



W.P.(MD)No.10402 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.10.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.10402 of 2021

and

W.M.P.(MD)Nos.8087 and 8088 of 2021

M.K.Haja Najumudeen

... Petitioner

vs.

1.The Chairperson,
Tamil Nadu Real Estate Regulatory
Authority (TNRERA), 1st Floor,
No.1-A, Gandhi-Irwin Bridge Road,
Egmore, Chennai – 600 008.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai -28.

3.The District Registrar,
O/o. the District Registrar Office,
Karaikudi, Sivagangai District.

4.The Sub Registrar,
Thiruvadanai Sub Registrar Office,
Taluk Office Complex,
Thiruvadanai, Ramanathapuram District.

... Respondents



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PRAAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in his proceedings vide Letter No.TNRERA/6579/2020 dated 10.03.2021 and to quash the same as illegal and consequently, to direct the respondents to register the sale deed relating to the property sitauated at S.No.269/8 extend 6870.00 sq.m, Puliyal Village/Panchayat, Devakkottai Taluk, Sivagangai District within the period that may be stipulated by this Court.

For Petitioner	:Mr.H.Mohammed Imran M/s.Ajmal Associates
For R1	:Mr.R.Satheesh
For R2 to R4	:Mr.B.Sarvanan Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the proceedings of the first respondent in Letter No.TNRERA/6579/2020 dated 10.03.2021 and for a consequential direction to the second respondent to register the sale deed relating to the subject property in S.No.269/8 measuring an extent of 6870 sq.mtr., at Puliyal Village, Devakottai Taluk, Sivagangai District.



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2.The case of the petitioner is that the subject property was originally owned by his father and upon his demise, the petitioner and others have inherited the property. The petitioner took steps to get an approval for the development of the property into plots and accordingly, DTCP through proceedings dated 13.03.2019 granted approval for regularising the lay out. Thereafter, the petitioner was intending to sell the plots to the intending purchasers.

3.At this juncture, the petitioner received a notice dated 10.11.2020 from the first respondent directing the petitioner to register under the Tamil Nadu Real Estate (Regulation and Development) Act, 2016 (for brevity hereinafter referred to as “RERA”) and the rules thereunder. On receipt of this notice from the first respondent, the petitioner gave a reply dated 18.12.2020 and took a stand that the petitioner is not a real estate promoter and that he is making developments to the lay out only for his own purpose and that such development is made after getting necessary approvals and according to the petitioner, he was not intending to sell the remaining plots and he does not owe any duty to register himself under RERA.



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4.The grievance of the petitioner is that the first respondent had issued the impugned communication dated 10.03.2021 to the fourth respondent, whereby, the fourth respondent was informed not to register any documents pertaining to the subject property without petitioner registered himself under RERA. Aggrieved by the same, the present Writ Petition has been filed before this Court.

5.The first respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

“6.It is submitted that, in compliance of the above Act provisions, the Promoter should file an application with Tamil Nadu Real Estate Regulatory Authority (RERA) for registration of the regularised layout. However, he has not filed any application with TNRERA for registration of the regularized layout. Hence, this Authority has issued a Notice to Thiru.M.K.Haja Najumudeen on 10.11.2020 to file an application for registration of the above said regularised layout.

7.It is submitted that, the Promoter Thiru.M.K.Najumudeen has furnished a reply dated 18.12.2020. In his reply, he has stated that he is not a Real Estate Professional and did not intend to sell the remaining plots but to keep for himself. Hence, he has stated that it is not necessary to register the layout under RERA Act.

8.It is submitted that, as he has declared that it is not meant for sale and for his own use, it is not mandatory to register the regularized layout with TNRERA. Accordingly, this Authority in its Letter No. TNRERA/6579/2020, dated 10.03.2021 has



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informed the Jurisdictional Sub Registrar Office i.e. Sub Registrar Office, Thiruvadanai, Ramanathapuram District that the regularized layout is for his own use and not for sale and hence requested the Jurisdictional Sub Registrar not to register any Sale Deed relating to the above said property. This Authority has also referred the Government Letter No.6275/31/2020-1, dated 05.09.2020, Commercial Taxes and Registration Department, Government of Tamil Nadu addressed to the Inspector General of Registration with a copy marked to TNRERA.

