



W.P(MD)No.21145 of 2021

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 27.06.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

**W.P(MD)No.21145 of 2021**

**and**

**W.M.P(MD)No.17714 of 2021**

K.Noor Mohamed

... Petitioner

**Vs.**

1.The Director of Town and Country Planning,  
2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> floor, C&E Market Road,  
Koyembedu,  
Chennai-600 107.

2.The District Collector,  
Collector Office,  
Thanjavur District.

3.The Assistant Director of Town and Country Planning Authority,  
2<sup>nd</sup> Street, Ganapathy Nagar,  
M.C Road,  
Thanjavur District.

4.The Executive Officer,  
Ayyempettai Town Panchayat,  
Thanjavur District.

5.Muhammadhupaisal

6.G.D.Badhurudheen Ahmed

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India,  
praying this Court to issue a Writ of Certiorarified Mandamus, to call for the



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records of the 3<sup>rd</sup> respondent pertaining to Na.Ka.2752/2020 TM/2 dated 12.11.2021 granting technical approval vide Ko.O.Ma.Va/Na.Vuu.Yv.E(Tha.Maa) No.37/2021 to regularize the unapproval layout called “IBN BATTUTA CITY” formed by the respondents 5 and 6 in Survey Nos.356/8,9A, 359/1B2pt,3B2, 360/3pt, 361/1pt,2pt, 362/1,2, 363/2B, 365/1, 370/1, 3A,3B,4,5pt, 372/1,2,3, 375/1,2, 376/1A,1B,2,2,4A,4B,5A,5B, 5C, 376/6, 380/2A,2B situated in the revenue village Soolamangalam-II sethi, Papanasam Taluk, Thanjavur District, as the regularization is based on the false certification made by the 4<sup>th</sup> respondent vide his communication Na.Ka.No. 812/2019 A2 dated 20.11.2019 quash the same and to direct the 2<sup>nd</sup> respondent to restore all the water bodies including the KanniVaikkals (tributary Channels) running through the above layout.

|                |                                                                                                                  |
|----------------|------------------------------------------------------------------------------------------------------------------|
| For Petitioner | : Mr.H.Lakshmi Shankar                                                                                           |
| For R1 to R4   | : Mr.Veera Kathiravan<br>Additional Advocate General<br>assisted by Mr.J.Ashok,<br>Additional Government Pleader |
| For R5&R6      | : Mr.S.Parthasarathy<br>for Mr.K.Balu                                                                            |

### **ORDER**

The writ petition has been filed in the nature of a certiorarified mandamus seeking records of the third respondent in Na.Ka.2752/2020 TM/2 dated 12.11.2021 by which proceeding technical approval was granted vide Ko.O.Ma.Va/Na.Vuu.Yv.E(Tha.Maa) No.37/2021 and regularization was granted for what is termed as unapproved layout called “IBN BATTUTA CITY”



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formed by the fifth and sixth respondents in Survey Nos.356/8,9A, 359/1B2pt, 3B2, 360/3pt, 361/1pt,2pt, 362/1,2, 363/2B, 365/1, 370/1, 3A,3B,4,5pt, 372/1,2,3, 375/1,2, 376/1A,1B,2,2,4A,4B,5A,5B,5C, 376/6, 380/2A,2B, situated in the revenue village of Soolamangalam-II Sethi, Papanasam Taluk, Thanjavur District. It is claimed that such regularization was obtained on the basis of a false certification made by the fourth respondent, by his communication Na.Ka.No.812/2019 A2, dated 20.11.2019. A Consequent direction is sought against the second respondent to restore all the water bodies, including KanniVaikkals (distributary Channels) running through the above layout.

2.In the affidavit filed in support of the writ petition, the writ petitioner, Noor Mohamed, S/o.Kamal Batcha, had stated that he had earlier filed W.P.No. 14737 of 2020 seeking a mandamus against the respondents 1 to 7 in that writ petition to consider a representation dated 01.10.2020 by which he sought restoration of Serumaakkanallur Water Channel and distributaries canal (SR.No.363/1) and to restrain the fifth and sixth respondents in the present writ petition from converting agricultural lands into layout based on G.O.Ms.No.79, dated 04.05.2017. It had been stated that there were two other writ petitions filed questioning the same layout and a Government Order was passed on 27.07.2021. It had been stated that the Court in thise writ petition was not



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inclined to pass any order regarding the lands except for the lands in S.Nos. 363/1, 2a, 3, 4 & 5. A direction was issued that the first and second respondents should inspect the property in the layout and take necessary action. It had been stated that the approval granted for the lands in S.Nos.363/2A,3,4 & 5 were cancelled consequent to the findings that they were water channels.

