

(2014) 06 MAD CK 0211

In the Madras High Court

Case No : Writ Appeal (MD) No. 637 of 2014

Anna Nagar, Ramvilas Nagar, Mullai Nagar, People Welfare
Association

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0211

Hon'ble Judges : V.M. Velumani, J;V. Ramasubramanian, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—This appeal arises out of a common order passed by a learned Judge in a writ petition filed by the appellant and another writ petition filed by the husband of the fourth respondent herein.

2. Heard Mr. S.P. Maharajan, learned counsel for the appellant, Mr. A.K. Baskarapandian, learned Special Government Pleader for the respondents 1 and 2, Mr. Aayiram K. Selvakumar, learned counsel for the third respondent and Mr. H. Arumugam, learned counsel for the fourth respondent.

3. The appellant herein is an Association of Residents and Owners of Plots and Houses situate in Anna Nagar, Ramvilas Nagar and Mullai Nagar in Tirunelveli. These three residential colonies were promoted in a land of the extent of about 4.65 acres which belonged about 53 persons. All of them appeared to have applied for approval of the lay out. In the lay out, a land of the extent of about 46 cents in Survey No. 829/2, was shown as a place earmarked for park and public place. But the husband of the fourth respondent by name Mr. Mathavan, obtained patta for the land in 2005. Consequently, the Assistant Director Survey and Land Records appears to have cancelled the entry in the Town Survey Register in 2006. Upon coming to know about the same, the appellant Association made representations before the first respondent. Claiming that the

first respondent did not take any steps, the appellant filed a writ petition in W.P(MD) No. 17514 of 2013 praying for the issue of a Writ of Mandamus to direct the first respondent to consider the representations of the appellant and to pass orders on the recommendation made by the second respondent on 30.01.2012.

4. After notice was ordered, in the aforesaid writ petition in W.P(MD) No. 17514 of 2013, the husband of the fourth respondent filed a separate writ petition in W.P(MD) No. 5219 of 2014 seeking the issue of a Writ of Mandamus to direct the respondents 1 and 2 to consider his representations for the removal of the land of the extent of 50.22 cents in Survey No. 829/Part and 828/Part from the approved lay out of Perumalpuram Extension Scheme No. 7. In the writ petition in W.P(MD) No. 5219 of 2014, the husband of the fourth respondent did not make the appellant herein as a party. But fortunately both the writ petitions were clubbed together and heard by a learned Judge. By a final order dated 28.03.2014, the learned Judge disposed of both the writ petitions directing the second respondent to consider the representations given by both the parties and to pass appropriate orders in accordance with law after giving an opportunity of hearing to both parties. In other words, the relief sought by both the rival claimants, had been granted by the learned Judge. However, the appellant has come up with the above appeal on a very short issue namely, that instead of giving a direction to the first respondent to pass orders, the learned Judge had wrongly given a direction to the second respondent to pass orders. According to the appellant, the second respondent has already considered the issue and issued proceedings dated 30.01.2012 and that what remains to be done is only a consideration of the representation of the appellant by the first respondent in the light of the order passed by the second respondent.

5. Learned counsel for the fourth respondent does not have a serious grievance against the modification that the appellant wants to the order of the learned Judge. But the fourth respondent wants the first respondent to consider both the representations and give opportunity of hearing to both parties and thereafter pass orders in accordance with law. But unfortunately, the fourth respondent's husband has neither come up with any appeal against common order arising out of his own writ petition in W.P(MD) No. 5219 of 2014 nor has he challenged the proceedings of the second respondent dated 30.01.2012.

6. The proceedings of the second respondent dated 30.01.2012 relate to the application made by the fourth respondent's husband for the deletion of the land allegedly owned by him from the approved lay out. After going through the history the second respondent indicated that the approval for the lay out was granted on the basis of the disputed land being shown as a place earmarked for park and public place and that therefore, at this distance of time the removal of the land from the approved lay out plan was not possible.

7. Instead of challenging the proceedings of the second respondent dated 30.01.2012, the fourth respondent's husband earlier came up with a writ petition challenging a check slip issued by the Sub Registrar, Melapalayam, dated

03.10.2013 refusing to register a sale deed. But for reasons which are not very clear, the fourth respondent's husband withdrew the said writ petition in W.P(MD) No. 17456 of 2013. We do not know why the fourth respondent's husband did not challenge the proceedings dated 30.01.2012.

8. Be that as it may, the dispute between the appellant and the fourth respondent is as to whether the consent of the fourth respondent or her husband was taken when the application for an approval of lay out was submitted, to earmark the land of the extent of 50 cents for a public purpose or not.

According to the fourth respondent, 53 persons joined together, and submitted an application for approval of lay out, showing not only their lands but also the land of the fourth respondent and her husband. Therefore, according to the fourth respondent, the approval of the layout itself was illegal.

9. However, according to the appellant, the fourth respondent's husband gave consent. But it appears that the file relating to lay out is now not available.

10. From the facts narrated above, it is clear that

(i) that there are serious disputes regarding facts and

(ii) that there are also serious questions relating to possession and limitation involved in the dispute between the parties. Therefore, the dispute between the appellant and the fourth respondent cannot be resolved in a writ petition filed before this Court. Hence, the learned Judge merely directed the second respondent to consider the representations of both parties and to pass orders.

11. However, the only mistake that crept into the order of the learned Judge is that the second respondent has already issued a communication dated 30.01.2012. Therefore, it is not possible for the second respondent to again reconsider the representation of both parties. If at all any one can consider the grievance of both parties, it is only the first respondent. We do not know whether the first respondent himself can really consider the above mixed questions of law and facts and decide the issue and whether the Civil Court is the appropriate forum.

12. However, since the learned Judge has directed the second respondent to pass orders on the representations of both the parties and also since the first respondent alone is competent now to pass orders, we allow the writ appeal and modify the order of the learned Judge to the limited extent as follows:

i) the first respondent shall consider the representations of both the parties and take into account all facts and pass appropriate orders in accordance with law, within twelve weeks and

ii) the first respondent shall give an opportunity to both the parties to file necessary documents and any further submissions that they wish to make before passing final orders.

No costs. Consequently, connected miscellaneous petition is closed.