

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.25431 of 2010 and

M.P.No.1 of 2010

1.T.R.Murugesan
2.V.Ramabhadra Raju
3.A.Anbu

... Petitioners

Vs

1.The Commissioner,
Thiruvallur Municipality,
Thiruvallur,
Thiruvallur District.

2.V.M.Nagar, V.M.Nagar Extension,
Samarias Nagar Santhanam Avenue
Residents Welfare Association,
No.2, Samarias Nagar,
Thiruvallur Taluk,
Thiruvallur District,
Rep by its Secretary Mr.Maran

R2 impleaded as per Court order dated 27.03.2012
in M.P.No.1 of 2011 in W.P.No.25431 of 2010. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the respondent relating to the impugned order passed by the respondent in proceedings Na.Ka.No:150/2010/F1 dated 11.10.2010, quash the same and consequently direct the respondents to grant approval for construction of a building in the approved land measuring 0.15 cents in Sy.No.633/1B2 in No:182, Periyakuppam Village of Thiruvallur District as per the provisions laid down under the Tamil Nadu District Municipalities Act, 1920.

For Petitioners : Mr.T.Velumani for
M/s.K.S.Kumar
For Respondents : Mr.P.Srinivas for R1
Mrs.Lita Srinivasan for R2

O R D E R

Heard Mr.T.Velumani, learned counsel for the petitioner and Mr.P.Srinivas, learned counsel appearing for the first respondent and Mrs.Lita Srinivasan, learned counsel appearing for the second respondent.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records of the respondent relating to the impugned order passed by the respondent in proceedings Na.Ka.No:150/2010/F1 dated 11.10.2010, quash the same and consequently direct the respondents to grant approval for construction of a building in the approved land measuring 0.15 cents in Sy.No.633/1B2 in No:182, Periyakuppam Village of Thiruvallur District as per the provisions laid down under the Tamil Nadu District Municipalities Act, 1920."

3. The case of the petitioner is as follows:-

The grievance of the petitioners is that they were the owners of the land in Survey No.633/1B2 of 182, Periyakuppam Village, Thiruvallur District, having purchased the same on 29.12.2008 from one Thanikachalam and two others under a registered sale deed bearing Document No.13958/2008, before Sub Registrar Office, Thiruvallur for valid sale consideration. According to them, their vendors have been holding patta for the said land and after purchase of the property, the petitioners were in enjoyment and possession of the same.

4. After the purchase of the land, the petitioners filed an application, seeking approval from the first respondent Municipality for putting up construction in the land under the provisions of Tamil nadu District municipalities Act, 1920. However, according to the petitioners, inspite of fulfilling the formalities, no approval has been granted by the Municipality.

5. In the said circumstances, the petitioners were constrained to file a writ petition in W.P.No.21990 of 2010, seeking to issue a Mandamus to dispose of their application, seeking approval from the Municipality, dated 04.08.2010. Thereafter, the writ petition was disposed of on 22.10.2010, directing the Municipality to consider the representation of the petitioners and pass orders within a period of four weeks.

6. However, it appears that, in the meanwhile, the respondent Municipality has passed an order on 11.10.2010 itself, refusing to grant approval for a construction of the house in the land belonging to the petitioners. According to the rejection order, the site was located in a place where there is a 60 feet public road is located and there is also a proposal to

acquire the land under Compulsory Acquisition by the Thiruvallur Municipality.

7. The petitioners having aggrieved by the rejection order, are before this Court, challenging the same. After the writ petition was admitted, the second respondent who is representing the welfare of the neighbourhood, has got himself impleaded in the writ petition. According to the second respondent, the claim of the petitioners i.e, a patta land belonging to them is disputed, as there was 60 feet road in existence in the same locality, in which the petitioners are claiming that it belongs to them since 1960 and the road has been used by public as thorough fare.

