IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-12-2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION No.38714 OF 2015

Daisy Vimalarani ...Petitioner

-vs-

1. The Executive Officer,
   No.04, Veerapandi Town Panchayat,
   Coimbatore - 641 019.

2. Srivari Builders,
   rep.by its Proprietor,
   M.R.Rathindran,
   No.366, Mettupalayam Road,
   Coimbatore-641 043. ...Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records of the first respondent in Na.Ka.No.80/2015, dated 07.07.2015, and quash the same as illegal, arbitrary and non-est in law.

For petitioner : Mr.C.Veeraraghavan

For respondent 1 : Mr.Lakshminarayanan,
Addl.Govt.Pleader.

O R D E R

Mr.Lakshminarayanan, learned Additional Government Pleader takes notice for the first respondent.

2. By consent of the learned counsel on either side, the Writ Petition is taken up for final disposal, without ordering notice to the second respondent.

3. In this Writ Petition, the petitioner has sought for issuance of a Writ of Certiorari to quash the proceedings of the first respondent. The petitioner is the purchaser of a ready built house, which has been constructed by the second respondent-builder.

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4. The petitioner's case is that one M.R.Rathindran was the Proprietor of the second respondent Company and he promoted the lands in Veerapandi Village, situated at Press Colony, Veerapandi Town Panchayat, Coimbatore Taluk, Coimbatore District, by constructing independent residential houses. The petitioner has purchased an independent house in the residential layout and is residing in the said premises.

5. The dispute in the writ petition lies in a very narrow compass relating to the provision of individual septic tank for each house. By the impugned proceedings, the first respondent has invoked the powers conferred under Tamil Nadu Public Health Act, 1930 and directed the petitioner to construct individual septic tank within a period of ninety days.

6. The petitioner has approached this Court by contending that the first respondent ought to have seen that there is a common septic tank constructed for 167 houses in the locality with the concurrence of the first respondent and that tank has been utilized from 2002 onwards without any difficulty. In such a situation, the first respondent, in a hasty and arbitrary manner has issued the impugned proceedings. Further, it is contended that the petitioner is not aware as to what is the nature of the approval granted by the Planning Authority and as to whether there is any change in the approval. The petitioner was made to believe that a common septic tank and underground pipeline with adequate manholes, which are sufficient to fulfill all the clauses prescribed by the Pollution Control Board, have been provided and in use as on date. Therefore, it is submitted that the petitioner should not be called upon to construct individual septic tank.

7. Learned counsel for the petitioner has drawn the attention of this Court, to the terms and conditions of the approval and submitted that it is the promoter, who has to maintain all these facilities and the petitioner has purchased the same as ready built house and that therefore, the first respondent is not justified in directing the petitioner to construct individual septic tank that too, within a period of ninety days.

8. Learned counsel appearing for the first respondent, by referring to the counter affidavit, submitted that a tripartite agreement for sale between the owner of the land, the second respondent, and the writ petitioner was entered into in respect of the site and the construction is not in accordance with the approved plan. It is submitted that the builder has to comply with the conditions of building plan permission and agreed not to proceed with the execution work, unless and until the approval is certified by an Authority or

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permission is granted under Tamil Nadu Panchayat Building Rules and not to permit the occupation of the building, until such permit is granted and a certificate from the Officer of the Public Works Department is issued. It is submitted that the builder, having accepted the said conditions, cannot flout the same.

9. The first respondent would further submit that the allegation that there is a common septic tank constructed for the occupants of Sri Balaji Gardens is incorrect and it is in deviation of the approved plan. The learned counsel has also drawn the attention of this Court to the various conditions, based on which, the approvals were granted. It is further submitted that as per the approved layout plan, individual septic tank has to be constructed and there is no approval for common septic tank. Further, it is submitted that the approval is to provide rain water harvesting tanks for storage of rain water, but the writ petitioner, violating the said condition, has been using the rain water harvesting tank as septic tank, which is contrary to the condition of approval and G.O.Ms.No.138 Municipal Administration and Water Supply Department dated 11.10.2002.

