



W.P.No.33695 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

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1.S.Baskar
2.D.V.Gnanaprakasam
3.C.V.Arun Kumar
4.V.Raghuraman
5.Rajeswari Thiyagrajan
6.V.Raja
7.K.Priya
8.V.Hema
9.A.N.Swamy
10.Shylas Dinesh

... Petitioners

versus

1.The District Collector,
Office of the District Collector,
Kancheepuram District, Kancheepuram.

2.The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai-600 002.

3.The Special Officer cum Block Development Officer,
Thazhambur Village Panchayat at Thiruporur,
Kancheepuram District.



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4.M/s.Srinivasa Shipping and Property
Development Limited (SSPDL),
Corporate Office at "Challa Mall",
8th Floor, No.11, Sir Thiyagaraya Road,
T.Nagar, Chennai-600 017.

5.Mrs.K.M.Nalini Shree

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Mandamus directing the respondents 1 and 3 to ensure the free access to the petitioners and other flat owners to use the 30 feet wide village panchayat public road for their ingress and egress on the southern side of the Mayfair Apartments at No.31 Thazhambur Village, Thiruporur Taluk, Kancheepuram District, Kancheepuram without any hindrance from the 4th and 5th respondent and consequently direct the 2nd respondent to take action against the 4th and 5th respondents for creating a deviation against the Layout plan dated 16.12.2010 approved in Na.Ka.No.20262/2010/BA2 by the second respondent for constructing of flats and independent villas and pass orders.

For Petitioner

: Mr.W.M.Abdul Majeed

For Respondents

: Mr.E.Vijay Anand

Additional Government Pleader
for respondents 1 to 3

Mr.Vishnu Mohan
for fourth respondent

Mr.V.Sundar
for fifth respondent



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ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

This writ petition has been filed for a Mandamus directing the respondents 1 and 3 to ensure the free access to the petitioners and other flat owners to use the 30 feet wide village panchayat public road for their ingress and egress on the southern side of the Mayfair Apartments at No.31 Thazhambur Village, Thiruporur Taluk, Kancheepuram District, Kancheepuram without any hindrance from the 4th and 5th respondent and consequently direct the 2nd respondent to take action against the 4th and 5th respondents for creating a deviation against the Layout plan dated 16.12.2010 approved in Na.Ka.No.20262/2010/BA2 by the second respondent for constructing of flats and independent villas.

2. According to the writ petitioners, the fourth respondent, who is a builder, has constructed the 'Mayfair Apartments' comprising of about 76 flats with a joint venture agreement entered between the 5th respondent, who being the land lady. The petitioners herein had purchased their respective flats from the respondents 4 and 5 and all are in possession of the respective flats in the aforementioned



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apartment. As per the layout plan dated 16.12.2010 approved in Na.Ka.No.20262/2010/BA2 by the second respondent herein, on the north side of the proposed flats, a 20 feet Panchayat road was in existence and on the south side of the proposed site, a 30 feet Panchayat road was also in existence, these Panchayat roads were already gifted to the Tahzhambur Village Panchayat by the fifth respondent through a gift deed dated 22.09.2008 registered as Document No.7222/2008 at the office of the SRO Thiruporur. As per the layout plan for the proposed site for construction of the said flats at Survey No.66/2 and 67/2 in Thazhambur village, on the south side of the proposed site an "IN" gate measuring 5 metre width and an 'OUT' gate measuring 5 metre width has to be constructed. But the fourth respondent who had constructed the flats had constructed the 'IN' gate of 5 metre width and the 'OUT' gate of only with a width of 1 metre on the south side of the apartments adjacent to the existing 30 feet panchayat road. All the petitioners and other flat owners were using the 'IN' gate alone to drive in and drive out their four wheelers and two wheelers. While so, on 23.10.2017, the fourth and fifth respondents, after completing the sale of entire builder's share flats had joined together and along with their men had demolished the



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vehicle ramp put up over the 'IN' gate on the southern side of the apartment building and on 24.10.2017 had forcibly removed the IN gate and constructed a new wall thereby closing the 5 metre wide IN gate permanently inspite of the petitioner's and other flat owner's objection. Now the petitioners have left open only with 1 meter wide out gate to enter the 30 feet road. When the petitioners questioned the action of the 4th and 5th respondents, they were threatened at the hands of the respondents.

3. According to the petitioners when the said road is panchayat road and therefore the fourth respondent and fifth respondents cannot close the gate which has been exclusively given in the approved layout plan for the petitioners. The respondents 4 and 5 have closed the ingress and egress to the petitioners and other public towards the 30 feet panchayat road on the south side. Narrating all these facts, the petitioners herein had gave a representation dated 25.01.2017 to the first and third respondents and the same was not considered till date and no action had been taken by the respondents 1 and 3 against the respondents 4 and 5. Hence, the petitioners have filed the present writ petition before this



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Court.

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4. Second respondent has filed a counter-affidavit, wherein it is stated that the fourth respondent, who is the builder has entered a joint venture agreement with 5th respondent who is the landlady. Further, stated that as per the layout plan dated 16.12.2010 in Na.Ka.No.20262/2010/BA2 by the second respondent, on the north side of the proposed flats, a 20 feet panchayat road was in existence and on the south side of the proposed site, a 30 feet panchayat road also in existence and were gifted to Thazhambur Village Panchayat by the 5th respondent. As per the layout plan for the proposed site for construction, an IN gate measuring 5 metre width and an OUT gate measuring 5 metre width has to be constructed. But the fourth respondent has constructed 5 meter width of IN gate and 1 meter width of OUT gate and on completion of sale, removed the IN gate measuring 5 metre width and constructed new wall thereby closing the IN gate permanently on the south side and put up a big iron gate in the middle of the road thereby restraining the petitioners and other public from using the panchayat road. Based on the said allegation, the petitioner made representation to the third respondent for taking immediate action. It is further stated that technical approval of layout



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was recommended and forwarded to DTCP/second respondent by the local bodies with necessary certificates. According to the second respondent, they have accorded the technical approval to that layout vide proceedings of the Director Town and Country Planning in Na.Ka.No.20261/2010.BA2 dated 16.12.2010 and now the third respondent is the executive authority, who is empowered for final approval after fulfilling the conditions and if there is any deviation, it is for the local authority to take appropriate action for the same. Therefore, the second respondent has specifically stated that Executive Authority namely the third respondent is the competent authority to take action.

5. Though notice served to the third respondent, none appeared for the third respondent. However this Court directs Mr.E.Vijay Anand, learned Additional Government Pleader, takes notice for the third respondent.

6. On considering the said fact, we direct the third respondent to inspect the said property in question and if found any violation of the approved layout plan dated 16.12.2010 or found if they have



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closed the panchayat road on the south side when they do not have any right to do so, it is the responsibility of the third respondent to take action against the respondents 4 and 5, for the violation of the approved layout plan, after providing opportunity to the petitioner as well as to the respondents 4 and 5, in accordance with law. The third respondent shall complete the entire exercise as expeditiously as possible, within a period of twelve weeks from the date of receipt of a copy of this order.

7. With the above directions, the writ petition stands disposed of. There will be no order as to costs. Consequently, connected W.M.P.No.37315 of 2017, is closed.

[D.K.K., J.] [P.D.B., J.]
22.06.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn



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D.KRISHNAKUMAR, J.
and
P. DHANABAL, J.
(mrn)

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