



WEB COPY

WP No.28593 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-08-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.28593 of 2022

Balamurugan

... Petitioner

Vs.

1.The District Registrar,
Salem.

2.The Sub Registrar,
Mecheri Sub Registrar Office,
Mecheri,
Salem District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the second respondent in Refusal Receipt No.91712211/2022, T.P.No.134113184/2022, Support Request No.9981764 dated 29.09.2022 and quash the same and consequently direct the second respondent to register the document submitted by the petitioner.



For Petitioner : Mr.T.Ganesan
For Respondents : Mr.D.Ravichander,
Special Government Pleader.

ORDER

The writ on hand has been instituted questioning the validity of the impugned Refusal Check Slip issued by the Sub Registrar in proceedings dated 29.09.2022.

2. The petitioner states that he entered into Sale Agreement on 11.08.2022 with his vendor for purchase of the property situated in S.No.474/5C1 to an extent of 6 cents at Mallikuntham Village, Mettur Taluk, Mecheri Sub Registrar Office, Salem District.

3. The petitioner presented the Sale Deed executed on 29.09.2022 for registration. The second respondent returned the document along with the impugned Refusal Check Slip on the ground that the petitioner has to get approval from the Planning Authority in view of Section 22-A of the Registration Act, 1908.



4. The learned counsel for the petitioner mainly contended that the Government issued G.O.Ms.No.78, Housing and Urban Development Department, dated 04.05.2017, regarding regularisation of Unapproved Plots and Layouts Rules. As per the said Rules, 'Layout' means “(i) division of land into plots exceeding 8 (eight) in numbers in Chennai Metropolitan Planning Area; and (ii) division of land into plots by introducing a new road or street in areas other than Chennai Metropolitan Planning Area”.

5. In the present case, there is no such layout formed and the petitioner has proposed to purchase land to an extent of six cents and thus the application of Section 22-A of the Registration Act, 1908, is incorrect.

6. The learned counsel for the petitioner relied on the Circular issued by the Inspector General of Registration in the letter dated 18.03.2020, wherein based on G.O.Ms.No.78, Housing and Urban Development Department, dated 04.05.2017, a clarification was issued.

7. Relying on the said clarification, it is stated that the Sale Deed presented by the petitioner is to be registered.



8. The learned Special Government Pleader, appearing on behalf of the respondents, raised an objection by stating that the Government Order issued in G.O.Ms.No.78, Housing and Urban Development Department, dated 04.05.2017, has no application regarding the registration to be made under the provisions of the Registration Act, 1908.

9. G.O.Ms.No.78, dated 04.05.2017, was issued by the Housing and Urban Development Department regarding regularisation of Unapproved Plots and Layouts Rules under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972). Therefore, the said Government Order is inapplicable with reference to the registration to be made under the provisions of the Registration Act, 1908. The clarification issued by the Inspector General of Registration pertaining to a particular case, cannot be now relied upon by the petitioner, since the Government Order issued in G.O.Ms.No.78, dated 04.05.2017 is inapplicable.



10. Considering the arguments of the respective learned counsel appearing on behalf of the parties to the lis on hand, let us now consider the scope of Section 22-A(2) which stipulates “instrument relating to the transfer of ownership of lands converted as house sites without the permission for the development of such land from Planning Authority concerned shall be refused.”

11. Sub Section (2) to Section 22-A of the Act, do not speak about the layouts or formation of layouts or otherwise. It reiterates instrument relating to transfer of ownership of lands converted as house sites without the permission from Planing Authority concerned for the development of such land. Therefore, any land, which is proposed to be used as house site, requires permission from the Planning Authority.

12. In the present case, the petitioner proposed to purchase six cents of land. The petitioner may say that he has no intention to construct house immediately. In such circumstances, whether approval from the Planning Authority is required or not is the question to be considered. The very purpose and object of amendment and insertion of Section 22-A of the



Act, is to ensure that the buildings, residential houses etc., are constructed in the approved plots and regulated.

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13. In this context, Section 49 (1) of the Town and Country Planning Act, 1971, enumerates “Application for permission’.-Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of Section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, shall make an application in writing to the appropriate Planning Authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed”.