9.It is further submitted that the Government has directed the Inspector General of Registration to give suitable instructions to send a circular to all the Sub-Registrar Offices to register plots by insisting the proof of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 before registration wherever registration with Tamil Nadu Real Estate Regulatory Authority is required under the Act.

10.It is submitted that, action taken by this Authority by informing the Jurisdictional Sub Registrar Office is well within the Act provisions and as per the directions given by the Government to the Sub-Registrar Offices.”

11. Hence the petitioner has not approached this Hon'ble Court with clean hands. In the above circumstances, it is humbly prayed that this Hon'ble Court may be pleased to dismiss the above writ petition with costs and thus render justice.

6.The main grounds that were urged by the learned Counsel for the petitioner is that the first respondent cannot compel the registration of the petitioner under RERA and restrain the petitioner from dealing with his own property. It was further contended that the petitioner had already



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given his explanation to the first respondent by assigning reasons as to why the petitioner need not register under RERA and when the same was pending, the impugned communication was issued by the first respondent to the fourth respondent even without putting the petitioner on notice.

7.The learned Counsel also submitted that as per the provisions of RERA, the petitioner has not undertaken any developments as defined under Section 2(s) of the Act and the petitioner cannot be stated to be a promoter under Section 2(zk) of the Act and what is done by the petitioner will not fall within the definition of “*real estate project*” under Section 2(zn) of the Act. Hence, according to the petitioner, the petitioner need not register himself under RERA and consequently, the first respondent cannot compel the petitioner to register himself under RERA and issue a communication to the Sub Register not to register any documents.

8.Per contra, the learned Counsel for the first respondent submitted that the petitioner admittedly developed a lay out and converted it into plots and it is being sold to third parties. Therefore, according to the



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learned Counsel, the very nature of transaction that is done by the petitioner will clearly fall within the definition of “*real estate project*” under Section 2(zn) of the Act. The learned Counsel submitted that the petitioner is admittedly developing the plots and selling it to third parties and therefore, the registration is compulsory under RERA.

9.The learned Counsel also relied upon G.O.Ms.No.166, dated 29.11.2018, wherein, the Government had directed registration with RERA as one of the pre-condition for planning permission and for granting of completing certificate. The learned Counsel also relied upon the letter dated 05.09.2020 issued by the Chief Secretary to the Government to the Inspector General of Registration, wherein, it has been informed that the lay outs which have not been registered with RERA and where the promoters are attempting to sell the properties, suitable directions must be given to the registration authorities to insist for proof of registration with RERA, failing which, the document must not be entertained for registration.

10.The learned Counsel further submitted that even for the reply



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that was given by the petitioner on 18.12.2020, the first respondent had responded by asking the petitioner to produce all the relevant documents in order to proceed further to register under RERA. Therefore, it was contended that the first respondent was well within their rights to insist for the registration of the petitioner under RERA and in the absence of the same, the petitioner should not be allowed to sell the plots to third parties.

11.The short issue that arises for consideration in this Writ Petition is as to whether the lay out that was developed by the petitioner through which plots are being sold to third parties is compulsorily registrable under RERA.

12.The very object of bringing into force RERA in the year 2016 was to regulate and to ensure the sale of plots, apartments, etc., in an efficient and transparent manner and to protect the interest of the consumers in the real estate sector. Section 3 of the Act provides for prior registration of real estate project with the Regulatory Authority. In order to insist for the registration under the Act, the person or entity



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concerned must be doing a real estate project. The term “*real estate project*”, is defined under Section 2(zn) of the Act and for proper appreciation, the same is extracted hereunder:

“2.Definitions:-

.....

