



W.P.No.24278 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.24278 of 2022

Uma Mohanraj

.. Petitioner

Versus

1. The State of Tamil Nadu
Rep by The Secretary to Government
Housing and Urban Development Department
Fort St.George, Chennai- 600 009.

2. The Director
Directorate of Town and Country Planning
2nd Floor C and E Market Road
Koyambedu, Chennai- 600 107

3.The Deputy Director Town and
Country Planning (Coimbatore Region)
Dr. Nanjappa Road, Corporation
Shopping Complex Coimbatore- 641 018.

4.The District Collector
Collectorate building
Coimbatore- 641 018.

5. The Corporation Commissioner
Coimbatore City Municipal Corporation
Coimbatore- 641 001.

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the proceedings of the 2nd Respondent in Na.Ka.No.13180/2022/TCP 10 dated 6/7/2022 and quash the same and direct the respondents to grant building approval for the petitioners property in S.No.24/1, New Thillai Nagar, Coimbatore.

For Petitioner : M/s.Lita Srinivasan

For Respondents : Mr.K.Karthick Jaganathan for R1 to R4
Government Advocate

Mr.K.M.D.Muhilan for R5
Additional Government Pleader

ORDER

This writ petition has been filed challenging the proceedings of the 2nd Respondent in Na.Ka.No.13180/2022/TCP 10 dated 6/7/2022 and quash the same and direct the respondents to grant building approval for the petitioners property in S.No.24/1, New Thillai Nagar, Coimbatore.

2. The petitioner is a senior citizen had purchased the property from one Rangammal vide registered Document in Doc.No.2735 of 1992 measuring to an extent of 3627 sq.ft., at Site No.3 in S.No.24/1 of New

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Thillai Nagar, Coimbatore for valuable consideration. The petitioner's vendor namely one Rangammal and her sisters were allotted 62 cents based on the final decree granted on 30.04.1989 in I.A.No.241 of 1982 in O.S.No.1182/1980 on the file of First Additional Subordinate Judge, Coimbatore. The vendor Rangammal and her sisters partitioned their share of 62 cents and site No.3 to an extent of 3627 sq.ft., vide Doc.No2573 of 1989 dated 11.09.1989.

3. The Panchayat had originally granted building permission before sale of property. When the petitioner made an application, the respondent took a stand that the area has been reserved for OSR (Open Space Reservation). Hence, the petitioner gave a representation dated 09.02.2017 to de-reserve the area. According to the petitioner, the original layout has also not contained any signature of original owners. Hence, challenges the impugned order refusing to grant permission to the petitioner by way of this writ petition.

4. Counter has been filed by the third respondent. The stand of the respondent is that the planning permission was obtained in LPA



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No.199/1980. However, the original drawing is not available at the Coimbatore Local Planning Authority Office. The petitioner originally purchased the property during the year 1992, viz., 15.07.1992. Hence, it is the stand of the respondent that since the area is already earmarked as OSR, no plan could be sanctioned.

5. In the reply to the counter affidavit, it is the contention that the layout plan relied upon by the respondent is not there, the petitioner property has been sub-divided and the revenue records stand in her name and thereafter, many residential buildings were put up in the area. There are more than 7 residential unit in other places, said to have been earmarked for OSR. Assessment is also made on the above properties.

6. Mr.K.Karthick Jaganath, learned Government Advocate takes notice for the respondents.

7. The main contention of the learned counsel for the petitioner is that the alleged layout is only the creation of a story. Admittedly, even in the counter, it would indicate that the original layout plan is not available with



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the respondents. Be that, as it may, the alleged layout has been sanctioned pursuant to the agreement of sale entered into by the brother of the vendor of the petitioner. Based on that, layout is said to have been approved without any title. A suit in OS. No. 1182 of 1980 was filed by the sisters of one Rengasamy for partition of their shares. The above suit has been decreed declaring the rights of the vendor of the petitioner. As a result, final decree came to be passed 30.04.1989 in I.A.No.241 of 1982 in O.S.No.1182/1980 and 62 cents were allotted to the sisters of one Mr.Rangasamy. The petitioner herein purchased from one of the above referred sisters namely Mrs.Rangammal an extent of 3627 sq.ft..

