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W.P. Nos. 22091 and 22105 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 22091 and 22105 of 2023

and

W.M.P. Nos. 21490, 21491, 21511 and 21512 of 2023

W.P. No. 22091 of 2023

Lalitha

... Petitioner

-VS-

1. The Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai – 600009.
2. The Director,
Directorate of Town and Country Planning,
E&C Market Road,
Koyambedu,
Chennai – 600017.
3. The Deputy Director,
Erode District Town and Country Planning Office,
Erode District,
Erode – 9.
4. The Sub-Registrar,
Sathyamangalam SRO,
Athani Road,
Sathyamangalam,
Erode District – 638 401.
5. S.K.Senniappa Gounder
6. S.Subramaniam



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7. M.Ramesh

8. P.L.Balachandiran

9. S.Muthulakshmi

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to quash the impugned approval of the layout plan granted by the Third Respondent in Na. Ka. No. 5658/21/E.Ma/2 dated 13.06.2022 with respect to 2.20 acres of land in S.F. Nos. 16/2A, 16/2B1B & 16/2D2 in Sellipalayam Village, Sathyamangalam Taluk, Erode District, granted in favour of the Seventh to Ninth Respondents.

W.P. No. 22105 of 2023

Lalitha

... Petitioner

-VS-

1. The Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai – 600 009.
2. The Director,
Directorate of Town and Country Planning,
E&C Market Road,
Koyambedu,
Chennai – 600 017.
3. The Deputy Director,
Erode District Town and Country Planning Office,
Erode District,
Erode – 9.



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4. The Sub-Registrar,
Sathyamangalam SRO,
Athani Road,
Sathyamangalam,
Erode District – 638 401.

5. S.K.Senniappa Gounder

6. S.Subramaniam

7. K.Mohanraj

8. K.K.Karunamoorthy

9. K.K.Shanmugam

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to quash the impugned approval of the layout plan granted by the Third Respondent in ROC No. ERD/06941R9B/2022/TCP dated 11.10.2022 with respect to 2.06 acres of land in S.F. Nos. 16/2B1C & 16/2D2 in Sellipalayam Village, Kembanaickenpalayam Village, Sathyamangalam Taluk, Erode District, granted in favour of the Seventh to Ninth Respondents.

For Petitioner
in both W.Ps

: Mr. G.K.Muthukumar
for Mr. M.Roshan Atiq

For Respondents
in both W.Ps

: Mr. U.Baranidharan,
Additional Government Pleader
(for R1 to R4)

Mr. M.Guruprasad (for R5 & R6)

Mr. S.Maniraj (for R7)

No appearance (for R8 & R9)



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COMMON ORDER

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Heard Mr. G.K.Muthukumar, Learned Counsel for the Petitioner, Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the First to Fourth Respondents, Mr. M.Guruprasad, Learned Counsel for the Fifth and Sixth Respondents and Mr. S.Maniraj, Learned Counsel for the Seventh Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is the daughter and sister of the Fifth and Sixth Respondents respectively, and she claims to be a coparcener having one-third share in their joint family property of an extent of 10.61¼ acres of land in New Survey Nos. 16/1A, 16/1B, 16/2A, 16/2B1, 16/2B2, 16/2C, 16/2D, 16/3, 16/4 and 16/5 in Sellipalayam Village, Sathyamangalam Taluk, Erode District. According to the Fifth and Sixth Respondents, a release-deed dated 05.09.1995 registered as Document No. 221/1995 in the office of the Sub-Registrar, Sathyamangalam was executed by the Petitioner transferring her entire share in the said property in their favour. Subsequently, the Fifth and Sixth Respondents had sold the extents of 2.20 acres and 2.06¼ acres to the Seventh to Ninth Respondents in W.P. Nos. 22091 and 22105 of 2023 by sale-deeds



