

Amirtham, and anr. Vs. the Managing Director Tamil Nadu Housing Board Nandanam, and ors.

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Court : Chennai

Decided On : Jul-27-2010

Judge : K.B.K.Vasuki, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P. No.10088 of 2010 & M.P. Nos. 2 and 3 of 2010

Appellant : Amirtham, and anr.

Respondent : The Managing Director Tamil Nadu Housing Board Nandanam, and ors.

Advocate for Def. : Mr. A.Vijayakumar; Mr.D.Veerasekaran; Mr.I.Parandaman; Mrs.Geetha Thamaraiselvi, Adv.

Advocate for Pet/Ap. : Mr. S.Venkatesh, Adv.

Judgement :

1. On consent, this writ petition is taken up for final hearing.
2. The writ petition is filed to set aside the order of the third respondent dated 30.12.2009 in Na.Ka.No.2323/09 LPS3 and to consequently direct the third respondent to grant planning permission on the basis of the petitioner's application dated 09.11.2009.

3. The property situated in various Survey Nos.399/1B1, 399/2, 400/2A, 401/2A, 402/2C-2 of Kallapatti Village in Coimbatore District measuring 5.19 Acres belong to the petitioners 1 and 2 having been allotted the same in the family partition. The petitioners jointly appointed other two persons as their power of attorneys to maintain the property and have also through their power of attorneys made an application to the third respondent to sanction the layout plan in Survey No. 402/2C-2 and the application is filed along with necessary documents such as Layout plan, Topo sketch, Parent document, FMB sketch, Chitta & Adangal, No Objection Certificate issued by Tahsildar and Encumbrance Certificate etc. However, the third respondent has by the order impugned herein returned the petition to be resubmitted along with additional particulars and additional documents as sought for in the order. Though the additional documents sought for are numbering six, the petitioners have come forward with this writ petition challenging one of the additional documents sought for in the impugned order i.e. No Objection Certificate from Tamil Nadu Housing Board.

4. According to the learned counsel for the petitioners, the Government has in its Letter (Ms) No.240 dated 01.08.2007 issued suitable instructions to the authorities concerned, not to insist for No Objection Certificate from Tamil Nadu Housing Board for the purpose of issuing planning permission/building approval for the lands covered in the LPS i.e. Letter for proposal Scheme in the pre 4(1) notification stage and to dispense with the present practice of getting such certificate. It is contended by the learned counsel for the petitioners by relying upon the G.O. above referred to that the third respondent has acted contrary to the instructions contained in the same in returning the application for layout permission for resubmitting it along with No Objection Certificate from the Housing Board. The reading of the G.O. clearly supports the objection so raised on the side of the petitioner. The G.O. is very clear that one such practice was prevailing as per Government Letter (Ms) No.58, Housing and Urban Development Department, dated 05.02.1996 and the same is deleted by the Government through letter above referred to and suitable amendment is also brought in by incorporating Clause-5 to G.O.Ms.No.620, Housing and Urban Development Department, dated 29.06.1990. Further in the instant case, the jurisdictional Tahsildar has already issued certificate to the effect that the land which is the subject matter of the

proposed layout plan is not subjected to any acquisition proceedings and no portion of the land is classified as Poramboke belonging to the Government.

5. That being so, the insistence for production of No Objection Certificate from Housing Board along with the application for layout sanction for the purpose of granting the sanction is contrary to the procedure and the instructions stipulated by the Government. The official respondents are also not able to produce any other G.O. superseding the G.O. above referred to in this regard. In that event, the condition-2 in the impugned order to produce No Objection Certificate from the Housing Board has to be necessarily act aside as invalid in law. The petitioners are now ready to resubmit their application along with other additional documents as mentioned in the impugned order.

6. In the result, the petitioners are given liberty to resubmit the application dated 09.11.2009 for layout sanction in Survey No.402/2C-2 Kallapatti Village, Coimbatore District along with the additional documents and additional particulars except No Objection Certificate from Tamil Nadu Housing Board, as sought for in the impugned order dated 30.12.2009 in Na.Ka.No.2323/09 LPS3 passed by the third respondent, within 15 days from the date of receipt of copy of this order. The second respondent is directed to duly consider the application without insisting for the production of No Objection Certificate from the Housing Board and duly dispose of the petition within four weeks thereafter.

7. With this observation, the writ petition is disposed of. The connected miscellaneous petitions are closed. No costs.

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