



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.34151 of 2022
and W.M.P No.33622 of 2022

C.Radhakrishnan

Petitioner

vs.

1.The Director of Tamil Nadu Town and Country Planning,
No.807, Anna Salai,
Chennai – 600 002.

2.The Deputy Director of Town and Country Planning,
Chengalpattu Region,
No.124, Municipal Complex,
GST Road, Chengalpattu – 603 001.

3.The Sub-Registrar, Chengalpattu,
Chengalpattu District.

4.Mrs.Dhanalakshmi

5.Ravichandar

6.J.Vijay Surana

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order vide Na.Ka.No.20368/22/DCP.5 dated 12.11.2022 (signed on 16.11.2022) issued by the 1st respondent and quash the same.



For Petitioner : Mr.N.L.Rajesh
Senior Counsel for
Mr.K.S.Arumugam

For Respondents : Mr.S.Arumugam
Government Advocate for R1 to R3

Mr.L.Dhamodharan for R4 and R5

ORDER

This writ petition has been filed challenging the impugned proceedings of the 1st respondent in Na.Ka.No.20368/22/DCP.5 dated 12.11.2022.

2.Shorn of unnecessary details, the brief facts of the case are as follows:

2.1.The subject property measuring an extent of 55¼ cents situated in S.No.388/13(part) and 388/10 was owned by one Mrs.Dhanammal and she bequeathed this property in favour of the 4th respondent by a Will dated 17.08.1989 which was registered as Document No.76/1989 before the Joint Sub Registrar's Office-II, Chengalpet. The said Dhanammal died on 07.10.1999 and the Will came into force. The 4th respondent having become the owner of the property executed a Settlement Deed dated 20.07.2015 in favour of the 5th respondent who is none other than her son and this document was registered as



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2.2. The further case of the petitioner is that the 5th respondent executed a Power of Attorney dated 01.08.2016 in favour of the petitioner and this document was registered as Document No.8060/2016 before the Sub Registrar's Office, Chengalpet. Pursuant to this Power of Attorney document, the petitioner executed a Sale Deed dated 01.08.2016 and conveyed the subject property and a larger extent of other properties to and in favour of the 6th respondent. What was conveyed in favour of the 6th respondent was a total extent of 5.90 acres out of which the dispute pertains to 55¼ cents in this writ petition.

2.3. The 6th respondent made an application before the 2nd respondent seeking for layout approval and on scrutiny of the application, the layout approval was sanctioned through proceedings dated 09.11.2016 by the 2nd respondent. After the layout approval was granted, the property was plotted and 99 plots were sold by the 6th respondent in favour of the various prospective purchasers.

2.4. The 4th respondent seems to have made a representation to the 1st respondent seeking for the cancellation of the layout approval. Since the same was not considered, the 4th respondent filed a writ petition before this Court in



W.P.No.6600 of 2021 for a direction to the 1st respondent to consider the representation and to dispose it of in accordance with law. This writ petition was disposed of by this Court by an order dated 26.07.2022 and a direction was given to the 1st respondent to deal with the representation and specific reference was made to Section 54 of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as “the Act”). The 1st respondent was directed to take a decision, within a period of eight weeks from the date of receipt of copy of this order.

2.5.Pursuant to the above order, the 1st respondent conducted an enquiry after giving opportunity to all the parties concerned and ultimately, the impugned proceedings dated 12.11.2022 came to be passed by the 1st respondent and thereby, the earlier approval that was granted through proceedings dated 09.11.2016 was suspended and the parties were directed to resolve their dispute with regard to the right and title over the property before the competent Court. A further direction was also given by the 1st respondent to the registration authority not to register any documents pertaining to the layout. Aggrieved by the same, the present writ petition has been filed before this Court.