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dated 07.09.2021 registered as Document Nos. 5122 and 5121 of 2021

respectively in the office of the Sub-Registrar, Sathyamangalam and they have obtained lay-out approvals from the Third Respondent by Proceedings in Na.Ka. No. 5658/2021/E.Ma/2 dated 13.06.2022 and ROC No. ERD/06941R9B/2022/TCP dated 11.10.2022 respectively and have also allotted some of those plots to third parties. Thereafter, the Petitioner has filed a suit in O.S. No. 47 of 2021 before III Additional District Court, Erode at Gobichettipalayam (hereinafter referred to as 'the Civil Court' for short) seeking partition of the joint family property (which includes the properties that have been sold by the Fifth and Sixth Respondents to the Seventh to Ninth Respondents in both Writ Petitions), which is pending.

3. While matters stand as narrated supra, these Writ Petitions have been filed challenging the lay-out approvals granted by the Third Respondent in favour of the Seventh to Ninth Respondents in both Writ Petitions.

4. This Court at the time of admission on 26.07.2023 had granted an order of interim injunction restraining the Seventh to Ninth Respondents from alienating the plots for which lay-out approvals had been granted by the Third Respondent, which continue to be in force till date.



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5. Having due regard to the rival contentions, it is evident that the nature of relief claimed by the Petitioner falls within the realm of disputed questions of fact, which cannot be effectively determined by this Court in proceedings under Article 226 of the Constitution following summary procedure. It must be recapitulated here that the Hon'ble Supreme Court of India in the decision in ***Roshina T. -vs- Abdul Azeez K.T.*** [(2019) 2 SCC 329] has cautioned that such claims relating to property rights would have to be answered one way or the other only in a properly framed suit impleading necessary parties before the civil court. In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in these Writ Petitions in the pending suit in the Civil Court and there is no acceptable explanation from the Petitioner for not having availed it. It would obviously follow that it is only in the event that the Petitioner first establishes her title to the property claimed against the Fifth to Ninth Respondents in both Writ Petitions before the Civil Court that she could seek for revocation of lay-out approvals under Section 54 of the Tamil Nadu Town and Country Planning Act, 1971, from the Third Respondent. In that view of the matter, this Court is not inclined to entertain this Writ Petition or delve into the merits of the controversy involved.



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6. At the same time, in order to balance equities between the contesting parties till the ultimate outcome of the pending suit in the Civil Court, the Fifth and Sixth Respondents have undertaken by affidavit dated 25.11.2023 along with FMB sketch with demarcated portions that they would not alienate the unsold portions of the joint family property without prior permission of the Civil Court in consonance with the doctrine of *lis pendens* as mandated in Section 52 of the Transfer of Property Act, 1882, so that if it is found later that the Petitioner would be entitled to any share in the joint family property, such allocation could be made from the unsold portion of that property. In other words, it has been made clear that no fetter has been created on the rights of the Seventh to Ninth Respondents in both Writ Petitions to alienate the plots falling within the lay-out approvals granted by the Third Respondent in the respective portions of the property already sold to them by the Fifth and Sixth Respondents without prejudice to their contentions in the pending suit in the Civil Court. The interim order granted by this Court on 26.07.2023 stands modified to this extent.

7. The Civil Court shall ensure that there is atleast two effective hearings every month showing progress of the pending suit and quarterly reports are sent in that regard to the Registrar (Judicial) of this Court till it is finally decided.



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WEB COPY In the result, these Writ Petitions are disposed on the aforesaid terms.

consequently, the connected Miscellaneous Petitions are closed. No costs.

21.12.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

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To

1. The Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai – 600009.
2. The Director,
Directorate of Town and Country Planning,
E&C Market Road,
Koyambedu,
Chennai – 600017.
3. The Deputy Director,
Erode District Town and Country Planning Office,
Erode District,
Erode – 9.
4. The Sub-Registrar,
Sathyamangalam SRO,
Athani Road,
Sathyamangalam,
Erode District – 638 401.

Copy to

The Judge, III Additional District Court,
Erode at Gobichettipalayam.



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P.D. AUDIKESAVALU, J.

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