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W.P.No.12857 of 2022 & Cont.P.No.228 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2024

PRONOUNCED ON : 01.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.No.12857 of 2022 &
Cont.P.No.228 of 2023**

W.P.No.12857 of 2022 &

R.Muthuvelu

.. Petitioner

vs.

1.The Member Secretary,
Directorate of Town and Country Planning,
Hosur New Town Development Authority,
Hosur, Krishnagiri District 635 109.

2. The Block Development Officer,
Soolagiri,
Hosur, Krishnagiri District 635 117.

3. Anand

4. Ravi

5. D.Poongavanam

.. Respondents



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R.Muthuvelu

.. Petitioner

VS.

1. Anand

2. Ravi

3. D.Poongavanam

.. Respondents

Prayer in W.P.No.12897 of 2022 :- Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of second respondent pertaining to his proceedings in Na.Ka.No.1045/2019/E4 dated 03.03.2022 Panchayath Union, Soolagiri and quash the same .

Prayer in Cont.P.No.228 of 2023 :-Contempt petition filed under Section 11 of Contempt of Courts Act to punish the respondents for their wilful and deliberate disobedience of the status quo order of this Court dated 06.06.2022 made in W.P.No.12897 of 2022.

In both Petitions

For Petitioner : Mr.P.Sesubalan



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For R1 and R2 : Mrs.M.Geetha Hemaselvan(Cont.P.)

For R3 : Mrs.Sumathi

COMMON ORDER

By this common order, both the writ petition and the contempt petition are being disposed.

2. This writ petition has been filed by the petitioner to quash the impugned order dated 03.03.2022 bearing Reference No.ந.க.எண்.1045/2019/இ4 of the second respondent.

3. Relevant portion of the impugned order, reads as under:-

“திரு.முத்துவேல் ஆகிய தங்களுக்கு ஆவணம் எண்.12485 2014 மற்றும் 6625‘2018-ன் வழங்கப்பட்ட பொது அதிகார ஆவணங்கள் ஆவண எண்.5199 2018 மற்றும் 5200 2018ன்படி இரத்து செய்யப்பட்டுள்ளது. 2018-ஆம் ஆண்டிலியே பொது அதிகார ஆவணம் இரத்து செய்யப்பட்ட நிலையில் இதனை மறைத்து இரத்து செய்யப்பட்ட பொது அதிகார ஆவணம் மற்றும் அதற்கான வில்லங்க சான்று ஆகியவற்றை உறுப்பினர் செயலர்(பொ) அதிகார ஆவணம் இரத்து செய்யப்பட்ட நிலையில் இதனை மறைத்து இரத்து செய்யப்பட்ட பொது அதிகார ஆவணம் மற்றும்



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அதற்கான வில்லங்க சான்று ஆகியவற்றை உறுப்பினர் செயலர் (பொது) ஓசூர் அவர்களுக்கு போலியாக சமர்ப்பித்து தங்களது பெயரில் மனைப்பிரிவுக்கு முறைக்கேடாக அனுமதி பெறப்பட்டுள்ளது தெரியவருகிறது. மேலும் இந்த அனுமதியின் பேரில் மனைப்பிரிவுக்கு உரிய கட்டணங்கள் வட்டார வளர்ச்சி அலுவலர் (கி.ஊ)இ குளகிரி அலுவலகத்தில் செலுத்தப்பட்டுள்ளது. இவ்வாறு செலுத்தப்பட்ட கட்டண தொகைகளை முறையாக விண்ணப்பம் செய்து பெற்றுக்கொள்ள தெரிவிக்கப்படுகிறது.”

4. By the impugned order, the regularization obtained from the petitioner in respect of unsold plots on 07.03.2019 has been cancelled.

5. By the impugned order, the Block Development Officer, the petitioner has asked to collect the fees paid for a sum of Rs.2,75,50,000/- towards regularization of the lay out as the regularization was obtained after the land owners had withdraw the Power of Attorney in favour of the petitioner.

6. This Court had passed the following order of status-quo dated 06.06.2022 at the time of admission as follows:-



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“Considering the fact that the petitioner has already filed a suit in O.S.No.103 of 2021 before the District Munsif Court, Hosur against the third and fourth respondents pursuant to the Power of Attorney executed by them in favour of the petitioner which appears to have been cancelled by the third and the fourth respondents on 28.03.2019 and the petitioner came to know about the same only after the impugned order was passed and direct the respondents to maintain Status Quo as on date till 06.07.2022”.

