

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.25831 of 2017 &
W.M.P.Nos.27272 to 27274 of 2017 &
W.M.P.No.31231 of 2017

1.B.Manoharan
2.B.Mahalingam
3.B.Devadoss

.. Petitioners

Vs.

1.The Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2.The Commissioner,
St. Thomas Mount Panchayat Union,
Chitlapakkam,
Chennai - 600 064.

3.The Planner - I (PA-I),
St. Thomas Mount Panchayat Union,
Chitlapakkam,
Chennai - 600 064.

4.The Joint Registrar - I,
Saidapet, Chennai - 600 015.

5.R.Devendra Naicker,
6.D.Anandan
7.Ashokan,
8.D.Rani

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to forbear the respondents 2 and 3 from in any manner granting planning permission for formation of residential layout by respondents 5 to 8 in respect of sub-divided lands, comprised in Survey Nos.199/1B (part), 191/1A (part), 198/3B(part), 198/3A (part) and 198/4B (part), Medavakkam Village, Tambaram Taluk, without following the conditions contained in the Circular

No.24282/2005-ALA2 dated 04.05.2006 issued by the Directorate of Town and Country Planning.

For Petitioner : Mr.S.Ramesh
For Respondents : Mr.K.Raja Shrinivas
Standing Counsel for R1

Mr.V.Shanmugasundar
Special Government Pleader for R2 to R4

Mr.N.Jothi
For Mr.V.Manoharan for R5 to R8

O R D E R

Heard Mr.S.Ramesh, learned counsel for the petitioner; Mr.K.Raja Shrinivas, learned Standing Counsel for the first respondent; Mr.V.Shanmugasundar, learned Special Government Pleader for the second and third respondents; Mr.N.Jothi, learned counsel, representing Mr.V.Manoharan, learned counsel for the respondents 5 to 8 and perused the records.

2. The petitioners have come forward with this Writ Petition seeking issuance of Writ of Mandamus forbearing the respondents 2 and 3 from any manner granting planning permission for formation of residential layout by the respondents 5 to 8 in respect of subdivided lands comprised in Survey Nos.199/1B (part), 191/1A (part), 198/3B(part), 198/3A(part) and 198/4B (part), Medavakkam Village, Tambaram Taluk, without following the conditions contained in the Circular No.24282/2005-ALA2 dated 04.05.2006 issued by the Directorate of Town and Country Planning.

3. According to the petitioners, they are joint owners of the property comprised in Survey Nos.191/1A, 191/11B, 191/1C, 191/1D and 191/1E totally measuring 1.52 acres situated at Medavakkam Village in Chennai. The property of the petitioners has access only through the property owned by the fifth respondent in Survey Nos.198 and 199. The petitioners would further state that as per the Circular issued by the Director of Town and Country Planning Department, link road shall be provided to the adjacent lands, but the private respondents in contravention of law attempted to get layout approval.

4. The petitioners would further state that since the Circular was not followed by the private respondents, a letter was addressed to the first respondent on 09.01.2017 requesting

them not to grant any planing permission for the layout proposed by the respondents 5 to 8. Based on the complaint of the petitioners, the first respondent also addressed a letter dated 03.03.2017 to the second respondent directing him not to grant approval to the respondents 5 to 8.

5. The petitioners would allege that to overcome the difficulties, the fifth respondent had subdivided his property into the three parts by executing settlement deeds in favour of the respondents 6 to 8. The further case of the petitioners is that the very subdivision is illegal and hence, the present Writ petition.

6. In the counter affidavit, the respondents 5 to 8 have denied the allegations as false and it is further stated that the respondents 5 to 8 have no plan to make any layout nor any intention to divide their lands into any plots so as to form a layout exceeding 8 plots. It is further stated that the petitioners are having a pucca motarable road to reach their property and the road is being used to take water from the land of the petitioners through tanker lorries and for accommodating about 500 families in their land. It is further stated that in the settlement deeds executed in favour of the petitioners, the road formed in the lands have been mentioned.

7. It is further stated that the construction companies viz., M/s.Casa Granda and Poomalai have constructed housing complex on the eastern side and western side and a pucca compound wall was constructed by the respondents on the souther side of the petitioners property, which would show that the petitioners are using the motarable road already existence on the northern side of their property, which emanating from Velachery Main Road.

8. The learned counsel for the petitioner while reiterating the averments made in the affidavit, submitted that as per the Circular issued by the Town and Country Planning, the respondents 5 to 8 have an obligation to provide link road to the land of the petitioners. Further, as per the Development Regulations of Chennai Metropolitan area, the approval of layout or subdivision shall be granted only by the Chennai Metropolitan Development Authority, hence, the second respondent has no power to consider the application of the private respondents as clarified by the first respondent in his letter dated 03.03.2017.

9. The learned counsel further submitted that the petitioners have no alternative road to reach their property, which is evident from the printout taken from the website of Chennai Metropolitan Development Authority, which is annexed at Page No.119 in the typed-set.

