BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.25307 of 2024

M.Rani .. Petitioner

Vs.

1.The District Collector,
The District Collector Office,
Thoothukudi District.

2.The Revenue Divisional Officer,
The Revenue Divisional Office,
Thiruchendur, Thoothukudi District.

3.The Tahsildar,
Tahsildar Office,
Sathankulam,
Thoothukudi District. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the second respondent herein to hear and dispose the appeal sent on 26.09.2024 as against the order passed by the third respondent in his file No.2024/0103/28/457385, dated 17.04.2024 pertaining to the land in S.Nos.398/2 to an extent of 5.91.00 Hectares, 400 to an extent of 4.69.00 Hectares, 413/1 to an extent of 4.46.00 Hectares, 413/2 to an extent of 0.66.00 Hectares, 417/1A to an extent of 2.90.50 Hectares, 417/1C to an extent of 0.01.50 Hectares, 417/1E to an extent of 0.02.00 Hectares, 420 to an extent of 2.62.00 Hectares in Patta No.1 in Karunkadal Village, Sathankulam Taluk, Thuticorin District.

For Petitioner	:	Mr.V.Meenakshi Sundaram
For Respondents	:	Mr.B.Saravanan Additional Government Pleader

ORDER

This writ petition has been filed for the following relief:

> *"For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue a writ or order or direction, more in the nature of Writ of Mandamus directing the 2nd respondent herein to hear and dispose the appeal sent on 26.09.2024 as against the order passed by the 3rd respondent in his file No.2024/ 0103/28/457385, dated 17.04.2024 pertaining to the land in S.Nos.398/2 to an extent of 5.91.00 Hectares, 400 to an extent of 4.69.00 Hectares, 413/1 to an extent of 4.46.00 Hectares, 413/2 to an extent of 0.66.00 Hectares, 417/1A to an extent of 2.90.50 Hectares, 417/1C to an extent of 0.01.50 Hectares,*

417/1E to an extent of 0.02.00 Hectares, 420 to an extent of 2.62.00 Hectares in Patta No.1 in Karunkadal Village, Sathankulam Taluk, Tuticorin District and pass appropriate orders to issue separate patta within a time stipulated by this Hon'ble Court and for other reliefs."

2.1. The case of the petitioner is as follows:

2.2. The subject matter of property comprised in S.No.398/2 to an extent of 5.91.00 Hectares, S.No.400 to an extent of 4.69.00 Hectares, S.No.413/1 to an extent of 4.46.00 Hectares, S.No.413/2 to an extent of 0.66.00 Hectares, S.No.417/1A to an extent of 2.90.50 Hectares, S.No. 417/1C to an extent of 0.01.50 Hectares, S.No.417/1E to an extent of 0.02.00 Hectares and S.No.420 to an extent of 2.62.00 Hectares in Patta No.1 in Karunkadal Village, Sathankulam Taluk, Thuticorin District, originally belonged to Swamy Somasundareshwar and Nithiya Kalyani Amman Temple, which was found about 180 years ago by one Subbramaniyapillai and Velayee Ammal, who were the then representatives of the ancient and premier family. The above said Subbramaniyapillai and Velayee Ammal built up a temple and consecrated the deities and ear marked certain properties heritable, partible and alienable as such. In these circumstances, the Commissioner, Hindu Religious and Charitable Endowment Board *suo motu* initiated a proceeding under Section 84 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1986 (Madras Act, II of 1927) in O.A.No.111 of 1944 wherein by a Board Order No.63, dated 03.01.1945, the Board decided that the Somasundareshwar and Nithiya Kalyani Amman Temple is not a public temple and it is not a temple as defined under Section 9(12) of Madras Act, II of 1927. In such circumstances, one Shenbagavalliammal, wife of Shanmuga Velayuthampillai executed a Will dated 30.12.1993 in favour of one Mr.S.Swamy with respect to other properties. Hence, it is clear that the Hindu Religious and Charitable Endowment Board has no jurisdiction over the subject matter of the properties

2.3. The subject matter properties along with some other properties were managed by the said Mr.S.Swamy as an Akthar of the temple Arulmigh Somasundareshwar and Nithiya Kalyani Amman Temple. The said Mr.S.Swamy as an Akthar had executed a Power of Attorney in favour of his son Mr.Suresh *vide* Document No.16/2019, dated 08.05.2019. All the revenue records were mutated in favour of Arulmighu Somasundareshwar and Nithiya Kalyani Amman Temple in Patta No.1. The Resurvey and Resettlement register also stands in favour of the temple. At this juncture, the petitioner purchased the subject matter of properties for a valuable consideration by a registered sale deed dated 30.10.2019 from the present Akthar of the temple namely S.Suresh, who is the son of Mr.S.Swamy. Further, the third respondent in his proceedings in Na.Ka.Aa3/1934/2017, dated 13.08.2019 passed an order that the subject matter properties do not come under the purview of the Land Ceiling Act.

2.4. It is submitted that from the date of purchase, the petitioner is in exclusive possession and enjoyment of the subject matter of properties. Hence, the petitioner submitted an application dated 17.04.2024 before the third respondent for mutation of patta in his favour. The third respondent however, without considering the supporting documents as the petitioner enclosed in his application for mutation of patta, by a cryptic order dated 17.04.2024, rejected his request on the sole ground that "the petitioner has not enclosed the parent documents". Aggrieved over the rejection order of the third respondent dated 17.04.2024, the petitioner preferred an appeal before the second respondent on 26.09.2024. Even after the receipt of the appeal, there is no development on the side of the second respondent. Hence this Writ Petition.

