



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.08.2015

CORAM
THE HONOURABLE MR.JUSTICE R.SUBBIAH

WEB COPY

W.P. (MD) No.17346 of 2014

M.KANIMOZHI SOPIA

.. Petitioner

Vs.

THE COMMISSIONER,
THANJAVUR MUNICIPALITY,
THANJAVUR DISTRICT.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the respondent in Na.Ka.No.4684/2014/F4, dated 27.06.2014 and quash the same and consequently direct the respondent to grant plan approval and the order of license to construct the building in petitioner property bearing plot No.23 comprised in Survey No.201/1, New Survey No.201/9C2 at Pandiyan Nagar, Melaveli Thottam Village, Thanjavur.

For Petitioner	: Mr.S.C.Herold Singh
For Respondent	: Mr.S.Pakalavan

O R D E R

This writ petition has been filed for a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the respondent in Na.Ka.No.4684/2014/F4, dated 27.06.2014 and quash the same and consequently direct the respondent to grant plan approval and the order of license to construct the building in petitioner property bearing plot No.23 comprised in Survey No.201/1, New Survey No.201/9C2 at Pandiyan Nagar, Melaveli Thottam Village, Thanjavur.

2.It is the case of the petitioner that he purchased a property bearing Plot No.23 measuring to an extent of 3735 sq.ft of land comprised in Survey No.201/1, New Survey No.201/9C2 at Pandiyan Nagar, Melaveli Thottam Village, Thanjavur by way of a registered sale deed, dated 30.12.2011 in document No.4276/2011 registered with the office of the Sub-Registrar, Karunthattangudi from the petitioner's vendor Mrs.M.A.Thaslim Fathima through her power of attorney Mrs.S.Jegatheesh Babu. As per the order of the Zonal Deputy Tahsildar, Thanjavur, the name of the petitioner was included in the extracts of Chitta-Adangal issued by the Village Administrative Office, Melaveli Thottam Village, Thanjavur by deleting the name of the erstwhile patta holder. Now, the petitioner is willing to construct the household building. Hence, he has approached the respondent with the

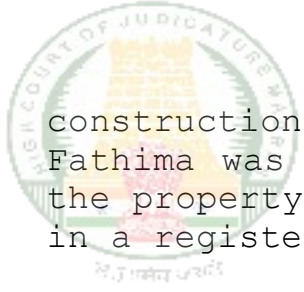


application for getting an order of plan approval and license to construct the building. But the respondent refused to receive the application without any valid reason.

3. It is the further case of the petitioner that the petitioner's vendor also got the order of plan approval and the order of license to construct the building from the respondent on 26.06.2001. But due to some financial problem, the petitioner's vendor was not able to construct the building. Even though the petitioner approached the respondent several times to remit the payment for getting the order of license to construct the building, the respondent has not allowed the petitioner to remit the payment. Hence, he sent a representation, dated 15.04.2014 with an application, blue print of the building plan along with other necessary documents through registered post with acknowledgment. The said representation was received by the respondent on 22.04.2014, but the respondent has not considered the said document, to grant approval to the petitioner to construct house. Hence, the petitioner filed W.P.(MD)No.8327 of 2014 to direct the respondent to issue the order of plan approval and the order of license to construct the building in his property bearing Plot No.23 comprised in Survey No.201/1, New Survey No.201/9C2 at Pandiyan Nagar, Melaveli Thottam village, Thanjavur on the basis of his representation dated 15.04.2014. This Court, by order dated 15.05.2014, directed the respondent to consider the representation of the petitioner, dated 15.04.2014, and pass appropriate orders on merits and in accordance with law, within a period of two months from the date of receipt of a copy of that order. Thereafter, the impugned order came to be passed in Na.Ka.No.4684/2014/F4, dated 27.06.2014 rejecting the petitioner's plan approval stating that Plot No.23 was already reserved as "Park and Play Ground" in the sketch. Hence, challenging the same, the present writ petition has been filed.

