

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 01.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)Nos.15018 and 18115 of 2013
and
M.P. (MD)Nos.1,2,3,1 and 2 of 2013

W.P. (MD)Nos.15018 of 2013:

Leo Kalaraj

: Petitioner

Vs.

1. The Commissioner,
Tiruchirappalli City
Municipal Corporation,
Tiruchirappalli-620 001.
2. The Assistant Commissioner,
Srirangam Zone,
Tiruchirappalli City
Municipal Corporation,
Tiruchiappalli-620 001.
3. Balaji Avenue Welfare Association,
West Chinthamani, Tiruchirappalli-2,
represented by its President D.Jeyabal,
No.32/42, Balaji Avenue,
5th Cross Street, Old Karur Road,
West Chinthamani,
Tiruchirappalli-2.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property comprised in Plot No.9A in Balaji Avenue 1st Cross comprised in New T.S.No.10/2 and 11/3 in Block No.18 in Ward F situated at Chinthamani Village, Tiruchirappalli Taluk and District, measuring to an extent of 1500 square feet pending disposal of the above Writ Petition.



For Petitioner : Mr.K.S.Shankar Murali
For Respondents 1&2 : Mr.N.S.Karthikeyan
For Respondent No.3 : Mrs.J.Anandhavalli

W.P. (MD) No.18115 of 2013:

Balaji Avenue Welfare Association,
West Chinthamani, Tiruchirappalli-2,
represented by its President D.Jeyabal,
No.32/42, Balaji Avenue,
5th Cross Street, Old Karur Road,
West Chinthamani,
Tiruchirappalli-2.

: Petitioner

Vs.

1. The Commissioner,
Tiruchirappalli City,
Municipal Corporation,
Tiruchirappalli-620 001.

2. The Assistant Commissioner,
Srirangam Zone,
Tiruchirappalli City,
Municipal Corporation,
Tiruchiappalli.

3. Leo Kalaraj

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent in Ka.A.No.70/2013 and C.No.1453/2013 dated 06.05.2013, granting building permission, planning permit and planning approval respectively to the 3rd respondent, quash the same and direct the respondents 1 and 2 to demolish the part construction put up by the 3rd respondent in Plot No.9A, T.S.No.10/2, Ward No.F, Block No.18, Chinthamani Village, Srirangam Zone, Trichy Corporation, within a time fixed by this Court.

For Petitioner : Mrs.J.Anandhavalli

For Respondents 1& 2 : Mr.N.S.Karthikeyan

For Respondent No.3 : Mr.K.S.Sankara Murali

**COMMON ORDER**

[Order of the Court was made by **K.K.SASIDHARAN, J.**]

The Writ Petition in W.P.(MD)No.15018 of 2013 is filed for a Writ of Mandamus, forbearing the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property in Plot No.9A in Balaji Avenue 1st Cross, comprised in New T.S.No.10/2 and 11/3, Block No.18, Ward F, at Chinthamani Village, Tiruchirappalli District.

2. The Writ Petition in W.P.(MD)No.18115 of 2013 is filed by Balaji Avenue Welfare Association, West Chinthamani, Trichy, challenging the order dated 06 May, 2013, granting building permission to the petitioner in W.P.(MD)No.15018 of 2013.

3. It is the case of the petitioner in W.P.(MD)No.18115 of 2013 that the Local Planning Authority issued building permission to the petitioner in W.P.(MD)No.15018 of 2013 in respect of a plot reserved for public purpose. The petitioner in W.P.(MD)No.15018 of 2013 purchased the common purpose plot, notwithstanding the pendency of the civil suit in O.S.No.1592 of 2010 before the Second Additional District Munsif Court, Trichy. The Trichy City Municipal Corporation, notwithstanding the civil suit, approved the building plan and the same is under challenge at the instance of the Welfare Association in W.P.(MD)No.18115 of 2013.

4. The purchaser of the plot filed W.P.(MD)No.15018 of 2013 to restrain the Welfare Association from interfering with his peaceful possession and enjoyment of the land.

5. The prayer in W.P.(MD)No.15018 of 2013 is more in the nature of an injunction which has to be claimed only in a civil suit. There is no question of issuing a Mandamus to the respondents to forbear from interfering with his peaceful possession and enjoyment. It is always open to the petitioner to file a civil suit. The Writ Petition is not a remedy in a matter of this nature. We are, therefore, of the view that the petitioner in W.P.(MD)No.15018 of 2013 has not made out a case for issuing a Writ.

6. The petitioner in W.P.(MD)No.18115 of 2013, notwithstanding the civil suit instituted by them in O.S.No.1592 of 2010 on the file of the Second Additional District Munsif Court, Trichy, filed the present Writ Petition challenging the building plan. Nothing prevented the petitioner from challenging the building plan in the existing suit in O.S.No.1592 of 2010. There is no question of permitting parallel proceedings one before the District Munsif Court and another before this Court. We are, therefore, of the view that the petitioner must move the Civil Court and not this Court against the order granting building permission.



7. The petitioner in W.P.(MD)No.18115 of 2013 is at liberty to approach the Trial Court for moulding the relief or to seek further relief. However, we make it clear that the liberty should not be construed to be an expression of opinion on the merits of the matter.

8. In the result, the Writ Petitions are dismissed with the above observation. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Tiruchirappalli City
Municipal Corporation,
Tiruchirappalli-620 001.
2. The Assistant Commissioner,
Srirangam Zone,
Tiruchirappalli City
Municipal Corporation,
Tiruchiappalli-620 001.

+2cc to M/S. J.ANANDHAVALLI, Advocate, SR.No.76184 & 76186.
+2cc to M/S. K.S.SANGAR MURALI, Advocate, SR.No.75975 & 75976.
+1cc to M/S. N.S.KARTHIKEYAN, Advocate, SR.No.75966.

Common Order made in
W.P. (MD) Nos.15018 and 18115 of 2013
01.09.2017

rmi/smn/SML
SDS/SKN:RSK/SAR 2/13.10.2017/4P/8C