3. Heard the learned counsel on either side.

4. The appeal before the second respondent emanates from the order of the third respondent rejecting the request of the petitioner for grant of patta. Despite the fact that along with his application dated 17.04.2024, the petitioner had filed documents in the application for patta transfer shown as file attachment, not only is there a non-application of mind on the part of the third respondent, but also the order is a non-speaking one.

5. E-Governance has been introduced with the ultimate objective to bring public services close to the homes of the citizens and in a convenient, efficient and **transparent** manner. The National e-Governance Plan (NeGP) has been rolled out across the country with this vision statement.

6. “Make all Government services accessible to the common man in his locality through common service delivery outlets and ensure efficiency, transparency and reliability of such services at affordable costs to realise the basic needs of the common man.”

7. The E-District Projects adopted by the State is a part of this NeGP. The scheme not only envisages an easy accessibility to the services, but it also contemplates a transparency in these services which is clear from the Vision Statement. Therefore, when the authority whose statutory services has been availed by a common citizen and his request is turned down, he has a right to know the reason for the refusal as the scheme contemplates **transparency.**

8. That apart, when an order of an authority is subject to an appeal/revision to a higher authority, the aggrieved person has a right to know the ground on which he can challenge the order of the original authority. It is also seen that applications are rejected for want of documents. In such cases, the authority can ask the applicant to produce the documents. In some cases, the response simply states "request is rejected". An order rejecting an application has to be a speaking one it need not run into pages but should definitely convey to the person why his request cannot be processed and the grounds upon which it is turned down.

9. The Hon'ble Supreme Court in its judgment in ***Oman Usman Chamadia Vs. Abdul and Ors.*** reported in ***(2004) 13 SCC 234*** was considering a case which arose from bail proceedings. The Learned Judges discussed as to why orders that are appealable should indicate the grounds on which the order is based. They had observed as follows:

> *"10. ... In our opinion, this is not proper if such orders are appealable, be it on the ground of*

concession shown by the learned counsel appearing for the parties or on the ground that assigning of elaborate reasons might prejudice the future trial before the lower courts. The High Court should not, unless for very good reasons, desist from indicating the grounds on which their orders are based because when the matters are brought up in appeal, the court of appeal has every reason to know the basis on which the impugned order has been made. It may be that while concurring with the lower courts' order, it may not be necessary for the said appellate court to assign reasons but that is not so while reversing such orders of the lower courts. It may be convenient for the said court to pass orders without indicating the grounds or basis but it certainly is not convenient for the court of appeal while considering the correctness of such impugned orders. The reasons need not be very detailed or elaborate, lest it may cause prejudice to the cause of the parties, but must be sufficiently indicative of the process of reasoning leading to the passing of the impugned order. The need for delivering a reasoned order is a requirement of law which has to be complied with in all appealable orders. ...”

10. In yet another judgment of the Hon'ble Supreme Court in ***Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and others*** reported in ***(2010) 9 SCC 496,*** the Hon'ble Supreme Court was considering a cryptic order of dismissal passed by the National Consumer Disputes Redressal Commission. The learned Judges observed that "an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of the parties, must speak. It must not be like the "inscrutable face of a sphinx". The learned Judges after discussing the various judgments summarised their discussions as follows in para 47:

> *"47. Summarising the above discussion, this Court holds:*
>
> *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *(b) A quasi-judicial authority must record reasons in support of its conclusions.*
>
> *(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done*

as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions

serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons

emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process"."

11. Therefore, taking into consideration the dicta laid down in the above cases and taking into account the vision of NeGP *viz.,* "Transparency", the authorities while rejecting a request, shall give a speaking order giving reasons for the decision. This is very important particularly where orders of revenue authorities have far reaching

consequences in civil proceedings between parties. In such cases it cannot be said that the application is *per se* not maintainable. If the documents are produced and it is seen that the request is a valid one, the same can be ordered. In this way, the time, money and effort of the common man can be spared and that apart, the appellate/revisional authority need not be burdened with the unnecessary proceeding by way of appeal/revision. In such cases the original authority can direct the applicant to appear in person on a given date, peruse the records and proceed to pass orders.

12. Therefore, taking into account the above, this Court issues the following guidelines relating to the procedure to be followed post receipt of online applications by the revenue authoritoies: -

a) On a preliminary perusal of the documents submitted alongwith the application, if the authorities feel that further documents are required, then they can inform the applicant to produce the said documents: and not proceed to reject the application on the ground of want of documents.

b) If the authorities require any clarification, they can afford an opportunity to the applicant to clarify the doubt.

c) If the documents are in order, the request may be granted and such orders need not be a speaking one.

d) If the authority is convinced from the records that the request has to be rejected, then a speaking order citing the reasons shall be issued.

13. For the above reasons, though the prayer is only for a mandamus to the second respondent to hear the appeal in a time bound manner, considering the fact that the original authority himself has passed a one line order and this Court is at loss to know on what ground the same can be challenged before the subsequent authority, exercising jurisdiction under Article 226 of the Constitution of India, this Court proceeds to set aside the order passed by the third respondent dated 17.04.2024. Accordingly, the order of the third respondent dated 17.04.2024 is set aside and the matter is remitted back to the Tahsildar, Sathankulam, Thoothukudi, who shall consider the case of the petitioner

and pass speaking orders within a period of one month from the date of receipt of a copy of this order.

14. With the above observations and directions, this Writ Petition is allowed. No costs.

24.10.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

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To

1.The District Collector,
The District Collector Office,
Thoothukudi District.

2.The Revenue Divisional Officer,
The Revenue Divisional Office,
Thiruchendur, Thoothukudi District.

3.The Tahsildar,
Tahsildar Office,
Sathankulam,
Thoothukudi District.

P.T.ASHA, J.

abr

W.P.(MD) No.25301 of 2024

Dated: 24.10.2024