



W.P.(MD).No.12664 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 08.08.2022

ORDER PRONOUNCED ON : 12.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.12664 of 2016

Tmt.Nowsath Begum

....Petitioner

Vs

1.The District Collector
Dindigul District

2.The Tahsildar
Aathur Taluk
Dindigul District

3.The District Primary Education Officer
Dindigul District

4.Sheik Amir Ali

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in his proceedings vide Na.Ka.28413/2015/R4 dated 27.06.2016 and quash the same and direct the first respondent to renew the building license.



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For Petitioner	: Mr.R.Chandrasekar
For R1 to R3	: Mr.D.Sasikumar Additional Government Pleader
For R4	: Mr.T.S.Mohamed Mohideen

ORDER

The present writ petition has been filed to quash the order passed by the first respondent herein under which the request of the writ petitioner for grant of license under the Public Building License Act has been rejected confirming the order passed by the second respondent herein.

2.The petitioner has contended that she is running a School in the name and style of Nehru Nursery and Primary School situated in Sithayankottai Village, Aathur Taluk, Dindigul District with 140 students and 18 staff members from the year 2005 onwards. According to the petitioner, the School being a public premises it requires periodical renewal of license under Section 6 of Tamil Nadu Public Building License Act, 1965. Originally a license was granted under the said Act in favour of the petitioner's School on 22.09.2005 covering the period between 06.06.2005 to 05.06.2008. The license was periodically renewed and ultimately the petitioner has presented a renewal application for a further period of three years from 06.06.2014 to



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05.06.2017 to the first respondent herein who referred the matter to the second respondent herein. The second respondent passed an order on 02.06.2014 rejecting the request for building license on the following grounds:

- (i). The tenancy agreement in favour of the writ petitioner has been cancelled by the landlord and thereafter, he has sold it to a third party.
- (ii). A suit in O.S.No.271 of 2011 is pending before the District Munsif Court, Dindigul between the School Management and the erstwhile landlord.
- (iii). The present purchaser of the School building has raised objection with regard to the renewal of the building license.

3. The said order passed by the second respondent was challenged by the writ petitioner before the Revenue Divisional Officer, Dindigul. The Revenue Divisional Officer, Dindigul by his proceedings dated 09.02.2014 has reversed the order of Tahsildar and directed to grant public building license for a further period of three years. The said order of the Revenue Divisional Officer was challenged by the fourth respondent herein. The first respondent by his order dated 31.03.2015 set aside the order passed by the Revenue Divisional Officer, Dindigul and directed the second respondent herein to enquire afresh. This order of the first respondent herein was challenged by the writ petitioner in W.P.(MD).No.6689 of 2015. This Court



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by an order dated 16.06.2015 had directed the second respondent herein to pass fresh order after giving due opportunity to the writ petitioner and the fourth respondent herein with liberty to parties to place sufficient material before the second respondent to substantiate their claims. This Court has also passed an order that the petitioner shall not be evicted or disturbed by the authorities pending disposal of the enquiry by the second respondent herein.

4.Pursuant to the order of this Court, the second respondent herein had conducted a fresh enquiry and had passed an order on 15.09.2015 granting license to the petitioner School for a period of three years. It was further observed in the said order that the parties have to resolve their title dispute before the competent Civil Court. This order was challenged by the fourth respondent herein before the first respondent, the District Collector. The District Collector had called for a report from the second respondent relating to the survey number in which the School building is located. The Tahsildar has submitted a report that the School building is not located in Survey No. 1338, but it is located in Natham Survey Nos.1382/6, 1382/7A3 and 1382/8. According to the Tahildar's report, Survey No.1382/6 and 1382/8 as per Patta No.1602 has been standing in the name of Sathasamy Kovil and Pattalamman Kovil. As far as Survey No.1382/7A is concerned, Patta No.956 stands in the name of one Palanichamy Chettiar. After natham settlement proceedings,



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Survey Nos.1382/6 and 1382/8 are patta lands and Survey No.1382/7A3 is a Government poromboke land. Based upon the said report of the Tashildar, the District Collector passed an order to the effect that when the School building is not located in Survey No.1388 and it is located in a different Survey Numbers namely 1382/6, 1382/7A3 and 1382/8. The Tahsildar ought not to have granted public building license to the petitioner's School. On the above said findings, the first respondent herein has cancelled the order passed by the second respondent herein. The said order is impugned in the present writ petition.

