IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.Nos.25564, 4572, 4573 and 30909 of 2016, 31332 to 31340 of 2015 and 35381 to 35385 of 2015
and
W.M.P.Nos.21932, 21933, 3939, 3940, 26775 and 2676 of 2016 and M.P.Nos.1 and 2 of 2015 (14 Nos. each)

C.R.Vasantha Kumari .. Petitioner in W.P.No.25564 of 2016

L.Harikrishnan .. Petitioner in W.P.No.4572 of 2016

P.Subramanian .. Petitioner in W.P.No. 4573 of 2016

V.Sivalingam .. Petitioner in W.P.No. 30909 of 2016

A.R.Krishnan .. Petitioner in W.P.No.31332 of 2015

S.Varghese Deepak .. Petitioner in W.P.No.31333 of 2015

S.Usha .. Petitioner in W.P.No.31334 of 2015

R.Sivaganesan .. Petitioner in W.P.No.31335 of 2015

P.Vinoth .. Petitioner in W.P.No.31336 of 2015

V.Ravi .. Petitioner in W.P.No.31337 of 2015

S.S.Shyaam .. Petitioner in W.P.No.31338 of 2015

N.Geetha .. Petitioner in W.P.No.31339 of 2015

R.Jayanthi .. Petitioner in W.P.No.31340 of 2015

D.Samuel Dhanasekaran .. Petitioner in W.P.No.35381 of 2015

P.Nancy Deepa .. Petitioner in W.P.No.35382 of 2015

T.M.Chandran .. Petitioner in W.P.No.35383 of 2015

A.Ananthi .. Petitioner in W.P.No.35384 of 2015

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L.Raman .. Petitioner in W.P.No.35385 of 2015

Vs

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

2.Srivari Builders rep. by its
Proprietor M.R.Rathindran

3.The Secretary,
Municipal Administration, Water
and Sewerage Board,
Fort St. George, Chennai.

4.The Director,
Town Panchayat,
Kuralagam, Chennai.

5.The Assistant Director,
Town Panchayat,
Collectorate Campus,
Coimbatore, Coimbatore District.

.. Respondents 1 to 5 in WP.25564 and 30909/16

6.K.Mahadevan

.. 6th Respondent in WP.No.25564/16

(R6 impleaded vide order dated 22.06.2017
in W.M.P.No.31458 of 2016 in
W.P.No.25564 of 2016)

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 in WP.4572,4573 of 2016
31332 to 31340 of 2015, 35381 ti 35385 of 2016

Prayer in W.P.No.25564 and 30909 of 2016: Writ petition filed under Article 226 of The Constitution of India praying for the

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issuance of a writ of certiorari to call for the records of the first respondent in Na.Ka.No.80/2015 dated 20.06.2016 and quash the same as illegal, arbitrary and non-est in law.

WP.No.4572 of 2016 and 4572,4573,31332 to 31340/15 and 35381 to 35385/15:
To call for the records of the 1st 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 1.. Mr.C.Veeraraghavan in WP.25564, 4572, 4573 and 30909/16

2.. Mr.Vijay- in WPS Nos.31332 to 31340/15, and 35381 to 35385/15

For Respondents .. Mr.V.Jayaprakash Narayanan,
Spl. Govt. Pleader for R1
in all the W.Ps
Mr.S.Diwakar,
Spl. Govt. Pleader for R3 to R4
in all the W.Ps
No appearance for R2
in all the W.Ps
Mr.V.Elango for R6
in all the W.Ps

COMMON ORDER

When the matter is taken up for hearing, learned counsel appearing for the petitioners submitted that in a similar batch of writ petitions in W.P.No.30805 of 2015 etc., batch, this Court has passed the following order:

> By consent of the learned counsel on either side, these writ petitions are taken up for final disposal.
>
> 2. In all these Writ Petitions, the petitioners have sought for issuance of Writ of Certiorari to quash the proceedings of the first respondent. The petitioners are all purchasers of ready built houses, which have been constructed by the second respondent-builder. Though in some of the Writ Petitions, the second respondent has been served, they have not entered appearance.
>
> 3. The petitioners' case is that one

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M.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 petitioners have purchased independent houses in the residential layout and some of them have been residing in the said premises. The dispute in the Writ Petitions lies in a very narrow campus, 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 petitioners to construct individual septic tanks within a period of ninty days. The petitioners have 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 utilised from 2002 onwards without any defect. In such a situation, the first respondent in hasty and arbitrary manner have issued the impugned proceedings. Further, it is contended that the petitioners are 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 petitioners were made to believe that there is a common septic tank and underground pipeline with adequate manholes, which is 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 petitioners should not be called upon to construct individual septic tanks.

