



W.P(MD)No.4256 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4256 of 2015

and

M.P.(MD)No.1 of 2015

N.Amaran

... Petitioner

Vs.

1.The Commissioner,
Thirumangalam Municipality,
Thirumangalam,
Madurai District.

2.Sithanantham

3.Sarathisrinivash
(R2 and R3 are impleaded vide order dated
16.08.2022 in W.M.P.(MD)No.11341 of
2022 in W.P.(MD)No.4256 of 2015 by RVJ)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, calling for
the records of the impugned proceeding passed by the respondent herein
in Na.Ka.No.2111/2014 E1, dated 25.09.2014 and quash the same and



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further direct the respondent herein to issue building plan approval to the petitioner for construction of house in vacant site measuring 3,216 Sq.ft in new Survey No.11/7, Maravankulam village, Shanmugam nagar, Thirumangalam within time stipulated by this Court.

For Petitioner : Mr.K.Govindarajan,
For T.Palanisamy.

For Respondents : Mr.Austin,
Standing Counsel for R1.
Mr.A.V.Arun for R2 & R3.

ORDER

Heard the learned counsel on either side.

2.One Mariappan, S/o.Shanmugam Pillai developed a layout in a village known as Maravankulam. Approval was given by the Member Secretary, Town and Country Planning, Madurai Zone (16/1985). The promoter sold the petition mentioned area measuring 315 square meters in favour of one Srinivasan, S/o.Narayansamy vide document



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No.588/1991 registered on the file of Sub Registrar, Thirumangalam.

The said Srinivasan sold in favour of Sarathy Srineevasan vide document No.77/1992. From the said Sarathy Srineevasan, the writ petitioner / Amaran purchased the property on 14.06.2010 vide document No.5679/2010. When the petitioner applied for building plan approval, it was negatived by the local body on 25.09.2014. The ground of rejection was that the petitioner had purchased what has been classified as “திறவிடம்”. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He added that the petitioner gave an undertaking that the petitioner is ready to donate 121 square meters of land from out of the property purchased by him in favour of the local body. This undertaking given by the petitioner through is counsel is recorded.

4.The local body has filed counter affidavit and the learned standing counsel took me through its contents. The learned standing



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counsel would contend that the land has been classified as “மரம் சம்பந்தமான திறவிடம்”. He contended that such a land so earmarked in the planing approval cannot be alienated. He placed reliance on the decision reported in **(2018) 7 MLJ 385 (SIDCO Nagar Welfare Association Vs. Chennai Metropolitan Development Authority)**. He pointed out that the Hon'ble Supreme Court as well as this Court have consistently held that the land reserved for public purpose cannot be the subject matter of alienation. The learned standing counsel submitted that the writ petition will have to be dismissed because of exhaustion of appeal remedy. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. It is well settled the rule regarding non-exhaustion of appeal remedy is only a rule of discretion and it does not go to the jurisdiction of the Court. When the facts are fairly clear, simple and not complicated, the Writ Court itself can take up the matter for adjudication even if the writ petitioner fails to exhaust the appeal remedy.



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6.The main proposition canvassed by the learned standing counsel for local body is beyond cavil. If a land has been classified as park in the plan, it cannot be put to use for any other purpose. In the case on hand, the land owner had earmarked a portion of the layout area for park purposes. It measures an extent of 1406 square meters. This obviously cannot be alienated. Apart from the park area, two other areas have been earmarked as “திறவிடம்”. The word “திறவிடம்” had been dealt with in the decision reported in **(2008) 1 MLJ 1285 (Cooperative Nagar Residents Vs. The Director of of Town and Country Planning)**. The issue that arose in that case was whether the site earmarked for community hall could be sold by the society. The notification issued by the Cooperative Society for alienating such a land was put to challenge by the residents. The writ petition was dismissed vide order 19.12.2007 and it was held therein that only the land that has been earmarked for common use and which are not saleable cannot be alienated. Other sites earmarked for purposes such as community hall can be alienated as only saleable interests have been created therein. It is not in dispute that 10% of the total extent of lands will have to be earmarked for common use. The total layout area was 17338 square meters. The park area allotted



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1406 square meters. Two places have been earmarked as open places.

திறவிடம் purchased by the petitioner is 315 square meters. If park place and the திறவிடம் No.2 are added together, that would still mean a short-fall of 121 square meters. The petitioner had purchased 315 square meters. He is now ready to part with 121 square meters to make good the short-fall. Subject to the petitioner parting with 121 square meters by way of gift in favour of local body, the local body is directed to issue building planning permission to the petitioner for the remaining extent of land. This writ petition is disposed of in the following terms:-

(1) The petitioner shall execute a gift deed in favour of the local body in what has been earmarked as திறவிடம் No.1 to an extent of 121 square meters.

(2) The petitioner is also permitted to submit a revised building plan approval for putting up construction in the remaining extent of land.

(3) Subject to the petitioner fulfilling condition No.1, the local body shall grant building plan approval in favour



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*of the petitioner. No costs. Consequently, connected
miscellaneous petition is closed.*

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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