



WEB COPY



W.P.No.20353 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTAR

W.P.No.20353 of 2023
and W.M.P.Nos.19716 and 19717 of 2023

Kamalammal

... Petitioner

VS.

1.The Assistant Director
Town Local Planning Department [Planning Permission]
No. 6, Sannathi Street, Subramaniya Nagar
Sooramangalam
Salem – 636 005.

2.The Commissioner
Attur Municipality
Attur Taluk
Salem District.

3.Boobathy

4.Devan

5.Arul

6.Sathish

7.K.Ganesan

8.S.Bharath

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of



W.P.No.20353 of 2023

India, to issue a Writ of Certiorarified Mandamus, calling for the records culminated in the impugned order vide Approval No.SWP/DTCP/SALEM/LAYOUT No.40/2023 dated 01.02.2023 on the file of the 1st respondent, and quash the same as illegal, null, void, arbitrary, without any authority, without jurisdiction and ultra vires and consequently, direct the 2nd respondent from not to issue building approval pursuant to the impugned order passed by the 1st respondent vide Approval No.SWP/DTCP/SALEM/LAYOUT No.40/2023 dated 01.02.2023 in respect of properties admeasuring to an extent of Acre 2.40 cents comprised in S.F.Nos.7/1 and 7/4, Block 21, Ward B, Mulluvadi Village, Attur Taluk and Salem District in favour of the 7th and 8th respondents or in favour of their assignees.

For Petitioner	: Mr.Shangar Murali
For R1	: Mr.N.Naveenkumar Government Advocate
For R2	: Mr.B.Anand Standing Counsel
For R3 to R8	: Mr.S.Parthasarathy Senior Advocate for M/s.P.Dineshkumar

ORDER

The petitioner herein has come by way of this writ petition challenging the order passed by the 1st respondent approving the layout promoted by respondents 7 and 8.



W.P.No.20353 of 2023

2. It is the case of the petitioner that the property in respect of which the layout is promoted by respondents 7 and 8 originally belonged to one Solaimuthu Naickar. He had three sons by name A.S.Chinnasamy, Muthuraja and Govindharaj. The petitioner herein claiming herself as a testamentary heir of A.S.Chinnasamy, who died in the year 2019. It is also stated by the petitioner that said A.S.Chinnasamy filed a suit for partition against his siblings Muthuraja and Govindharaj in O.S.No.303 of 1997 on the file of Sub Court, Attur and a preliminary decree was passed for 1/3 share. Subsequently, the said A.S.Chinnasamy filed I.A.No.111 of 1997 for passing of final decree but due to some reason or other the same was not pursued.

3. Now, subsequent to the death of A.S.Chinnasamy, the petitioner filed final decree petition in the said suit in I.A.No.1 of 2023 and the same is pending.

4. It is the case of the petitioner that when the suit was pending, the respondents 3 to 6, who are legal heirs of brothers of A.S.Chinnasamy sold the entire property in favour of respondents 7 and 8 including



W.P.No.20353 of 2023

A.S.Chinnasamy's 1/3 share over which the petitioner is claiming right.

Thereafter, the purchasers namely respondents 7 and 8 promoted a layout and got approval from 1st respondent by way of impugned order.

5. The learned counsel for the petitioner assails the impugned order mainly on the ground that petitioner is one of the sharer entitled to 1/3 share over the property and without her consent, the respondents 7 and 8 are not entitled to get approval from the 1st respondent.

6. The petitioner claiming 1/3 right in the property in question by virtue of a Will allegedly executed by one of the sharer namely A.S.Chinnasamy on 01.09.1989. This Court sitting in writ jurisdiction cannot go into the validity of testamentary document under which the petitioner is claiming right. Admittedly, the petitioner already filed final decree petition in O.S.No.303 of 1997 on the file of the Sub Court, Attur. It is for the petitioner to establish her right under the Will before the Civil Court. It is also open to the petitioner to work out her other remedies including any interim order by moving appropriate application before the Civil Court.



W.P.No.20353 of 2023

7. With these observations, the writ petition is disposed of. No costs.

Consequently, the connected miscellaneous petitions are closed.

27.07.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm

To

1. The Assistant Director
Town Local Planning Department [Planning Permission]
No. 6, Sannathi Street, Subramaniya Nagar
Sooramangalam
Salem – 636 005.

2. The Commissioner
Attur Municipality
Attur Taluk
Salem District.



WEB COPY



W.P.No.20353 of 2023

S.SOUNTHAR, J.

dm

W.P.No.20353 of 2023

27.07.2023