4. The 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 petitioners have purchased the same as ready built houses and therefore, the first respondent is not justified in directing the petitioners to construct individual septic tank that too, within a period of ninty days.

5. The learned counsel appearing for the first respondent by referring to the counter affidavit submitted that a Tri-Party Agreement for Sale between the owner of the land, second respondent and the writ petitioners was entered into, in respect of each of

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the sites and the construction is not in accordance with the approved plan. It is submitted that the builder have 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 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. The first respondent would further submit that, the allegation is 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 Petitioners violating the said condition, have 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. Further, it is submitted that the building permission accorded by the respondent also provides that the builder can form 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 07.07.2015 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 petitioners are bound to construct individual septic tanks.

6. The learned counsel appearing for the first respondent also contended that already the first respondent-Town Panchayat has initiated action and

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issued notice to the second respondent/builder.

7. 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.

8. In reply, the 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 petitioners inability to comply with the condition.

9. After hearing the arguments of the learned counsel of 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 Septic Tank. This amounts to clear violation of the planning permission. The petitioner being a party to the Tri-Party Agreement between himself, builder and the land owner, is bound by all the conditions and he cannot now say that it is only the builder who has to comply with the same, since the petitioners are the purchasers of the property and they are bound by the conditions, based on which, the layout and building plan was approved. That apart, it is not as if that the directions issued by the first respondent is not feasible of compliance, as more than 75 house owners have already constructed the septic tank. Therefore, it is only a question of time, which is required for the petitioners, to construct individual septic tanks. If, in case there is any specific difficulty for any of the petitioners in constructing individual septic tanks, they can approach the first respondent with an appropriate proposal that two or three of them can jointly construct a septic tank or some other proposal which can be considered by the first respondent. However, the first respondent cannot in a overnight compel the petitioners to construct the septic tank and they should grant sufficient and reasonable time to the petitioners to comply with the order. It is submitted

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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 Assistant Director of Town Panchayat visited the spot and found the violation of conditions. Therefore, the first respondent had to issue a notice to remedy the breach.

10. In the light of the above findings, on the grounds raised by the petitioners, the impugned order cannot be quashed. However, there is more than one option available to the petitioners. The first option is to comply with the direction and construct individual septic tank and if the petitioners want further time, they can always approach the first respondent. The second option available is, the petitioners can approach the first respondent with specific request, in cases, where there is any other specific problem for them to construct the septic tank in their property. If such request is made, then 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. Further for this, no Writ of Mandamus can be issued, since the second respondent is a private party and the petitioners have to necessarily approach the appropriate forum in this regard.

11. Accordingly, instead of setting aside the impugned order, the petitioners are directed to submit a representation with undertaking to the first respondent, clearly setting out, as to within what time, they will be able to complete the construction of individual septic tank. If anyone of the petitioner is unable to construct individual septic tank for any valid reason, then, they shall mention the same in their representation, which shall be considered by the first respondent. The above directions shall be complied by the petitioners 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 those individual requests. In all other cases, the petitioners should comply with the impugned orders, for which this Court is of the view that they should

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be granted minimum of four months time, to comply with the direction, and complete the construction of individual septic tank.

12. With the above directions, these Writ Petitions are disposed of. Till the above proceedings are completed no coercive action shall be taken against the petitioners. No costs. Consequently, connected miscellaneous petitions are closed.

2.In view of the above, the impugned orders, which are under challenge, cannot be quashed. Accordingly, these writ petitions shall stand disposed of by directing the petitioners to submit a representation with undertaking to the first respondent, clearly setting out, as to within what time, they will be able to complete the construction of individual septic tank. If anyone of the petitioner is unable to construct individual septic tank for any valid reason, then, they shall mention the same in their representation, which shall be considered by the first respondent. The above directions shall be complied with by the petitioners 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 those individual requests. In all other cases, the petitioners, who are not having any such complaint, shall comply with the impugned orders, for which this Court is of the view that they should be granted minimum of four months time, to comply with the direction, and complete the construction of individual septic tank.

3. With the above directions, these Writ Petitions are disposed of. Till the above proceedings are completed, no coercive action shall be taken against the petitioners. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

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2.The Secretary,
Municipal Administration, Water
and Sewerage Board,
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3.The Director,
Town Panchayat,
Kuralagam, Chennai.

4.The Assistant Director,
Town Panchayat,
Collectorate Campus,
Coimbatore, Coimbatore District.

+2cc to M/s.V.Jaya Prakash Narayanan, Advocate SR.No.43878
+1cc to Mr.Vijay, Advocate SR.No.44579
+1cc to Veera Raghavan, Advocate SR.No.44564
+1cc to Government Pleader SR.No.44173

W.P.Nos.25564, 4572, 4573 and
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GN(25/07/2017)

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