10. Further, it is submitted by the first respondent that the building permission accorded by the first respondent also provides that the builder can provide a separate septic tank facility for all residential houses proposed to be constructed in the said property and a place has been earmarked in the approved sketch for constructing the septic tank, which is still lying vacant and there is no impediment in complying with the impugned order passed by the first respondent. Further it is submitted that after the impugned notice dated 7.7.2015 was issued, out of 389 houses, 60 have complied with the direction and constructed individual septic tanks and 15 are in the process of building individual septic tanks. Therefore, it is the submission of the first respondent that the petitioner is bound to construct individual septic tank. Learned counsel appearing for the first respondent also contended that already the first respondent-Town Panchayat has initiated action and issued notice to the second respondent/builder.

11. The averments made in the counter affidavit are reiterated by the learned counsel appearing for the first respondent and he has also produced photographs to show that several of the house owners have already commenced the construction activity of the septic tanks and it is in progress.

12. In reply, learned counsel for the petitioner would submit that the terrain of area where the houses are constructed is a sloppy terrain and in those houses, septic tank cannot be constructed. The pit cannot be dug for more than 5 feet depth and it is also one more reason for the petitioner's inability to comply with the condition.

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13. After hearing the arguments of the learned counsel for both the parties and perusing the materials placed on record, it is seen that as per the approved layout, individual septic tank has to be constructed. However, the approved plan also provides for construction of a common septic tank. But, no such facility has been provided by the builder and on the other hand, the builder has illegally converted the rain water harvesting tank as a septic tank. This amounts to clear violation of the planning permission.

14. The petitioner, being a party to the tripartite agreement between herself, the builder and the land owner, is bound by all the conditions and she cannot now say that it is only the builder, who has to comply with the same, since the petitioner is the purchaser of the property and she is bound by the conditions, based on which, the layout and building plan were approved. That apart, it is not as if the directions issued by the first respondent are not feasible of compliance, as more than 75 house owners have already constructed the septic tank. Hence, it is only a question of time, which is required for the petitioner, to construct individual septic tank.

15. In case there is any specific difficulty for the petitioner in constructing individual septic tanks, she can approach the first respondent with an appropriate proposal that two or three of the owners can jointly construct a septic tank or some other proposal, which can be considered by the first respondent. However, the first respondent cannot, in overnight, compel the petitioner to construct the septic tank and he should grant sufficient and reasonable time to the petitioner to comply with the order.

16. It is submitted by the learned counsel for the first respondent that the violation in converting the rain water harvesting tank to septic tank did not come to the notice of the first respondent earlier. But, only after the "Kudiyeruppor Murpokku Nala Sangam" presented a petition during the grievance day and the officials of the Pollution Control Board and the Assistant Director of Town Panchayat visited the spot and found the violations, the first respondent had to issue a notice to remedy the breach.

17. In the light of the above findings on the grounds raised by the petitioner, the impugned order cannot be quashed. However, there is more than one option available to the petitioner. The first option is to comply with the direction and construct individual septic tank and if the petitioner wants further time, she can always approach the first respondent. The second option available is that the petitioner can approach the first respondent with a specific request, in case where there is any other specific problem for her to construct individual septic tanks in her property. If such request is made, the first respondent can consider the same in accordance with law. The third and final option for the petitioner is to initiate the proceedings against the builder and compel the builder to construct a common septic tank. For this, no Writ of Mandamus can be issued, since

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the second respondent is a private party and the petitioner has to necessarily approach the appropriate forum in this regard.

18. Accordingly, instead of setting aside the impugned order, the petitioner is directed to submit a representation with an undertaking to the first respondent, clearly setting out, as to within what time, she will be able to complete the construction of individual septic tank. If the petitioner is unable to construct individual septic tank for any valid reason, then, she shall mention the same in her representation, which shall be considered by the first respondent. The above directions shall be complied with by the petitioner within a period of eight weeks from the date of receipt of a copy of this order and thereafter, the first respondent shall pass appropriate orders considering the petitioner's request. In all other cases, the owners/ occupants should comply with the impugned orders, for which, this Court is of the view that they should be granted a minimum of four months time, to comply with the direction and complete the construction of individual septic tank.

19. With the above directions, this Writ Petitions is disposed of. Till the above proceedings are completed, no coercive action shall be taken against the petitioner. No costs. Consequently, the connected M.P.Nos.1 and 2 of 2015 are closed.

Dixit

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

The Executive Officer,
No.04, Veerapandi Town Panchayat,
Coimbatore - 641 019.

+1 C.C. To MR.C.Veeraraghavan, Advocate in SR.NO.65992

W.P.No.38714 OF 2015

RSY(CO)
sd : 29/12/2015

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