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W.P.No.5045 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.5045 of 2024

S.Mala .. Petitioner

v.

1. The Additional Secretary (Technical)
Housing and Urban Development Department
Fort St.George, Chennai 600 009

2. The Commissioner
Avadi City Municipal Corporation
Avadi, Chennai 600 054

3. The Tahsildar
Avadi, Chennai 600 054

4. S.Mahadevan .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the proceedings in the Letter No.5505042/UDVI(2)/2023-6 dated 13.02.2024, on the file of the 1st respondent, including the notice bearing No.Na.Ka.No.3480/2021/F1 dated 23.02.2024, issued by the 2nd respondent to quash the same as illegal and without jurisdiction.



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For Petitioner :: Mr.V.Raghavachari
Senior Counsel for
Mr.Sharath Chandran

For Respondents :: Mr.R.Kumaravel
Additional Government Pleader
for R1 & R3
Mr.R.A.Gopinath for R2

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

This writ petition is filed for issuance of a writ of certiorari to quash the impugned order passed by the first respondent dated 13.02.2024 and the consequential proceedings of the second respondent dated 25.02.2024.

2. The petitioner claims exclusive title to an extent of 1308 sq.ft., of land in Survey No.716/1 in Paruthipattu Village, Avadi Taluk, Tiruvallur District. It is the case of petitioner that she obtained building approval from the erstwhile Municipality, which has now become a City Municipal Corporation. The petitioner, however, received a notice from the second respondent for locking and sealing the premises on 06.07.2023 on the basis that she had put up construction in excess of the approved plan. The



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petitioner has filed a revision under Section 80-A of the Tamil Nadu Town and Country Planning Act and the revision petition was dismissed. The grievance of the petitioner is that the revision petition was dismissed on the ground that the petitioner has encroached into the government poramboke land.

3. The petitioner has produced before this Court a settlement deed executed in her favour on 03.05.2000. The petitioner has also obtained plan approval on 06.11.2000. The petitioner also claims title on the basis of assignment of house site given in her favour in respect of an extent of 3 cents, equivalent to 1308 sq.ft., as per the proceedings of the Tahsildar. Earlier the petitioner filed a writ petition in W.P.No.24862 of 2023 challenging the order of locking and sealing passed by the second respondent. This Court disposed of the writ petition with a direction to the Government to pass orders on merits in the revision petition filed by the petitioner under Section 80-A of the Town and Country Planning Act. There was a further direction to the respondents not to take coercive steps till such time the revision petition is disposed of on merits. Pursuant to the order



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passed by this Court, the first respondent has disposed of the revision petition. However, while passing the order, the first respondent has observed that Survey No.716/1 in Paruthipattu Village is a government poramboke on the basis of information furnished by the Tahsildar, Avadi. Stating that the petitioner has put up unauthorized construction without any proof of title, the revision petition filed by the petitioner was dismissed with a further direction to the second respondent to take further action. While passing the order, the first respondent also noticed that the private parties who have also objected to the construction put up by the petitioner, are found to be encroachers of government poramboke land and officials were directed to take steps against such encroachers.

4. This Court finds that the petitioner has a bona fide claim to show that she had acquired title in respect of the property in Survey No.716/1 in Paruthipattu Village on the basis of not only the settlement deed, but also on the basis of an assignment. In such circumstances, dismissing the revision on the ground that the petitioner is an encroacher of government poramboke land, may not be proper. Assuming that the document filed in support of the



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petition is not in relation to the property in issue or the property in which the construction is put up by the petitioner is a government poramboke property, the petitioner should be given an opportunity to prove her case that she has put up construction only in her patta land, for which she has a valid document of title. In the absence of opportunity being given to the petitioner, this Court finds that the impugned order dismissing the revision petition showing the petitioner as an encroacher, is in violation of the principles of natural justice. Therefore, the impugned order is quashed on the short ground that the petitioner was not given a fair opportunity to put forth her case before coming to the factual conclusion, prompting the first respondent to reject the revision. Hence, the matter is remitted to the first respondent for passing appropriate orders after hearing the petitioner. It is needless to say that if any document is furnished by the Tahsildar to the first respondent regarding the character of property, a copy of the same shall also be furnished to the petitioner. It is open to the petitioner to rely upon her documents of title. The revision petition shall be disposed of by the first respondent on merits and in accordance with law afresh within a period of six weeks from the date of receipt of a copy of this order. The writ petition



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stands allowed. Consequently, W.M.P.No.5548 of 2024 is closed. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
27.02.2024

Issue copy on 28.02.2024
SS

To

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S.S.SUNDAR,J.

AND

N.SENTHILKUMAR,J.

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