Brief facts of the case are as follows:-

7. The respondents 3 and 4 are the brothers and they are/were the owners of eastern and western portion of the property measuring an extent of 2.18 acres of land comprised in S.No.186/1-B at Bathalapalli Village, Moranapalli Union, Hosur.

8. The petitioner engaged in real estate business under the name and style of M/s.Ezhil Builders and Developers had development unapproved



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layout. The respondents 3 and 4 had come forward to sell the above property to the petitioner and his nominee. Having accepted their offer, a sum of Rs.2,72,50,000/- appears to have been agreed towards sale consideration of the property.

9. The petitioner appears to have paid an initial amount of Rs.23,50,000/- to the respondents 3 and 4. Thereafter, the petitioner and the respondents 3 and 4 along with their minor children entered into Sale Agreement dated 07.05.2014 which was registered as Document No.14659 and had reportedly received further a sum of Rs.10,00,000/- towards further advance.

10. It is the further case of the petitioner that the third and fourth respondent in this writ petition had executed along with their minor children two power of attorneys dated 04.09.2014 and 09.02.2015 in favour of the petitioner in respect of the property which developed as layout under the Agreement between them. It is submitted that the entire extent of land measuring 2.18 acres were plotted into 64 out of which, a portion was to be



gifted to the local authorities.

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11. It is submitted that about 38 plots have already been sold on the strength of the above mentioned agreement by the petitioner as the power of attorney holder of the respondents 3 and 4 and their children. The learned counsel further would submit that the respondents 3 and 4 had sold 28 plots had executed a General Power of Attorney in favour of the petitioner. Further, on the same day, the parties cancelled the sale agreement dated 07.05.2014 and registered another sale agreement regarding 38 plots. By two separate registered deeds of cancellation of the General Power of Attorney dated 28.03.2018, the General Power of Attorneys were cancelled.

12. It is submitted that the fourth respondent, who cancelled the power of attorney, had not issued any notice to the petitioner before the cancellation of Power of Attorney on 28.03.2018. It is submitted that the respondents 3 and 4 along with their legal heirs, had executed a sale agreement dated 07.04.2021 in favour of Mr.Sathish Babu in respect of unsold plots. The said sale agreement has been registered as Document



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No.6514/2021 in the Office of Sub Registrar, Hosur.

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13. The petitioner issued legal notice dated 10.06.2021. The petitioner also issued further legal notice dated 17.06.2021 to the respondents 3 and 4 and other persons. On receipt of the same, since there is no reply by the respondents 3 and 4, the petitioner has filed O.S.No.103 of 2021 before the District Munsif Court, Hosur against the respondents 3 and 4 for the following reliefs : -

- i) Pass a decree of declaration declaring that the General Power of Attorneys dated 04.09.2014 and 09.02.2015, which had been registered as document Nos.12485/2014 and 6625/2016 respectively in the Office of Sub Registrar, Hosur are irrecoverable General Power of Attorneys and the defendants are not entitled to cancel the same.
- ii) Pass a decree of declaration that the cancellation deeds dated 28.03.2018 registered as document Nos.5199/2018 and 5200/2018 in the office of Sub Registrar, Hosur are Null and void.
- iii) Pass a decree of declaration that the plaintiff is not bound by the sale agreement No.6514/2021 dated 07.04.2021 entered into by the defendants 1 and 2 with one Mr.Sathish Kumar in respect of the unsold plots and Null and Void,



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- iv) Pass a decree of permanent injunction restraining the defendants 1, 2 and 5th defendant from interfering with the peaceful possession and enjoyment of the plaintiff in the suit properties.
- v) Pass a decree of permanent injunction restraining the defendants 1, 2 and 5th defendants from making any encumbrance or alienation regarding the suit properties,
- vi) Award costs of the suit .

14. It is submitted that the third respondent along with their children who have since attained majority have executed the General Power of Attorney in favour of the 5th respondent on 13.07.2021 vide Doc.No.5200 & 10094 of 2021 without the knowledge of the petitioner. Details of General Power of Attorney and the Cancellation Deed of General Power of Attorney are as under:-

<i>Date</i>	<i>General power of Attorney</i>			<i>Deed of Cancellation of General Power of Attorney</i>			
	Doc.No.	Plot.No.	Total Extent	Date	Doc.No.	Plot.No.	Total extent(sq.ft.)
04.09.2014	50887/14	15,25,26, 27,32 to 40, 47, 49,64 to 66	3200 sq.ft.	27.03.2018	15349/18	1,5,8,9,10, 13,19,43, 44 & 45	956
07.02.2015	6416/15	1 to 14, 16 to 24, 26 to 31, 41,42 to	12560 1/2	27.03.2018	15350/18	64	1084



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<i>Date</i>		<i>General power of Attorney</i>		<i>Deed of Cancellation of General Power of Attorney</i>			
		46, 48, 50 to 53, 54 to 61					

15. It is pertinent to note that one Mr.Sathish Babu and his father 5th respondent herein in this writ petition, have entered into a sale agreement dated 12.01.2018 with the petitioner.

