

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.12.2015

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

WP.No.29295 of 2015
& MP.Nos.1 & 2 of 2015

S.Nithyanandham

.. Petitioner

Versus

- 1.The Director of
Town and Country Planning,
No.807, Anna Salai,
Chennai-600 002.
- 2.The Member Secretary,
Vellore Local Planning Authority,
Sathuvacheri,
Vellore-632 009.
- 3.The District Collector,
Vellore District,
Vellore.
- 4.The Block Development Officer,
(Village Panchayats),
Arcot Panchayat Union,
Arcot,
Vellore District.

5.K.Ravi

6.K.Jaurilal Jain

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents 1 to 3 to take appropriate action against the respondents 5 & 6 for forming unapproved layouts in respect of the lands in SF Nos.226, 234, 238, 239, 240, 248, 249, 250, 251, 252, 255, 257, 262, 265, 266, 282, 283, 370, 371, 372 and 374 including its sub-divisions of Nandhiyalam Village, Walajah Taluk, Vellore District now named as 'Ambalal Nandhavanam' in terms of sections 56 & 85 of the Tamilnadu Town and Country Planning Act, 1971 and restore the above lands into its original position.

For Petitioner : Mr.S.Kamadevan
For RR1 to 3 : Mr.S.Diwakar, AGP
For R4 : Mr.R.Rajeswaran, Spl G.P
For R6 : Mr.T.Saikrishnan
for M/s.Sai, Bharath & Ilan

ORDER

Heard Mr.S.Kamadevan, learned counsel for the petitioner, Mr.S.Diwakar, learned Additional Government Pleader appearing on behalf of respondents 1 to 3, Mr.R.Rajeswaran, learned Special Government Pleader appearing on behalf of the fourth respondent and Mr.T.Saikrishnan, learned counsel appearing for the sixth respondent and with their consent, the Writ Petition is taken up for final disposal.

2. This petition has been filed for issuance of a writ of mandamus to direct the respondents 1 to 3 to take appropriate action against the respondents 5 & 6 for forming unapproved layouts in respect of the lands in SF Nos.226, 234, 238, 239, 240, 248, 249, 250, 251, 252, 255, 257, 262, 265, 266, 282, 283, 370, 371, 372 and 374 including its sub-divisions of Nandhiyalam Village, Walajah Taluk, Vellore District now named as 'Ambalal Nandhavanam' in terms of sections 56 & 85 of the Tamilnadu Town and Country Planning Act, 1971 and restore the above lands into its original position.

3. Earlier, the petitioner had filed a writ petition before this Court in WP.No.21048 of 2014, which was dismissed by this Court by order dated 08.09.2014. As against the said order, the petitioner had preferred a writ Appeal in Writ Appeal No.1472 of 2014. While dismissing the appeal, it was observed that it would not stand in the way of Statutory Authorities from taking appropriate action against the concerned in case of violation of the provisions of the Town and Country Planning Act and or other statutes/regulations. Thereafter, the petitioner is said to have been submitted a representation to the authorities on 06.01.2015. The said representation has been forwarded by the second respondent to the Block Development Officer on 19.08.2015. Since no action has been initiated, the petitioner has come forward before this Court by filing the present writ petition.

4. Mr.T.Saikrishnan, learned counsel appearing for the sixth respondent vehemently opposed the prayer sought for in the writ petition and contented that the petitioner has no locus standi to file the present writ petition, he is guilty of suppression of fact and the local authority is the competent authority to grant No Objection Certificate and the same has been obtained and the sixth respondent has sold 245 plots out of the total 345 plots have been sold to various third parties and those purchasers have not been made as respondents in the writ petition and therefore, the writ petition is liable to be dismissed. Further, it is submitted that any order passed in the writ petition without the purchasers being impleaded as respondents would affect their rights. Further, it is submitted that the earlier writ petitions filed by the petitioner were dismissed and the petitioner, who is not belonging to the said village, who is a Union Councilor has purposely filed this writ petition to harass the sixth respondent. Therefore, it is submitted that the writ petition is liable to be dismissed.

5. Though the official respondents have been served and they have entered appearance through counsel, no counter affidavit has been filed. It is seen that at the time of entertaining the writ petition, by order dated 16.09.2015, an order of interim injunction has been granted and the same is still in force till date.

6. After hearing the learned counsel appearing on either side and perusing the materials placed on record, it may be true that since the petitioner had lost in the earlier round of litigation, though the prayer sought for in these writ petitions/ appeals was slightly different, the issue being one and the same, the petitioner cannot be permitted to agitate the matter by way of amending the prayer, which is some what similar to the prayer sought for in the earlier round of litigation. In the earlier writ petition, the petitioner has sought for a direction not to register any document in respect of the property in question. In that writ petition, identical allegations were raised regarding the lack of proper approval for the lay out permitted by the sixth respondent herein and that writ petition was dismissed. In fact, while dismissing the earlier writ petition by order dated 08.09.2014, this Court also took note of the fact that earlier the petitioner had approached this Court by another writ petition in WP.No.16828 of 2014 and when submission was made that the said writ petition was for a different prayer, this Court rejected the same and stated that it has no doubt that the petitioner has taken a different Avatar for the same litigation. The order passed in W.P.No.21048 of 2014, was conformed by the Hon'ble Division

Bench by judgment dated 14.11.2014. The operative portion of the order passed by the Division Bench reads as follows:

Para.4.The appellant is stated to be the Union Committee Member of Nandhiyalam Panchayat, Wallajah Taluk, Vellore District. The layout formed by the sixth respondent in violation of the provisions of the Town and Country Planning Act was stated to be the reason for filing the earlier writ petition in W.P.No.16828 of 2014. The appellant, without disclosing the initiation of writ proceedings earlier, filed a fresh writ petition in W.P.No.21048 of 2014. The affidavit filed in support of the writ petition does not contain any indication that the appellant has taken up the issue with the statutory authorities. In any case, the learned Single Judge was perfectly correct in dismissing the writ petition on the ground of suppression of material particulars. We do not find any reason to take a different view in the matter.

7. Therefore, I am of the clear view that once again the petitioner cannot be permitted to re-agitate the same issue by slightly amending the prayer sought for. When the core issue was one and the same in the earlier two writ petitions, which were dismissed and one such order was confirmed by the Hon'ble Division Bench. Therefore, the prayer sought for in this Writ Petition cannot be granted and accordingly, the same is dismissed. However, it has to be observed that the Hon'ble Division Bench, while dismissing the Writ Appeal in W.A.No.1472 of 2014, observed that it would not stand in the way of the statutory authorities from taking appropriate action against the concerned, in case of violation of the provisions of the Town and Country Planning Act and or other statutes /regulations. From the documents annexed to the typed set of papers along with the writ petition, it is seen that already the authorities have initiated the some action and the authorities have seized of the matter.

8. In the light of the above, no orders are required in this writ petition and the prayer sought for by the petitioner

stands rejected. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Director of
Town and Country Planning,
No.807, Anna Salai,
Chennai-600 002.
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(Village Panchayats),
Arcot Panchayat Union,
Arcot,
Vellore District.

+1 cc to M/s.Saibharath & Ilan, Advocate, sr.68630
+1 cc to Government Pleader, sr.68743
+1 cc to Mr.S.Kamadevan, Advocate, sr.68534
+1 cc to Mr.R.Rajeswaran, Advocate, sr.68683

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