



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.6009 of 2021
and W.M.P. No.6662 of 2021

K.S.Mani @ Subramani

...Petitioner

Vs.

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Member Secretary,
Local Planning Authority,
Coimbatore.
3. The Assistant Commissioner,
West Zone,
Coimbatore Corporation,
Coimbatore.
4. The Tahsildar,
East Zone,
Coimbatore Corporation,
Coimbatore.
5. The District Registrar (Admin),
Coimbatore District,
Coimbatore.
6. The Sub Registrar,
Gandhipuram,
Coimbatore.
7. K.Balakrishnan
8. Dinesh Rajkumar Samuel
9. Elsha Samuel
10. Sandhya Mahilnan

...Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records impugned layout Approval made in Na.Ka.No.3500/2018/H-1(may) SPF No.4460/2018 dated 31.12.2019 of the 3rd Respondent and the subsequent sale deeds dated 7.9.2020 registered as Document Nos.6513 of 2020, 6512 of 2020 and 6511 of 2020 on the file of the 6th respondent, quash the same as non-est in the eye of law and ultra vires and consequently direct the 6th Respondent to remove the entry pertaining to the above sale deed from his records.

For Petitioner : Mr.D.R.Arun Kumar

For Respondents : Mr.U.Baranidharan
Government Advocate
for R1, R2, R4 to R6

Mr.K.Magesh
Standing Counsel for R3

Mr.C.Veeraraghavan for R7

ORDER

This writ petition has been filed challenging the proceedings of the 3rd respondent dated 31.12.2019 and also questioning the subsequent sale deeds that were executed by the 7th respondent in favour of the respondents 8 to 10 and registered on the file of the 6th respondent.

2.The case of the petitioner is that the entire extent of the property in S.F.No.326 was an ancestral property and there was a partition that took place between the petitioner and other legal heirs and this document was registered on 29.09.1982 as Document No.3870 of 1982. As per this Partition Deed, the property was divided into six shares. Schedule-A measuring an extent of 55 cents was allotted to one of the brother of the petitioner viz. Gopalakrishnan. Schedule-B measuring an extent of 18 cents was allotted in favour of the other brother who is the 7th respondent herein and Schedule-C measuring an extent of 18 cents was allotted in favour of the petitioner and all the other Schedules measuring 10 cents each was allotted in favour of three sisters. It is the further case of the petitioner that the three sisters had sold their respective properties and apartments were also constructed. It is stated that insofar as the three properties namely Schedule-A,B and C are concerned, there was a 30 feet common path way which was used as an access for reaching the property belonging to each of the shareholders.



3.The grievance of the petitioner is that the 7th respondent has blocked the common path way and had made an application seeking for approval of layout and has obtained an approval from the 3rd respondent and subsequently, it was also sold to respondents 8 to 10. According to the petitioner, the approval given by the 3rd respondent virtually blocks the access to the common path way for the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The 7th respondent has filed a counter affidavit and has denied all the allegations made by the petitioner. The 7th respondent has taken a stand that he applied for regularization of the layout and also for the sub-division of the property. The application made by the 7th respondent was considered and necessary permission was granted. The 7th respondent has taken a very specific stand that there is no ground to reach a conclusion that the layout approval has been granted for a common path way. More particularly, since there is no such mention made in the Partition Deed dated 9.09.1982.

5.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

6.The learned Standing Counsel appearing on behalf of the Coimbatore Corporation submitted that the approval was granted in the year 2019 and while granting approval, no objections were received by the 3rd respondent. The learned counsel further submitted that even now, the petitioner has directly approached this Court even without giving any objection to the 3rd respondent and therefore, the 3rd respondent never had an occasion to deal with the objections raised by the petitioner. The learned counsel further submitted that if this Court directs the 3rd respondent to consider the objections made by the petitioner, the same will be considered after affording opportunity to the 7th respondent and a decision will be taken.

7.The learned counsel appearing on behalf of the 7th respondent submitted that there is absolutely no dispute with regard to the properties that were allotted to the respective shareholders by virtue of Partition Deed, dated 29.09.1982. The learned counsel submitted that each of the shareholders was entitled to utilize the property that was allotted to them without any demur. Accordingly, the 7th respondent had applied for the regularization of the layout and for the sub-division of the property and the same was granted by the authorities as per the Rules. Thereafter, the property was sold in favour of the respondents 8 to 10. Therefore, there is absolutely no grounds to interfere with the layout approval granted by the 3rd respondent and the subsequent Sale Deed executed in favour of the respondents 8 to 10.