16. In the above said circumstances, the petitioner had received the impugned order dated 03.03.2022 of the second respondent Block Development Officer, Soolagiri.

17. The petitioner has challenged the impugned order on the ground that it has been passed based on the representation of the third respondent., without notice to the petitioner.

18. It is further submitted that the copy of the representation of the third respondent has also not furnished to the petitioner. Further, it is submitted that the second respondent Block Development Officer has



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passed the impugned order without conducting any enquiry, it is submitted that the impugned order was passed in violation of principle of natural justice. Hence, the petitioner has filed this petition.

19. It is submitted that the fifth respondent has created sale deeds in favour of his son, daughter, daughter-in-law in contravention of the status-quo dated 06.06.2012. Therefore, the petitioner has been filed the above contempt petition.

20. It is however noticed that the petitioner has not secured any interim order from the District Munsif Court, Hosur in O.S.No.103 of 2021. After the interim order was passed on 06.06.2022 which was uploaded on 08.06.2022, same was communicated by the petitioner with the respondents herein vide Communication dated 09.06.2022 which was received by the respondents on 11 & 12/06/2022.

21. The 5th respondent however effected sale of 16 plots out of 26 remaining plots in respect of which, the petitioner had obtained a regularization earlier from the first respondent on 07.03.2019. The 5th



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respondent has sold 16 plots to his son, daughter, daughter-in-law.

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22. The learned counsel for the petitioner would submit that the alacrity with which alienations have been made by the fifth respondent on the dates mentioned above in favour of his son, daughter, wife, daughter in law were intended to defeat the rights of the petitioner after the petitioner had made out a *prima facie* case against the impugned order of the second respondent dated 03.03.2022 and secured an interim order on 06.06.2022.

23. That apart, learned counsel for the petitioner would submit that an order dated 21.09.2020 cancelling the layout approval was not communicated and therefore, alienation made in the light of the cancellation of the Power of Attorney by the respondents 1 and 2 which is subject matter of a challenge in O.S.No.103 of 2021 was void.

24. The learned Special Government Pleader for the first respondent would submit that on receipt of the application submitted by the petitioner,



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the first respondent inspected the property the land measuring to an extent of 2.18 acres comprised in S.No.186/1B situated at Moranapalli Village, Shoolagiri Union, Hosur Taluk. The first respondent after following due process of law and considering the various Government Orders and also guidelines issued by the Commissioner, Urban Development, Chennai in various dates, accepted the application for regularization of the unapproved layout subject to conditions in his proceedings dated 07.03.2019.

25. The first respondent also directed the second respondent to issue final order after following due process of law and thus collected the Development Charges and Regularization Charges. The final order is issued only after collection all the charges payable to the Local Authority.

26. The learned counsel for the second respondent would submit that the act of the petitioner in getting approval though the third respondent as respondent had cancelled Power of Attorney was a fraud committed on the respondents. Therefore, there is no question of giving any hearing to the petitioner as the fraud was played on the first and second respondent. It is



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submitted that on the same ground , there was also no question of furnishing a copy of the representation of the fifth respondent to the petitioner.

27. The learned counsel for the second respondent further submits that the Local Authority under Section 2(23)(iv) of the Tamil Nadu Act 35 of 1972 namely, the Panchayat Union, Shoolagiri has not been impleaded as party to the writ petition and therefore this Court also the writ petition is liable to be dismissed.

28. The learned Senior Counsel for the fifth respondent would submit that neither the sale agreement nor the cancellation of sale agreement mentions about any receipt of the amounts from the petitioner. As a matter of fact, the sale agreements only refers to receipt of a sum of Rs.10,00,000/- which was paid as advance. Therefore, the arguments to the contrary to a written document cannot be countenanced.

29. It is further submitted that the sale agreement have lapsed since they were executed in the year 2014 and no sale deed were executed



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pursuant to the sale agreements thereafter. It is further submitted that the 5th respondent's son Sathis Babu passed away due to Covid -19 and the 5th respondent had independently obtained as General Power of Attorney.