4. The respondent has filed a counter affidavit *inter alia* contending that the said property was reserved for "Park and Play Ground". That is the reason why, the application filed by the petitioner for plan approval was rejected.

5. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that originally the Pandian Nagar Rural Co-Op Housing Society, Thanjavur formed layout of Housing society in R.S.No.201/9 of Melvelithottam and the said Plot No.23 was sold to one Indrakumar in an by a sale deed dated 15.03.1983. Subsequently, the said Indrakumar sold the said property to one Selvaraj. The said Selvaraj sold the said plot to the petitioner's vendor viz., Thaslim Fathima. In fact, the petitioner's vendor Thaslim Fathima had applied for plan approval for Plot No.23 on 04.06.2011. The plan approval was granted by the respondent on 26.06.2001 granting approval to the petitioner's vendor to put up a



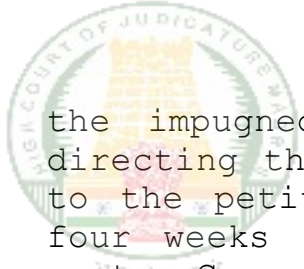
construction in Plot No.23. But subsequently, the said Thaslim Fathima was not in a position to construct a house. Hence, she sold the property to the petitioner in and by a sale deed dated 30.12.2011 in a registered document No.4376/2011.

6.Now, it is the submission of the learned counsel for the petitioner that having approved the plan granted to the petitioner by order dated 26.06.2001, now the respondent cannot reject the application of the petitioner. He has also invited the attention of this Court to the proceedings of the respondent, dated 02.04.2011 whereby the respondent herein has given a No Objection Certificate to one Selvaraj, who is the erstwhile owner of Plot No.23, to sell the property in favour of the petitioner's vendor Thaslim Fathima. Thus, the learned counsel for the petitioner submitted that the respondent having given No Objection to the said Selvaraj, now cannot turn around and say that the Plot No.23 was reserved for "Park and Play Ground" and prayed for quashing the impugned proceedings dated 27.06.2014 and to direct the respondent to grant approval and license to construct the building.

7.Per contra, the learned counsel for the respondent submitted that originally the Pandian Nagar Rural Co-Op Housing Society, Thanjavur formed a lay out in R.S.No.201/9 of Melvelithottam. When the Society formed a lay out, the said Society has not gifted the land to reserve for "Park and Play Ground". Subsequently, Plot No.23 was reserved for "Park and Play Ground". That is the reason why, the petitioner's application for approval was rejected. Thus, he sought for dismissal of this writ petition.

8.On keeping the above submissions made by either side in mind, I have gone through the entire records, particularly, the plan approval granted to the petitioner's vendor Thaslim Fathima by order dated 26.06.2001 and the No Objection Certificate issued in favour of Selvam to sell the said property in favour of the petitioner's vendor Thaslim Fathima. As contended by the counsel for petitioner, when the respondent has chosen to grant plan approval to the petitioner's vendor, I do not find any valid reason, as to why the respondent has rejected the application filed by the petitioner for grant of plan approval to construct a house. Though it has been submitted that the subject plot was reserved for "Park and Play Ground", absolutely, no material or tangible evidence was placed before this Court to show that the plot No.23 was reserved for "Park and Play Ground".

9.Therefore, I am of the considered opinion when earlier the respondent has granted approval in respect of the plan submitted by the petitioner's vendor and also in the absence of any tangible evidence to show that the Plot No.23 was reserved for "Park and Play Ground", cannot be any impediment to grant building plan approval and license to the petitioner to construct a building. Therefore, the impugned order is liable to be quashed. Accordingly,



the impugned order is quashed and the writ petition is allowed directing the respondent to grant building plan approval and license to the petitioner for constructing a building, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

raj2

To

THE COMMISSIONER,
THANJAVUR MUNICIPALITY, THANJAVUR DISTRICT.

1CC TO MR. R.RAJESH ADV. SR: 46836

RG 20 8 15 - 4P 3C

W.P. (MD) No.17346 of 2014

14.08.2015