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W.P.No.26909 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.26909 of 2021

S.Charles

.... Petitioner

-Vs-

- 1 The Collector
Tiruvallur District Chennai- Tiruttani
Highways Tiruvallur- 602 001.
- 2 The Block Development Officer
(Rural) Tiruvallur Panchayat Union
Ekkadu Village Tiruvallur- 602 021.
- 3 The Deputy Director
District Town Planning Authority
Directorate of Town and country planning No.
43/ 397A Annai Indira Gandhi Salai Rajaji
Puram Tiruvallur- 602 00
- 4 The Panchayat President
Kakkalur Panchayat Tiruvallur District.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari Calling for the records of to call for the records of the second respondent in proceedings No.Che.Mu.Na.Ka. No. 532 / 2021 / A-6 dated 03.09.2021 and quash the same as arbitrary illegal and against the provisions of the Town and Country Planning Act.



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For Petitioner : Mr.M.Venkatakrisnan
For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader – for R1 & R3
Mr.L.S.M.Hasan Fizal
-for R2 and R4

ORDER

This writ petition has been filed challenging the proceedings of the 3rd respondent dated 03.09.2021 cancelling the regularisation granted in favour of the petitioner through proceedings dated 02.01.2019.

2. The case of the petitioner is that he is the absolute owner of Plot No.7 measuring an extent of 2310 sq.ft in Kakkalur village, Tiruvallur Taluk by virtue of a registered sale deed dated 16.03.2018. Patta was also granted in favour of the petitioner in Patta No.12903.

3. The plot that was purchased by the petitioner form part of an unapproved layout. After the coming into force of the Regularisation of Unapproved Layouts Rules, 2017, the petitioner made an application for regularisation of his plot.

4. The 2nd respondent through proceedings dated 02.01.2019 regularized the plot owned by the petitioner. The petitioner thereafter obtained building permission for construction of a building in the plot and sanction was also given by the 4th respondent on 06.02.2021.

5. The grievance of the petitioner is that the 2nd respondent through the



impugned proceedings dated 03.09.2021, straight away proceeded to cancel the regularisation granted in favour of the petitioner based on the communication made by the 4th respondent dated 19.02.2021. The petitioner claims that this order was passed without issuing any notice to the petitioner and behind the back of the petitioner and in total violation of the principles of natural justice. Aggrieved by the same, the present writ petition has been filed before this Court.

6. The 2nd and 4th respondents have filed a common counter. The main stand that has been taken is that there is a common pathway measuring about 20 feet and the petitioner, by virtue of the regularisation, was attempting to encroach upon this common pathway. Thereby, it completely stalled the road maintenance work undertaken by the respondents. Immediately on coming to know the same, the 4th respondent had communicated to the 2nd respondent. The 2nd respondent realized that the petitioner had obtained the regularisation by concealing material facts and hence the impugned proceedings dated 03.09.2021 came to be issued.

7. The 3rd respondent has also filed a counter affidavit and the 3rd respondent has also taken a similar stand to the effect that the petitioner had suppressed the common pathway which was running right across the plot belonging to the petitioner and as a result, the 2nd respondent had proceeded to cancel the regularisation.

6. Heard Mr.M.Venkatakrisnan, learned counsel for the petitioner,



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Mrs.Maithreye Chandru, learned Special Government Pleader for the 1st and 3rd respondents, and Mr.L.S.M.Hasal Fizal, learned counsel for the 2nd and 4th respondents.

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7. The main ground that has been raised by the learned counsel for the petitioner is that the impugned order came to be passed by the 2nd respondent without putting the petitioner on notice. That apart, the petitioner has also questioned the impugned order passed by the 2nd respondent on the ground that the 2nd respondent cannot cancel the regularisation order once it is granted and if anyone is aggrieved by the regularisation order, only an appeal can be filed before the concerned authority.

8. There is no dispute with regard to the fact that the 2nd respondent had acted upon the communication made by the 4th respondent dated 19.02.2021. If really the regularisation was obtained by concealing material facts, it will always be open to the concerned authority to re-look into the order passed earlier. However, when any such decision is take to cancel the order or regularisation, the minimum that is required is to put the petitioner on notice and afford him an opportunity. The decision taken by the 2nd respondent has civil consequences and hence such a decision taken without following the principles of natural justice will certainly vitiate the proceedings of the 2nd respondent. On this ground alone, the impugned proceedings of the 2nd respondent dated 03.09.2021 is liable to be interfered by this Court.



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9. In the light of the above discussion, the impugned proceedings of the 2nd respondent dated 03.09.2021 is hereby quashed. If the 2nd respondent wants to initiate any proceedings for cancellation of the regularisation issued in favour of the petitioner on any ground, the petitioner shall be put on notice and he shall be given an opportunity before a final decision is taken. It is left open to the petitioner to raise all his defence as and when he receives the notice from the 2nd respondent.

10. In the result, this writ petition is allowed in above terms. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Neutral Citation : Yes/No
KST



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N.ANAND VENKATESH, J.

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