



WEB COPY

W.P.(MD).No.13715 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.09.2019**

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD) .Nos.13715 of 2019 and 13959 of 2018

and

W.M.P. (MD) .Nos.10262 and 10263 of 2019

in

W.P. (MD) .No.13715 of 2019

K.A.K.Poovanathan

... Petitioner in both W.Ps

Vs.

- 1.The Director of Panchayat,
Rural Development Panchayat,
Kuralagam, Chennai.
- 2.The Commissioner (Rural Development)
The Director of Rural Development Office,
807, Anna Salai, Chennai-2.
- 3.The District Collector,
Sivagangai District,
Sivagangai.
- 4.The Regional Deputy Director,
Town and Country Planning,
Regional Office, Sivagangai.
- 5.The Assistant Director of Panchayat,
Sivagangai Region,
Sivagangai, Sivagangai District.
- 6.The Executive Officer,
Thiruppuvanam Panchayat,
Thiruppuvanam,
Sivagangai District.
- 7.G.Stalin
- 8.G.Anbarasan
- 9.G.Sandiya
- 10.G.Tamil Selvi

... Respondents in both W.Ps

PRAYER in W.P. (MD) .No.13715 of 2019: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the 6th respondent impugned proceedings in Na.Ka.No.546/2017/A2 dated

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



09.04.2018 and impugned Building Plan Approval No.31/2018-2019 and 33/2018-2019 dated 07.06.2018 quash the same and consequently, direct the respondents 3 to 6 to demolish the offending building constructed by the respondents in S.No.37/1C1 T.Pudur Village, Tiruppuvanam Taluk, Sivagangai District, in accordance with law.

PRAYER in W.P. (MD) .No.13959 of 2019: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 6 forthwith to take action to demolish the unapproved offending buildings which is illegally put up nearby Vaigai River Bed in S.No.34/1C1 in an extent of 1 acre, Thiruppuvanam Village, Thiruppuvanam Pudur Group, Thiruppuvanam Taluk, Sivagangai District.

For Petitioner in
both W.Ps :Mr.J.John
For R1 to R5 in
both W.Ps :Mr.S.Angappan
Government Advocate

For R6 in both W.Ps :Mr.M.Murugan
Standing Counsel

For R7 to R10 in
both W.Ps. :Mr.A.Prasanna Rajadurai

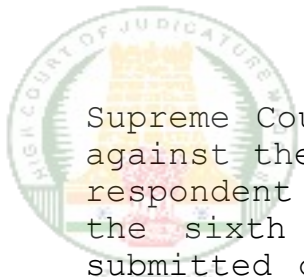
COMMON ORDER

(Order of this Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.J.John, learned counsel appearing for the petitioner, Mr.S.Angappan, learned Government Advocate appearing for the respondent Nos.1 to 5, Mr.M.Murugan, learned Standing Counsel appearing for the sixth respondent and Mr.A.Prasanna Rajadurai, learned counsel appearing for the respondent Nos.7 to 10.

2.By consent on either side, the writ petition is taken up for final disposal.

3.These writ petitions have been filed by the petitioner challenging the proceedings of the sixth respondent viz., the Executive Officer of Tiruppuvanam Panchayat. The second proceedings which are subject matter of challenge in the writ petitions are both dated 07.06.2018. One is pertaining to the approval granted to the private respondents for putting up construction and another one is regarding the layout approval. There has been an earlier round of litigation, at the instance of the petitioner where he approached this Court for a direction to demolish the unauthorized construction and the writ petition was disposed of to consider the representation and take action. The said order dated 08.08.2017 had attained finality, as the Special Leave Petition filed before the Hon'ble

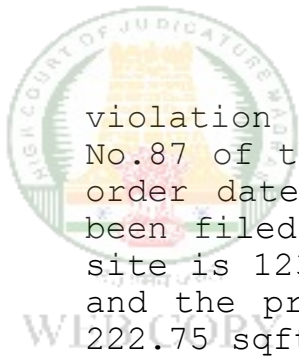


Supreme Court was not pursued. As soon as the action was initiated against the private respondents for illegal construction, the eighth respondent herein filed W.P.(MD).No.21238 of 2017 for direction upon the sixth respondent/ panchayat to dispose of the revised plan submitted on 21.07.2016. The said writ petition was disposed of by order dated 17.11.2017 by directing the application to be considered within a time frame. The petitioner before us issued contempt notice dated 20.11.2017 stating that the order in direction issued in W.P.(MD).No.18069 of 2016, dated 08.08.2017 was not complied with. Thereafter, the contempt petition was filed, which was heard by us and disposed of by order dated 21.03.2018. While disposing of the contempt petition, we recorded the statement of the learned Special Government Pleader that the revised plan has been approved by the sixth respondent herein.

