

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2016

Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition No.5352 of 2016 and
W.M.P.No.4664 of 2016

Papathi

...Petitioner

Vs.

1. Ariyalur Municipality,
rep. by its Commissioner,
Thiru V.Navendran,
Ariyalur Taluk & District.

2. Rajmohan Gandhi

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for records from the files of the first respondent in N.A.No.5734/15/F1, dated 01.02.2016, and to quash the same.

For Petitioner : Mr.M.Raja Sekhar

For Respondent -1 : Mr.R.Rajeswaran
Special Government Pleader

For Respondent-2 : Dr.C.Ravichandran,
for Mr.S.D.Venkateswaran

O R D E R

Heard the learned counsel appearing for the parties.

2. This Writ Petition is filed, being aggrieved by the notice issued by the first respondent/Municipality, calling upon the petitioner not to proceed with the construction on the ground that, suit is pending at the instance of the second respondent.

3. It is not in dispute that the second respondent has filed a suit, being O.S.No.1 of 2016, on the file of the District Munsif Court, Ariyalure, seeking for the relief of declaration and injunction, in which, the petitioner herein is the first defendant, and the first respondent/Municipality is the second defendant. It is stated that, in the said suit,

there is no interim order, and the second respondent/plaintiff failed to obtain any interim orders. Thereafter, the second respondent/plaintiff appears to have represented to the Municipality, and the Municipality has issued the impugned proceedings/notice. In my view, these controversies need not be gone into, for the simple reason, that the petitioner's application for grant of planning permission is still pending consideration. Therefore, unless, the plan is approved, the petitioner is not entitled to commence construction. Therefore, when the first respondent/Municipality are not enjoined by the Civil Court, the approval application given by the petitioner has to be considered in accordance with Act and the relevant regulations. Without doing so, the impugned notice appears to be an arbitrary exercise of power, especially, when there is no prohibitory orders against the first respondent/Municipality.

4. For all the above reasons, the Writ Petition is allowed, the impugned notice is set aside, and the matter is remitted to the first respondent to process the petitioner's application for planning permission in accordance with Act and relevant regulations. Till such approval is granted, the petitioner shall not put up any construction. It is needless to say that it is always open to the second respondent to move the Authorities concerned, if he has got any grievance. No costs. Consequently, connected Miscellaneous Petition is closed.
sd

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Commissioner,
Ariyalur Municipality
Thiru V.Navendran,
Ariyalur Taluk & District.

+ 1 cc to Mr.Venkateswaran, Advocate, SR 12315

+ 1 cc to Mr.M.Raja Sekhar, Advocate Sr 13445 (26/4/16)

mg(co)
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Writ Petition No.5352 of 2016