3. The 2nd respondent has filed a counter affidavit and this counter affidavit has been adopted by the 1st respondent also. The main stand that has been taken in the counter affidavit is extracted hereunder:

6. It is further submitted that in compliance of the order, the 1st respondent conducted an enquiry on 10.10.2022 and after the enquiry, the petitioner, 4th and the 5th respondent have given their confession statement with regard to the subject matter and also verified the entire records. After the enquiry with both the parties and also concerned documents the 1st respondent vide his Na.Ka.No.20368/22/TCP.5, dated 12.11.2022 (signed on 16.11.2022) stating that at the time of given technical clearance by the 2nd respondent in Layout Approval vide DTCP No.107/2016 it was clearly stated and the conditions imposed that if the ownership of the subject property is disputed affecting the layout approval, the approval will stand rejected by the department. Further, the ownership of the lands is not under the respondent department and the complaint dated 07.11.2020, Therefore both the parties have to approach the revenue department to find out the ownership of the subject dispute property. The first respondent clearly stated the competent Revenue Authorities to establish their ownership rights over the immovable property and till such time, the Layout Approval granted is to be kept in abeyance and further the



3rd respondent/Registration department is directed not to register any document in respect of the subject layout till the Revenue Authorities decides the ownership of the subject property. Hence the Order passed by the 1st Respondent is sustainable in law.

4. The contesting respondents viz., the 4th and 5th respondents have filed independent counter affidavits. On carefully going through the counter affidavit filed by the 4th respondent, it is seen that very serious allegations have been made as if the property was grabbed from the 5th respondent even without paying the consideration and the 5th respondent was made to sign on dotted lines. The complaint that was given to the police and the related proceedings have also been mentioned in the counter affidavits. That apart, the various applications that were made under the Right to Information Act and the information that was received has also been mentioned in the counter affidavit. Ultimately, the 4th respondent has taken a very clear stand that a valuable property has been knocked off by the petitioner in connivance with the 6th respondent and the same was considered by the 1st respondent and that the 1st respondent has merely suspended the approval till the parties approach the competent court to workout their right and title. Hence, the 4th respondent has sought for the dismissal of this writ petition.



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5.The 5th respondent has also filed an independent counter affidavit and he has also toed the line of the 4th respondent and has adopted all the contentions raised by his mother in the counter affidavit and he has also sought for the dismissal of the writ petition.

6.Heard Mr.N.L.Rajesh, learned Senior counsel appearing on behalf of the petitioner, Mr.S.Arumugam, learned Government Advocate appearing on behalf of the respondents 1 to 3 and Mr.L.Dhamodharan, learned counsel appearing on behalf of the respondents 4 and 5.

7.The learned Government Advocate appearing on behalf of the 1st respondent submitted that the 1st respondent has passed the order in exercise of its power under Section 54 of the Act and the said provision clearly enables the 1st respondent to revoke and modify the permission granted for any development. The learned Government Advocate also touched upon the merits of the case and submitted that the 4th and 5th respondents had a genuine claim over the subject property and hence, the approval was suspended and the parties were relegated before the competent court.



8. The learned counsel appearing on behalf of the 4th and 5th respondents apart from reiterating the contentions raised in the counter affidavit filed by the 4th and 5th respondents, vehemently contended that it is a clear of land grab and the petitioner in connivance with the 6th respondent had virtually cheated the 4th and 5th respondents and valuable lands have been knocked off by leaving these respondents in lurch. The learned counsel further submitted that apart from prosecuting the criminal case, the 4th and 5th respondents had also approached the Town and Country Planning authority and sought for the cancellation of the approval, since fraud was prayed in getting the document executed and the consequence of such a fraud was the application seeking for approval and such an approval must be considered to be non est in the eye of law. The learned counsel in order to substantiate his submission, brought to the notice of this Court various documents that were filed by way of typed set of papers.