WEB GATES

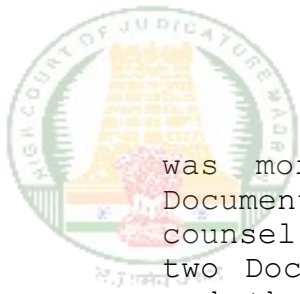
8.The learned Government Advocate appearing on behalf of the 1st and 2nd respondents submitted that a pure and simple civil dispute between the petitioner and the 7th respondent is being canvassed in the present writ petition. The learned Government Advocate by bringing to the notice of this Court, the Partition Deed, dated 29.09.1982 submitted that there is no whisper with regard to the availability of 30 feet road as claimed by the petitioner and therefore, if at all there was any such common road, it can only be established before the competent civil court and there was nothing illegal on the part of the 3rd respondent to have granted regularization for the layout approval.

9.This Court has carefully considered the submissions made on either side and also the materials available on record.

10.In the considered view of this Court, if the petitioner had any objection in the 3rd respondent granting a layout approval in favour of the 7th respondent, such objection must have been made before the 3rd respondent. However, the petitioner had directly approached this Court challenging the layout approval granted by the 3rd respondent. The same is challenged by the petitioner by raising certain grounds which were not available before the 3rd respondent at the time when the approval was granted and therefore, on the face of it this Court does not find any illegality or infirmity in the approval granted by the 3rd respondent. Since the approval was granted by the 3rd respondent, the 7th respondent has proceeded to sell the plots to respondents 8 to 10.

11.The learned Standing Counsel appearing on behalf of the Coimbatore Corporation submitted that the 3rd respondent was not aware about the availability of a common path way since it did not form part of the title document which is the Partition Deed, dated 29.09.1982. The 3rd respondent while issuing approval for the layout had merely acted upon the Partition Deed, dated 29.09.1982 and considered the application as per the Rules. The 3rd respondent never had the advantage of any objections from any quarters.

12.The main grievance that has been expressed by the petitioner is that for all the three properties that were allotted to the shareholders under Schedule-A,B and C under the Partition Deed, there is a 30 feet common path way which is the access to reach the property. According to the petitioner, the 7th respondent has now got an approval for the layout by including this 30 feet common path way also and as a result of the same, the access to the property belonging to the petitioner is completely blocked. The learned counsel for the petitioner



was more concerned about the property that is involved in Document No.6512 of 2020, dated 07.09.2020 and the learned counsel for the petitioner did not complain much about the other two Documents viz., Document Nos.6511 of 2020 and 6513 of 2020 and the properties that are covered under these two documents also form part of the approval that was granted by the 3rd respondent through proceedings dated 31.12.2019. Therefore, the grievance is confined only to the 30 feet common path way covered in one particular Document viz., Document No.6512 of 2020.

13.To this limited extent, this Court is inclined to direct the 3rd respondent to conduct an enquiry on the objections made by the petitioner. It must be made clear that the 3rd respondent will not decide on the right of path way as between the claimants and the enquiry of the 3rd respondent will be confined only with regard to availability of the 30 feet common path way as claimed by the petitioner.

14.In view of the above discussion, there shall be a direction to the petitioner to submit his objections before the 3rd respondent, within a period of two weeks from the date of receipt of copy of this order. The 3rd respondent on receipt of the same, shall issue a notice to the 7th respondent and call for his explanation. On receipt of the same, the 3rd respondent shall conduct an enquiry after affording opportunity to the petitioner and the 7th respondent and deal with the issue in accordance with the Tamil Nadu Regularization of Unapproved Layouts and Plots Rules, 2017. A decision shall be taken by the 3rd respondent, within a period of four weeks from the date of receipt of the objections from the petitioner.

15.This writ petition is disposed of with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssr



1. The District Collector,
Coimbatore District,
Coimbatore.

3. The Assistant Commissioner,
West Zone,
Coimbatore Corporation,
Coimbatore.

5. The District Registrar (Admin),
Coimbatore District,
Coimbatore.

+1 CC to M/s.D.R.Arunkumar, Advocate, Sr 40836.
+1 CC to M/s.C.Veeraraghavan, Advocate, Sr 40879.
+1 CC to Mr.K.Magesh, Advocate, Sr 40909.
+1 CC to The Government Pleader, Sr 41513.

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SJ (CO)
LS (13/09/2021)