before this Court which preceded representations to the Tahsildar, Tondiarpet Taluk, Chennai and the Commissioner, Corporation of Chennai/ first respondent in the respective writ petitions to cancel the legal heir certificate dated 23.10.1991 and to cancel the building permission granted by the first respondent in W.P.No.43957 of 2016.

9. That apart, it is submitted that the petitioners have also filed O.S.No.5813 of 2015 before the IIIrd Additional City Civil Court, Chennai for participation of the suit property.

10. It is further submitted that the second respondent / V.Pandurangan has executed a settlement deed dated 18.06.2014 in favour of the private respondent Nos.3 & 4 in the respective writ petitions who are his children and therefore, on this account also the writ petitions are liable to be dismissed.

11. That apart, it is submitted that the petitioners are entitled to work out their remedy for challenging the planning permission, if any, in accordance with the provisions of the Town and Country Planning Act, 1971 read with relevant Development Control Rule as in force during the period of



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disposal. As far as the legal heir certificate is concerned, neither the Commissioner nor the Tahsildar is competent to cancel the legal heir certificate and therefore, on this count also the writ petition is liable to be dismissed.

12. The learned counsel for the official respondent in W.P.No.43957 of 2016 has merely stated that the planning permission has been granted based on the available records and therefore, the writ petition is liable to be dismissed.

13. The learned counsel for the official respondent in W.P.No.28348 of 2017 submits that the writ petition is devoid of merits as the Tahsildar is not the competent authority to cancel the legal heir certificate issued by him or his predecessor on 23.10.1991. If at all, it is open for the petitioner to work out his remedy in accordance with the relevant Government Orders.

14. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsels for the respondents.



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15. The fact on record indicates that the petitioners have filed O.S.No.5813 of 2015 for partition of the property. Rights over the property has been exercised by the second respondent based on the strength of a legal heir certificate obtained from the Tahsildar on 23.10.1991.

16. On the strength of the aforesaid legal heir certificate, the second respondent has also settled the property in favour of his children namely the third and fourth respondent in the respective writ petitions. If, a fraud has been played by the second respondent, then the certificate granted by the Tahsildar on 23.10.1991 is liable to be declared as null and void. However, it has to be exercised before the appropriate forum. Tahsildar by himself cannot come to a conclusion that a certificate issued by him or his predecessor was null and void. Therefore, liberty is given to the petitioners to file appropriate application before the appropriate forum or file a suit to declare the legal heir certificate dated 23.10.1991, as null and void as having obtained fraudulently.

17. As far as the building permission is concerned, the petitioners have



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to work out their remedy once the petitioners establish that they are also entitled to a share in the property which is now a subject matter of O.S.No.5813 of 2015.

18. In the result, W.P.No.43957 of 2016 is dismissed and as far as W.P.No.28348 of 2017 is concerned, the writ petition is disposed of by giving liberty to the petitioners to take steps for cancelling the legal heir certificate dated 23.10.1991 issued by the Tahsildar in the manner known to law. No costs.

11.10.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
rgm

To

1. The Tahsildar,



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Tondiarpet Taluk,
Corporation Community Centre,
No.473, T.H.Road,
Tondiarpet,
Chennai – 600 021.

2. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
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C.SARAVANAN, J.

rgm



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