30. It is pertinent to note that no final orders have been passed in against the petitioner.

31. The learned Senior Counsel further submits that there is a condition even in the proceedings dated 07.03.2019 that OSR Gift Deed should be executed and further if it is found that permission has been obtained by suppressing any material information, the same could be cancelled without any notice.

32. The learned Senior Counsel further submits that since the petitioner suppressed the cancellation of the Power of Attorney and did not execute the gift deed and the order dated 07.03.2019 being conditional in nature could never have been said to come into effect. Thus, on the ground of suppression of material facts alone the writ petition deserves to be dismissed.



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34. The facts on record seem to indicate that the third and the fourth respondents had entered into a Sale Agreement with the petitioner on 07.05.2014, pursuant to which the petitioner had developed a layout consisting of 66 plots pursuant to Agreement dated 07.05.2014 which a power of attorney was executed by the third respondent along with his minor children and the fourth respondent and his minor children in favour of the petitioner over a land measuring a total extent of 2.18 acres in Hosur Taluk in Bathalapalli Village.

35. The said Power of Attorney was subsequently cancelled by the second respondent herein on 28.03.2018. Thereafter, the third respondent is said to have been executed a Power of Attorney in favour of the fifth respondents in the Writ Petition on 13.07.2021.

36. *Prima facie* there are indications that power that was granted in



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the year 2014-15 in favour of the petitioner by the third and fourth respondent along with their minor children were coupled with power.

However, it would require a proper determination in a Civil Court.

37. The cancellation of the regularization dated 28.03.2018 vide the impugned order dated 03.03.2022 of the second respondent is inspired from the fact that two power of attorneys dated 04.09.2014 & 09.02.2015 were cancelled in the year 2018 vide Doc.No.15350 dated 28.03.2018.

38. The cancellation of the Power of Attorney is only by the third respondent and his children not by the fourth respondent. Two deeds of cancellation dated 28.03.2018 referred to General Power of Attorney dated 04.09.2014 & 09.02.2015.

39. Whether the two General Power of Attorneys dated 04.09.2014 & 09.02.2015 by the 3rd and 4th respondent in favour of the petitioner were coupled with interest and whether the petitioner is entitled for declaration in the above suit is a matter has to be decided by the Trial Court in O.S.No.103 of 2021.



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40. On the strength of the power of attorney, the petitioner also appears to have sold plots as the principal of third and fourth respondent and their minor children. The consideration were received by the petitioner and not by the 3rd/4th respondent or their children.

41. Although the cancellation of power was that without notice, there are overwhelming material available that indicate that the petitioner, third and fourth respondents had resorted to valuation of the two properties to evade the stamp duty payable. Appropriate stamp duty is to be recorded from the petitioner under Section 35 of Indian Stamp Act, 1899.

42. The petitioner has filed O.S.No.103 of 2021 before the District Munsif Court, Hosur in respect of sale of 16 out of 26 remaining plots that have been sold to the 5th respondent to kith and kin, order came to be passed on 06.06.2022. The petitioner has rightly invoked the jurisdiction of this Court in O.S.No.103 of 2021 for the relief mentioned above.



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43. The cancellation of the approval granted by the first respondent and impugned order of the second respondent is liable to be kept in abeyance, as the cancellation of regularisation granted by the first respondent was made without notice to the petitioner although the regularization granted by the first respondent states that the approval could be cancelled if there was suppression.

44. Therefore, to balance the interest of parties, following orders are passed :-

- i) The District Munsif Court, Hosur is directed to dispose O.S.No.103 of 2021 as expeditiously as possible preferably within a period of 12 months from the date of receipt of a copy of this order.
- ii) There shall be no further alienation of any of the properties by the 5th respondent in respect of 26 plots either by himself or by his kith and kin and



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any sale alienation by the 5th respondent or his kith and kin will be subject to final outcome of the above suit in O.S.No. 103 of 2021.

iii) The first and second respondents shall ensure suitable communication are sent to the Jurisdictional Sub-Registrar Office to make suitable entry in the Register of property to that effect.

iv) the impugned order dated 03.03.2022 shall be kept in abeyance pending disposal of the suit.

45. In the result, contempt petition is closed and the Writ Petition is disposed with the above direction. However, liberty is given to the petitioner to approach this Court at the later point of time, if any further alienation is made by the 5th respondent or any of his alienasee. No costs.

01.03.2024

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To

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Directorate of Town and Country Planning,
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C.SARAVANAN, J.

kkd

Pre-delivery Common Order in
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