



W.P(MD)No.9112 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

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M.Gopinath

... Petitioner

Vs.

1.The Commissioner

Trichy Corporation,

Trichy,

Trichy District.

2.The Assistant Commissioner

O/o. the Assistant Commissioner Office,

Ponmalai Zone,

Trichy,

Trichy District.

... Respondents



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PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to grant building plan approval in respect of petitioner's land to an extent of 11 cents (4800 Sq.Ft) situated in Plot Nos.17 and 18 in Survey No.143/5, Kotapattu Village, Sempattu, Golden Rock Municipality, Trichy, Trichy District, by considering the petitioner's representation, dated 11.03.2023.

For Petitioner : Mr.C.Venkatesh Kumar,
for M/s.Ajmal Associates

For Respondents : Mr.K.R.Kishore Ram
for R.B.Law Associates

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The writ petition has been innocuously filed in the nature of a Mandamus seeking a direction against the respondents / Commissioner, Trichy Corporation, Trichy and Assistant Commissioner,



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Ponmalai Zone, Trichy, to grant building plan approval with respect to land of the petitioner measuring 11 cents equivalent to 4800 sq.ft. at Plot Nos.17 and 18 in Survey No.143/5, Kottapattu Village, Sempattu, Golden Rock Municipality, Trichy. The petitioner had given a representation on 11.03.2023.

2. In the affidavit filed in support of the writ petition, it had been stated that a power of attorney had been executed in favour of the petitioner and in such capacity the petitioner R.Vijay Prasanth has filed the writ petition. He had stated that he is managing the properties of the writ petitioner consequent to the power of attorney. This in itself puts a question mark on the bonafide of the petitioner herein, as the original or the true owners of the property have not approached this Court. It is stated that one Nagappa Chettiyar and Gilbert Morris had formed Nagappa Nagar during the year 1971 at Golden Rock Town Panchayat in Trichy. Lay out was formed consisting of 64 plots and the plots were sold out to various persons. The Plot No.18 was purchased by R.M.Ponnammal by a sale deed, dated 19.09.1972. The petitioner had



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purchased two plots from R.M.Ponnammal through her power of attorney agent A.L.Nagappan Chettiyar by a registered sale deed, dated 20.07.2009 in Document No.2340 of 2009. He then sold out the property to his Principals namely, Gopinath and Kalidasan by a registered sale deed, dated 12.03.2014. It is stated that the properties in Plot Nos.17 and 18 have also been described in the parent document. Then they applied for building plan approval. This was not at all entertained by the respondents. It had been stated the Detailed Development Plan was of the year 1996 and the plots of the petitioner have not been acquired. It is therefore, stated that the entire plan had lapsed under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

3. It is claimed that the plots purchased by the petitioner should be declared to have been released from such reservation, allotment or designation. Thereafter, two other writ petitions were filed in W.P.(MD) Nos.10673 and 10674 of 2020 to declare that the said plots have been released from reservation, in effect, that the plan itself has lapsed under Section 38 of the Tamil Nadu Town and Country Planning



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Act, 1971. An order was passed on 25.09.2020, allowing the said writ petitions. The petitioner had then further filed a detailed representation requesting building plan. The respondents stated that the request of the petitioner had been forwarded to their legal consultant for obtaining an opinion. It is stated that since the respondents had not taken any steps to grant building plan, a Mandamus should be issued against the respondents directing them to grant building plan.

4. The learned counsel had also taken notice on behalf of the respondents and had also appeared. My attention had been drawn to an order of a learned Single Judge dated 18.04.2016 in W.P.(MD) Nos.14129, 15655 and 15656 of 2015, Nagappa Nagar Welfare Association, rep. by its President Vs. The Commissioner, Trichy Corporation and others and in another case R.Kalidasan Vs. The District Collector, Trichy and others. The learned Single Judge in those writ petitions had passed a common order wherein, the impugned order therein which was sought to be interfered with had been set aside, since there was a violation of principles of natural justice and the matter has



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been remitted back to the concerned authority and a direction was given to issue notice and within a period of four months to pass necessary orders. The entire issue surrounds the claim of the petitioner that the land demarcated for public purpose stands released, consequent to Section 38 of the aforementioned Act.

5. Reliance is also placed on the order of the learned Single Judge in this regard, but however, the petitioner cannot seek a Mandamus from this Court placing on the obligation on the respondents to pass necessary orders on the building plan. The respondents have referred the matter for obtaining a legal opinion. It is complained that it had been referred so for more than a year back. But, the petitioner will necessarily have to assist the respondents in this particular case and cannot blame on the respondents.

6. I am not inclined to grant any Mandamus as sought by the petitioner herein. The respondents may examine the entire issue in detail and examine whether section 38 of the said Act would in fact apply and



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thereafter, take necessary decision. I am not inclined to give any time limit also. Matter requires deep consideration by the respondents. Mandamus would not lie. The issue is with the respondents and I am confident that they would endeavour to pass necessary orders within appropriate time.

7. With the above observation, the Writ Petition stands dismissed. No costs.

20.04.2023

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

RM



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C.V.KARTHIKEYAN, J.

RM

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