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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.8168 OF 2021

1. S.V.Srinivasan
2. N.Eswaraiah
3. Chengalrayulu Chetty
4. S.Poornachandra Kumar
5. S.Muralidharan

... Petitioners

.Vs.

1. The Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.
2. The Assistant Director of Town and Country Planning,
Thiruvallur Region,
No.43/397-A, Annai Indira Gandhi Salai,
Tiruvallur.
3. The Executive Officer,
Pallipattu Town Panchayat,
Pallipattu.

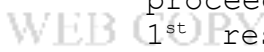
... Respondents

PRAYER:-

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the first respondent order dated 25.01.2021 and to quash the same and direct the second respondent to approve the layout formed by the petitioners in the property comprised in S.No.108/1, 108/2, 108/15, 108/16, Pallipattu Town Panchayat, pallipattu Taluk, Thiruvallur District.

For Petitioner : Mr.L.Damodharan

For Respondents : Mr.U.Bharanidharan
Government Advocate



ORDER

The present writ petition has been filed challenging the proceedings of the 1st respondent dated 25.01.2021, wherein the 1st respondent has confirmed the order passed by the Appeal Committee on 12.10.2020 and has refused to grant layout approval to the petitioner on the ground that the petitioner does not fulfill the requirements under Rule 47(1) (a) of the Tamil Nadu Combined Development and Building Rules, 2019 (herein after called as Rules).

2. The case of the petitioners is that they are the owners of the property situated at Survey Nos.108/1 dated 108/2, 108/15 and 108/16 at Pallipattu Town Panchayat, Thiruvallur District, measuring an extent of 1.43 acres. The further case of the petitioners is that patta was also issued in their name and the necessary mutation has been done in the revenue records. The petitioners had sub-divided the property for the purpose of formation of a layout and they have plotted out nearly 30 house plots. According to the petitioners, the layout that is formed by them will have access from the highways running from Chittoor to pallipattu through a connectivity road with a width of 20 feet which runs to an extent of 345 feet from the main road and for the balance 75 feet as access to the proposed layout, the petitioners were willing to get the consent from the owner and also were willing to execute a gift deed for the 75 feet. The petitioners even went to the extent of stating that they will execute a gift deed for the 75 feet with a width of 23 feet.

3. The application for layout approval was submitted before the 3rd respondent and the 3rd respondent forwarded the application through a letter dated 20.09.2019 to the 2nd respondent with the necessary recommendation. The 2nd respondent sought for a clarification with regard to the availability of the access road. The 3rd respondent had informed the 2nd respondent about the availability of the existing road to an extent of 345 feet with a width of 20 feet. The 2nd respondent was not convinced with the explanation and the application submitted by the petitioners was returned through letter dated 30.09.2019.

4. The petitioners thereafter filed an appeal and the same was taken up for consideration before the Appeal Committee meeting held on 12.10.2020. The Appeal Committee after deliberating the issue rejected the appeal through proceedings dated 01.12.2020. For proper appreciation, the decision of the Appeal Committee is extracted hereunder :-



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Decision of the Appeal Committee

The Appeal committee went through the records in respect of planning permission for the layout approval compromised in S.F.No.108/1, 2 & 15, Thalavoypettai Village, Pallipattu Taluk/Town Panchayat, Thiruvallur region, Thiruvallur District.

The Appellant appeared in person and explained the case. The appellant stated before the Committee that the site under reference was purchased by him before the formation of 6.0 m wide approach road and requested to relax the road width violation.

The Appeal committee deliberated the issue in detail and rejected the appeal with a direction to DTCP to take further action.

5. The same was taken into consideration by the 1st respondent and the impugned GO Ms.No.14 dated 25.01.2021 came to be issued confirming the decision taken by the Appeal Committee and rejecting the Appeal filed by the petitioners. Aggrieved by the same, the present writ petition has been filed before this Court.

