



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 25.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD)No.8094 of 2021

(Through Video Conferencing)

P.Babu

... Petitioner

Vs.

1.The State of Tamilnadu

Rep. by its Secretary

Housing and Urban Development Department

Fort St. George,

Chennai.

2.The Director of Town and Country Planning

Directorate of Town and Country Planning,

E&C Market Road

Koyembedu

Chennai.

3.The Member Secretary

Madurai Town and Country Planning Authority,

Corporation Office Campus,

Madurai 2.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings of the 3rd respondent in Na.Ka.No.4753/2019/MD12 dated 04.11.2020 and quash the same as illegal and consequently direct the respondents to grant planning permission for the development/construction in the petitioner's land in Survey No.146/1A2, Uthangudi Village, Madurai.

For Petitioner :Mr.M.Mahaboob Athiff

For Respondents :Mr.M.Lingadurai

Government Advocate

ORDER

This writ petition has been filed aggrieved by the proceedings of the third respondent dated 04.11.2020 and for a consequential direction to the respondents to grant planning permission to the petitioner to enable the petitioner to develop his property in S.No.146/1A2, Uthangudi Village, Madurai.

2. The case of the petitioner is that he is the owner of the
<https://hcservices.ecourts.gov.in/hcservices/>



subject property by virtue of a registered sale deed dated 29.03.2019. The further case of the petitioner is that the patta was also issued in favour of the petitioner in patta No.7041. The petitioner wanted to develop his property and hence submitted an application on 04.11.2019 seeking for approval for putting up a construction in the property. The third respondent did not entertain the application on the ground that a detailed development plan is proposed and when implemented, the proposed scheme road will pass through the property of the petitioner and therefore, the planning permission cannot be granted. Aggrieved by the same, the present writ petition has been filed before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the respondents.

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

5. The short issue that arises for consideration in this writ petition is as to whether the third respondent can reject the planning permission sought for by the petitioner only on the ground that there is a proposal for a detailed development plan under which a scheme road will pass through the property belonging to the petitioner.

6. It will be relevant to take note of the provisions of the Tamil Nadu Town and Country Planning Act, 1971(hereinafter referred to as 'the Act'), which provides for the procedure starting from Section 19 of the Act up to Section 31 of the Act, which ultimately ends in coming into operation of the detailed development plan.

7. The learned Government Advocate submitted the written instructions received by him from the third respondent, which states that the proposal for a detailed development plan has got the sanction of the Deputy Director of Madurai Zone, through letter dated 30.12.2005.

8. A careful perusal of the provisions of the Act shows that a development plan is made for the development or improvement of an area, which falls within the jurisdiction of the planning authority. The definition of a development plan is provided under Section 2(4) of the Act. The process starts by way of the planning authority passing a resolution expressing the intention to prepare a detailed development plan under Section 19(1) of the Act. This is required to be published by the planning authority in the District Gazette under Section 19(2) of the Act. It is clear from the instructions received by the learned Government Advocate that the intended development plan has not even reached this stage.



9. After the resolution is published in the District Gazette, an enquiry has to be conducted by consulting with the owners of the land in the area, where there is a proposal for the detailed development plan. Thereafter, the planning authority should prepare and submit the development plan to the Director under Section 21 of the Act. Thereafter the Director has to give the consent for publication of notice of the preparation of the detailed development plan under Section 25 of the Act. This in turn should be published in the Tamilnadu Government Gazette and also in the newspapers in the concerned region. Ultimately, the detailed development plan comes into operation under Section 31(1) on the completion of this process.

10. In the present case, the detailed development plan remains at the stage of proposal and it has not crossed that stage. This means that it remains at the stage contemplated under Section 19(1) of the Act. A long journey needs to be undertaken before it ultimately becomes operational under Section 31 of the Act. Till this happens, a citizen cannot be deprived from utilizing his property. Article 300-A of the Constitution of the India gives a constitutional right to a citizen over his property and it cannot be deprived unless otherwise by an authority of law. The stage at which the detailed development plan remains cannot be a ground to deprive the petitioner from putting to use his property. In other words, there is no authority of law to stop the petitioner from proceeding further to construct or develop the property to put up the construction or develop his property, after getting proper sanction.

11. In view of the above discussion, the impugned proceedings of the third respondent dated 04.11.2020 is illegal and the same requires the interference of this Court. Accordingly, the impugned order is quashed. There shall be a direction to the third respondent to proceed further and process the application submitted by the petitioner and other parameters being satisfied, the sanction order shall be passed within a period of six weeks from the date of receipt of a copy of this order.

12. This writ petition is allowed with the above directions. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary
Housing and Urban Development Department
Fort St. George,
Chennai.
 - 2.The Director of Town and Country Planning
Directorate of Town and Country Planning,
E&C Market Road
Koyembedu
Chennai.
 - 3.The Member Secretary
Madurai Town and Country Planning Authority,
Corporation Office Campus,
Madurai 2.
- +1 CC to M/s.SPL GP (SR-20562[F] dated 29/06/2021)

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