



WEB COPY



W.P.No.14208 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.05.2024

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.No.14208 of 2024
and W.M.P.No.15404 of 2024

S.Mala

... Petitioner

VS

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.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the proceedings in Na.Ka.No.9976/2023/F1 dated 15.09.2023, issued by the 2nd respondent and to quash the same as illegal and to consequently direct the 2nd respondent to consider the representation containing regularization of revised plan dated 21.08.2023.

For Petitioner : Mr.Sharath Chandran

For Respondents : Ms.R.L.Karthika,
Government Advocate for R1 & R3
Mr.R.A.Gopinath,
Standing Counsel for R2



W.P.No.14208 of 2024

ORDER

Heard both sides.

WEB COPY

2. The petitioner's building was locked and sealed. Questioning the same, the petitioner filed appeal under Section 80-A of the Tamil Nadu Town and Country Planning Act, 1971, the appeal was dismissed. Challenging the same, petitioner filed W.P.No.5045 of 2024. Writ petition was allowed vide order dated 27.02.2024. Paragraph 4 of the said order reads as follows:-

'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 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



WEB COPY



W.P.No.14208 of 2024

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

3. The petitioner's counsel states that the prime reason for the initiation of lock and seal proceedings was that the petitioner's construction had deviated from the approved plan. Seeking regularization, the petitioner went before the Commissioner, Avadi City Municipal Corporation with a revised plan. The petitioner's request was not accepted by the second respondent in view of pendency of appeal under Section 80-A of the Act. Challenging the same, the present writ petition came to be filed.

4. There is considerable merit in the contention of the learned counsel appearing for the petitioner that the issue of title was already considered by the Hon'ble Division Bench and that it need not come in the way of the second respondent from



W.P.No.14208 of 2024

considering the petitioner's request for regularization. It is true that the appeal proceedings are pending, I consciously refrain from going into the issue of title. It is always open to the authorities concerned to take appropriate action in accordance with law, if according to them, the petitioner does not have title over the land in question. That is for the future. That need not come in the way of the second respondent from exercising his jurisdiction on the petitioner's present application.

5. In this view of the matter, the impugned order is set aside and the matter is remitted to the file of the second respondent to pass an appropriate order on the petitioner's request for regularization of the construction. The pendency of the appeal under Section 80-A of the Act will not come in the way. I make it clear that I have not gone into the merits of the matter. Till final order is passed by the second respondent, no coercive steps shall be initiated.

6. Writ petition stands disposed of accordingly. No costs. Connected miscellaneous petition is closed.

25.05.2024

Index:Yes/No



W.P.No.14208 of 2024

Neutral Citation:Yes/No
ssm/gvn

WEB COPY

To

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.



WEB COPY



W.P.No.14208 of 2024

G.R.SWAMINATHAN,J.

ssm/gvn

W.P.No.14208 of 2024

25.05.2024