3.It had been further stated in the affidavit that the first respondent, the Director of Town and Country Planning at Koyembedu in Chennai, had inspected the layout formed by the fifth and sixth respondents and had forwarded a communication dated 27.09.2021 to the second and third respondents. It had been further stated that the first respondent had pointed that the land gained access through 5F number 359/2pt, which was a water channel, which had been filled up with mud materials and had been encroached. He had directed the third respondent to delete S.F.Nos.360/4, 363/5, 363/2A, 363/3, 363/4 and 363/5 in Soolamangalam-II Sethi revenue village and to maintain S.F.Nos.359/2 and 363/1 as water channels and thereafter to issue a revised layout approval after obtaining application from the applicants therein. A further direction was given to the second respondent to clear the encroachments in the lands in S.No.359/2.



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4.It must be kept in mind that in the relief sought in this writ petition the lands in aforementioned survey numbers which have been categorized as water channel do not find place. The layout as it stands is with respect to other lands, which had been cleared by the first respondent and for which, a revised layout approval had been given.

5.The writ petitioner further stated that though directions were given by this Court on 27.07.2021 to clear the encroachments in the water channels, it had not been done and the petitioner herein and the fifth and sixth respondents herein had encroached into the water channels. This appears to be the main grievance of the writ petitioner herein.

6.It had also been stated that the applications given by the fifth and sixth respondents for approval of their layout had been processed by the first to third respondents 1 to 3 on the basis of a certificate given by the fourth respondent. This certificate given by the fourth respondent had been very seriously assailed in the course of the arguments advanced in the writ petition. The fourth respondent in his certificate had stated that the fifth and sixth respondents had formed a layout in S.F.Nos.353/9, 356/7,8,9A; 359/1B2pt, 3B2; 360/3pt,4; 361/1pt,2pt; 362/1,2; 363/2A,2B,3,4,5; 365/1; 370/1,3A,3B,4,5pt; 372/1,2,3; 375/1,2; 376/1A, 1B,2,3,4A,4B,5A,5C,6; 380/1, 2A and 2B totally measuring



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27.17 acres and had formed about 633 house sites prior to 20.10.2016 and had sold 68 house-sites.

7. According to the petitioner, this particular certificate did not convey the true information and it was a certificate issued with the knowledge that the statements made therein were false. It is the specific case of the writ petitioner that prior to 2019, the fifth and sixth respondents did not own any property in Sollamangalam Village and consequently the assertion that they had sold 68 house sites prior to 2016 is a false statement.

8. It had also been stated that Musthoora Banu had formed a layout called K.S.K Nagar and had sold 68 house sites in the above layout and another individual Abdhul Kasim had formed yet another lay out called Annai Fathima Nagar and had also sold out plots. It had been stated that the fifth and sixth respondents however, who had purchased the property through a power of attorney in December 2019, had formed an unapproved layout called “IBM BATTUTA CITY”. It is claimed that the fifth and sixth respondents had fallen back on the layouts formed by Masthoora Banu and claimed that they had formed a layout prior to 20.06.2016 and had sold 68 house-sites. The petitioner has also claimed that he had produced encumbrance certificate in respect of the sales.



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9.This in effect is the crux of the writ petition. He claimed that the fifth and sixth respondents did not own plots prior to 2019 but still the fourth respondent had issued a certificate that 68 house-sites or plots were sold prior to 20.06.2016. This date assumes importance owing to G.O.Ms.No.79, dated 04.05.2017 which provided formation of layouts by converting agricultural lands for such purpose and a cut off date was given and the said cut off date was 20.06.2016. It is under those circumstances, the writ petition had been filed.

10.Incidentally, though it had not been stated in the affidavit and sufficient reasons had not been disclosed subsequently, it also transpires that the writ petitioner herein had an indirect interest in the lands in two of the survey numbers, namely in S.Nos.370/3B and 372/3. He claimed that those lands had been given by way of an oral Hiba and that he was a beneficiary and therefore, was also directly interested since his lands in the aforementioned two survey numbers were also included in the lay out plan submitted by the fifth and sixth respondents. It must also be stated that the said oral Hiba had not been proved in manner known to law and still the subject matter of an Original Suit which is pending. As on date, one aspect which is clear that the writ petitioner has no direct interest in the lands in which the layout has been formed.