14. Therefore, even for a single plot purchased by an individual, an application has to be submitted for the purpose of getting approval under the provisions of the Town and Country Planning Act, 1971. If at all the plot is falling under the territorial jurisdiction of the Local Authority, then such permission/approval is to be obtained from the



concerned Authorities under the provisions of the applicable Statutes and the Rules in force.

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15. Rule 4 of the Tamil Nadu Combined Development and Building Rules 2019 framed in exercise of the powers conferred by Sub Section (4) of Section 32 and Section 122 of the Tamil Nadu Town and Country Planning Act, 1971 states about “written permission for development-Subject to Sections 47 and 58 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) no person shall carry out any development or construction of building or structure, subdivision, layout, reconstitution or amalgamation of land or change of use of land or building without the written permission of the competent authority.”

16. Therefore, even in respect of an individual house site/ housing plot, an approval/permission from the Competent Authority under the relevant Statute is mandatory. The Registering Authority under the Registration Act, may not have knowledge about construction of a house or building in respect of the document of Sale Deed presented for registration.



Therefore, wherever a smaller extent of land is sought to be transferred and the surrounding areas are residential locality, and cannot be utilised as agricultural land, the Registering Authority shall demand the presentant of a document to obtain approval from the Planning Authority in compliance with Section 22-A(2) of the Registration Act, 1908. Whether such person has a proposal to construct a building immediately or in future, is immaterial for the purpose of compliance of Section 22-A(2) of the Registration Act, 1908.

17. Once the Registering Authority found that the land proposed to be transferred, is not an agricultural land and no cultivating activities are going on and there is a possibility of construction of buildings, houses etc., even in future, then the Registering Authority is empowered to ask the presentant of the document to obtain approval from the Competent Planning Authority.

18. The very purpose and object of the amendment and insertion of Section 22-A of the Registration Act, 1908, is to ensure that housing sites are regulated and the buildings are not constructed without



approval of land from the Planning Authority concerned.

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19. That being the purpose and object of the amendment, the presentant of a document, at no circumstances, shall be allowed to defeat the spirit of the legislative intention by merely stating that they do not propose to construct a house immediately or otherwise. The word 'Layout' is not employed in Section 22-A of the Registration Act, 1908. The purport of Section 22-A of the Registration Act, 1908 would indicate that any instrument relating to transfer of ownership of land converted as house sites without the permission from the Planning Authority shall be refused. Therefore, the legislative intention of amendment is to ensure that the house sites are regulated across the State of Tamil Nadu and no house site is left out without permission/land approval hereinafter. Therefore, the amendment is to be interpreted, so as to ensure that the intention of the amendment has been complied with in all respects. The idea of the presentant of a document is immaterial and whether a building is going to be constructed immediately or in future, but in respect of the land, which is proposed to be converted as a house site [such proposal is for immediate construction or for future construction, which is immaterial] or the surrounding areas are housing



localities, the Registering Authority is empowered to demand permission from the Planning Authority for the purpose of registering the document.

Thus the Government Order relied on by the petitioner in G.O.Ms.No.78, Housing and Urban Development Department, dated 04.05.2017, is inapplicable and not connected with the purport of Section 22-A(2) of the Registration Act, 1908.

20. The clarifications cannot override the provisions of the Act.

The clarifications issued by the Government/Inspector General of Registration in such circumstances is to be understood in the context of the question raised before the Inspector General of Registration and all other cases are to be considered based on the facts involved and therefore, in the present case, the petitioner has to secure appropriate approval from the Competent Planning Authority and thereafter present the document for registration and in the event of such presentation, the Registering Authority shall proceed with the registration.

21. An illegality, if any, committed cannot be a ground for the petitioner to claim equity under Article 14 of the Constitution of India. A



submission made by the petitioner that an adjacent land has already been registered without planning permission cannot be considered for the purpose of committing an illegality in perpetuity. Thus the said contention of the learned counsel for the petitioner deserves no merit consideration.

22. In respect of such illegalities, the Competent Authority under the Registration Act, 1908 is empowered to invoke Section 77-A of the Registration Act, 1908.

23. In view of the above facts and circumstances, the present writ petition stands dismissed. However, there shall be no order as to costs.

11-08-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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Salem.
2. The Sub Registrar,
Mecheri Sub Registrar Office,
Mecheri,
Salem District.



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S.M.SUBRAMANIAM, J.

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