



W.P(MD)No.1770 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.1770 of 2022

and

W.M.P(MD)Nos.1557 & 1558 of 2022

Sulthan Beevi

... Petitioner

Vs.

1.The Director of Town and Country Planning,
2nd 3rd and 4th Floor, C and E Market Road,
Koyembedu,
Chennai – 107.

2.The Assistant Director of Town and Country Planning Authority,
2nd St., Ganapathy Nagar,
M-C Road,
Thanjavur District.



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3.The Executive Officer,
Ayyempettai Town Panchayath,
Thanjavur District.

4.The Sub Registrar,
Sub Registrar Office,
Ayyempettai,
Thanjavur District.

5.Muhammadhupaisal

6.G.D.Badhurudeen Ahmed

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the second respondent pertaining to Na.Ka.No.2752/2020 TN2, dated 12.11.2021 granting technical approval vide Ko.O.Ma.Va/Na.Vuu.Vu.E (Tha.Maa) No.37/2021 to regularize the unapproved layout called “IBN BATTUTA CITY” formed by the respondents 5 and 6 and quash the same in so far as the lands comprised



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in SR.Nos.376/1B, 376/2 and 376/4B to an total extent of 50 cents in
Soolamangalam 2- Sethi Revenue Village, Ayyampettai Town Panchayat,
Thanjavur District.

For Petitioner : Mr.H.Lakshmi Shankar
for A.Senthilkumar

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
assisted by
Mr.J.Ashok, - for R1 to R4
Additional Government Pleader

Mr.S.Parthsarathy
for Mr.K.Balu - for R5 & R6

ORDER

The Writ petition has been filed in the nature of Certiorari seeking records of the second respondent, Assistant Director of Town and Country Planning Authority, Thanjavur, relating to an order, dated 12.11.2021 granting technical approval to regularize, of according to the petitioner, unapproved lay out called “IBN BATTUTA CITY” formed by the respondents 5 and 6 in lands in Survey Nos.376/1B, 376/2 and 376/4B



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measuring 50 cents in Soolamangalam 2 – Sethi Revenue Village, Ayyampetti Town Panchayat, Thanjavur District.

2. In the affidavit filed in support of the Writ Petition, the petitioner had claimed that the property aforementioned belong to her grandfather Meeran Mydeen. During his life time, he had allotted the property to his 4 sons by executing four different registered settlement deeds. The petitioner's father, Mohammed Ismail, stood benefited to the properties aforementioned measuring 50 cents in Survey Nos.376/1B, 376/2 and 376/4B in Soolamangalam 2 – Sethi Revenue Village, Ayyampetti Town Panchayat, by a settlement deed, dated 26.10.1997, registered as document No.1022 of 1977 in the office of the Sub Registrar, Ayyampetti.

3. The petitioner further stated that her father died intestate on 04.03.1992 leaving behind her mother and two other brothers of the petitioner. One of the brother died and the mother had also died. The petitioner claimed that she is in possession along with the other brother,



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but who however, is now abroad. The petition claimed that she is therefore, directly interested in the lands aforementioned and she came to know that the respondents 5 and 6 had formed a layout of a large area of the property, including the property aforementioned. Claiming that her property had been unlawfully included in the layout, the Writ Petition has been filed seeking interference with the order granting such approval of the lay out.

4. A counter affidavit had been filed by the fifth respondent on behalf of himself and on behalf of the sixth respondent. He questioned the delay of the petitioner in approaching the Court challenging the lay out granted. It had been further stated that the grandfather of the petitioner Meera Maideen claimed right over the lands through a registered Partition Deed, dated 19.07.1940. The land mentioned in 'B' schedule in the said partition deed had been allotted to the grandfather of the petitioner. It had been further stated that there were three survey numbers which had been divided namely, the lands in survey No.376/1, the lands in Survey No.376/2 and the lands in Survey No.376/4. The grand father of the petitioner had been allotted one acre



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and 20 cents in Survey No.376/1. He had been allotted 14 cents in Survey No.376/2. He had also been allotted 41 cents in Survey No.376/4. It had been stated that the total land in Survey No.376/4 was one acre and 43 cents. The brother of the grand father was allotted one acre and 23 cents. It had therefore been stated that the grand father could not have been allotted 41 cents, when the available land was only 20 cents.

5. It had thus been stated that the petitioner cannot claim title to the lands as a matter of right, but must establish title only when there is measurement conducted over the lands which had been actually allotted to her grandfather, who infact, subsequently, further executed 4 separate settlement deeds in favour of his 4 sons. It had therefore been stated that only a suit should be filed, to first identify the lands before any claim can be made.

