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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.2141 of 2023
and W.M.P No.2228 of 2023

Mahalakshmi

Petitioner

vs.

- 1.The Assistant Director,
District Town and Country Planning Department,
Kumaran Commercial Complex,
Tiruppur – 01.
- 2.The Special Officer for Bodipatti Panchayat/
The Block Development Officer (Village Panchayat),
Udumalpet Union,
Udumalpet.
- 3.The President,
Bodipatti Panchayat,
Udumalpet Taluk,
Tiruppur District.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order of the 1st respondent made in Na.Ka.No.3154/2019/Thimaa dated 27.12.2022, quash the same.



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For Petitioner : Mr.D.R.Arun Kumar

For Respondents : Mr.C.Selvaraj
Additional Government Pleader for R1

Mr.T.Venkatesh Kumar
Special Government Pleader
for R2 and R3

ORDER

This writ petition has been filed challenging the impugned proceeding of the 1st respondent in Na.Ka.No.3154/2019/thimaa dated 27.12.2022, wherein, the approval granted for formation of the road on 31.07.2018 was sought to be canceled.

2.The petitioner is the absolute owner of the property comprised in S.F.No.66/5A2 measuring an extent of 0.42 acres by virtue of a Settlement Deed registered as Document No.4731/2017. The petitioner made an application seeking for layout approval to the 1st respondent and the application was submitted through the 2nd respondent.

3.The application submitted by the petitioner was processed and the 1st respondent through communication dated 31.07.2018 directed the petitioner to execute a Gift Deed for the proposed road portion in favour of the 2nd respondent and also to obtain a certificate from the 2nd respondent in this



regard. Accordingly, the petitioner executed a Gift Deed in favour of the 2nd respondent through a registered Document dated 28.08.2018 and laid the road and this was also certified by the 2nd respondent. According to the petitioner, the certificate of the 2nd respondent was directly sent to the 1st respondent.

4.The further case of the petitioner is that the 1st respondent granted the technical clearance for the layout through proceedings dated 15.02.2019 by imposing certain terms and conditions. Pursuant to the same, the 2nd respondent also gave the consent for the development of the layout and directed the petitioner to pay the development charges. The petitioner also remitted the development charges on 29.03.2019.

5.The layout consists of nine residential plots and one commercial plot. After getting the approval from the 1st respondent, the petitioner had sold the plots to various persons and some of the purchasers had also put up super structure.

6.The petitioner received a communication dated 13.12.2022 from the 1st respondent which was sent through the 3rd respondent and the petitioner was directed to pay a sum of Rs.3500/- toward the tax and miscellaneous charges.



The petitioner was also willing to pay this amount. While so, the petitioner received the impugned communication dated 27.12.2022 from the 1st respondent canceling the approval granted for the formation of the road. Aggrieved by the same, the present writ petition has been filed before this Court.

7.The 1st respondent has filed a counter affidavit. The 1st respondent has taken a stand that the technical clearance was not issued to the property belonging to the petitioner and the Approval No.460/2018 was actually issued to one Thangaraj. Hence, the 1st respondent has questioned the very technical clearance that was claimed by the petitioner. Apart from the same, the 1st respondent has also taken the following stand and for proper appreciation, the same is extracted hereunder:

7. It is submitted that the subsequent letter has been sent to the Petitioner to remit the amount for NSC, Centage charge in favour of the District Town and Country Planning Department, but the said amount has not been paid so far hence. The remainder letters vide No.3154/2019/TD dated 07.09.2020, 04.03.2021, 30.12.2021, 18.03.2022, 13.12.2022 also sent to the petitioner by the Tiruppur District Town and Country Planning Office to submit paid Challan of Centage charges for about Rs.3000/- and NSC Bond Rs.500/-. But the Petitioner has no response to above letters.



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8. It is submitted that the inspite of receiving the remainder letter as stated above and no reply has been received from the petitioner for more than 32 months. Hence the proposal of the Petitioner for layout approval was cancelled vide letter No.3154/2019/TD dated 27.12.2022 and was sent to the Local Body, Petitioner and the Sub Registrar's Office, Udumalpet. After receiving the cancellation letter, no further communication was made to the District Town and Country Planning Department by the Petitioner regarding layout approval of the Petitioner's bud.