8. Upon notice, learned counsel appearing for the respondents entered appearance and filed counter affidavit. In the counter, it is stated that the property belonging to the petitioners is required for public purpose and there is a road in existence in that place in which the petitioners were claiming that it belonged to them. Even according to the municipality that one of the petitioners has sold a portion of the properties to third party by a registered sale deed. From the above, it is seen that there appears to be too many factual controversies as between the parties which cannot be resolved by this Court exercising its jurisdiction under Article 226 of the Constitution of India.

9. According to the learned counsel appearing for the petitioners, without subjecting the lands to any acquisition proceedings, both the official and private respondents are attempting to trespass together by disturbing the peaceful possession and enjoyment of the property belonging to them.

10. In any event, the claim of the petitioners is strongly being disputed by the respondents which controversy cannot be resolved by this Court under Article 226 of the Constitution of India. The petitioners are therefore, directed to approach appropriate Civil Court or any other authority as they may be advised for working out their remedies as against both the respondents.

11. In the above circumstances, this Court feels that the present writ petition is not maintainable and therefore the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

gsk

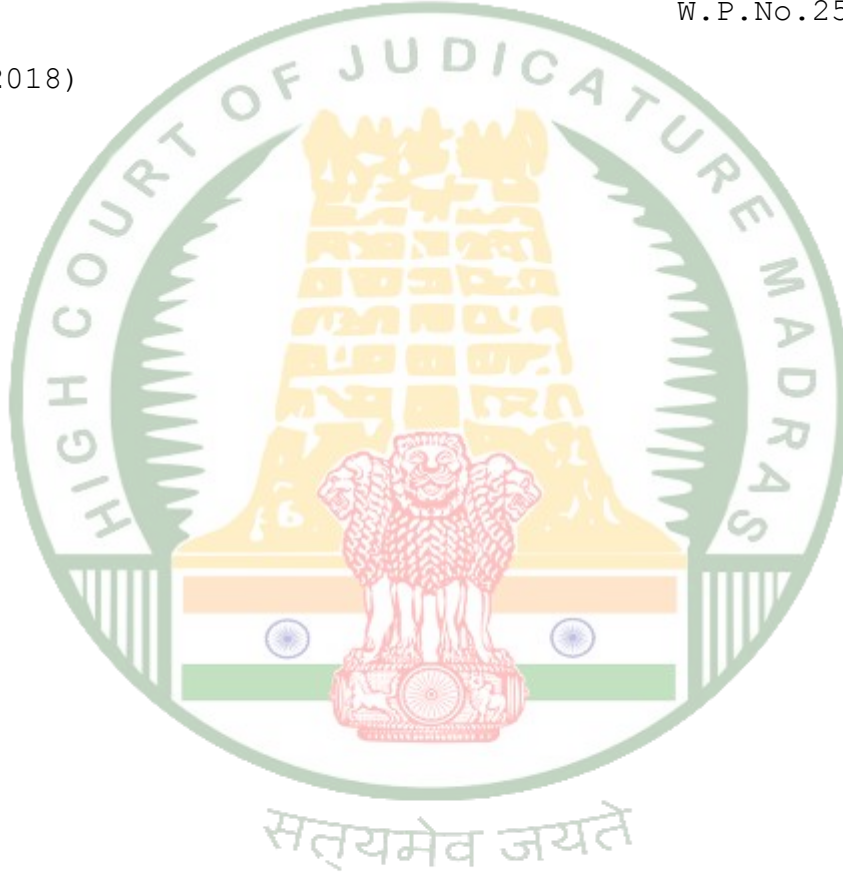
To

The Commissioner,
Thiruvallur Municipality,
Thiruvallur,
Thiruvallur District.

+lcc to Mr.Lita Srinivasan, Advocate SR.No.81905
+lcc to Mr.T.Velumani, Advocate SR.No.81842
+lcc to Mr.P.Srinivas, Advocate SR.No.82167

W.P.No.25431 of 2010

RJ(CO)
GN(05/01/2018)



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