



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2022

CORAM :

WEB COPY

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.7144 of 2010

and

M.P(MD)No.1 of 2010

K.Manikandaprabhu

: Petitioner

Vs.

1.The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 2.

2.The Assistant Director,
Town and Country Planning,
No.10, Williams Road,
Contonment,
Trichy.

3.The Executive Officer,
Innam Karur (Special Grade),
Town Panchayat,
Karur District.

4.The Secretary to Government,
Municipal Administration Department,
Secretariat,
Chennai.

: Respondents

[R.4 suo-motu impleaded vide order dated 26.04.2022]

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.563/10 TheMa-1, dated 27.04.2010 and quash the same.

For Petitioner :Mr.B.Saravanan

For Respondents :Mr.A.Baskaran,
Additional Government Pleader
for R.1, R.2 & R.4

Mr.K.Balasubramanian
for R.3

**ORDER**

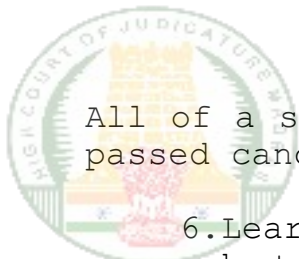
This writ petition is filed as against the orders of the second respondent in Na.Ka.No.563/10 TheMa-1, dated 27.04.2010, in and by which, the second respondent rejected the request of the petitioner to regularize his plot and building under the Town and Country Planning Act.

2.The case of the petitioner is that one Karuppanan has purchased a house plot bearing no.102, KVB Nagar, Innam Karur (Special Grade), Town Panchayat, Karur District, in the year 1985 from the Co-operative Housing Society. The said Karuppanan sold the plot to one Swaminathan in the year 1995, from whom, the petitioner purchased the plot in the year 1999, by a registered sale deed. The property was in the Town Panchayat limit during the relevant point of time and therefore, the petitioner approached the concerned local body for building plan approval, obtained the same and based on that, constructed a house in that place.

3.While so, the building plan approval granted to the petitioner in the year 2001 was cancelled by the third respondent by his proceedings in Na.Ka.No.279/2003, dated 22.12.2003, on the ground that the plot no.102 was demarcated as a park. Aggrieved by this order dated 22.12.2003, the petitioner filed a writ petition before this Court in WP.No.267 of 2004 and this Court, by order dated 15.12.2009, directed the petitioner to prefer an appeal before the Director of Town and Country Planning under Section 76 of the Town and Country Planning Act. Accordingly, the petitioner preferred an appeal before the first respondent under Section 76 of the Act and the first respondent referred the appeal to the second respondent, who passed the impugned order.

4.Learned Counsel for the petitioner submitted that the earlier writ petition filed by the petitioner in WP.No.267 of 2004 was disposed of by this Court, on the stand taken by the learned Special Government Pleader who represented the respondents that the remedy to the petitioner lies by way of an appeal before the Director of Town and Country Planning under Section 76 of the Act. As per the direction of this Court, the petitioner preferred an appeal before the first respondent / Director. But the first respondent has simply forwarded the appeal to the second respondent, who, in turn, by the impugned proceedings dated 27.04.2010, rejected the petitioner's claim for reclassification.

5.He further submitted that it is not the fault of the petitioner. By way of a registered sale deed, the petitioner's vendors purchased the property from the Co-operative Housing Society and from them, the petitioner purchased the property. The petitioner, after the purchase, approached the concerned authorities for grant of building plan approval, which was also granted. Based on the same, he has also constructed a house.



All of a sudden, for no fault of the petitioner, the order has been passed cancelling the building plan approval already granted.

6.Learned Additional Government Pleader appearing for the respondents submitted that the building plan permission was granted by the Executive Officer, Innam Karur Town Panchayat under Sections 200 & 201 of the Municipal Act (Amendment of 1920). Hence, the provision of appeal lies only under the Municipal Act and not under the Town and Country Planning Act.

7.He further submitted that the 101 layouts alone are approved, whereas, the petitioner has purchased the plot no.102, which is classified as a park area. By referring to the orders passed by this Court in WA.Nos.156 of 2000, 45 of 2003 and WP.No.23980 of 2005, 25371 of 2002, dated 04.01.2010, learned Additional Government Pleader submitted that an area which has been allotted for public purpose cannot be altered. Therefore, he prayed for dismissal.

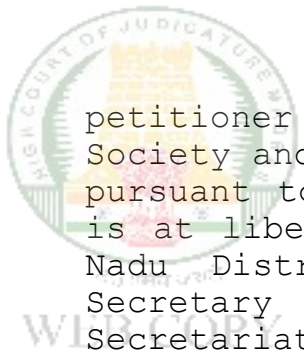
8.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

9.The petitioner has purchased the property in the year 1999 and applied for building plan approval before the third respondent / local body. The third respondent has also granted permission to the petitioner to construct a house in K.Va.No.123/2001-2002, dated 09.11.2001. This permission was valid from 09.11.2001 to 08.11.2004. The petitioner has also completed the construction based on this approval. Only in the year 2003, the respondents have cancelled the permission granted to the petitioner.

10.The said order of cancellation was already challenged before this Court in the earlier writ petition and on the submission of the learned Special Government Pleader, that he can prefer an appeal before the Director of Town and Country Planning, the said writ petition was disposed of. Accordingly, the petitioner has preferred an appeal, which was rejected by the second respondent and therefore, this second round of litigation.

11.It is the contention of the petitioner that for no fault of him, he is now penalized by the respondents. Without ascertaining that the place has been earmarked for park, the petitioner's vendors purchased the plot, from whom, the petitioner purchased it and thereafter, constructed a house, based on the approval granted by the third respondent. After the construction of the building, the respondents are taking a stand that the place was earmarked for park.

12.The Government is having power under Rule 19 of the Tamil Nadu District Municipalities Building Rules, 1972 to pass appropriate orders granting exemption from the application of the provisions of the Tamil Nadu District Municipalities Building Rules, 1972. The Government is having the facts and circumstances of the case that the



petitioner is a victim at the hands of the Housing Co-operative Society and the third respondent; and has constructed the house only pursuant to the approval granted by the local body, the petitioner is at liberty to submit an application under Rule 19 of the Tamil Nadu District Municipalities Building Rules, 1972, before the Secretary to Government, Municipal Administration Department, Secretariat, Chennai, who, in turn, shall consider the case sympathetically.

13. For the purpose of the aforesaid direction, this Court *suo-motu* impleads the Secretary to Government, Municipal Administration Department, Secretariat, Chennai, as a party respondent in this writ petition and Mr.A.Baskaran, learned Additional Government Pleader takes notice on behalf of the newly impleaded respondent.

14. With the above directions and observations, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar (CS)

gk

To

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+1 CC to M/s.B. SARAIVANAN, Advocate (SR-21551[F] dated 27/04/2022)

+1 CC to M/s.SPL.GP. (SR-21879[F] dated 27/04/2022)

W.P(MD)No.7144 of 2010

MGJ(30.06.2022) 4P 7C

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