

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2021

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.32869 of 2012 and
M.P.No.1 of 2012

1. D.P.Madhan deceased

2. M.Halan

(P2 substituted as L.R of deceased first petitioner
D.P.Madhan, as per order dated 23.07.2018 in
WMP Np.21850 of 2018 in W.P.No.32869 of 2012).

... petitioner

Vs.

1. Executive Officer,
Ketti Town Panchayath, Ketti,
Nilgiri District.

2. The Assistant Director of Town Panchayat,
Udhagamandalam, The Nilgiris, Nilgiris District.

3. M.Iyappan

4. M.Mani

5. M.Shanthi

R3 to R5 are impleaded as per order dated 10.11.2017
in WMP No.30810 of 2017 in W.P.No.32869 of 2012).

.... Respondents

PRAYER: Writ petition filed under Section 226 of the
Constitution of India to issue a Writ , order or direction in
the nature of Writ of Certiorarified mandamus calling for the
records of the respondents in their proceedings dated
19.07.2012 in Na.Ka.No.312/2012 and 06.09.2012 in
O.Mu.No.33104/2012/U3 respectively and quash the same and
further direct the respondents to grant planning permission to
the petitioner for construction of residential house for the
property situated at Door No.18/95-A, Dhenali sogathorai Post,
Kunoor Taluk, Nilgiri District.

For Petitioners : Ms.T.Ananthi

For respondents : Mr.D.Suryanarayanan,
Gov. Adv. for R1 and R2

Mr.S.Elambharathi
for R4 and R5

No appearance for R3

ORDER

This writ petition has been filed to quash the impugned orders dated 19.07.2012 and 06.09.2012 passed by the respondents and for direction to the respondents to grant planning permission to the petitioner for construction of residential house for the property situated at Door No.18/95-A, Dhenali Sogathorai Post, Kunoor Taluk, Nilgiri District.

2. The brief averments in the writ petition is as follows:

The petitioner is the owner of the above said property. Since some third parties attempted to interfere and encroach upon the vacant space of his property, the petitioner had filed a suit in O.S.No.68 of 2011 and had obtained interim injunction in I.A.No.479 of 2011 as early as on 22.12.2011 and it was made absolute on 16.02.2012, as the respondents were set exparte. The petitioner had also given application dated 07.06.2012 for grant of plan approval for construction of house on the northern side of his property and the same was rejected by the respondents on 19.07.2012. Further the representation given by the petitioner dated 16.07.2012 and 21.08.2012 to the first and second respondent also rejected by the proceedings dated 06.09.2012. Hence, this writ petition.

3. The learned Government Advocate appearing for the first and second respondent submitted that the application filed by the petitioner for planning permission was rejected by the authority concerned stating that since a suit is pending with regard to the subject matter of the property, no order can be passed. He further submitted that if the petitioner is having any grievance on the orders passed by the respondents 1 and 2, he can very well approach the prescribed authority, by filing an appeal under Section 79 of the Tamil Nadu Town and Country Planning Act, but without approaching the prescribed authority, the petitioner has filed this writ petition and hence, the same is not maintainable.

4. It is not disputed by the petitioner that the suit in O.S.No.68 of 2011 is pending before the Civil Court and in the above said suit, he had obtained exparte interim injunction against the respondents therein. Further, as

rightly pointed out by the Government Advocate, if the petitioner is aggrieved over the orders passed by the respondents 1 and 2, there is a remedy to file an appeal before the prescribed authority, under Section 79 of the Tamil Nadu Town and Country Planning Act. The disputed facts have to be decided only by the authority concerned, after giving fair opportunities to the parties. In a decision in Shanthi Krishna, Vice-President, Kalakshetra Colony V. Union of India, 2005(1) LW 70 (SN), the court held that only after exhausting the remedies available in the Act, Writ petition can be filed. But, here in this case, the writ petitioner has filed this writ petition, without approaching the authority concerned, as per Section 79 of the Tamil Nadu Town and Country Planning Act. Therefore, this court is not inclined to entertain this writ petition filed under Section 226 of the Constitution of India.

5. Accordingly, this writ petition is dismissed. No costs. The connected miscellaneous petition is closed. The petitioner is at liberty to approach the concerned authority to seek the remedy as sought for in this writ petition.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

mst

To

1. Executive Officer,
Ketti Town Panchayath, Ketti,
Nilgiri District.
 2. The Assistant Director of Town Panchayat,
Udhagamandalam, The Nilgiris, Nilgiris District.
- +1cc to Mr.S.Elambharathi, Advocate SR.No.23619
+1cc to Government Pleader SR.No.24003

W.P.No.32869 of 2012 and
M.P.No.1 of 2012

GMY(08/07/2021)