6. The 2nd respondent has filed a counter affidavit and the relevant portions in the Counter affidavit are extracted hereunder :-

2. I humbly submit that no comment required for the land and ownership of the property, to an extent of 1 acre 43 cents, comprising survey No.108/1, 2, 15 and 16, situated at Thalavaipattadai village, Pallipattu Town Panchayat, pallipattu Taluk, Thiruvallur District. In fact, the layout formed by the petitioner has got access from the connectivity highways road running from Chittoor to Pallipattu, but the connectivity road from Chittoor to Pallipattu with a width of only 20 feet road, comprised survey No.106, which is admitted facts. "As per Section 47(a) of the Tamil nadu Combined Development and Building Rules, 2019, the minimum width of the public street or road on which the site abuts or gains access shall be 7.2. For the minimum width of the passage or public streets on road on which the site abuts or gains access shall be as required for different uses and types of

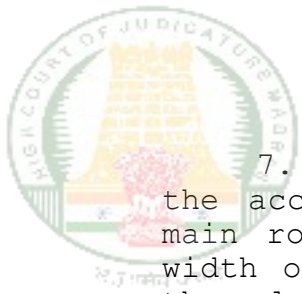


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developments. For subdivisions the minimum width of the passage or public streets or road on which the site abuts or gains access shall be required for different uses and types of developments" in G.O.Ms.No.18 of the Municipal Administration and Water supply (MA.1) Department dated 04.02.2019 and subsequently, amended as per Section 14(a) of G.O.Ms.No.16 of the Municipal Administration and Water supply (MA.1) Department dated 31.01.2020, "In sub rule(1), in clause (a), for the expression "7.2m", the expression "7.0m" shall be substituted" wherein the width of the connectivity road should be not less than 23 feet (7 mtrs), but the petitioners has provided only 20 feet road, instead of 23 feet and hence, the denial of layout approval is perfectly correct and the petitioners have no right to challenge the same before this Hon'ble Court by way of the present writ petition.

3. I humbly further state that at the time of applying for layout approval, the petitioners has submitted a layout by indicating the connectivity road of 345 feet with 20 feet width and no documents were produced in respect of the 75 feet connecting road in between connectivity road of 345 feet road and the petitioners layout and hence, the petitioners have not approached with clean hands i.e they have not at all mentioned about the 75 feet connecting road and even the subject 75 feet connecting road is also 20 feet width and no wrong in denial of approval, which is the basic reason even for dismissal for appeal by the appellant authority herein. Even in the affidavit sworn by the Power Agent on behalf of the petitioners, no where given any more explanation in respect of the width of the connectivity road is not touching 23 feet width as per the aforesaid provisions and as well as G.O.s and even in the appeal grounds. Hence, denial of approval for the subject layout within the ambit of the provisions and as well as G.O.s.

4. I humbly further submit that even the usage of 75 feet approach road is concerned, the petitioners are not the owners and no proper documents are enclosed at the initial stage, while submitting for approval or even not properly mentioned about 75 feet running connecting the access road in between the layout and connectivity road of 345 feet road.



7. The learned counsel for the petitioners submitted that the access to the proposed layout of the petitioner from the main road was only through the existing 345 feet road with a width of 20 feet commencing from the main road and ending with the layout situated at SF No.106. Thereafter, for the balance 75 feet access road up to the proposed layout, the petitioners were willing to provide for the 23 feet width road as required under the relevant Rules and inspite of the same, the respondents have proceeded to reject the application made by the petitioners.

8. The learned counsel in order to substantiate his submissions relied upon G.O Ms.No.172 dated 13.10.2017 and specifically, relied upon clause 3(d) (1) of the G.O, which specifically provides that if atleast one plot has been sold in an unapproved layout, the internal roads of the layout shall be regularized on "as is where is" basis. The learned counsel submitted that there was an unapproved layout in SF No.106 and the only access that was available for that layout was the 345 feet road with a width of 20 feet. Since the plots in the said SF number had been sold, the layout was regularized even though the width of the road did not satisfy the Rule by relying upon the above said clause. Therefore, the learned counsel submitted that the existing road which is 345 feet with a breadth of 20 feet was considered as "as is where is " basis. The learned counsel submitted that the petitioners cannot do anything about the existing road and admittedly, this road is also maintained by the Town panchayat. The petitioners can have control only insofar as the 2nd bit of the access road for 75 feet which directly will end in the boundary of the proposed layout. The learned counsel for the petitioners submitted that insofar as this position is concerned, there is already a consent agreement with the owner of the property and the petitioners are also willing to provide 23 feet width for the entire 75 feet road and a gift deed will also be executed in favour of the 3rd respondent. Therefore, this will sufficiently satisfy the requirements under the Rules and hence, the impugned proceedings of the 1st respondent requires the interference of this Court.

