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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.12970 of 2023

1.P.Shanmugam

2.A.K.Chinnusamy

3.A.P.Chellamuthu

4.K.Palaniappan

5.Palanisamy

Petitioners

vs.

1.The Assistant Director,
District Urban Planning Office,
(District Town and Country Planning)
Namakkal District.

2.Mrs.P.Nirmala

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to consider on merits of the application of the petitioners vide reference No.NKL/B3HAFXC3/2857/2002 through online dated 21.09.2022 for grant of final approval of layout of the petitioners land bearing survey No.213/1A1D1 measuring about Ac.1.33 cents or 0.54.15 Hectares of Manavari lands of Thekkavadi Village, Tiruchengode Taluk, Namakkal District without reference to the suit filed by the 2nd respondent in O.S.No.61/2022, on the file of the DMC,



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For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.A.M.Ayyadurai
Government Advocate for R1

ORDER

This writ petition has been filed for issue of writ of mandamus directing the 1st respondent to consider the application submitted by the petitioner through online mode on 21.09.2022 and for grant of final approval of the layout for the land in S.No.213/1A1D1 measuring about Ac.1.3 cents or 0.54.15 Hectares of Manavari lands of Thokkavadi Village, Tiruchengode Taluk, Namakkal District.

2.The case of the petitioners is that they are the absolute owners of the subject property by virtue of a registered Sale Deed dated 14.09.2011 registered as Doc.No.7447 of 2011. The 2nd respondent approached the petitioners and she purchased through a Sale Deed dated 24.11.2011, Plot No.13 measuring an extent of 2000 Sq.Ft. and she was also given the right of access over 7½ cents on the northern side. Based on the same, the 2nd respondent also obtained a separate patta in her name. Pursuant to this conveyance, the petitioners had retained an extent of nearly 1.233 acres which has been subdivided as S.No.213/1A1D1 at Thokkavadi Village and they have also been given patta in Patta No.4054. The further case of the petitioner is that they applied for approval of the layout of this land through



technical approval was also granted by the 1st respondent through proceedings dated 11.11.2022. The petitioners also paid the prescribed fees before the 1st respondent along with all the relevant documents seeking for final approval. In the meantime, the petitioners had executed Gift Deed in favour of the 1st respondent through a registered Gift Deed dated 15.11.2021 registered as Doc.No.8283/2021. The property that was conveyed through the Gift Deed was also assigned S.No.213/1A1C and it is now standing in the name of the 1st respondent and it is earmarked as a public road.

3.The petitioners were awaiting for the final approval from the 1st respondent. At that point of time, the petitioners came to know that the 2nd respondent had filed a suit in O.S.No.71 of 2022 before the District Munsif Court, Tiruchengode seeking for the relief of permanent injunction against the petitioners not in any way assign or sell the right of use of the suit schedule property. Due to the pendency of this suit, the processing of the application given by the petitioners seeking for final approval came to a standstill. The representation made by the petitioners also did not evoke any response. Left with no other alternative, the present writ petition has been filed before this Court seeking for appropriate directions.



4. Heard Mr.T.M.Hariharan, learned counsel appearing on behalf of the petitioners and Mr.A.M.Ayyathurai, learned Government Advocate appearing on behalf of the 1st respondent.

5.The learned Government Advocate appearing on behalf of the 1st respondent submitted that the final approval has not been given till date only due to the pendency of the suit in O.S.No.71 of 2022 on the file of the District Munsif Court, Tiruchengode.

6.The learned counsel for the petitioners submitted that the 2nd respondent has filed the suit even without arraying the 1st respondent as a party to the suit in spite of the fact that the 1st respondent had already become the owner of the land that has already been conveyed by means of a Gift Deed as early as in the year 2021. The learned counsel further submitted that the 2nd respondent has not obtained any orders against the 1st respondent and hence, the 1st respondent cannot refuse to exercise their statutory duty in processing the application and granting the final approval.

7.In the considered view of this Court, merely because a suit has been filed by the 2nd respondent, that cannot be a ground for the 1st respondent to keep the final approval pending. Admittedly, the technical approval has been granted and



the Gift Deed has already been executed in favour of the 1st respondent and what remains is only the final approval to be given. As on today, no orders have been passed by the Civil Court restraining the usage of the suit schedule property and it will take years together for the suit to be disposed of. This is more so in view of the fact that the 2nd respondent has not even bothered to add the necessary parties to the suit. Therefore, the 1st respondent cannot be permitted to take a stand that the final approval will be given only after the disposal of the suit. If at all, the 2nd respondent has any right over the suit schedule property, she has to establish it only in the suit after trial and it goes without saying that the rights will be worked out based on the final result in the suit. Hence, this civil proceedings will not stand in the way of the 1st respondent considering the application submitted by the petitioner seeking for final approval in the absence of any restraint orders.

8. In the light of the above discussion, there shall be a direction to the 1st respondent to proceed further and process the application given by the petitioners which is now at the stage of grant of final approval and necessary orders shall be passed, within a period of four weeks from the date of receipt of copy of this order. The petitioners are directed to make a fresh representation to the 2nd respondent along with all the relevant documents and also a copy of this order.



N. ANAND VENKATESH, J.

SSR

WEB COPY 9. This writ petition is disposed of with the above directions. No Costs.

27.04.2023

Index : Yes/No

(2/2)

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

SSR

To

The Assistant Director,
District Urban Planning Office,
(District Town and Country Planning)
Namakkal District.

W.P No.12970 of 2023

(2/2)