

WMP.No.33396 of 2016
in WMP.No.30771 of 2016
in W.P.No.35824 of 2016

M.SATHYANARAYANAN, J.

The first respondent/writ petitioner filed this writ petition, challenging the communication of the second respondent dated 03.05.2016 addressed to the third respondent with a copy marked to the petitioner herein/fifth respondent in the writ petition as well as the President of the Local Body in and by which approval of the proposed division of plots has been accorded, subject to certain conditions, which include one of the conditions, namely the said approval is subject to the result of the writ petition in W.P.No.30078 of 2013 filed by the first respondent/writ petitioner.

2. The first respondent/writ petitioner, pending disposal of the writ petition, filed WMP.No.30771 of 2016 praying for stay of the operation of the impugned order dated 03.05.2016 and this Court, vide interim order dated 07.10.2016, after extracting the facts, has granted interim orders by recording the following reasons:

“3.The above facts would reveal that when a suit for partition is pending before the Civil Court, pendente lite, the 5th respondent had obtained sale deeds and tried to convert the suit properties as an industrial estate and now, after getting approval, the 5th respondent

is trying to sell away the properties. Hence, the impugned order is stayed until further orders.”

The fifth respondent in the writ petition came forward to file this petition for vacating the above said interim order.

3. Mr.X.Selvam Sounther, learned counsel appearing for the first respondent/writ petitioner would vehemently contend that the writ petitioner filed a Suit for Partition in O.S.No.34 of 2007 on the file of the Sub-Court, Kancheepuram for division of 1/5th share in respect of lands admeasuring to an extent of 5.84.5 Hectares in Sooramanikuppam Village, Kancheepuram District and Taluk comprised in various survey numbers and pending disposal of the said Suit, she filed I.A.No.734 of 2010 in O.S.No.34 of 2007 praying for impleadment of the fifth respondent herein and it has also been ordered and apprehending that the fifth respondent in the main writ petition is trying to alter the nature and character of the properties admeasuring to an extent of 5.03 acres in S.Nos.112/3B3, 34/2A1A2, 31/2, 32/3D2, 34/2A1B, 43/2, 76/5B, 39/1, 44/1A1, 44/2B2A, she has filed a Suit in O.S.No.139 of 2011 on the file of the District Munsiff Court, Sriperumbudur, praying for Permanent Injunction restraining the fifth respondent in the writ petition/vacate stay petitioner from interfering with her

peaceful possession and restraining them from altering the physical features of the property and the said Suit is also pending and despite the said fact, the fifth respondent in the writ petition, behind the back of the writ petitioner, managed to get No Objection Certificate from the Collector of Kancheepuram District for conversion of lands into industrial plots and got further orders from the Director of Town and Country Planning approving the said plots. It is the further submission of the learned counsel appearing for the first respondent/writ petitioner that since the petitioner, by way of intestate succession, is having 1/5th share in the lands in question and the Suit for Partition is also pending adjudication, in all fairness, the Collector of Kancheepuram District as well as the Director of Town and Country Planning, Chennai-2, ought not to have passed the said orders and would further contend that the learned Judge, after taking into consideration all the relevant facts and circumstances, has rightly granted interim orders and prays for making the interims orders absolute.

4. *Per contra*, Mr.Sriram Panchu, learned Senior Counsel assisted by Mr.P.V.Balasubramaniam, learned counsel appearing for the vacate stay petitioner/fifth respondent in the writ petition has drawn the attention of this Court to the affidavit filed in support of this petition as well as typed set of documents and would state that admittedly, in the Suit for Partition and in the Suit for

Permanent Injunction, the first respondent/writ petitioner has failed to get any interim orders and even for the sake of arguments without admitting that the averments made in the Plaint in O.S.No.34 of 2007 are tenable, admittedly, the first respondent/writ petitioner is claiming right only by way of intestate succession and not based upon any instrument and unless and until her right is established in the form of preliminary decree, the petitioner is not entitled to challenge the impugned orders. The learned Senior Counsel appearing for the vacate stay petitioner has further drawn the attention of this Court to the additional affidavit dated 10.01.2017 and would submit that though the first respondent/writ petitioner, in O.S.No.34 of 2007, has claimed 1/5th share out of the total extent of 5.84.5 Hectares in Sooramanikuppam Village, Kancheepuram District and Taluk comprised in various survey numbers, in the subsequent Suit in O.S.No.139 of 2011, restricted to an extent of 5.03 acres in the above said survey numbers and would further contend that the subject matter of property in O.S.No.139 of 2011 does not form part of the proposal of layout submitted by the fifth respondent in the writ petition and it is also not a part of the impugned approved layout.

5. It is the further submission of the learned Senior Counsel appearing for the vacate stay petitioner/fifth respondent in the writ petition that the vacate stay

petitioner/fifth respondent in the writ petition also undertakes that it shall not carryout any development activities in the above said 5.03 acres and it will not alienate or create any encumbrance in respect of the above said lands of 5.03 acres. The learned Senior Counsel appearing for the vacate stay petitioner has also drawn the attention of this Court to para 7 of the affidavit filed in WMP.No.33396 of 2016 and would submit that in the light of the averments made above coupled with the fact that the vacate petitioner, in pursuant to the issuance of No Objection Certificate by the official respondents, had invested huge amounts of money in the pending industrial plots and it has also submitted Bank Guarantee for a sum of Rs.33 Crores for completion of infrastructure work on 20.04.2016 and as per the terms and conditions thereof, the vacate stay petitioner needs to complete construction activities by 19.04.2017, failing which the said Bank Guarantee could be invoked by the Government and prays for modification of the interim order dated 07.10.2016, insofar as the lands admeasuring to the extent of 5.03 acres.