5.The primary contention of the counsel for the petitioner is that the authorities under the Tamil Nadu Public Building (License) Act, 1965 do not have any jurisdiction whatsoever to go into the issue of the title dispute or relating to the survey number in which the School building is located. The authorities should only be concerned with the stability of the building and the safety measures that are required under the statutory provision for the welfare of the children. The authorities have conducted the enquiry as if it is a Patta proceeding and they have rejected the building license requested by the writ petitioner.

6.The learned counsel for the petitioner had further contended that admittedly the said building is in possession of the petitioner School. The



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public building license has been granted in favour of the petitioner School in the year 2005 and it was periodically renewed up to the year 2015 for every three years.

7.The learned counsel had further contended that in the year 2005 when a public building license was originally granted in favour of the writ petitioner, it was specifically mentioned that the building is located in Survey No.1388, Door No.44. The building has not been shifted thereafter. Thereafter for two consecutive three years, the building license have been renewed only for the above said survey number namely survey No.1388. When a renewal application was filed in the year 2014, the only person who objected for the same is the fourth respondent herein who is said to have purchased the property from the original landlord of the petitioner. The fourth respondent has not raised any issue with regard to the survey number of the building in which the School is located. In the first round of litigation, neither the Tahsildar nor the RDO nor the District Collector have raised any objection with regard to the survey number of the building in which the School is located.

8.The learned counsel for the petitioner has further contended that even in second round of litigation, while the orders were passed by the second



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respondent herein on 15.09.2015, there was no dispute with regard to survey number. For the first time, the first respondent herein by way of an impugned order has raised a dispute with regard to survey number of the building. He had further contended that a report has been received from the second respondent by the first respondent to raise a dispute with regard to the survey number. The said report has been taken into consideration by the first respondent herein without offering any opportunity to the writ petitioner. The same second respondent who passed an order in favour of the writ petitioner granting license on 15.09.2015 has sent a report raising certain objection with regard to the survey number to the first respondent herein. Hence, he contended that the revenue authorities under Tamil Nadu Act 13 of 1965 have no jurisdiction whatsoever to consider the dispute with regard to the survey number or title of the property. The impugned order being passed based upon some dispute in the survey number is completely without jurisdiction and the same has to be set aside. Hence, he prayed for allowing the writ petition.

9.Per contra, the learned counsel for the fourth respondent had contended that the order impugned in the writ petition dated 27.06.2016 was challenged by the fourth respondent herein before the Commissioner (Land Administration), Chennai by way of a revision. In the said revision, the writ petitioner was arrayed as a respondent and he was represented through his



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counsel. After hearing both parties, the Commissioner (Land Administration) by his order dated 10.11.2020 has arrived at a finding that during natham settlement proceedings, original Survey No.1388 was sub-divided into Survey Nos.1382/6, 1382/7A3 and 1382/8. He has further found that as per document produced by the fourth respondent herein (landlord) and the boundaries mentioned in the document, the building is located in Old Survey No.1388. The Commissioner (Land Administration) has further found that the fourth respondent herein cannot have any grievance to be redressed by him and he has further directed the second respondent to clarify the revision petitioner about the developments/changes carried out in the subject land at the time of natham settlement proceedings. Hence, he has contended that the impugned order of the first respondent herein was subject to a revision before the Commissioner (Land Administration) and after hearing the writ petitioner, he has arrived at a finding that the building is located in old Survey No.1388. When the impugned order has got merged with the order passed in the revision petition filed by the fourth respondent herein, the present writ petition is not maintainable.

10.The learned counsel for the fourth respondent had further contended that the present writ petitioner had filed O.S.No.271 of 2011 before the Principal District Munsif Court, Dindigul as against one Farook Basha for the



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relief of permanent injunction not to be evicted unless by due process of law.

The said suit was dismissed for default on 22.12.2016. He had further contended that the District Educational Officer, Vathalakundu has recommended to the Chief Educational Officer of Dindigul to cancel the recognition granted to the petitioner School. Hence, he contended that now that the recognition of the petitioner School has been cancelled, the question of granting a public building license for running a School does not arise.

11.I have considered the submissions made on either side and perused the materials available on record.

12.Admittedly, the petitioner was granted a license under Section 6 of the Tamil Nadu Public Building (License) Act, 1965 for running a nursery and primary School for the building located in Survey No.1388 corresponding to Door No.44, Mathinapettai, Aathur Taluk, Dindigul District on 22.09.2005 having validity for a period between 06.06.2005 to 05.06.2008. It is also not in dispute that the said license was renewed periodically till 2014. The writ petitioner had obtained a lease agreement and thereafter, the land owner has alienated the property in favour of the fourth respondent herein under a registered sale deed dated 22.11.2013. Thereafter, when the writ petitioner approached for renewal of the public building



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license, the fourth respondent had started objecting for granting of such license and hence, the present dispute has arisen.