8. The Civil Court has clearly held that the agreement for sale is not binding on the plaintiffs. Such being the position, merely, on the basis of alleged layout, the right of the petitioner cannot be denied. Whereas, the learned Government Advocate admitting that the suit has been decreed and a final decree has been passed allotting 62 cents to the sisters of one Rangasamy. It is his contention that layout plan has been approved based on the agreement entered into between Rangasamy and another. Therefore, once the land is earmarked for public purposes, no plan could be issued.



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9. Heard both sides and perused the materials placed on record. It appears that layout has been approved in the year 1980 based on the agreement for sale said to have been entered into between one Mr.Rangasamy and another. Based on the said agreement, per say, planning permission appears to have been approved in layout LPA.No.199/1980 on 10.06.1980. However, the records have not been produced to substantiate the same. Even, in the paragraph 4 of the counter affidavit filed by the third respondent, it is clearly averred that no records is available before the Coimbatore Local Planning Authority Office. Be that as it may, a larger extent of 1.74 acres was the subject matter of the alleged layout. In respect of the above said lands. The said land was originally owned by Krishnappa Naicker. After the death of the said Mr.Krishnappa Naicker, his daughters have filed a suit in O.S. No.1182 of 1980, wherein, a preliminary decree has been passed declaring the rights in respect of 64 cents which has been culminated into a final decree proceedings vide decree dated 30.04.1989 passed in I.A.No.241 of 1982 in O.S.No.1182/1980, wherein, the advocate commissioner was appointed and the property has been earmarked separately.



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10. The petitioner herein is the purchaser from one of the allottee namely Mrs.Rangammal. In the above suit, one of the issue framed by the Civil Court was that whether an agreement relied upon by one Mr.K.Rangsamay is true, valid and binding on the plaintiffs. The Civil Court in issue No. 3 has categorically held that since the plaintiffs are not party of the agreement, the same is not binding on them and their interest will not be affected. Such being the position, when the agreement for sale as entered by some other persons who has no valid title and based on that the alleged planning permission is said to have been granted. This Court is of the view that the same will not bind the true owners who have acquired the rights legally. It is also declared by the competent civil court.

11. The other submissions made by the learned Government Advocate is that since, the land has been earmarked as an OSR, the interest of the predecessor of plots will be affected. Such submission will not hold good for the simple reason that when the layout plan itself is approved without proper verification of title. Merely, because the plan has been approved by the authority that will not convey any better title to the purchaser of layout. Even the plot owners ought to have been more vigil in verifying the plan.



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The *Doctrine of Caveat Emptor* also apply to them. Therefore, as a matter of right, the plot owners cannot claim any right on the land which at the time of planning permission did not belong to the persons when applied for such permission.

12. Such view of the matter, this Court is of the view that when the petitioner has legally acquired title and she or her vendor was not a party to the application for the planning permission, merely, on the basis of the alleged planning permission which is also approved based on the imperfect title. The title of the petitioner or vendor cannot be divested on the basis of the approved plan, which is also not proved before this Court.

13. On earlier occasion, this Court in a contempt proceedings in Cont.P.No.1139 of 2022 by order dated 15.07.2022 has held that the rights of the petitioner to put up a construction on the land also cannot be denied as it was not binding on petitioner or her predecessor and further, liberty was also granted to the petitioner to challenge the impugned order, which has resulted in filing this writ petition.



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14. Such view of the matter, this Court is of the view that the respondent cannot refuse the approval. The impugned order rejecting the approval hereby stands quashed and the respondent is directed to grant the building permission to the petitioner within a period of one month.

15. At this time, the learned Government Advocate submitted that the petitioner may make a fresh application to the official respondent. Therefore, the petitioner shall make a fresh application within a period of two weeks from the date of receipt of a copy of this Order and on such application being filed, the same shall be considered and planning permission shall be granted within a period of one month thereafter.

16. It is also brought to the notice of this Court that the so-called OSR area is not available in ground. The Google map produced before this Court would indicate that the no such space is available. Such view of the matter, since, the petitioner has acquired the title in a lawful manner, the right cannot be divested by way of planning permission which is also accorded without any valid title at the relevant point of time.



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17. With the above, this writ petition stands allowed. No costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation : Yes/No

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