



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.17371 of 2018

and

W.M.P. (MD) Nos.15285 to 15287 of 2018

K.Somasundaram

... Petitioner

vs.

1.The Collector,
Chairman, Local Planning Authority,
Office at Collectorate,
Tiruchirappalli-01.

2.The Commissioner,
Tiruchirappalli City Corporation,
Cantonment, Tiruchirappalli-01.

3.The Commissioner,
Town and Country Planning,
807, Anna Salai,
Opp.L.I.C. Chennai.

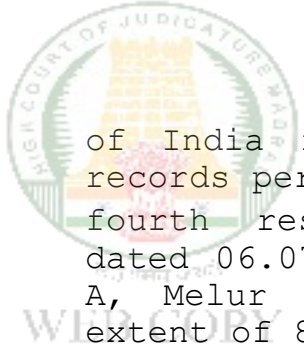
4.The Assistant Director/The Members Secretary,
Tiruchirappalli Local Planning Authority,
Kajamalai, Trichy

5.The Joint Registrar,
Joint Registrar Office,
Srirangam,
Trichy District.

6.The Sub Registrar,
Sub Registrar Office,
Cantonment, Trichy.

7.Navaneetha Property Developers,
represented by its Managing Director,
S.Anantha Krishnan.

... Respondents



of India for issuance of writ of Certiorari to call for the records pertaining to the regularization of layout approved by the fourth respondent vide No.ம.வ.(வரன்முறை)/தி.உ.தி.கு.எண் : 140/2018, dated 06.07.2018 for the property comprised in Block No.39, Ward A, Melur Village, Srirangam region, Trichy Corporation to an extent of 8093.71sq.mt(2 acres) and quash the same.

For Petitioner : Mr.C.Muthusaravanan

For Respondents : Mr.M.Murugan
Government Advocate
for R.1, R.3 to R.6
: Mr.N.S.Karthikeyan
for R.2
: Mr.R.Nireshkumar
for R.7

O R D E R

The brief facts which are necessary for adjudication of the writ petition are stated hereunder:

(i) The petitioner is owning some property adjacent to the property owned by the seventh respondent herein. It appears that the seventh respondent had approached the competent authority i.e., the fourth respondent for approval of lay out carved out by him in respect of the property owned by him in the name of Navaneetha Property Developers in Muthu Nagar comprised in T.S.No.1292/2 and 1292/3. The petitioner had some objections in regard to the approval of the lay out and therefore, he appears to have submitted a representation to the respondents 1 to 4 on 30.10.2017 and 07.04.2018. Since no action was taken on his representation, he appears to have approached this Court in W.P. (MD)No.8781 of 2018 and this Court disposed of the writ petition on 20.04.2018 by directing the fourth respondent to consider the representation of the petitioner and to provide an opportunity to the petitioner and hear his objections before granting any approval to the lay out plan submitted by the seventh respondent.

(ii) In pursuance to the direction, the petitioner was directed to appear for an enquiry on 07.06.2018 and accordingly he appeared on the said date. After taking into account the objections submitted by the petitioner herein, the fourth respondent has passed an order on 06.07.2018 granting approval of the lay out submitted by the seventh respondent in the subject property. Being aggrieved by the approval granted to the seventh respondent's lay out, the petitioner is before this Court challenging the order of the fourth respondent dated 06.07.2018.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The petitioner has raised several grounds in the writ petition against the order passed by the fourth respondent for



granting approval to the lay out submitted by the seventh respondent.

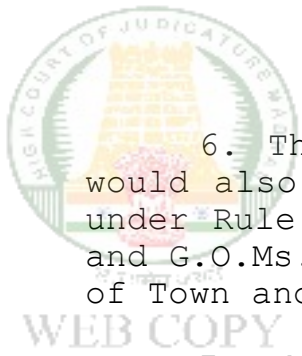
3. In response to the writ petition, a counter affidavit has been filed on behalf of the fourth respondent. According to the fourth respondent, the seventh respondent complied with all the provisions mentioned in the Government Order and also paid all the regularization charges and there was no encroachment on any land as objected to by the petitioner.

4. In fact, in the counter affidavit it has been stated that the seventh respondent approached this Court in W.P.(MD)No.11606 of 2018 seeking direction to the authority to grant approval for his lay out and this Court by order dated 30.05.2018 allowed the writ petition and directed the authorities to pass orders regularizing the unapproved lay out.

5. In fact, according to the counter affidavit, this Court has categorically held that the requirements were fully complied with by the petitioner therein, the seventh respondent herein and therefore, the fourth respondent was directed to consider his case positively. The relevant paragraphs viz., 5 and 6, as found in the counter affidavit filed on behalf of the fourth respondent, are extracted hereunder:

"5. I further submit that as per the rules No.4(6) mentioned in the G.O.Ms.No.78, dated 4.5.2017 and G.O.Ms.No.172 H&UD Dept. dated 13.10.2017 is that no plot with any encroachment on to a public road or street or on any other land over which the applicant does not possess ownership right shall be considered for regularization. The seventh respondent has not encroached on any land as mentioned above and regularization was given only since the seventh respondent complied all the provisions mentioned in the Government Order. I further submit that as per the rules mentioned in the Government Order the seventh respondent has paid all the regularisation charges. I further submit that regularization was given only since the access road was in conformity with the provisions said out in G.O.Ms.No.78 H&UD Dept. dated 4.5.2017 and G.O.Ms.No.172 H&UD Dept. dated 13.10.2017.