6. This Court paid its best attention and anxious consideration to the rival submissions and also perused the entire materials placed before it.

7. A perusal of the averments made in O.S.No.34 of 2007 on the file of the

Sub-Court, Kancheepuram instituted by the first respondent/writ petitioner would disclose that the petitioner claimed 1/5th share by way intestate succession and inspite of impleadment of the vacate stay petitioner/fifth respondent in the writ petition, she failed to get any interim orders. The first respondent/writ petitioner, subsequent to the above said Suit for partition, also filed O.S.No.139 of 2011 on the file of the District Munsiff Court, Sriperumbudur, against the vacate stay petitioner/fifth respondent in the writ petition praying for a judgment and decree for permanent injunction restraining them from altering the nature and character of the Suit admeasuring to an extent of 5.03 acres situated in S.Nos.112/3B3, 34/2A1A2, 31/2, 32/3D2, 34/2A1B, 43/2, 76/5B, 39/1, 44/1A1, 44/2B2A in Sooramanikuppam Village, Kancheepuram District and Taluk, but once again failed to get any interim orders. The approval accorded by the Collector of Kancheepuram District as well as the Director of Town and Country Planning, Chennai-2 are the subject matter of challenge in two writ petitions in W.P.Nos.30078 of 2013 and 35824 of 2016.

8. Though the petitioner has claimed 1/5th share in respect of large extent of lands in O.S.No.34 of 2007 before the Sub-Court, Kancheepuram, the fact remains that in the subsequent Suit for Permanent Injunction in O.S.No.139 of 2011 filed before the District Munsif Court, Sriperumbudur, she has restricted her prayer only

to an extent of 5.03 acres in respect of lands situated in various survey numbers as stated above.

9. This Court, taking into consideration of the fact that the petitioner has entered into collaboration with Sojitz Corporation of Japan through the Tamil Nadu Industrial Guidance and Export Promotion Bureau and also entered a Memorandum of Understanding dated 10.09.2015 and based on the same, proceeded further and also executed Bank Guarantee for a sum of Rs.33 Crores for completion of infrastructure work on 20.04.2016 and in the light of the conditions stipulated as per the approval accorded by the Director of Town and Country Planning, they has to complete the construction activities by 19.04.2017, failing which Bank Guarantee could be invoked by the Government, is of the view that the blanket interim order granted by this Court requires modification.

10. It is also relevant to extract para 3 of the additional affidavit of the vacate stay petitioner dated 10.01.2017:

“3. I respectfully submit that the above mentioned extent of 5 Acres and 3 cents are not part of the proposal for layout submitted by the 5th respondent in the Writ Petition and neither is the above mentioned land part of the Impugned Approved Layout. It is

respectfully submitted that the 5th respondent herein undertakes that it shall not carry out any development activities in the above mentioned extent of 5 Acres and 3 Cents. The 5th Respondent in the Writ Petition further undertakes that it shall not sell, alienate or create any encumbrance in respect of the above mentioned extent of 5 Acres and 3 Cents till the disposal of OS.No.34 of 2007 and OS.No.139 of 2011.”

11. In the light of the rival submissions and considering the above facts and circumstances, the interim order dated 07.10.2016 is modified as follows:

Except the lands admeasuring to an extent of 5.03 acres situated in S.Nos.112/3B3, 34/2A1A2, 31/2, 32/3D2, 34/2A1B, 43/2, 76/5B, 39/1, 44/1A1, 44/2B2A in Sooramanikuppam Village, Kancheepuram District and Taluk, which is the subject matter of the Suit filed by the first respondent/writ petitioner in O.S.No.139 of 2011 on the file of the District Munsiff Court at Sriperumbudur, the vacate stay petitioner/fifth respondent in the writ petition is entitled to proceed further in accordance with the terms and conditions imposed in the impugned orders dated 03.05.2016 passed by the Director of Town and Country Planning (In-Charge) Chennai-2 and the Collector of Kancheepuram District dated 18.12.2012 and 19.03.2013. It is made clear that this modified interim order is subject to the result of W.P.Nos.30078 of 2013 and W.P.No.35824 of 2016 and the vacate stay petitioner/fifth respondent in the writ petition cannot claim any

equity at the time of final disposal of these writ petitions. It is also made clear that the undertaking given by the vacate stay petitioner in the additional affidavit dated 10.01.2017 is without prejudice to their rights and contentions in the pending Suits instituted against them.

12. W.M.P.Nos.33396 of 2016 and 30771 of 2016 are disposed of accordingly.

11.01.2017

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Note: Issue order copy on 19.01.2017

To

1.The Sub-Court, Kancheepuram.

2.The District Munsiff Court,
Sriperumbudur.

M.SATHYANARAYANAN, J.

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