13.As rightly contended by the counsel for the petitioner that the dispute relating to survey number of the land in which the School building is located was not raised by the fourth respondent or by the statutory authorities during the first round of litigation in which the orders were passed by the Tahsidlar on 02.06.2014, by the Revenue Divisional Officer on 09.02.2015 and by the District Collector on 31.03.2015. Only issue that was under consideration was the objection raised by the fourth respondent herein in relation to the rental agreement which was entered into on the basis of a power of attorney executed by the erstwhile landlord. After orders of this Court in W.P(MD).No.6689 of 2015 dated 16.06.2015, the Tahsildar has passed an order on 15.09.2015 granting public building license in favour of the writ petitioner.

14.All the contentions raised by the fourth respondent were relating to the execution of the rental agreement in favour of the writ petitioner and the cancellation thereof and there was no dispute with regard to the location of the School building. In fact, the second respondent herein had clearly arrived at a finding in his order dated 15.09.2015 that the issue relating to the



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ownership of the building or the rental dispute shall be decided between the parties in O.S.No.271 of 2011.

15.In the impugned order, the first respondent herein had sought for a report from the second respondent relating to the survey number of the land in which the building is located. Based upon the report which was not furnished to the writ petitioner, the first respondent has proceeded to cancel the public building license granted in favour of the writ petitioner by the second respondent herein. The only ground on which the public building license was rejected is that during the natham settlement proceedings, the survey numbers in which the School building is located has been classified as a Government poromboke. The said classification has neither been objected by the writ petitioner nor by the respondents. On the said basis, the public building license was granted by the second respondent was cancelled by the first respondent.

16.The fourth respondent herein being aggrieved by the findings of the first respondent that it is a Government poromboke land had approached the Commissioner (Land Administration) by way of a revision petition. The Commissioner(Land Administration) by his order dated 10.11.2020 has clarified with Old Survey No.1388 has been sub-divided into Survey Nos.



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1382/6, 1382/7A3 and 1382/8 during the natham settlement proceedings. The Commissioner (Land Administration) has further observed that the building is located in old Survey No.1388. After arriving such a finding, the Commissioner (Land Administration) has closed the said revision petition on the ground that the fourth respondent herein cannot have any grievance to be redressed by this forum.

17.The order passed by the Commissioner (Land Administration), Chennai, dated 10.11.2020 will clearly establish the fact that the School building is located in Old Survey No.1388 which has been sub-divided into survey Nos.1382/6 and 1382/7A3 and 1382/8 during the natham settlement proceedings, In view of the clarification issued by the Commissioner (Land Administration), Chennai, this Court finds that the impugned order of the first respondent herein rejecting the public building license on the ground of different survey numbers is not legally sustainable. The impugned order passed by the District Collector is based upon the report of the second respondent herein dated 12.04.2016 which is part of the typed set filed on the side of the fourth respondent herein. As per the said report, Survey No.1388 has been classified as a Government poramboke in the revenue records during the settlement proceedings. But the School building is located in Survey Nos.1382/7A3, 1382/6 and 1382/8.



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18. Even as per the report of the Tahsildar, all the three above said sub-divisions are ryothwari punjai and not Government poromboke. Hence, it is evident that old Survey No.1388 during settlement proceedings has been assigned to a different land and it has been classified as a Government poromboke. But the School building is located in Survey Nos.1382/7A3, 1382/6 and 1382/8 which continue to be patta lands. Hence, the first respondent had misunderstood that the School building is located in a Government poromboke land and has proceeded to reverse the order of the second respondent herein. It is also not the case of the fourth respondent that the School building is located in a Government poromboke land, but he claims title to the above said sub-division in Survey No.1382.

19. In view of the above said discussion, the following orders are passed.

(i). The order impugned in the writ petition is set aside and the writ petition stands allowed.

(ii). The second respondent is directed to issue a public building license in favour of the writ petitioner indicating the survey Nos.1382/7A3, 1382/6 and 1382/8 on satisfaction of the other parameters under the Act.



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(iii). Any order passed in the writ petition shall not affect the right of the fourth respondent herein who has filed a suit before the District Court, Dindigul on 01.08.2022 seeking declaration of title and recovery of possession as against the writ petitioner.

20. With the above observations, the writ petition stands allowed. No costs.

12 .08.2022

Internet : Yes/No
Index : Yes/No
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To

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2. The Tahsildar
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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