

Thangaraj Vs. the Block Development Officer

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Court : Chennai

Decided On : Jul-20-2011

Judge : Vinod K.Sharma, J.

Appeal No. : W.P.(MD)No.1219 of 2006

Appellant : Thangaraj

Respondent : The Block Development Officer

Advocate for Def. : Mrs.S.Bharathi, Adv.

Advocate for Pet/Ap. : Mr.K.Balasundaram, Adv.

Judgement :

1. The petitioner seeks a writ, in the nature of certiorari, to quash the order, dated 19.10.2005, passed by the Block Development Officer, Ponnamaravathy, Pudukkottai District, directing the petitioner to stop construction of house, being raised by the petitioner and to select some other site, under the Indira Avas Yojana Scheme.

2.The admitted facts are that the petitioner was assigned plot No.44 in S.F.No.214/5 at Sevalur Village, Thirumayam Taluk, Pudukkottai District, by the Special Tahsildar, Adi Dravidar Welfare, Pudukkottai, in the year 1987. The petitioner is in possession of said plot, since the date of allotment.

3.The petitioner was selected by the Panchayat Union, as eligible person for construction of house under the Indira Avas Yojana Scheme 2005-2006.

4.The petitioner was allowed to construct a house at a cost of Rs.30,000/- [Rupees Thirty thousand only] by the President, Sevalur Panchayat, vide order, dated 17.08.2005. The construction stands completed, by raising loan from his friends, vide the impugned order, construction was ordered to be stopped on the ground that a decree for permanent injunction was passed by the learned District Munsif Court, Pudukottai, in O.S.No.638 of 1987, dated 15.12.1988.

5.The petitioner has challenged the impugned order, on the ground that the petitioner being not party to the suit, was not bound by the decree of the civil court, especially when the suit filed was after the allotment was made in favour of the petitioner and the plaintiff in the suit had not challenged the allotment of house site, to the petitioner.

6.The contention raised by the learned counsel for the petitioner is, that the impugned order cannot be sustained in law, as the interim injunction was granted not to allot house site, and no-where, the learned court restrained the respondent to proceed with the selection of the beneficiary under Indira Avas Yojana Scheme. Therefore, the impugned order is totally arbitrary and is the out-come of non-application of mind.

7.The learned counsel for the State, on the other hand, supported the impugned order, by contending that in view of the injunction by learned civil court, the impugned order was passed restraining the petitioner from raising construction.

8.On consideration, I find force in the contention raised by the learned counsel for the petitioner.

9.It is not disputed that allotment of site was made in favour of the petitioner, before filing of the suit and the allotment in favour of petitioner was not under challenge. The injunction order was granted restraining the Special Tashildar, from allotting the plot in a particular survey number. The decree could not, therefore, operate against the person, who had already been allotted plot, and the said

allotment was not under challenge in suit.

10.The order of injunction did not permit, the Tahsildhar, ordering the construction to be stopped, as the decree of the learned civil court had no such stipulation.

11.The Indira Avas Yojana Scheme, is independent of dispute in the civil suit as the monetary benefit have been given to the needy persons, who are eligible under the scheme.

12.It is not in dispute that the petitioner is eligible, and the only reason for passing of the impugned order is the decree of the civil court, which for the reason stated herein above, is not applicable to the case of the petitioner.

13.Accordingly, the writ petition is allowed, impugned order is set aside. The respondent is directed to consider the claim of the petitioner for grant of benefit under the Indira Avas Yojana Scheme, to reimburse the construction of costs, which admittedly stands completed. No costs.

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