6. I further submit that the seventh respondent has approached this Hon'ble Court by way of writ petition in W.P.No.11606 of 2018 to grant approval for this lay out and this Hon'ble Court by an order dated 30.05.2018 allowed the said writ petition and directed the concerned authorities to pass an order regularizing the unapproved lay out. This Hon'ble High Court has categorically held that all the requirements are meted out and the fourth respondent should consider it positively.



6. The learned Counsel appearing for the fourth respondent would also submit that in any event, there is an appeal provided under Rule No.17 of G.O.Ms.No.78 H&UD Department dated 04.05.2017 and G.O.Ms.No.172 H&UD Department dated 13.10.2017 to the Director of Town and Country Planning.

7. The learned Counsel appearing for the seventh respondent would submit that the entire writ petition lacks *bonafide*, since the petitioner has personal axe to grind as against the seventh respondent in view of being a neighbour in the locality.

8. In fact the seventh respondent has fully complied with all the requirements for grant of regularization of lay out and the said fact is evidenced by the clear statement made in the counter affidavit filed on behalf of the fourth respondent. Therefore, in the face of such clear submissions by the official respondents themselves, the writ petitioner is not entitled to any relief.

9. In any event, the learned Counsel appearing for the seventh respondent would submit that an appeal remedy is available in terms of the Tamil Nadu Regularization of Unapproved Plots and Layouts Rules 2017, which rules was issued under Section 113 r/w Section 122 of the Tamil Nadu Town and Country Planning Act 1971. The said rules have been issued vide G.O.(Ms).No.78 of Housing and Urban Development department, dated 04.05.2017. He would draw the attention of this Court to the appeal provision as provided under Rule 17 of the Tamil Nadu Town and Country Planning Act 1971, which is extracted hereunder:

"17. Appeal: (1) Any person aggrieved by an order passed by the competent Authority in Chennai Metropolitan Planning Area may prefer an appeal to the Government and in other areas to the Director of Town and Country Planning within thirty days from the date of receipt of the order:

Provided that the Government or the Director of Town and Country Planning as the case may be, may admit an appeal preferred after the expiration of thirty days, if they are satisfied that the appellant had sufficient cause for not preferring the appeal within the said period."

10. Therefore, he would submit that in case the petitioner has any grievance against the order passed by the fourth respondent, it is always open to him to invoke the above Rule and approach the third respondent and he can put forth his objections.

11. Therefore, instead of exhausting the appellate remedy which is provided under the statutory rules, the petitioner has chosen to approach this Court by invoking its extraordinary jurisdiction under Article 226 of the constitution of India.



12. This Court has considered the rival submissions of the learned Counsel appearing on either side and perused the materials available on record.

13. As rightly contended by the learned Counsel appearing for the seventh respondent, the relevant rule provided for an appeal to be filed against the order passed by the fourth respondent under Rule 17 of the the Tamil Nadu Town and Country Planning Act 1971, which is extracted supra.

14. In fact from the perusal of the rules, it appears a further revision would lie under Section 18 of the Act as against any order passed by the third respondent and it is extracted hereunder:

"18.Revision: Any person aggrieved by an order passed by the Director of Town and Country Planning in any area not covered under the Chennai Metropolitan Planning Area may prefer revision to the Government within thirty days from the date of receipt of the order:

Provided that the Government may admit a revision preferred after the expiration of thirty days, if they are satisfied that the appellant had sufficient cause for not preferring the revision within the said period."

15. From the above it is clear that not only appeal remedy is provided but also the petitioner has revisional remedy before the Government. When such is the position, this Court is unable to appreciate as to how the petitioner can rush to this Court and invoke its special original jurisdiction of this Court under Article 226 of the Constitution of India.

16. This Court, time and again, has consistently held that once an alternative remedy is provided under the relevant statute or rules, the same has to be exhausted before knocking the doors of this Court invoking its writ jurisdiction. Without exhausting such alternative remedy as provided under the rules as mentioned above, it is not open to the petitioner to approach this Court directly and seek reliefs. It is always open to the petitioner to go before the appellate authority or the revisional authority as the case may be and he can put forth all his objections as against the impugned order passed by the fourth respondent.

17. In view of the above discussion and narrative, this Court has no hesitation in dismissing the writ petition as not maintainable. While dismissing the case on the ground of maintainability, this Court does not express any views on the merits of the petitioner's case.



18. For the above stated reasons, the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

WEB COPY

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS-I)

To

- 1.The Collector,
Chairmnan, Local Planning Authority,
Office at Collectorate,
Tiruchirappalli-01.
- 2.The Commissioner,
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- 6.The Sub Registrar,
Sub Registrar Office,
Contonment, Trichy.

+1 CC To MR.C.MUTHU SARAVANAN, Advocate SR. NO.83741

+1 CC To MR.R.NIRESH KUMAR, Advocate SR. NO.84010

W.P. (MD) No.17371 of 2018

SSI

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