



W.P.(MD)No.10282 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.10282 of 2013
and
M.P.(MD)Nos.1 and 2 of 2013

Paramesvari

... Petitioner

versus

1. The Executive Officer,
Thiruppavanam Town Panchayat,
Sivagangai District.

2. Balasubramanian

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records pertaining to the impugned proceedings made in Ka.Na.No.A1/174/2012 dated 12.11.2012 passed by the first respondent and quash the same.

For Petitioner : M/s.J.Balameenakshi



W.P.(MD)No.10282 of 2013

For R1 : Mr.S.Shaji Bino,
Special Govt. Pleader
For R2 : Ms.M.D.Devi Saravana Priya

ORDER

This writ petition is filed as against the order of the first respondent/the Executive Officer, Thiruppuvanam Town Panchayat, in Na.Ka.No.A1/174/2012 dated 12.11.2012.

2. The petitioner, claiming to be the owner of the property in Survey No.41/3 measuring to an extent of 4 ½ cents, applied for building plan approval before the first respondent on 28.06.2012. The first respondent has also granted building plan approval in Ka.Vu.No. 80/2011-12 dated 24.07.2012. Thereafter, the second respondent has made an objection to the first respondent. Therefore, the first respondent issued a notice to the petitioner, calling upon her to produce original documents. However, the first respondent, by referring the Judgments passed in O.S.No.137 of 1992, A.S.No.45 of 1995, S.A.No.



W.P.(MD)No.10282 of 2013

881 of 1990 and also the dismissal order passed by the Hon'ble Supreme Court in S.L.P.(Civil)Nos.15885 and 1886 of 2009 dated 26.10.2009, has cancelled the building plan approval, by order dated 12.11.2012. As against the same, the petitioner has filed this writ petition in the year 2013. This Court while entertaining this writ petition on 26.06.2013, has also granted an order of interim stay.

3. Though the contesting second respondent was served with notice, the second respondent has not filed his counter affidavit in this writ petition.

4. The first respondent has filed a counter affidavit stating that based on the objection made by the second respondent and the Judgments passed in O.S.No.137 of 1992, A.S.No.45 of 1995, S.A.No. 881 of 1990 and also the dismissal order passed by the Hon'ble Supreme Court in S.L.P.(Civil)Nos.15885 and 1886 of 2009 dated 26.10.2009, the impugned order was passed.



W.P.(MD)No.10282 of 2013

WEB COPY 5. The learned counsel appearing for the petitioner submits that the petitioner has purchased the property by a sale deed dated 04.03.1988 and she is still in possession of the property and based on the earlier building plan approval granted by the first respondent, she has also put up row of houses in the subject property. However, without considering the same and without providing sufficient opportunity of hearing, the first respondent cancelled the building plan approval already granted in favour of the petitioner on 24.07.2012.

6. The learned Special Government Pleader appearing for the first respondent submits that the first respondent passed the impugned order based on the documents produced by the second respondent. Before passing the impugned order, notice was issued to the petitioner and sufficient opportunity was also provided to the petitioner and thereafter only, the impugned order was passed based on the orders of the Courts.



W.P.(MD)No.10282 of 2013

WEB COPY 7. The learned counsel appearing for the second respondent submits that despite taking sincere efforts, she is not in a position to contact the second respondent. However, based on the available materials, she submits that even though the petitioner claims that she is in possession of the property, in view of the Judgments passed by this Court and the Hon'ble Supreme Court, the first respondent has rightly cancelled the building plan approval, which has already been granted to the petitioner.

8. This Court considered the rival submissions and perused the materials placed on record.

9. The petitioner claims that she has purchased the property from the second respondent by a sale deed dated 04.03.1988, however, the same was cancelled by the second respondent on 26.06.1990. Thereafter, the petitioner has filed a suit for declaration and perpetual



W.P.(MD)No.10282 of 2013

injunction as against the second respondent before the Sub Court, Sivagangai, in O.S.No.137 of 1992 and the same was dismissed by its Judgment and Decree dated 15.03.1995. As against the same, the petitioner has preferred an appeal suit before the District Court, Sivagangai, in A.S.No.45 of 1995, which was also dismissed by the District Court, by its Judgment and Decree dated 15.12.1995. As against the concurrent findings of the Courts below, the petitioner has also filed a Second Appeal before this Court in S.A.(MD)No.881 of 1990 and the same was dismissed by this Court by its Judgment and Decree dated 26.11.2008.

10. This Court, while disposing the second appeal, held that even though the plaintiff claims that she is in possession of the suit property, her mere possession will not clothe title to the suit property by virtue of Ex.A1 a void sale deed. As against the same, the petitioner has also preferred a Special Leave Petition (Civil) Nos.15885 – 15886 of 2009 before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by



W.P.(MD)No.10282 of 2013

order dated 26.10.2009 dismissed the Special Leave Petition.

However, the petitioner, without making any reference to the above orders, approached the first respondent for building plan approval. The first respondent has also granted building plan approval on 24.07.2012. Thereafter, on the objection made by the second respondent, the first respondent has conducted an enquiry by issuing a notice to the petitioner on 22.10.2012, calling upon the petitioner to produce relevant documents, if any. However, the petitioner has not responded to the same. Therefore, the first respondent, based on the Judgments passed by the Courts, has cancelled the building plan approval and the tax assessment made in favour of the petitioner.

11. In view of the Judgment passed by this Court in S.A.No.881 of 1990 and the order of dismissal passed by the Hon'ble Supreme Court in the Special Leave Petition, this Court is not inclined to interfere with the impugned order passed by the first respondent.



W.P.(MD)No.10282 of 2013

12. Accordingly, this writ petition is dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

17.04.2023

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

1. The Executive Officer,
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W.P.(MD)No.10282 of 2013

B.PUGALENDHI, J.

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W.P.(MD)No.10282 of 2013

17.04.2023