6. Heard arguments advanced by Mr.Lakshmi Shankar, learned counsel for the petitioner. Mr.Veera Kathiravan, learned



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Additional Advocate General, assisted by Mr.J.Ashok, learned Additional Government Pleader on behalf of the respondents 1 to 4. Mr.S.Parthasarathy, for Mr.K.Balu, learned counsel on behalf of the respondents 5 and 6.

7. Mr.Lakashmi Shankar, learned counsel for the petitioner asserted that the petitioner had an existing right of title over the lands which formed part of the lay out and therefore, questioned the approval granted by claiming that the lands of the petitioner had been unlawfully included in the lands for which the lay out has been approved.

8. The learned Additional Advocate General however, pointed out, that to identify the lands, the petitioner should first institute a suit seeking declaration and thereafter, measure and identify the lands. The settlement deeds were also pointed out, whereby, excess lands had been settled by the grand father to his sons and therefore, the improbability of the petitioner having title of 50 cents of land was also pointed out.



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9. Mr.S.Parthasarathy, learned counsel also pointed out that the petitioner cannot question the approval particularly, because, eventhough some lands could be mixed up in the approval, those lands can be properly identified only when a suit is instituted.

10. I have given careful consideration for the arguments advanced.

11. The petitioner claims that the approval granted for the lay out bit “IBN BATTUTA CITY” in Soolamangalam 2 – Sethi Revenue Village, Ayyampetti Town Panchayat, Thanjavur District, by the respondents 1 and 2 should be interefered with, since she claimed title to 50 cents of lands in Survey Nos.376/1, 376/2 and 376/4.

12. The flow of title for the said lands is not direct but rather had taken various turns and twist. The lands originally belonged to the grand father of the petitioner and his brother Abdul Khader. They had entered into a parition deed. By the partition, the grand father was



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allotted portions of land in each one of the survey numbers. If he where to deal with the lands subsequently, by a further settlement deeds infavour of his sons, then he could do so only with respect to the lands which had been allotted to him under the partition deed.

13. But a perusal of the record shows that he had dealt with excess land. Once this fact stares in the face of the petitioner, the petitioner should institute a suit seeking a relief to divide the lands, to demarcate the lands, to identify the lands and to partition the lands and to sub-divide the lands. Without a suit for declaration of title, as against her own paternal uncle since there has been a overlapping of lands in the four separate settlement deeds executed by the paternal grand father, the petitioner can never claim exclusive title for 50 cents of lands in the aforementioned 3 survey numbers. She can claim joint title, but it is only with her brother who is surviving, and more importantly with the legal heirs of with her paternal uncles as there has been four separate settlement deeds executed by her grand father.



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14. The records reveal that the paternal grand father of the petitioner had settled 24 cents of land in excess in survey No.376/1 in favour of his 4 sons. He had similarly, settled 21 cents of land in excess in Survey No.376/4. These facts may be right. These facts may be wrong, but the only forum to test these facts is the Civil Court where the settlement deeds will have to be put to test and marked as documents and will have to pass the test of admissibility, of proof and of being relevant. The partition deed will have to be examined. The schedule of the lands in the partition deed between her grand father and his brother will have to be examined. Thereafter, the lands which was allotted to her grand father will have to be crystalized. Thereafter, the four settlement deeds executed by the grand father will have to be examined. The lands settled will have to be identified and finally the lands settled to the father of the petitioner herein will have to be identified. If the grand father had settled excess lands, then what he was allotted in the partition deed, then the issue of title itself must be adjudicated. That would be a question to be adjudicated not between the petitioner and the respondents 5 and 6, but between the petitioner and her paternal uncles who were the



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beneficiaries of the settlement deeds executed by her grand father.

Without there being a proper demarcation of lands, there can never be an adjudication in this Writ Petition on the basis of an affidavit.

15. It is thus seen that the petitioner will necessarily have to approach the Civil Court, seek necessary relief, to identify the lands and then, question the approval if the lands are identified and if they fall within the lands for which lay out was approved in favour of the respondents 5 and 6. Without that preliminary examination of title, of possession and of demarcation of lands, this Court never can adjudicate on the issue raised by the petitioner. I cannot grant any relief to the petitioner herein. The petitioner should put the horse before the cart. She should first institute a suit, identify her lands and then question the approval order, if the lands fall within the approval granted for the lay out formed by the respondents 5 and 6. She cannot approach the Writ Court first and seek an order. The Writ Court can never adjudicate the issues on the basis of documents.



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16. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index :Yes/No
Internet :Yes/No
NCC : Yes / No

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C.V.KARTHIKEYAN, J.

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