9. The learned Senior Counsel appearing on behalf of the petitioner refuted the allegations that were made by the learned counsel for the 4th and 5th respondents. Insofar as the jurisdiction of the 1st respondent is concerned, the learned Senior Counsel submitted that the 1st respondent lacked jurisdiction, since the approval had already been granted and it has been acted upon and the land has been plotted and it has been sold to various third parties. Therefore, it



was contented that the power under Section 54(1) of the Act cannot be exercised by the 1st respondent. The learned Senior Counsel further submitted that the subsequent purchasers who have already purchased 99 plots have not been put on notice and they were not even aware that the approval that was granted has been suspended. It was further contended by the learned Senior Counsel that dispute is with regard to an extent of 55¼ cents and whereas, the 1st respondent by virtue of the impugned proceedings has suspended the layout approval for the entire 5.90 acres. The learned Senior Counsel concluded his arguments by submitting that the 4th and 5th respondents were aware about the registration and the grant of layout approval even in the year 2016 and they have not chosen to go before the Civil Court to establish their right and title and instead they are attempting to make out the case by approaching the revenue authorities/Town Planning authority and the police and it was contended that the same is unsustainable. Hence, the learned Senior Counsel sought for the interference of the impugned proceedings of the 1st respondent and to allow this writ petition.

10.This Court has carefully considered the submissions made on either side and the materials available on record.



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11. The main issue around which the entire case is centred is with regard to the right and title claimed by the 4th and 5th respondents with respect to the subject property measuring an extent of 55¼ cents and which according to them has been grabbed by the petitioner in connivance with the 6th respondent. The learned counsel for the petitioner had brought to the notice of this Court various documents to substantiate his submission that no fraud has been committed on the 4th and 5th respondents by the petitioner. The learned Senior Counsel appearing on behalf of the petitioner is refuting the allegations and he submitted that he has an answer for each and every allegation that has been made by the 4th and 5th respondents. Obviously, this Court exercising its jurisdiction under Article 226 of the Constitution of India cannot go into disputed facts which requires appreciation of evidence and hence, this Court will lay off its hands from these disputed facts in this writ petition.

12. The first and foremost ground to be considered by this Court is as to whether the 1st respondent had the power and jurisdiction to pass the impugned order by suspending the layout approval that was granted in the year 2016. When this Court disposed of the writ petition in W.P.No.6600 of 2021 by an order dated 26.07.2022, the following direction was issued:



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9. *Leaving aside the rival submissions, for cancellation of approval, a machinery is contemplated under Section 54 of the Tamil Nadu and Country Planning Act, 1971. I am inclined to dispose this writ petition, without expressing any opinion on merits of the case, by directing the first respondent to consider and pass appropriate orders on the petitioner's representation dated 07.11.2020 in terms of the Section 54 of the Tamil Nadu Town and Country Planning Act, 1971.*

10. *Needless to state, before passing such orders, the first respondent shall call upon the petitioner's son, the third respondent who is the alleged Power of Attorney holder of the petitioner's son Mr.Ravichander and the fourth respondent or his representative before passing any order. Pending such exercise, appropriate endorsement shall be made in the plan that the proceeding under Section 54 of the Tamil Nadu Town and Country Planning Act, 1971, is pending so that the unwary buyers are not taken by surprise. The fourth respondent shall inform all the buyers about the same.*

11. *The exercise shall be completed by the first respondent, within a period of eight weeks from the date of receipt of a copy of this order, strictly, in accordance with the provisions of the Tamil Nadu Town and Country Planning Act, 1971.*



13. The above order was passed based on the writ petition filed by the 4th respondent. In view of the above order, the 1st respondent has passed the impugned order in exercise of its power under Section 54 of the Act. For proper appreciation, Section 54(1) of the Act is extracted hereunder:

54. Power of revocation and modification of permission to development.- (1) *If it appears to an appropriate planning authority that it is expedient, having regard to the development plan prepared, that permission for any development granted under this Act or any other law, should be revoked or modified, the said planning authority may, after giving the person concerned an opportunity of being heard against such revocation or modification, by order, revoke or modify the permission to such extent as may be necessary:*

Provided that-

(a) where the permission relates to the carrying of building or other operation, no such order shall affect such of the operations as have been previously carried out, or be passed after those operations have been completed;

(b) where the permission relates to a change of use of land or building, no such order shall be passed at any time after the change has taken place.



