



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.8610/2022 and WMP.Nos.8523 and 8525 of 2022

1. Maheswari
2. Punithavalli ... Petitioners

-vs-

1. The District Collector,
Office of the District Collectorate,
Salem District.
2. The Commissioner,
Salem Corporation,
Salem District.
3. The Assistant Commissioner
Salem Corporation,
Salem District.
4. The Deputy Director,
Town and Country Planning,
No.6 Sannathi Street,
Subramani Nagar,
Salem-5.
5. The Assistant Engineer,
Corporation Zonal Office,
Sooramangalam,
Salem-5.
6. Loganathan ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus, directing the respondents 1 to 5 to demolish the unauthorized construction



at Salem West Taluk, Village No.29, Reddiyur Village, R.S.No.84/1, Patta No.430, Sub-Division Survey No.84/1G1 total extent 661 out of 1322 sq.ft. in Salem West District Register, Sooramangalam Sub-Register, as per Sections 56 and 57 of the Tamil Nadu Town Planning Act, 1971 as well as the G.O.(Ms.) No.289, Housing and Urban Development (D4-1) Department dated 16.12.2010 on merits and according to law within a time stipulated by this Court.

For Petitioners : Mr.G.Munuraj

For Respondents : Mr.K.V.Sajeev Kumar,
Spl.Govt.Pleader for R1

Mrs.K.Bhuvaneswari,
Standing Counsel for R2 & 3

ORDER
(Order of the Court was made by T.RAJA, J.)

The Writ Petitioners herein have filed the present Writ Petition seeking one of the same reliefs sought for by them in a suit in O.S.No.190/2021 on the file of the learned District Munsif, Salem against their sister.

2. Learned Counsel appearing for the petitioners would submit that under Section 56(2-A) of the Tamil Nadu Town and Country Planning Act, 1971, the petitioners have a right to come to this Court, even though they have filed a civil suit for the same relief.

3. This has been seriously objected by the learned Special Government Pleader appearing for the 1st respondent. In support of his contention, he has also drawn our attention to the very same prayer made by the petitioners against the very same respondent, namely, their sister before the Civil Court which is extracted here under :

'a. Declaring the fraudulent release deed dated 03.02.2021 document Number 875/2021 registered on the file of 3rd defendant as Null and void, fraudulent not binding on the plaintiffs;

b. restraining the 1,2 defendants from any manner alienating and encumbering the suit property the defendants by means of permanent injunction; and

c. directing the defendants to remove the illegal



construction in the suit property as shown in the photographs by means of mandatory injunction...''

4. A perusal of the same shows that though the first relief has been sought for against the 3rd defendant, there was no 3rd defendant shown in the cause title of the suit in O.S.No.190/2021. Therefore, it is clear that the petitioners have not made out a definite case before the civil court. Secondly, when the statutory authority has not taken any action for removal and demolition of the unauthorized building, the petitioners although have filed a civil suit and the same is pending, the contention of the learned Counsel for the petitioners that they are entitled to approach this Court is far from acceptance for the reason that they have filed a civil suit challenging the validity of the release deed dated 03.02.2021. Unless the validity of the release deed is decided by the learned Civil Court concerned on production of oral and documentary evidence, the petitioners cannot maintain the consequential prayer before this Court. Therefore, we find no merits in the present Writ Petition. Moreover, two parallel proceedings for same relief cannot be espoused by the writ court.

5. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

tsi

To

1. The District Collector,
Office of the District Collectorate,
Salem District.
2. The Commissioner,
Salem Corporation,
Salem District.



3. The Assistant Commissioner
Salem Corporation,
Salem District.

4. The Deputy Director,
Town and Country Planning,
No.6 Sannathi Street,
Subramani Nagar,
Salem-5.

5. The Assistant Engineer,
Corporation Zonal Office,
Sooramangalam,
Salem-5.

W.P.No.8610 of 2022

NR(CO)
CB(28/04/2022)