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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
W.P.No.1406 of 2018

Mrs.H.A.Arunmohi Fathima

..Petitioner

.v.

1. Greater Chennai Corporation,
Rep.by its Commissioner,
Rippon Buildings,
Chennai 600 003.
2. Executive Engineer,
Town Planning Section-Central Region,
Greater Chennai Corporation,
No.36-G, Pulla Avenue,
Shenoy Nagar,
Chennai 600 030.
- 3.Mr.Sham Ahuja
- 4.Mrs.Aarthi S.Ahuja

... Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned proceedings in Ref.No.W.D.C.No.TP.PPA/WDCN08/06076/2017 dated 08.11.2017 on the file of the 2nd respondent and quash the same and consequently direct the respondents 1 and 2 to consider the petitioner's application for planning permission dated 14.09.2017 for putting up a building construction of 700 sq.ft. by the petitioner in the Second Floor of Plot No.420 comprised in Survey No.48 Part and 55 Part of Ayanavaram Block No.12 and Survey No.48 part and 49 part of Periakudal Village, Block No.4, situate at "K" Block, bearing Door No.42 (Old No.5) 13th Street, Anna Nagar East, Chennai 600 102 without insisting the consent or application from the respondents 3 and 4, within a reasonable time to be fixed by this court.



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For Petitioner : Mr.V.Thillaisamy

For R 1 & R 2 : Mr.S.P.Arthi
Government Advocate

O R D E R

This writ petition has been filed challenging the impugned proceedings of the 2nd respondent returning the application submitted seeking for planning permission on the ground that the consent of all the owners was not obtained by the petitioner.

2.The case of the petitioner is that the consent was given by the erstwhile owner of the property and therefore such a consent will enure for the fresh planning permit also and there is also no requirement to get the consent of the 3rd and 4th respondents. The petitioner has further stated that the proposed construction was to put up a 2nd floor in the subject building and 3rd and 4th respondents do not have any right to object to the said construction and they have merely stepped into the shoes of their vendors. The 1st respondent has filed a counter affidavit in this case. It is stated in the counter affidavit that the petitioner had submitted an application seeking for planning permit for putting up an additional construction of 700 sq.ft in the 2nd floor. While scrutinizing the application, it was found that the proposed site has two owners and therefore the petitioner ought to have got the consent of both the owners. However, the petitioner failed to get the consent of the co-owner of the property and therefore the application was returned.

3.The 3rd respondent has filed a counter affidavit in this case. A careful reading of the counter affidavit shows that there is a serious dispute with regard to the right over the property. It is also mentioned in the counter affidavit that the 3rd and 4th respondents own approximately 55% of the undivided share in the land and therefore they have a say in the proposed 2nd floor to be put up by the petitioner. It is also stated in the counter affidavit that the entire FSI has been used to put up the existing apartments and therefore there is no question of the petitioner being allowed to put up any additional construction to the extent of 700 sq.ft.

4.Heard Mr.V.Thillaisamy, learned counsel for the petitioner and Mr.S.P.Arthi, learned Government Advocate appearing on behalf of respondents 1 & 2.



5.It is apparent from the submissions made on either side and the materials available on record that there is a serious dispute with regard to the respective rights of the parties over the property. It is also brought to the notice of this court that the 3rd and 4th respondents have already filed a suit in O.S.No.9118/2019, before the City Civil Court, against the petitioner and the same is pending. When there is such a serious civil dispute between the parties, the 2nd respondent cannot unilaterally grant planning approval without satisfying himself that the proposed construction has the approval of all the owners of the property. Therefore, the 2nd respondent has rightly returned the application seeking for planning permission and had directed the petitioner to get the consent of all the owners of the property.

6.This Court does not find any illegality or infirmity in the action taken by the 2nd respondent and the 2nd respondent cannot be expected to decide the inter se civil dispute among the parties. Therefore, there is no ground to interfere with the impugned proceedings of the 2nd respondent.

In the result, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

KP

To

1. Greater Chennai Corporation,
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2. Executive Engineer,
Town Planning Section-Central Region,
Greater Chennai Corporation,
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NRL (CO)
KKV/08/07/2020