



WEB COPY



W.P. No.11264 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.11264 of 2021

and

W.M.P. No.11924 of 2021

Saradeuz

.... Petitioner

Versus

1. The Competent Authority (Southern Region),
Archaeological Survey of India,
Chennai Circle,
Fort St. George,
Chennai – 600 009.

2. The National Monuments Authority,
Represented by its Member Secretary,
Ministry of Culture,
Govt. of India,
No.24, Tilak Marg,
New Delhi – 110 001.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records of the Second respondent in its order F. No.2-8/476/2015-NOC/NMA, dated 04.02.2000 quash the same and direct the First respondent and Second respondent to issue NOC for the construction put up in Plots Nos.2C, 1B, 2B, 3B, 1A & 2A of Survey No.336 (part) Perumbakkam Village, St. Thomas Mount Panchayat Union, Shollinganallur Taluk, Kanchipuram District.



W.P. No.11264 of 2021

For Petitioner

: Mr.S.M. Deenadayalan

For Respondents

: Mr. G. Karthikeyan
Standing Counsel

ORDER

This writ petition has been filed to call for the records of the Second respondent in its order F. No.2-8/476/2015-NOC/NMA, dated 04.02.2000 and to quash the same and direct the First respondent and Second respondent to issue NOC for the construction put up in Plots Nos.2C, 1B, 2B, 3B, 1A & 2A of Survey No.336 (part) Perumbakkam Village, St. Thomas Mount Panchayat Union, Shollinganallur Taluk, Kanchipuram District.

2. It is stated in the affidavit filed in support of the petition that the petitioner has purchased lands in Survey No.336 (part) Plot Nos.1A-6A, 1B-6B and IC-5C, Perumbakkam Village, St. Thomas Mount Panchayat Union, Shollinganallur Taluk, Kanchipuram District. The petitioner is a developer of plots. Consequently, he wanted to put up construction in the said land and as such, he constructed Ground + 2 Floors, which are meant for commercial purpose. When that being so, suddenly, he received a show cause notice from the respondents stating that since the said lands come under the regulated zone of archaeological site and remains, declared as National importance under Ancient Monuments and Archaeological Sites



W.P. No.11264 of 2021

and Remains Act, 1958, necessary clearances / No Objection Certificate

have to be obtained from the National Monuments Authority. It is the

claim of the petitioner that he obtained necessary permission from the authorities for putting up construction in the said plots and immediately on receipt of the said show cause notice, he stopped the entire construction task.

3. It is further stated that subsequent to receipt of show cause notice, the petitioner submitted multiple representations to the respondents, wherein it was mentioned that it was not his intention to violate any rules or norms and he was unaware of the fact that the land, where construction was put up come under the purview of “regulated zone” and there was no signage or fence marking as protected area. Thereafter, he made all endeavours seeking for grant of No Objection Certificate by the authority concerned to put up further construction in the property. But, on the contrary, the Competent Authority vide his letter dated 01.08.2016 rejected and refused to grant permission, since the said plots are come under the zone of regulated area of archaeological site. Aggrieved by the same, he approached this Court earlier by filing writ petition. This Court by its order dated 21.01.2020 in W.P. No.9268 of 2018, disposed of the said petition, thereby directed the 1st respondent therein to consider the



W.P. No.11264 of 2021

representation of the petitioner and pass final orders, after providing an opportunity of personal hearing to the petitioner. While so, the 2nd respondent vide their letter dated 04.02.2020 rejected the request of the petitioner in the above regard, which is the order impugned herein. In such circumstances, this writ petition has been filed.

4. Learned counsel for the petitioner submitted that without complying the directions of this Court, issued on 21.01.2020 in W.P. No.9268 of 2018, the 2nd respondent has passed the impugned order. He vehemently argued that neither any opportunity of personal hearing was granted to the petitioner, nor the entire issue was re-examined. Thus, the impugned order, dated 04.02.2020 passed by the 2nd respondent was issued in a capricious manner, which is arbitrary and illegal as well as in violation of principles of natural justice. On the aforesaid score, he prays for quashment of the impugned order dated 04.02.2020.

5. Per contra, learned Standing Counsel appearing for the respondents, vehemently opposes the contention made by the learned counsel for the petitioner and submitted on instructions that in compliance of the directions issued by this Court in the order dated, 21.01.2020, the issue was re-examined and thereafter the order dated 04.02.2020 was passed by the 2nd respondent. Further, without obtaining necessary



W.P. No.11264 of 2021

clearances from the respondents - Archaeological department, construction work was carried on by the petitioner, which is in the regulated area and therefore, the same is bad in law. He further argued that the respondents have followed due procedures contemplated under law, prior to issuance of the order, dated 04.02.2020, show cause notice was served on the petitioner. Hence, the order, dated 04.02.2020 passed by the 2nd respondent, is legally sustainable and warrants no interference of this Court. In such view of the issue, he prays for mere dismissal of this writ petition.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials placed on record.

7. It is the contention of the petitioner that he carried on construction activities, only after obtaining permission from the authorities viz., Planning permits from the Local Body as well as from the CMDA. On a bare perusal of entire records, it reveals that the petitioner submitted representation before the respondents to grant No Objection Certificate for resumption of construction in the contentious area. Normally, when a plot / site is declared as regulated zone, which comes within the purview of archaeological department, it is the duty of the ASI is to preserve the



W.P. No.11264 of 2021

monuments in the subject zone. Therefore, construction activities are banned around 100 metres within the sites where the monuments are located. It is crystal clear that the aim of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 is to protect and preserve ancient monuments, which are having cultural and historical significance for future generations. Further, it is true that the local authority have got powers for regularisation of construction, whereas the power to de-notify the regulated zone has to be determined by the respondents/ Archaeological department. When that being the position, the respondents have to make a survey and determine the historical significance in the subject place, as on current date to conclude the issue.

8. In the light of the above, this Court directs the petitioner to submit a fresh representation to the respondents seeking for de-notifying the regulated zone in the subject place, along with this order copy, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such an application, the respondents shall consider the request of the petitioner and pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

9. With the aforesaid directions, this Writ Petition is disposed of. No



W.P. No.11264 of 2021

costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

13.08.2024

Index : Yes / No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To

1. The Competent Authority (Southern Region),
Archaeological Survey of India,
Chennai Circle,
Fort St. George,
Chennai – 600 009.

2. The National Monuments Authority,
Represented by its Member Secretary,
Ministry of Culture,
Govt. of India,
No.24, Tilak Marg,
New Delhi – 110 001.



WEB COPY



W.P. No.11264 of 2021

vsi2

W.P. No.11264 of 2021

13.08.2024