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11.In the counter affidavit filed by the fourth respondent, the Executive Officer, Ayyampettai Town Panchayat, Thanjavur District, whose certificate has been very seriously assailed by the petitioner herein, it had been stated that the certificate, dated 20.11.2019 which indicated that 68 plots had been sold in the subject survey number prior to 20.10.2016, does not contain the names of the fifth and sixth respondents and it is only the petitioner, who had inferred that it was the fifth and sixth respondents, who had sold the land prior to 20.10.2016. It had also been stated that what was stated was that 68 house sites have been sold prior to 20.10.2016 in the survey numbers mentioned therein.

12.The fourth respondent denied the allegation that the certificate was a false certificate. The allegation that the fifth and sixth respondents had fallen back to the layout formed by Masthoora Banu was also denied by the fourth respondent. It was stated that the petitioner apparently had possession of an internal communication sent by the fourth respondent to the Government counsel. It was consistently denied that the allegation that the certificate dated 20.11.2019 was false. It had been further stated that the fifth and sixth respondents, with a view to regularize the unapproved layout in the survey numbers mentioned in the writ petition in Soolamangalam 2<sup>nd</sup> Sethi Village, had submitted their application by enclosing all the required documents as stipulated under the Tamil Nadu Regularization of Unapproved Layouts and



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Plots Rules, 2017 and as notified in G.O.Ms.No.78, dated 04.05.2017 and the subsequent G.O.Ms.No.172, dated 13.10.2017. It had been further stated that the Deputy Director of Town and Country Planning, Thanjavur District, on being satisfied that the fifth and sixth respondents possessed clear marketable title over the lands, had granted technical sanction and had forwarded the same for granting planning permission to the fourth respondent.

13.The conditions which were imposed where that areas should be kept aside for public purposes like park, connecting roads and such other facilities. It had been stated that such lands should be surrendered to the local-body. It had also been stated that a joint inspection was conducted and it was found that there was no encroachment in the distributory channel passing through S.Nos. 386, 353K/7, 356/6, 358/3 and 359/2. It was also stated that the channel which was vested with the Public Works Department in S.Nos.363/1 passed through the land measuring 0.04.0 acres which was classified as Government poromboke and that the channels passes through the lands in S.Nos.363/2A, 3, 4, 5 and 360/4.

14.It had also been stated that G.O.Ms.No.79, dated 04.05.2017 which provided for conversion of land from agricultural to non-agricultural purpose was prospective in nature. It had been stated that the petitioner is a



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stranger/third party and has no locus to question the approval granted. It had been further stated that care had been taken to ensure that approval was not granted to the lands which contained water channels.

15.The fifth respondent also filed a counter affidavit wherein all the allegations stated in the affidavit filed in support of the writ petition had been denied. It had been stated that the plots had been developed with prior approval from the respondents. There was no violation of rules or procedures. It had been stated that the writ petitioner has no locus to maintain the writ petition.

16.An additional affidavit was filed by the writ petitioner enclosing a copy of the amendment application filed in O.S.No.133 of 2020. It must be stated that the pendency of this particular suit in O.S.No.133 of 2020 had not been disclosed at the time when the writ petition was filed. The prayer sought in the writ petition was that the approval had been granted for formation of layout on the basis of a false certificate issued by the fourth respondent and also that the lands for which approval was granted contained water channels. However, as is always the case, facts can never be suppressed and they always surface. It had been contended by the respondents that a suit is pending in O.S.No.133 of 2020. After much deliberation a copy of the plaint in O.S.No. 133 of 2020 had been filed before this Court by way of an additional document



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presented on 23.06.2023. It had not been presented on the date of filing of the writ petition and at least for a year from that particular date. The reason for not producing the same is best known to the writ petitioner. A perusal of that plaint shows that four individuals had filed the suit. The writ petitioner is the third plaintiff. It had also been filed against the Tahsildar, Papanasam, Sub-Registrar, Ayyampettai, District Collector, Thanjavur and against three other private individuals who were shown as the first to third defendants.