4.The learned counsel for the petitioner would vehemently contended that a false submission was made before this Court and no such approval was granted on 11.12.2017 as recorded by this Court, while disposing of the contempt petition. It is further submitted that the building put up by the private respondents is in total violation of the Rules and assuming that there is some approval granted by the Panchayat the building is not in accordance with the approved plan. Further it is submitted that the layout itself should not have been approved as the petitioner has filed a civil suit, in which, the private respondents are the defendants seeking the very sale in their favour, however, they remained exparte in the suit. Further, it is submitted that the layout should not have been approved, since the land has been reserved for playground. Therefore, it is submitted that the buildings put up by the private respondents have to be demolished.

5.We have heard the learned counsel appearing for the respondents on the above submission. From the typed-set of papers filed by the sixth respondent, it is seen that technical sanction was granted on 11.12.2017 by the fourth respondent and this was reported before this Court when the contempt petition was heard. Therefore, this submission of the learned counsel that no false statement was made before this Court.

6.On a perusal of the document filed by the sixth respondent, we find that the technical sanction to regularize the unapproved layout of the respondents 7 to 10 was granted on 11.12.2017 and therefore, the submission made in the contempt petition is not factually incorrect. However, ultimately, the layout has been approved by the sixth respondent pursuant to the technical sanction of the fourth respondent, which technically is a consequential order, which has been impugned in this writ petition. So far as the provision of land for playground is concerned, that is not required under the extend of rules since the entire lay-out area is about one acre. Therefore, the approval of the layout cannot be faulted. However, with regard to the construction, which have been put up by



violation of the approved plan building, if say so because in page No.87 of the typed-set of papers, the plan appended to the approval order dated 07.06.2018 issued in favour of the 10th respondent has been filed. Form the said plan, we find that the title area of the site is 1230 sqft., and the proposed ground floor is 1007.25 sqft., and the proposed first floor area is 1007.25 and the open area is 222.75 sqft.

7.The photographs produced by the learned counsel appearing for the writ petitioner, prima facie shows that there could be violation of the approved building plan. However, this aspect has to be taken note of by the sixth respondent and the sixth respondent is duty bound to ensure that the construction had been put up in accordance with the approved building plan. With regard to the layout which has been approved, though we have prima facie found that there is no illegality in the approval, nevertheless any observation made by this Court in the writ petition should not affect the right of the petitioner in the Civil Suit nor this order can be taken advantage by the defendants in the Civil Suit. Therefore, we make it clear that the contention advanced by the petitioner in the Civil Suit is kept intact, it is open to the petitioner to prove the contention by let in oral and documentary evidence in the Civil Suit and the civil Court shall decide the suit based on the oral and documentary evidence placed before it and not based on any observation made by us in this order. The observation made in this order shall not be taken advantage of by any of the defendants in the suit, more particularly, the respondents 7 to 10 herein, who are also arrayed as defendants. We direct the sixth respondent to inspect the property in question within a period of one week from the date of receipt of a copy of this order, after notice to the respondents 7 to 10 and if the construction is in violation of the approved building plan, action shall be taken for removal of the offending structure.

8.With the above observations, these Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

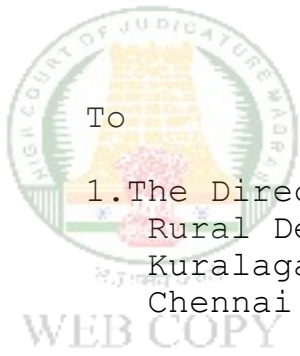
Sd/-

Assistant Registrar (C.O)

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Sub Assistant Registrar(CS)

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To

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Kuralagam,
Chennai.
 - 2.The Commissioner (Rural Development)
The Director of Rural Development Office,
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 - 3.The District Collector,
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 - 4.The Regional Deputy Director,
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Regional Office,
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 - 5.The Assistant Director of Panchayat,
Sivagangai Region,
Sivagangai,
Sivagangai District.
 - 6.The Executive Officer,
Thiruppuvanam Panchayat,
Thiruppuvanam,
Sivagangai District.
- +2 CC to M/s.G.JEREMIAH, Advocate SR-90084.
+1 CC to M/s.NA.PALANIYANDI, Advocate SR-90143.
+1 CC to SPL GP SR-90560.

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