IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.M.SUNDRESH

W.P. No.5566 of 2016

C.Anbarasu .. Petitioner

-vs-

1.Govt. Of Tamil Nadu,
Rep. By its Secretary,
Dept. of Housing and Urban Development,
Fort St. George, Chennai.

2.The Executive Engineer cum Administrative
Officer, Anna Nagar Division,
Tamilnadu Housing Board, Tamilnadu
Housing Board Commercial Complex,
Thirumangalam, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Prohibition to prohibit the 2nd respondent from putting up any construction under the scheme of providing houses through the Tamilnadu Housing Board in Jammagkulam comprising in S.No.1279, Korattur, Ambattur Talulk, Thiruvallur District, on the basis of the petitioner's representation dated 20.01.2016 and consequently direct the respondents to protect the water bodies in the interest of public welfare.

For Petitioner : Mr.S.Viswanathan

For Respondents : Mr.P.H.Aravind Pandian,
Addl. Adv. General, assisted by
Mr.S.T.S.Murthi, Govt. Pleader,
for R-1

: Mr.V.Anandhamoorthy for R-2

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O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner filed this public interest litigation claiming to be a social worker. In the paragraph disclosing lack of personal interest and his source of income, he then mentions that he is an advocate. The grievance of the petitioner is that the scheme of the second respondent for putting up housing comprises of land included in Survey No.1279, Korattur, Ambattur Taluk, Thiruvallur District, which is a pond and thus, seeks protection of the water body on account of failure of the respondents to act on his representation dated 20.01.2016.

2.We may note at the inception that the petition was filed immediately after making the representation within a short span on 08.02.2016.

3.We have the benefit of the counter-affidavit of both the State and the Housing Board. The affidavit filed by the State states that patta lands were acquired during the year 1969-1970 for housing scheme and the scheme was formulated in 1976 over an extent of 140.33 acres including the Government land in Survey No.1279. Layout of residential / commercial plots was approved by the Chennai Metropolitan Development Authority in 1976 and while implementing the scheme, the stream of water flow was re-arranged and open channels were provided. The Board formed 1460 residential plots and constructed 1040 flats allotted to general public. Sale deeds are stated to have been issued except for commercial plots available in Survey No.807-A2 of Korattur Village.

4.The documents sought to be relied upon by the petitioner are stated to be 40 years old vintage and not representing the present status of utilisation of the lands. Survey No.1279 is stated to have been formed into a road, residential plots, community hall and temple etc., as per the approved layout plan. There are no water channels leading to the land so as to maintain it as Kulam. The land under reference has also been re-formed to commercial and residential use and shops and no pond exists and no water canal drains into the land.

5. 222 LIG flats are proposed in the reformed land portion, which is part and parcel of the approved layout of more than 40 years old. The sum and substance of the sequence of events and the current situation have been set out in para 10 as under:

a) The lands under reference has already been changed into Housing area during the year 1976 from Kulam since the pond was in disused condition in the year 1976 itself.

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b) Necessary layout approval was obtained from the Chennai Metropolitan Development Authority, Chennai, during the year 1976 itself.
c) The channels have been re-arranged according to topographical
d) There is no existence of Kulam in the land under reference.
e) The extract of land use published by the Chennai Metropolitan Development Authority under Second Master Plan shows the land as mixed residential zone.
f) No water channels leads to the land at present.
g) The land under reference is surrounded by the developments of residential buildings, roads, temple, etc.
h) The certificate issued by the concerned Village Administrative Officer is only the extract of the previous record entry. It does not represent the present status and usage of the reference land.
i) There is no encroachments in the above said land and does not obstruct the water flow.

6.A separate counter-affidavit has also been filed by the Housing Board / second respondent more or less stating the same thing. Since there was no response to purchase of shops earmarked in Survey No.807-A2, Korattur Village, the Board had decided to change the portion of the land as residential plots vide Board resolution No.11.01 dated 24.03.2007 and the revised layout plan submitted to CMDA was approved on 03.08.2015. 222 numbers of Low Income Group flats in the Survey Numbers in question including Survey No.1279 part with which the petitioner has a grievance have obtained technical sanction.

7.Learned counsel for the petitioner has still sought to urge that the this is a bona fide petition and that the Town Survey records only a recent change.

8.On hearing the learned counsel for parties, we are of the view that the petitioner who claims to be living in the area would certainly be aware of the surroundings. It does appear to us that this is a possible proxy litigation since the land is now sought to be utilised for the lower income groups which may not be palatable to the other residents. An issue is sought to be raised over a 40 years old planning proposals, which have been largely fructified and there is no existence of a pond at the site. We are, thus, of the view that the present case would not fall within the parameters of the Full Bench decision of this Court in T.K.Shanmugam vs. State of Tamil Nadu, 2015 WLR 1029. The Survey number in question itself has gone through number of changes which was formed into a road, residential flats, community hall and temple etc., while what was sought to be

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conveyed was as if there was an existing pond which was sought to be converted to another use contrary to the judgment of the Full Bench judgment referred supra.

9.In the given facts of the case, we find no merit in this petition and dismiss the writ petition. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

sra

To

1. The Secretary,
Dept. of Housing and Urban Development,
Fort St. George, Chennai.

2.The Executive Engineer cum Administrative
Officer, Anna Nagar Division,
Tamilnadu Housing Board, Tamilnadu
Housing Board Commercial Complex,
Thirumangalam, Chennai.

1 cc to Mr.S. Viswanathan, Advocate, Sr. 20963
1 cc to Mr.V. Anandhamoorthy, Advocate, Sr. 21085
1 cc to Government Pleader, Sr. 21125

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