10. Per contra, the learned counsel for the private respondents submitted that this Writ Petition is premature and it has been filed in an anticipation of an action would be initiated by the respondents 5 to 8; that the private respondents have not so far submitted any application seeking approval from the competent authorities; that the fifth respondent has a wife and three children and taking into consideration his age, he has settled his properties in favour of his family members and based on the settlement deeds, the lands have been subdivided.

11. It is further submitted that in the lands of the petitioners, there are two bore wells and by using the electricity service connection provided by the electricity board, the petitioners have been selling the water taken from the bore wells by using a pucca motarable road lying on the northern side of their property, while the other three sites have been closed by a compound wall.

12. The learned counsel also relies on the settlement deeds executed in favour of the petitioners to show that in the property of the petitioners 15 feet road is already in existence. The respondents have produced the electricity bill and photographs to show that the petitioners have been taking water through tanker lorries and they have also constructed sheds to accommodate more than 500 persons. It is further urged that the layout approval enclosed in the typed set is a false and fabricated document.

13. The sum and substance of the case of the respondents is that the petitioners have not approached the Court with clean hands and the writ petition is premature. In the instant case, this Writ Petition has been filed alleging that the private respondents 5 to 8 have approached the second respondent to get a layout approval formed in their property and it is also alleged that in order to overcome the hurdle of getting an approval, they have subdivided the lands without the permission of CMDA. The case of the petitioners is that as per the Development Regulations of Chennai Metropolitan area, the competent authority is the CMDA.

14. From the perusal of the records, it is made clear that the petitioners have dug two bore wells in their property and they have been taking water through tanker lorries in the road formed on the northern side of their properties. It is not in dispute that except the northern side, the other three sides of the petitioners property have been encircled with a pucca compound wall. These facts would establish that the petitioners have suppressed the material facts, by alleging that they have access only through the land of the private respondents. In the counter affidavit, though the private respondents have

categorically stated that no layout approval was given to them and layout plan enclosed in the typed set is fabricated one, but no proper explanation was offered by the petitioners.

15. The learned counsel for the petitioners submitted that the approved plan was given to the petitioners by somebody, when an unsuccessful attempt was made to purchase of the petitioners at a thrown away price. But, I find it difficult to accept the argument for the reason that the petitioners are not illiterates and without proper verification they cannot rely on the document especially while they have been sending objections to the authorities.

16. Therefore, I am of the considered view that the petitioners have not come to the Court with clean hands and they are guilty of suppression of material facts.

17. For the reasons stated above, the Writ Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

r n s

To

1.The Member Secretary,
The Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
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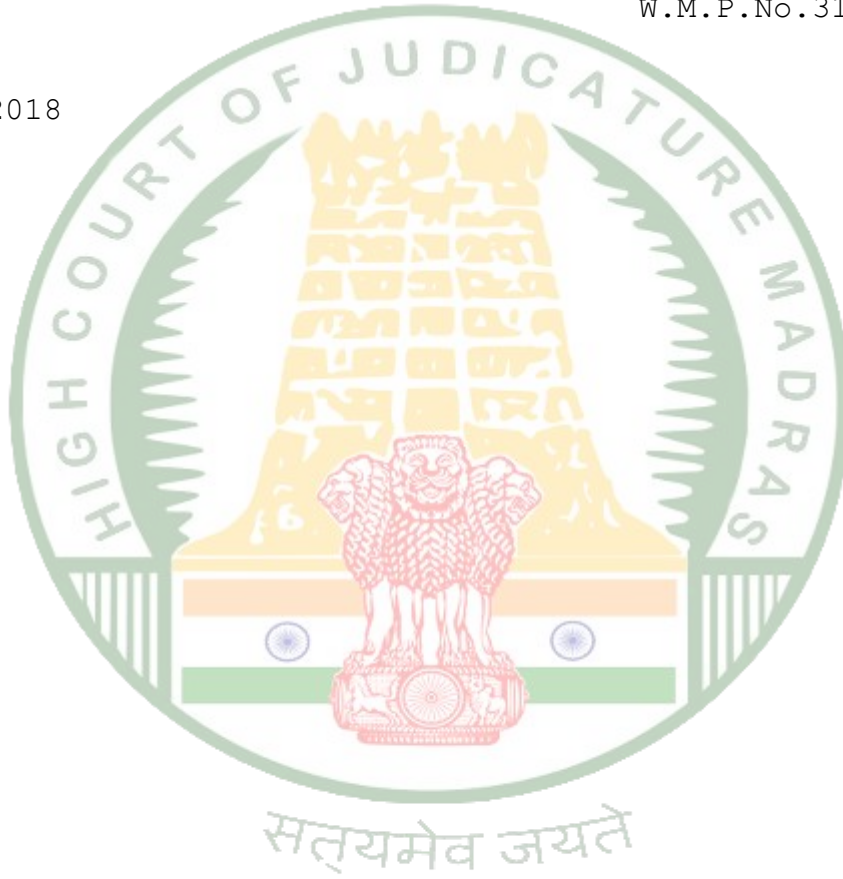
+ 1 cc to Mr.K.Raja ShrinivasAdvocate,SR.27068

+ 1 cc to Mr.S.Ramesh Advocate,SR.26969

+ 1 cc to The Govt.Pleader, SR.27698

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