



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2017

CORAM:

**THE HONOURABLE MR. HULUVADI G. RAMESH,
ACTING CHIEF JUSTICE**

AND

**THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM
W.A. (MD) .No. 79 of 2017**

M. Baby : Appellant/ Petitioner

Vs.

1. The District Collector,
Thoothukudi District,
Thoothukudi.
2. The Executive Officer,
Srivaikundam Selection Grade Town Panchayat,
Srivaikundam,
Thoothukudi District. : Respondents/ Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent against the order dated 26.04.2016 made in W.P.No.16520 of 2015.

Prayer in WP(MD). 16520/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in Na. Ka. No.370/2015 dated 20.08.2015 on the file of the 2nd respondent and quash the same and further directing the 2nd respondent to accept the petitioner's application dated 27.07.2015 in respect of the property in Survey No.53/4A, Ward No.10, Saraswathi Amman Kovil Street, Srivaikundam Town Panchayat, Thoothukudi District and to approve the petitioner's building plan.

For Appellant : Mr.G.Prabhu Rajadurai

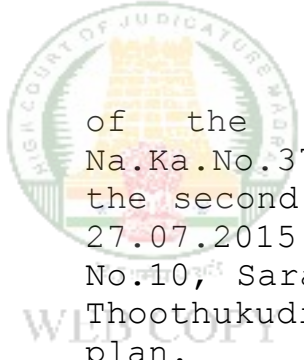
For Respondents : Mr.S.Chandrasekar,
Government Advocate

J U D G M E N T

[Judgment of the Court was made by

The Hon'ble The Acting Chief Justice]

<https://hcservices.courts.gov.in/hcservices/> The appeal is directed against the order dated 26.04.2016, in W.P. (MD) .No.16520 of 2015, filed by the petitioner, seeking quash



of the proceedings of the second respondent herein in Na.Ka.No.370/2015/Aa7, dated 20.08.2015 and consequently to direct the second respondent to accept the petitioner's application dated 27.07.2015 in respect of the property in Survey No.53/4A, Ward No.10, Saraswathi Amman Kovil Street, Srivaikundam Town Panchayat, Thoothukudi District and to approve the petitioner's building plan.

2. Heard the learned counsel appearing for the appellant and the learned Government Advocate appearing for the respondents. Perused the orders of the learned Single Judge.

3. The petitioner purchased property to the extent of 11 cents in Survey No.53/4A, Ward No.10, Saraswathi Amman Kovil Street, Srivaikundam Town Panchayat, Thoothukudi District, from her vendor and patta also transferred to her name. Thereafter, she applied for sanction of plan for putting up construction. However, the same was rejected by the second respondent.

4. It is submitted by the learned Government Advocate for the respondents that the property, which was purchased by the appellant, is a subject matter of joint family property of the appellant's vendor's vendor. He further submitted that the suit filed by the legal representatives of the appellant's vendor's vendor was dismissed. Against which, appeal was filed before the lower appellate Court and the same is pending without any interim orders.

5. In this situation, it is contended by the learned counsel for the petitioner that the property purchased by the appellant is not a joint family property. In the absence of any interim stay granted by the civil Court or lower appellate Court, there would be no impediment for the respondent local body to accept the claim of the appellant.

6. The learned Government Advocate appearing for the local body submits that objection is being filed by the legal heirs of the appellant's vendor's vendor against the appellant's claim. In that view of the matter, till the disposal of the matter before the lower appellate Court, it would be rather difficult on the part of the respondent local body to issue permission for putting up construction.

7. The appellant can very well file an application before the lower appellate Court where the appeal filed by the appellant's vendor's vendor is pending, impleading the local body as one of the party respondents. If such an application is filed before the civil Court, the said Court can issue direction after hearing the ~~appeal and the objection~~ <https://hcc.judges.in/hcc/jcs> in, and there would be no impediment for the civil Court to consider and give direction to the local body at the earliest.



8. Accordingly, the appellant is at liberty to file such an application to direct the local body to grant permission to put up construction. On filing of such application, the lower appellate Court shall dispose of such application on merits and in accordance with law, within a period of 3 months from the receipt of such application. The appellant is also at liberty to file an undertaking before the lower appellate Court to the effect that permission may be accorded subject to the result of civil dispute pending between parties. It is for the lower appellate Court to consider the case of the appellant herein and to direct the respondent local authority to issue necessary sanction subject to the result of the civil dispute.

9. With the above direction, the writ appeal is disposed of. No costs.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Executive Officer,
Srivaikundam Selection Grade Town Panchayat,
Srivaikundam,
Thoothukudi District.

+1 CC to Mr.Prabhu Rajadurai, Advocate, SR No. 14892/17.

JIKR/SJ

PSM/SV-MMS/SAR3/04.04.2017/3P/4C

JUDGMENT MADE IN
W.A. (MD) .No.79 of 2017
14.03.2017