



WEB COPY

W.P.No.800 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.800 of 2018

S.Muthukrishnan

... Petitioner

Vs.

1.Block Development Officer,
Udumalpet Panchayat Union,
Dhali Road,
Udumalpet,
Tirupur District.

2.Zonal Deputy Block Development Officer (Zone-2)
Udumalpettai Block/Circle,
Udumalpet,
Tirupur District.

3.Panchayat Secretary,
Bodipatti Panchayat,
Udumalpet Taluk,
Tirupur District.

4.V.Brindha

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling the records relating to the impugned order of the 1st respondent dated 27.11.2017 made in N.Ka.



No.3068/17/B1 and quash the same and direct the respondents 1 to 3 to grant building plan approval in survey No.95, Bodipatti Village, Udumalpet Taluk, Tirupur District to the petitioner.

For Petitioner	: Mr.D.R.Arun Kumar
For R1 to R3	: Mr.D.Ravichander Special Government Pleader
For R4	: Mr.Ramesh Venkatachalapathy

ORDER

The letter dated 27.11.2017 issued by the Block Development Officer, stating that the Building Plan permission as such sought for by the petitioner cannot be granted, in view of the pendency of the Civil Suit in O.S.No.38 of 2010.

2. The learned counsel for the petitioner mainly contended that there is no impediment for proceeding with the construction even during the pendency of the suit. The learned counsel for the petitioner relied on the judgment of the Hon'ble Division Bench of this Court in W.P.No.26650 of 2022 dated 13.10.2022, which reads as under:



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“3. We do not propose to enter upon the merits of the civil suit that is pending. Pendency of a civil suit by itself cannot be a bar for the authority to exercise their powers under specific provisions of the Chennai City Municipal Corporation Act. Unless there is a prohibitory order by the civil court, the authority cannot refrain from exercising the powers vested in it under the provisions of an enactment.

4. As regards the contentions that the Commissioner alone can grant permission and not others, Mr.D.B.R.Prabhu, learned counsel appearing for the Chennai Corporation would submit that Section 16 of the Chennai City Municipal Corporation Act empowers the Commissioner to delegate the powers to another Officer and such delegation has been done by virtue of letter in W.D.C.No.2106/2019 dated 05.08.2021. A copy of the letter has also been produced.

5. We find that the power to sanction demolition has been delegated to the Zonal Executive Engineer. We therefore, do not see any



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merit in the writ petition. This Writ Petition fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed. It is open to the petitioner to approach the Civil Court to seek appropriate interim orders as he may be advised.”

3. It is not in dispute between the parties that the Civil Suit in O.S.No.38 of 2010 is pending before the Court at Tirupur. If at all the petitioner has decided to put up any construction or to improve the property or otherwise, he has to approach the Civil Court for consideration.

4. The rights of the parties are to be protected during the pendency of the Civil Suit, whether granting permission would cause prejudice or not; whether the petitioner gives an undertaken that he will not claim any damages in future in the event of transferring the right in favour of the other parties, and all such mitigating factors are to be taken into consideration, since the Civil Suit is pending.

5. In the event of passing any order in a writ proceeding by the High Court, the same would cause prejudice to either of the parties. More so, the



disputed facts of civil nature cannot be adjudicated in a writ petition. Thus, the petitioner is at liberty to approach the Civil Court for redressal of his grievances in the manner known to law.

With this liberty, this Writ Petition stands disposed of. No costs.

07.07.2023

Jeni
Index : Yes
Neutral Citation : Yes
Speaking order

To

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S.M.SUBRAMANIAM, J.

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