17.The relief sought in the said plaint was for a declaration of title of the scheduled mentioned lands in favour of the plaintiffs and the third defendant, and that the first and second defendants have no right or title over the said lands. Consequential reliefs restraining the official defendants from mutating the patta in the name of the first and second defendant and that encumbrances should not be registered by the fifth defendant were also sought. Subsequently by way of an additional document, it had been disclosed that in the said suit I.A.No.409 of 2022 had been filed to implead as further defendants, the Director, Town and Country Planning at Chennai, the Assistant Director of Town and Country Planning Authority, Thanjavur and the Executive Officer, Ayyampettai, Thanjavur. They are as the first, third and fourth respondents in the writ petition. However, the reasons or the necessity for impleading them in the suit had not been disclosed. The only reason that they could be impleaded is



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to questioning the approval granted to the fifth and sixth respondents over the the lands which were mentioned in the suit in viz., S.Nos. 370/3B, 372/3 to that extent. In view of the fact that the petitioner had not voluntarily come forward to disclose the facts, it has to be only inferred that the petitioner is questioning the grant of approval of atleast those lands in S.Nos.370/3B, 372/3 both in the suit and in this writ petition. There cannot be two parallel authorities or judicial authorities examining the same issue.

18.Heard arguments advanced by Mr.Lakshmi Sankar, learned counsel appearing on behalf of the petitioner, Mr.Veerakathiravan, learned Additional Advocate General appearing on behalf of the first to third respondents and Mr.S.Parthasarathy, learned counsel appearing for the fifth and sixth respondents.

19.It had been contended by the learned counsel for the petitioner that the certificate issued by the fourth respondent did not contain the correct details and more particularly, indicated and projected an impression that plots had been sold prior to 2016. The inference was that such plots had been sold by the fifth and sixth respondents. The learned counsel stated that this was a false statement and the fifth and sixth respondents did not own any lands in the aforementioned Survey Numbers prior to the year 2019. It had been contended that on the basis



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of such certificate issued by the fourth respondent, the processing of the grant for approval of the layout, commenced and flowed through the offices of the first and second respondents and it was therefore, contended that the fifth and sixth respondents stood benefited by the approval being granted.

20.The learned Additional Advocate General however questioned the locus of the petitioner herein to maintain the writ petition. It is contended that he is only an outsider, who is not directly or indirectly connected with the lands. It is contended by the learned Additional Advocate General that the petitioner should resort to filing a suit to first establish his right and thereafter establish the fact that approval for the lands covered under the layout had been obtained by a false certificate. It is therefore contended that filing of the writ petition is not the proper avenue to address the grievances of the petitioner.

21.The learned counsel appearing on behalf of the fifth and sixth respondents also questioned the locus of the petitioner herein to maintain the writ petition. The learned counsel stated that the writ petitioner had filed a suit as one among three other plaintiffs seek declaration on the basis of an oral Hiba which had not yet been tested by any Court of Law. It is contended that the petitioner therefore, cannot claim any right title or interest even with respect to the lands in the two survey numbers mentioned in the said suit. The learned



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counsel therefore stated that the petitioner, not having any right over any of the lands for which approval was granted, has no locus to question the orders passed by the respondents. The learned counsel further stated that the petitioner himself had admitted in his affidavit that the layout had been formed and 68 plots had been sold and yet another layout had been formed and other individuals have also sold plots. The learned counsel also asserted that the petitioner should file a suit to establish his right and then question the sale deeds and then seek to establish that the statement in the certificate issued by the fourth respondent is a false statement.

22.I have carefully considered the arguments advanced and also perused the materials on record.

23.The petitioner is one among the three individuals who had filed a suit in O.S.No.133 of 2020 before the Principal Sub-Court, Thanjavur. He had asserted rights over the lands in S.Nos.370/3B and 370/3 Soolamangalam – II Sethi Revenue Village, but his title has not yet been affirmed by any Court of Law. He does not have any document to assert such right. He claims right by way of oral Hiba. Even though it can be stated that oral Hiba conveys title, still it should also be mentioned that there should be a donor, there should be a donee and there should be acceptance of the gift. If there is an acceptance of the



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gift that the petitioner herein should be in physical possession of the  
aforementioned lands.

24.That is not the case in his writ affidavit. He has never mentioned about the pendency of the suit or about the institution of the suit. He had not asserted that the approved layout had been formed by including his lands. If at all there is any bonafide in his assertion then that should be the first statement made in the affidavit filed in support of the writ petition. The fact that the suit was instituted came out much later after it had been disclosed by the respondents herein. It is very strange that the petitioner had not disclosed about the institution of the suit in the affidavit filed in support of the writ petition. It may be a fraction of land but still they are lands and if he claims any right, title or interest, he should assert the same in every legal forum.

