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W.P.No.12646 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.12646 of 2023

and

W.M.P.Nos.12430 and 12432 of 2023

S.P.Dowladh Basha

... Petitioner

VS.

- 1.The Director
Town and Country Planning Department
Koyembedu
Chennai 600 107
- 2.The Assistant Director,
Town and Country Planning,
Dharmapuri District.
- 3.The Executive Officer,
Papparapatti Town Panchayat.
- 4.The President,
Madhaehalli Village Panchayat,
Dharmapuri District.
- 5.The Block Development Officer,
Pennagaram.



W.P.No.12646 of 2023

6.The Sub Registrar,
Palacode

7.C.Pichan

8.K.Surya

9.Santhana Lakshmi

10.Arumugam

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in Na.Ka.No.1719/2021/T.M., dated 03.03.2022, on the file of the 2nd respondent and quash the same and consequently to cancel the layout approval dated 26.08.2022 on the file of the 4th respondent.

For Petitioner : Mr.S.C.Vishwanth

For R1, R2, R3
and R6 : Mr.C.Selvaraj
Additional Government Pleader

For R4 : Mr.P.P.Purushothaman

For R5 : Mr.Balathandayutham



W.P.No.12646 of 2023

ORDER

WEB COPY

The writ petition is filed challenging the order passed by the 2nd respondent granting approval to the layout proposed by respondents 7 to 10 in S.Nos.195/4D1A2 and 195/4D1A3 situated at Madhaehalli Village and Panchayat and S.Nos.522/1B, 522/1C, 522/1E and 522/1F situated in Papparapatti Village and Panchayat, Pennagaram Taluk, Dharmapuri District.

2. The impugned order granting layout approval passed by the 2nd respondent was challenged by the petitioner mainly on the ground that there is no access road available to the layout from the main road. It is the submission of the learned counsel appearing for the petitioner that his private land has been shown as a access road for the layout approved by the 2nd respondent and therefore, the approval order granted by the 2nd respondent is liable to be set aside.

3. The learned counsel appearing for the private respondents, the promoters of the layout, by taking this Court to Section 79 of the Tamil



W.P.No.12646 of 2023

Nadu Town and Country Planning Act, 1971, submitted that any person aggrieved by the order granting layout approval is entitled to file an appeal before the Prescribed Authority under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971. Therefore, the writ petition filed by the petitioner without availing alternative remedy is not maintainable.

4. The learned Additional Government Pleader appearing for respondents 1, 2, 3 and 6 by referring to the counter affidavit filed by the 2nd respondent, submitted that layout approval was granted by the 2nd respondent based on the certificate issued by 5th respondent that there is a 23 feet access road to the proposed layout.

5. In view of the fact that existence of access road to the proposed layout is a disputed question of fact, this Court is not inclined to entertain the writ petition, especially when the petitioner is having effective alternative remedy by way of filing an appeal under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971.



W.P.No.12646 of 2023

6. A perusal of Section 79 of the Tamil Nadu Town and Country Planning Act, 1971 would indicate that the Appellate Authority is also having power to pass appropriate interlocutory orders pending consideration of the appeal. In such circumstances, the appellate remedy available under the Tamil Nadu Town and Country Planning Act, 1971 cannot be termed as an ineffective remedy. Therefore, the petitioner is directed to file an appeal challenging the order impugned in this writ petition before the Prescribed Authority. The time taken by the petitioner in prosecuting the writ petition before this Court namely from 17.04.2023 to the date of receipt of copy of the order can be excluded while calculating limitation for filing the appeal.

7. It is needless to say that the Appellate Authority has got power to condone the delay. In case, there is any delay in filing appeal, the petitioner is also permitted to file a petition to condone the delay in filing appeal, if necessary, explaining the reason for the delay.

8. Therefore, the writ petition is dismissed with liberty to the petitioner to avail alternative remedy. No costs. Consequently, the connected miscellaneous petitions are closed.



W.P.No.12646 of 2023

9. This Court already granted *status quo* in favour of the petitioner.

The petitioner is entitled to file an application seeking interim protection before the Appellate Authority under Section 79 (5) of the Tamil Nadu Town and Country Planning Act, 1971. Till the application filed by the petitioner is considered on merits by the Appellate Authority, the parties are directed to maintain *status quo*.

29.08.2023

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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Note: The Registry is directed to return the original impugned order to the learned counsel for the petitioner.



W.P.No.12646 of 2023

To

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WEB COPY



W.P.No.12646 of 2023

S.SOUNTHAR, J.

dm

W.P.No.12646 of 2023

29.08.2023



WEB COPY



W.P.No.12646 of 2023

W.P.No.12646 of 2023
and W.M.P.Nos.12430 & 12432 of 2023

S.SOUNTHAR, J.

This matter is listed “for being mentioned” at the instance of the learned counsel for the petitioner.

2.Mr.M.Loganathan, learned counsel appearing for the private respondents 7 to 10 submits that in the preamble portion of the order, his name has not been mentioned. However, the contention of the learned counsel is referred to in Paragraph No.3 of the order.

3.In view of the same, the Registry is directed to mention the name of the learned counsel appearing for the private respondents 7 to 10 in the preamble portion of the order and issue fresh order copy.

25.09.2023

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W.P.No.12646 of 2023

S.SOUNTHAR, J.

W.P.No.12646 of 2023
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