(zn) “*real estate project*” means the developments of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”

13.On a careful reading of the above definition, it is clear that “**the development of land into plots**” will fall within the scope of real estate project.

14.To understand the term '*development*', it is necessary to take note of the definition under Section 2(s) of the Act and the same is extracted hereunder:

“2.Definitions:-

.....

(s)“*development*” with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over



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or under the land or the making of any material change in any immovable property or land and includes redevelopment;”

15.It is clear from the above definition that making any material change in any immovable property, which translates itself into developing the property, will fall within the definition of development. This definition has been very widely worded to cover any type of developments, where, a material change is made to any immovable property to carry out the development in the immovable property. Therefore, where an immovable property is sought to be developed through a lay out and thereby, it is plotted and each plot is intended to be sold to third parties, it will all automatically fall within the definition of the term “*development*”.

16.It is also necessary to understand the word “*promoter*”, which is defined under Section 2(zk) of the Act. For the purpose of this case, it is enough to take note of sub clause (ii), which is extracted hereunder:

“2.Definitions:-

....

(zk) “promoter”

(i)....

(ii)a person who develops land into a project, whether or



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not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon, or
.....”

17.The above definition exclusively covers the development of land into plots and those plots being sold to third parties.

18.On a conspectus of the very scheme of the Act, it is seen that the development of an immovable property by making material change in the immovable property and converting it into plots and selling the same to third parties, will clearly bringing such a venture within the scope of RERA. It may be true that the petitioner is selling the plots after getting necessary permission from the authorities. However, the scope of RERA is to safeguard the interest of the consumers and therefore, in every project, where the interest of the consumer is involved, the registration under RERA will give an authenticity to the transaction that is undertaken while selling plots to third parties.

19.In the light of the above discussions, this Court has absolutely no doubt in its mind that the exercise undertaken by the petitioner by



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developing the property into lay out and dividing it into plots and selling the same to third parties, will clearly fall within the scope and ambit of RERA. Therefore, the petitioner has to register himself under the Act.

20.The next issue to be taken into consideration is with regard to the impugned communication that was made by the first respondent to the fourth respondent not to entertain any documents without the petitioner getting himself registered under RERA. When the petitioner was issued notice dated 10.11.2020, the petitioner has responded by saying that he is not intending to sell the remaining plots and that he wants to retain it for himself. If the petitioner continues with the same stand and he wants to keep the plots for himself without selling the plots to outsiders, the interest of outsiders will not come into play and therefore, the petitioner can continue to enjoy the property. However, it is clear that the petitioner is intending to deal with the property, since the petitioner has sought for a consequential relief in this Writ Petition to permit him to register the documents pertaining to the subject property. Hence, the stand taken by the petitioner should be considered by taking into account the intention of the petitioner to sell the property to third



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party and not permanently retaining those plots with himself.

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21.The communication that was made by the Chief Secretary to the Inspector General of Registration, dated 05.09.2020 makes it clear that the purchase of plots from a lay out which is developed, is compulsorily registrable under RERA and hence, suitable instruction was given to the Inspector General of Registration to send a circular to all the Sub Registrar Office to insist for the registration under RERA, whenever the plot is sought to be sold before entertaining the documents for registration. In view of the same, this Court does not find any ground to interfere with the impugned communication issued by the first respondent to the fourth respondent. This communication, in fact, is in line with the letter issued by the Chief Secretary to the Inspector General of Registration, dated 05.09.2020. Accordingly, this communication does not require the interference of this Court.

22.In the light of above discussions, this Court does not find any ground to interfere with the impugned proceedings of the first respondent in Letter No.TNRERA/6579/2020 dated 10.03.2021. If the petitioner is



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intending to deal with the property by selling plots to third parties, the petitioner has to register himself with RERA by submitting application and thereafter, the petitioner can always sell the plots to third parties.

23.The Writ Petition is disposed of in the above terms. No costs.

Consequently, connected miscellaneous petitions are closed.

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

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N.ANAND VENKATESH, J.

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