9. Per contra, the learned Government counsel appearing on behalf of the respondents submitted that Rule 47 (1) (a) of the Rules mandates that a minimum width of the public road/street on which the site abuts or gains access shall be 7 meters for residential layout developments. The learned counsel submitted that this minimum requirement has not been satisfied by the petitioners, since admittedly the access to the main road to an extent of 345 feet has only a breadth of 20 meters and whereas the requirement is 23 meters and this has not been satisfied by the petitioners. The learned Government Counsel submitted that the petitioner cannot take advantage of G.O Ms No.172 dated



13.10.2017 and that G.O will apply only insofar as the layout situated at S.F.No.106 is concerned. The learned counsel further submitted that even if the petitioners execute a gift deed for 75 feet of road with a width of 23 feet, for the balance 345 feet connecting to the main road, the petitioners will not be satisfying the requirements. Therefore, the petitioners are not satisfying the minimum requirement provided under Rule 47 of the Rules. The learned Government counsel submitted that this has been taken into consideration by the 1st respondent along with the findings of the appeal committee and the approval sought for by the petitioners has been rightly rejected and there is no ground to interfere with the same.

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

11. For proper appreciation, it will be relevant to extract Rule 47 (1) (a) of the Rules hereunder :-

47 (1) (a) The minimum width of the public street or road on which the site abuts or gains access shall be 7.2 m for residential layout developments and 9m for industrial layout developments. For sub divisions the minimum width of the passage or public streets or road on which the site abuts or gains access shall be as required for different uses and types of developments.

12. A reading of the above Rule makes it very clear that the minimum width of the access road from the main road connecting to the site where the proposed layout is going to be formed by the petitioners, must be atleast 7 meters, which is equivalent to 23 feet.

13. In the present case, it is clear from the records that there is already an existing access road from the Chitoor to Pallipattu highways to an extent of 345 feet. This access road does not end in the proposed layout of the petitioners. There is a additional requirement of 75 feet access road in order to reach the layout proposed by the petitioners. It is an admitted case that this is the only access from the proposed layout of the petitioners to the main road.

14. The specific stand that has been taken by the petitioners is that they do not have any control insofar as the existing 20 feet wide road running to an extent of 345 feet, which pertains to the layout situated at S.F.No.106. Even if the petitioners want to increase the extent, it is not in their hands. Therefore, according to the petitioners, what is under



their control is only the 2nd bit of 75 feet road that is connecting from the existing road to the proposed layout of the petitioners. Admittedly, this bit of the access road which is proposed is owned by a different individual and the petitioners had already entered into a consent agreement with the owner of the property. The learned counsel for the petitioners on instructions has made a statement to the effect that the petitioners are willing to execute a gift deed to the 3rd respondent for the 75 feet of the access road with a width of 23 meters and the petitioners will satisfy the requirements under Rule 47(1) (a) of the Rules insofar as this portion of the access road is concerned.

15. The Rule that has been relied upon by the parties to this writ petition does not contemplate a scenario of this nature. There are only two scenarios which are governed by the Rules. The 1st scenario is the one which is dealt with 47(1) (a) which mandates that the access road to the layout must have a width of 7 meters or 23 feet. This rule will apply insofar as consideration of an application for a new layout. The other scenario is where there is an existing unapproved layout which is sought to be regularized. Insofar as such regularization is concerned, there is a leverage given under the Rules to the extent that if atleast one plot had been sold in the unapproved layout, then the access road will be regularized on "as is where is" basis. It is clear from the records that the 3rd respondent through a communication dated 20.01.2020 has informed the 2nd respondent that insofar as the S.F.No.106 is concerned, it had 16 plots and all these plots were sold even prior to 2017 and therefore, by taking into consideration clause 3(d) (1) of G.O Ms.No.172 dated 13.10.2017, the same was regularized.

