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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.09.2019

CORAM:

**THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
AND**

THE HONOURABLE Mrs. JUSTICE R.THARANI

Writ Petition (MD).No.4191 of 2019

Thangavelu

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By the Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 600 032.

3.The District Collector,
Trichy District,
Trichy.

4.The Member Secretary,
Trichy Local Planning Authority,
Kajamalai,
Trichy - 20.

5.The Commissioner,
Trichy Corporation,
Trichy - 1.

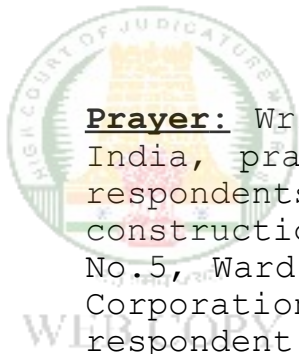
6.The Assistant Commissioner,
K.Abisehegapuram Zone,
Trichy Corporation,
Trichy.

7.M/s.Sri Balage Housing,
Represented by its partner P. Suresh,

8.M/s.Lavanya Property Developers Pvt. Ltd.,
Represented by its partner N.A.Varadharajan

9.R.Sathyavageeswaran

... Respondents



Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 to 6 to demolish the unauthorised and illegal construction put up by the respondents 7 to 9 in T.S.No.60, Block No.5, Ward M at 4th Cross Thillainagar, K.Abishegapuram Zone, Trichy Corporation, Trichy against the plan sanctioned by the fourth respondent in Plan approval No.74/2008 (File No.1776/2008 Thi U Thi Ku - 2), dated 31.12.2008 and against mandatory conditions imposed on them by the sixth respondent vide his proceedings in Na.Ka.No.51014/526/08/F1/K.Abi), dated 25.02.2009.

For Petitioner : Mr.B.S.Meltiue
For Respondents 1 to 4 : Mr.A.K.Baskara Pandian, Spl. GP
For Respondents 5 and 6 : Mr.Saji Bino
For Respondents 7 to 9 : No Appearance

ORDER

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

Heard Mr.B.S.Meltiue, learned counsel appearing for the petitioner, Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents 1 to 4 and Mr.Saji Bino, learned counsel for the respondents 5 and 6.

2.This writ petition has been filed praying for a direction upon the the respondents 1 to 6 to demolish the unauthorised and illegal construction put up by the respondents 7 to 9 in T.S.No.60, Block No.5, Ward M at 4th Cross Thillainagar, K.Abishegapuram Zone, Trichy Corporation, Trichy, against the plan sanctioned by the fourth respondent in Plan approval No.74/2008 (File No.1776/2008 Thi U Thi Ku - 2), dated 31.12.2008 and against mandatory conditions imposed on them by the sixth respondent vide his proceedings in Na.Ka.No.51014/526/08/F1/K.Abi), dated 25.02.2009.

3.The questions are whether there has been any violation of the building plan and whether there is any illegal construction. We need not much labour to examine in this matter as the counter affidavit filed by the fourth respondent sets out the factual position clearly. At this stage, it will be useful to refer to the stand taken by the fourth respondent in his counter affidavit, more particularly in paragraph no.4, which reads as follows:

"4.It is respectfully submitted that the averments of the petitioner herein in paragraphs 7, 8, 9 and 10 of the affidavit are denied as false. On receiving the complaint in this regard, immediate spot inspection was done and on finding that in T.S.No.60, Block No.5, Ward M at 4th Cross, Thillainagar, K.Abishegapuram Zone, Trichy Corporation, Trichirappalli, constructions was



made by the promoters in violation of the plan approval accorded by the 4th respondent in Plan Approval No.74/2008 (File No.1776/2008 Thi U Ku - 2) dated 31.12.2008 wherein plan approval was given to the promoters for the construction of Stilt for car parking + 4 floor for 4 dwelling houses with vacant site and open spaces in accordance with the rules that the 6th respondent approved the building plan accordingly in Na.Ka.No.51014/526/08/F1/K.Abi dated 25.02.2009 by imposing necessary and usual conditions whereas the inspection revealed that in flagrant violation of the plan approval as well as the building plan approval, shopping complex and 8 dwelling houses were constructed over and above the approved plinth area of the building Enforcement Notice No.1 vide Pro. Na.Ka.No.963/2016 Thi U Ku 2 dated 25.07.2016 was issued and served on the promoters, followed up with notice No.II dated 12.09.2016 and as ordered by the Chairman, Local Planning Authority and District Collector, Tiruchirappalli dated 10.11.2016, 'Final stop work notice' was also issued in even number dated 23.01.2017. As per G.O.Ms.No.289 Housing and Urban Development Department read with Section 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, power to take action against illegal and unauthorised construction is available to both Local Planning Authority and the Corporation and hence, the 6th respondent Corporation was informed to pursue suitable action vide Roc. No.136/2017 LPA-2 dated 14.05.2016. In the meanwhile, one Varadharajan and 8 others have preferred appeal with appeal plan to the Government on 30.01.2017 and in the proposals received from the said Varadharajan, details were not available in complete shape, additional particulars were sought for in Roc. 136/2017-2 dated 06.03.2017. The Government has also called for details vide Govt. Letter No.2441/UD 4(1)/2016-1 dated 15.03.2017 and the 2nd respondent vide Lr.No.5249/2017 PA 2 dated 19.04.2017 and since details are not forthcoming from the Promoters, the fact was informed to the 2nd respondent vide Roc. No.963/2016-2 dated 19.02.2019. The Promoters have sought for 30 days time to submit the required particulars vide their letter dated 27.06.2017 and hence, they were directed to submit full particulars before 15.07.2017 and reminded on 30.10.2017 in Roc.No.963/2016-3. But reply along with the required documents is not forthcoming from the Promoters. Since the appeal petition filed by the said Varadharajan and 8 others are pending before the Government, further action is being kept in



abeyance. In the meanwhile, the 6th respondent Corporation was requested to take Enforcement action against the Promoters for the violation of the building plan approval by the Corporation vide letter dated 14.05.2019."

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4.Thus, it is seen that the promoters, namely, the respondents 7 to 9 are purposely not co-operating with the Government to dispose of the appeal. Though the documents number were called for as early as in the year 2017, they sought 30 days time. Till date, no documents have been furnished by the promoters. Therefore, it is clear that the promoters, namely, the private respondents 7 to 9 are dragging on the matter.

5.It is not known as to why the Government is also keeping silent and not rejecting the appeal for default or for non production of documents. In the light of the above, we direct the first respondent to dispose of all the appeals filed by the respondents 7 to 9 on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order, after issuing final notice to the respondents. The petitioner should also be given notice and if there is any residential Association, notice should also be sent to that Association. If no order is passed by the first respondent within the time prescribed by this Court, the respondents 4 and 5 shall lock and seal all the unauthorised and illegal construction put up by the private respondents.

6.With the above direction, this writ petition is disposed of. No Costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary,
State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 600 032.

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



3.The District Collector,
Trichy District,
Trichy.

4.The Member Secretary,
Trichy Local Planning Authority,
Kajamalai,
Trichy - 20.

+1 CC to SPL GP (SR-87950[F] dated 19/09/2019)

+1 CC to Mr.B.S.MELTUE, Advocate (SR-88004[F] dated 20/09/2019)

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mrn/sji

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