

B.Selvam, and ors. Vs. State of Tamil Nadu, and ors.

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Court : Chennai

Decided On : Aug-19-2010

Judge : S.Tamilvanan, J.

Acts : Constitution Of Indian - Article 226

Appeal No. : W.P.Nos.4235, 4236 and 4448 of 2008 and M.P.Nos.1 and 2 of 2008

Appellant : B.Selvam, and ors.

Respondent : State of Tamil Nadu, and ors.

Advocate for Def. : Mr.P.S.Raman, Adv.

Advocate for Pet/Ap. : Mr.M.Thomas, Adv.

Judgement :

1. All these writ petitions are filed under Article 226 of the Constitution of India, challenging the order passed by the respondents. Considering the question of law involved in all these writ petitions, common order is being passed.

2. W.P.Nos.4235 and 4236 of 2008 have been filed, seeking an order in the nature of writ of certiorari, calling for the records relating to the G.O.Ms.No.418, Housing and Urban Development (UD4 (2)) Department, dated 31.12.2007 of the first respondent herein and quash the same.

3. W.P.No.4448 of 2008 has been filed, seeking an order in the nature of writ of Certiorarified mandamus, calling for the records relating from the file of the first respondent leading to the G.O.Ms.No.418, Housing and Urban Development (UD4(2)), dated 31.12.2007 and quash the same and consequently forbear the respondents from, in any way, preventing the petitioner from developing his lands.

4. Mr.T.V.Ramanujam, learned Senior Counsel appearing for the petitioner in W.P.No.4448 of 2008 submitted that the petitioner is the owner of the lands, residential plots Nos.12,23 and 142, measuring a total extent of 1500 sq.ft and 3074 sq.ft in Kovardhan Nagar, situated in S.Nos.764/1A, 764/3, 752 and 757, forming part of an approved layout in No.160/2005, Sriperumbudur Taluk, Kancheepuram District, having purchased the plots, out of his hard earned money for the purpose of putting up residential houses. It is an admitted fact that the plots are forming part of the approved sanctioned layout bearing Na.Ka.No.5025/2005 SA-2, dated 19.09.2005 on the file of the Director of Town and Country Planning, Chennai-2 in Approval No.160/05. However, the first respondent issued G.O.Ms.No.418, Housing and Urban Development (UD 4(2)) Department, dated 31.12.2007 stating that an area of 300 meters nearby Rajiv Gandhi Memorial was declared as "No Development Zone". As per the averments of the writ petitions, the Government Order referring a letter, dated 29.12.2007 sent by the District Collector, Kancheepuram and another letter, dated 31.12.2007 from the Commissioner of Town and Country Planning, Chennai-2. Hence, they approached the respondents 2 and 3, however, they decline to accept the request of the petitioners.

5. According to the respondents, since Rajiv Gandhi Memorial has got national importance, as a monument, which needs special protection, the District Collector had stated that any construction around the memorial would be detrimental to the memorial, having regard to the importance as a National monument.

6. According to Mr.T.V.Ramanujam, learned Senior Counsel appearing for the petitioner in W.P.No.4448 of 2008, the Government Order passed by the first respondent in G.O.Ms.No.418, Housing and Urban Development Department, (UD 4(2)) dated 31.12.2007 is against the fundamental right guaranteed under Article

14 of the Constitution of India and also against the principles of natural justice.

7. The learned Senior Counsel further contended that without acquiring the lands belong to the petitioners, the respondents cannot impose any condition not to develop the land purchased by them , out of their hard earned money and that the total ban is violative of the Constitution of India.

8. Mr.T.V.Ramanujam, learned Senior Counsel appearing for the petitioner in W.P.No.4448 of 2008 submitted that around Rajiv Gandhi Memorial, there are other constructions such as residential buildings, All women Police Station and also the buildings constructed by Brahmakumaris are available. Subsequent to the other constructions, the restriction has been imposed only on the petitioners, which is against the Fundamental Rights of the petitioners guaranteed under the Constitution. He has also further submitted that the petitioners be permitted to construct ground plus one floor for their residential purpose and to that extent, the respondents be directed to accord sanction.

9. Mr.P.S.Raman, learned Advocate-General appearing for the respondents fairly represented that he would place the facts and the prevailing circumstances and also request the Government to pass appropriate orders, considering the rights of the petitioners and other similarly placed persons. Accordingly, the writ petitions were adjourned. Today, when the matter was taken up for hearing, both the learned Senior Counsel appearing for the petitioner as well as the learned Advocate-General appearing for the respondents are present and the learned Advocate-General has produced the Government Order in G.O.Ms.No.181, Housing and Urban Development (UD 4(2)) Department, dated 18.08.2010.

10. In the aforesaid Government Order, passed by the first respondent in G.O.(Ms).No.181, Housing and Urban Development (UD 4(2)) Department, dated 18.08.2010, paragraph 4 reads as follows : "4. The Government after careful consideration accept the proposal of the Director of Town and Country Planning and direct that no development other than residential buildings upto height of 7 meters from the ground level shall be allowed in the area around Rajiv Gandhi memorial to a distance 300 m from its boundary."

11. As per the G.O.(Ms).No.181, Housing and Urban Development (UD 4(2)) Department, dated 18.08.2010 referred to above, the first respondent has taken a view to permit construction of buildings up to the height of 7 meters, which approximately comes to 24 feet. As contended by the learned Advocate-General, that would be sufficient for a normal construction any building of ground plus one floor.

12. After hearing both the learned counsel in all the writ petitions and also considering the latest development and the Government Order (G.O) passed by the first respondent, the writ petitions are disposed of on the following terms :

(i) It is made clear that the petitioners in all the writ petitions are entitled to put up construction in their respective plots, buildings with ground floor plus one floor or otherwise, up to the height of 7 metres from the ground level for residential purpose, in view of the Government Order passed in G.O.(Ms).No.181, Housing and Urban Development (UD 4(2)) Department, dated 18.08.2010 referred to above and accordingly, the respondents have to accord sanction.

(ii) The petitioners are permitted to approach the respondents, by way of making representation with a copy of this order, within a period of two weeks from the date of receipt of a copy of this order. If any such representation being made, the first respondent shall accord necessary sanction, as per the Rules, within a period of eight weeks thereafter.

13. With the above directions, these writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No order as to costs.

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