16. The 1st respondent was dealing with an application submitted by the petitioners, wherein the petitioners were seeking for the approval of new layout and therefore, the 1st respondent had straight away applied Rule 47(1) (a) of the Rules and rejected the application since the access road does not satisfy the requirements. A strict interpretation of the Rule shows that the 1st respondent had no other go except to deal with the application submitted by the petitioners under the said Rule. There was no scope in the existing Rule where the access road passes through an existing road which does not satisfy the requirement under Rule 47(1) (a) of the Rules. Under such circumstances, the 1st respondent had to go by the existing Rules and reject the application made by the petitioners. It is also stated in the impugned order that there are no materials to show that the petitioners had executed any gift deed even insofar as the road with a width of 6.10 meters.



17. The application submitted by the petitioners was accompanied with a consent agreement entered into between the petitioners and the owner of the property, who was a consenting for the usage of 75 feet access road through his property to the proposed layout. The learned counsel on instructions submitted that the petitioners will take all steps to execute a gift deed in favour of the 3rd respondent for the 75 feet with a width of 7 meters or 23 feet. Such a material was not available before the 1st respondent, when the 1st respondent was dealing with the application given by the petitioner.

18. In the considered view of this Court, the purport of the Rules is to ensure that layouts are developed in an organized manner and unapproved layouts are discouraged and are not approved. In the present case, the petitioners who want to form a layout do not have any other access to the main road except through the existing 345 feet road which runs up to the main road. Admittedly this road is being maintained by the 3rd respondent and it is provided as the access road for the existing plots in SF No.106. This is the only link road through which the petitioners can have access to the main road from the proposed layout. This link road will have to be added with another 75 feet road abutting the proposed layout of the petitioners. The petitioners will have control or will be able to satisfy the requirements only insofar this bit of 75 feet is concerned. The petitioners are willing to take steps to gift the property to the tune of 75 meters with a width of 23 meters to the 3rd respondent.

19. Taking into consideration the facts and circumstances of this case and also of the fact that the petitioners are willing to fulfill the requirements of Rule 47(1) (a) of the Rules for an extent of 75 feet of road that will link the existing 345 feet road, this Court deems it fit to remand the matter back to the file of the 3rd respondent.

20. The petitioners are directed to submit a fresh application to the 3rd respondent along with all the relevant documents and also documents establishing their right and title for the access road measuring to an extent of 75 feet with a width of 23 feet. The 3rd respondent on receipt of the same, shall forward the application to the 2nd respondent. The 2nd respondent shall scrutinize the documents and shall ensure that the petitioners satisfy the requirements insofar as the 75 feet road is concerned and it is in compliance with Rule 47(1) (a) of the Rules. This direction is being given considering the peculiar facts of this case, since the petitioners do not have any control over the existing road, which is already an access to the plots in SF No.106. Therefore, the 2nd respondent will take into consideration the already existing road of 345 feet



with a width of 20 feet. On satisfying the requirements, the 2nd respondent is directed to proceed further and pass final orders. This process shall be completed by the respondents 2 and 3, within a period of eight weeks from the date of submission of the application by the petitioners.

21. It is made clear that the directions are issued by this Court by considering the peculiarity of the facts involved in the present case and this order cannot be taken as a precedent in any other case and it is mandatory to fulfill the requirements of Rule 47 (1) (a) in all cases involving granting of approval for a fresh layout.

22. This writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai 600 009.
2. The Assistant Director of Town and Country Planning,
Thiruvallur Region,
No.43/397-A, Annai Indira Gandhi Salai,
Tiruvallur.
3. The Executive Officer,
Pallipattu Town Panchayat,
Pallipattu.

+1cc to Mr.L.Damodharan, Advocate, S.R.No.39342
+1cc to the Government Pleader, S.R.No.39733

W.P.NO.8168 OF 2021

PVS (CO)
PBS/16/09/2021