9. It is submitted that the without following due process of law and the Town and Country Planning Department's procedures and rules, the Petitioner has rushed to this Hon'ble Court for a direction, which is against law and the writ petition has to be dismissed with costs. Nevertheless, It is submitted that this office would consider the layout proposal application, provided the Petitioner herein pays the centage charges and NSC with a request letter for approval and upon receipt of the same this will initiate further action as per the prevailing Rules and Regulations.

8. Heard Mr.D.R.Arunkumar, learned counsel appearing on behalf of the petitioner, Mr.C.Selvaraj, learned additional Government Pleader appearing on behalf of the 1st respondent and Mr.T.Venkatesh Kumar, learned Special Government Pleader appearing on behalf of the 2nd and 3rd respondents .



affidavit filed by the 1st respondent and based on the instructions received by him, submitted that if the petitioner pays the Centage charges and the charges towards the NSC Bond, the request made by the petitioner for granting final approval will be considered by the 1st respondent as per the prevailing rules and regulations.

10.The 1st respondent has taken two diametrically contradictory stands in the counter affidavit. The 1st stand is that no technical clearance was given to the petitioner and the Approval No.460/2018 has been questioned by the 1st respondent. The other stand that was taken by the 1st respondent is that the petitioner will be given the final approval if he pays the necessary charges. These two stands cannot go together. However, based on the instructions received by the learned Additional Government Pleader from the 1st respondent, this Court need not get into this issue and it will suffice if the petitioner is directed to pay the Centage charges and the charges toward the NSC Bond and pursuant to the same, the final approval shall be granted by the 1st respondent.

11.This Court wanted to clear its mind with regard to the Approval No.460/2018. On going through the records, it is seen that this approval number has been quoted in the proceedings of the 2nd respondent in



Na.Ka.No.4912/2018-Coimbatore-3, dated 15.02.2019. This communication of

the 2nd respondent has also been marked to the 1st respondent. The 2nd respondent has not come before this Court questioning the said communication. Likewise, the approval number is also found in the approved layout that was annexed along with the proceedings dated 15.02.2019. It is also pertinent to note that the 2nd respondent has once again taken note of Approval No.460/2018 while granting technical clearance in Na.Ka.No.02/2019, dated 10.05.2019. In the light of all these documents, it is not known as to why the 1st respondent took a stand in the counter affidavit as if Approval No.460/2018 does not pertain to the petitioner. This Court had to undertake this exercise since this Court wanted to clear itself on the doubt that has been created by the 1st respondent in the counter affidavit on the genuineness of the approval. In the absence of the 2nd respondent coming before this Court and questioning the above said documents, this Court has to necessarily hold that those documents are genuine and there is no question of going against the petitioner on the ground that Approval No.460 of 2018 does not pertain to the petitioner.

12.In the light of the above discussion, the petitioner is directed to pay the Centage charges and the charge towards the NSC Bond in the office of the 1st respondent, within a period of one week from the date of receipt of copy of



this order. The petitioner shall also make the request for the grant of final approval by the 1st respondent. The 1st respondent on being satisfied that the necessary charges have been paid by the petitioner, shall proceed further to grant the final approval to the petitioner. This exercise shall be completed by the 1st respondent, within a period of four weeks from the date of the payment of the necessary charges by the petitioner and on receipt of the representation made by the petitioner in this regard.

13. This writ petition is disposed of in the above terms. No Costs. Consequently, connected miscellaneous petition is closed.

11.04.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

1. The Assistant Director,
District Town and Country Planning Department,
Kumaran Commercial Complex,
Tiruppur – 01.



2. The Special Officer for Bodipatti Panchayat/
The Block Development Officer (Village Panchayat),
Udumalpet Union,
Udumalpet.

3. The President,
Bodipatti Panchayat,
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N. ANAND VENKATESH, J.

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