



WP(MD)No.16766 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD).No.16766 of 2023

G.ELC.D.Raj

... Petitioner

Vs

1.The Commissioner,
Padmanabhapuram Municipality,
Thuckalay,
Kanyakumari District.

2.Biblyana Elsi Moni

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to reject the renewal of plan approval in R.S.No.C9/10/5 Kalkulam Village, Kalkulam Taluk, Kanyakumari District by considering the petitioner's representation dated 24.05.2023.

For Petitioner : Mr.G.Ramanathan
For R1 : Mr.P.Athimoola Pandian



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ORDER

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The petitioner claiming to be a tenant of the second respondent to an extent of 90 cents of land in RS.No.C9/10/5, Kalkulam Taluk, Kanyakumari District has submitted an application to the first respondent not to renew the Building plan approval granted in favour of the second respondent in the year 2018 for the above land.

2.The learned counsel appearing for the petitioner submits that the above property belongs to the second respondent herein. The petitioner is a cultivating tenant of the above lands under the second respondent. She entered into an agreement with the second respondent in the year 2009 by paying a sum of Rs.1,00,000/- as advance amount and Rs.7,000/- was fixed as a monthly rent and the lease period of three years was periodically renewed. While so, the second respondent attempted to evict the petitioner from the property. Therefore, the petitioner has filed a suit in O.S.No.87 of 2019 before the Principal District Munsif Court, Padmanatbhapuram for the relief of permanent



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injunction and has also obtained a decree in her favour. The second respondent has also filed a suit in O.S.No.166 of 2019 before the Sub Court, Padmanabapuram against this petitioner for the relief of recovery of possession and the same was decreed in favour of the second respondent on 01.09.2021. As against the Judgment and decree passed in O.S.No.166 of 2019, the petitioner has preferred an appeal in A.S.No.40 of 2021 before the Principal District Court, Kanyakumari at Nagerkoil and the same is still pending. At this juncture, the second respondent has attempted to get a Building Plan approval from the first respondent / Padmanabhapuram Municipality and therefore, the petitioner has submitted a representation to the first respondent not to renew the application of the second respondent. Since the petitioner's representation was not considered, she is before this Court, for a Mandamus, directing the first respondent to reject the Building plan approval in R.S.No.C9/10/5 Kalkulam Village, Kalkulam Taluk, Kanyakumari District by considering her representation dated 24.05.2023.



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3.Mr.Athimoolapandian, learned counsel, who takes notice for the first respondent submits that the suit filed by the petitioner in O.S.No.87 of 2019 was decreed in favour of the petitioner that the petitioner shall not be evicted without following due process of law. Thereafter, the second respondent/landlady has filed a suit in O.S.No. 166 of 2019 as against the petitioner for recovery of possession and the same was decreed on 01.09.2021, thereby, the suit property is now vest with the second respondent. Though the petitioner has preferred an appeal challenging the Judgment and decree passed in O.S.No.166 of 2019, she has not obtained any interim order. In the meantime, the second respondent has submitted an application for renewal of building plan approval. Hence, the petitioner has submitted a representation to the first respondent to reject the renewal plan approval.

4.Heard the learned counsel on either side and perused the materials placed on record.



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5. The petitioner claims that she is a cultivating tenant under the second respondent. However, she was not recorded as a cultivating tenant as per the Tamil Nadu Cultivating Tenant Protection Act. In the suit filed by the second respondent in O.S.No.166 of 2019 for recovery of possession, the learned Sub Judge, Padmanabhapuram has recorded that the petitioner herein is not a cultivating tenant and has also decreed the suit. Challenging the judgment and decree passed in O.S.No.166 of 2019, the petitioner has preferred an appeal in A.S.No.40 of 2021 and the same is still pending. In view of the order passed by the Sub Court, Padmanabhapuram, the petitioner is not having any right to question the building plan approval, if any granted in favour of the second respondent as she is the absolute owner of the subject property.

6. Therefore, this Court is not inclined to entertain this writ petition. Accordingly, this writ petition is dismissed with a liberty to the petitioner to work out her remedy in the Appeal suit, which was



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filed by her in A.S.No.40 of 2021 before the Principal District Court,

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Kanyakumari District at Nagercoil. No costs.

12.07.2023

NCC : Yes / No.

Index : Yes / No.

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To

The Commissioner,
Padmanabhapuram Municipality,
Thuckalay,
Kanyakumari District.



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B.PUGALENDHI, J.

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