14. On a careful reading of the above provision, it is seen that the planning authority had the power of revocation and modification of the permission that is granted for a development under Section 49 of the Act. However, while exercising such a power, exceptions are created by proviso (a) and (b) to Section 54 (1) of the Act. For this case, proviso (a) will be relevant. The said proviso makes it abundantly clear that where a permission relates to any operation and such operation has been carried out/completed, the power of revocation/modification cannot be exercised and no orders can be passed.

15. In the instant case, the layout approval was granted through proceedings dated 09.11.2016 for an extent of 5.90 acres. The entire property was plotted and 99 plots were sold in favour of prospective purchasers. The challenge to the layout approval was made only in the year 2020 and by then, the entire operation was completed and third party rights had been created. In view of the same proviso (a) to Section 54(1) will directly apply and the same denudes the power of the 1st respondent to revoke/modify an approval which has already been granted. The impugned order passed by the 1st respondent also suffers from non-application of mind, since the dispute between the petitioner and the 4th and 5th respondents pertains only to an extent of 55¼ cents and whereas, the entire approval for 5.90 acres has been suspended. This is yet



another reason as to why the impugned order passed by the 1st respondent should be held to be illegal.

16. The 4th and 5th respondents were aware of the fact that the petitioner was acting upon the power of attorney that was executed in his favour and on the same day, the Sale Deed was also executed by the petitioner in favour of the 6th respondent. The 4th and 5th respondents had given police complaint in this regard on 24.04.2017. At the best, the police complaint and the resultant investigation can only end in finding out as to whether the 4th and 5th respondents were cheated and their lands were grabbed by the petitioner. Ultimately, if the 4th and 5th respondents wanted to establish their right and title over the subject property and more particularly, when the power of attorney document is a registered document, they ought to have approached the Civil Court and challenged those documents as null and void and non est. Instead, the 4th and 5th respondents were approaching the police, making representation to the Registration Department to cancel the documents and also making complaint before the planning authority to cancel the layout approval. All these steps that were taken by the 4th and 5th respondents can only be a temporary measure and none of these authorities can decide the right and title over the subject property. It is very unfortunate that the 4th and 5th respondents did not go



to the Civil Court to establish their right and title over the property and to substantiate that they have been defrauded and the very execution of power of attorney document was done by force under duress. These are facts which can be established only before a Civil Court by adducing evidence. These facts can never be decided by the authorities under the various enactments or by the police in the course of their investigation. Till date, the 4th and 5th respondents have not chosen to approach the Civil Court and it is not known as to whether they were properly advised at the relevant point of time to approach the Civil Court. The entire effort that has been taken by the 4th and 5th respondents does not ultimately take them to the correct forum to establish their right and title over the subject property. What the 4th and 5th respondents were not able to achieve in a Civil Court by filing an appropriate suit, cannot be permitted to be achieved indirectly through the authorities under various enactments. Neither the authorities nor the police can fill up the place of a Civil Court which is the only forum of competent jurisdiction to deal with the nature of allegations that have been made by the 4th and 5th respondents.

17. In the light of the above discussion, this Court has absolutely no hesitation to hold that the impugned proceedings of the 1st respondent in Na.Ka.No.20368/22/DCP.5 dated 12.11.2022, is unsustainable and the 1st



respondent lacked the power and jurisdiction to pass the said order and the same is liable to be quashed by this Court. The 1st respondent apart from lacking power and jurisdiction, also failed to consider the fact that the third party interest were created and the purchasers were not put on notice. That apart, the 1st respondent had proceeded to cancel the approval for the entire 5.90 acres when the dispute pertains to only 55¼ cents.

18. In the result, the impugned proceedings of the 1st respondent in Na.Ka.No.20368/22/DCP.5 dated 12.11.2022, is hereby quashed and this writ petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

05.06.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

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No.807, Anna Salai,
Chennai – 600 002.



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18

N. ANAND VENKATESH, J.

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05.06.2023