25.The petitioner cannot claim that merely because the suit is still under adjudication before the Principal Sub-Court, Thanjavur, he need not disclose the fact that he had actually filed such suit. His title has not been declared. He is an outsider to the lands mentioned in the writ petition for which approval was granted. Suppression of this material fact, in this case, is an attempt to fraud on the Court. Non-disclosure of the suit which had been filed by the petitioner as one of three other plaintiffs, is a direct attempt to screen a material fact from the



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purview of the Court. Anybody who seeks any relief in any Court should disclose all the material facts and thereafter, should state that such facts may not be necessary for adjudication of the issue before the Court. But disclosure is the primary aspect. Non-disclosure gives the right to raise an inference that non disclosure was to screen a fact, which fact if disclosed would be to the disadvantage to the petitioner herein.

26.I am not able to comprehend why the suit instituted in the year 2020 was consciously omitted to be even whispered in the affidavit filed in the year 2021. The petitioner who claims that the fourth respondent had issued a certificate with false details should first establish that he had come to Court with clean hands. He should first come to the Court by disclosing all necessary facts. He should not face an allegation of screening of facts from the purview of the Court.

27.It has also transpired that the first, third and fourth respondents herein have also been sought to be impleaded in the said suit. They have nothing to do with the relief as seen from the plaint as originally drafted. In the plaint as originally drafted a restraint was sought on the Sub-Registrar from registering any document presented for registration. A restraint was similarly sought against the Tahsildar from transferring patta for the said lands.



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28.The Director of Town and Country Planning or the Assistant Director of Town and Country Planing or the Executive Officer of the Panchayat have no say or role in registering the documents or in grant of patta. If they are to be impleaded as further defendants in the suit, the only purpose is to question the approval granted for formation of layout. If that be so, then it is clear that the same relief is sought atleast to a fraction of the lands both in the suit and in this writ petition. This is the only reason why there has been suppression of the fact of filing of the suit and the further suppression of the fact of filing an application to implead the respondents in the writ petition as defendants in the suit.

29.Even if it is to be noted that the petitioner is an interested person and can question the grant of approval, the fourth respondent had filed a counter affidavit wherein he had stated in very clear terms that in the certificate issued he had not disclosed the names of the fifth and sixth respondents or disclosed the survey numbers. It was an inference created by the petitioner herein. The first and second respondents or the officials who have independently verified the genuineness of the certificate presented before them had examined the records. They examined the records on the basis of the entire file and not on the basis of a certificate issued by the fourth respondent. They had taken a conscious decision to grant approval for the plots for formation of layout. The



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petitioner being a stranger to all the transactions cannot now turn around and urge this Court to re-examine the entire issue once again. It does not lie on the mouth of the petitioner to seek such a relief.

30.The learned counsel for the petitioner had placed reliance on the judgment of the Hon'ble Supreme Court reported in *Air 1974 SC 2177*, in *K.Ramadas Shenoy-vs-Chief Officers, Town Municipal Council, Udipi and Ors.* The judgment was delivered on 09.08.1974. The Hon'ble Supreme Court had taken up on itself an examination of the construction of a cinema building in a residential area. It examined the difficulties to which the residents would be put to, if they were to suddenly find a cinema hall in the mist of their residences. Taking into consideration the fact that therefore, the voices of those residents must be heard, the Supreme Court adjudicated the issue.

31.The facts in this case are distinguishable. The petitioner is a neighbour or at the most a resident. His right over the lands in the two survey numbers mentioned above have not yet been crystallized. The fifth and sixth respondents are not the defendants in the suit where declaration of title is sought. He has claimed reliefs against a stranger and he claims that an oral Hiba had been executed and that consequent to such oral Hiba with right flowing down to another generation, claims right over the lands. That fact has to be established



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independently, and till that is done, he remains a stranger to the lands for which the approval had been granted.

32.The scope of the writ petition cannot be permitted to expand to permit a third party stranger to question official acts. This is all the most so when such a third party had himself suppressed a material information. In view of these reasonings I hold that though, the ratio laid down in the judgment aforementioned is binding, the facts in this case are distinguishable.

33.The learned counsel for the petitioner further stated that this aspect of the locus standi had not been taken as a stand in the earlier writ petition. The locus standi of the writ petitioner goes to the very root of his authority and right to maintain the writ petition. It is not open to a stranger to come forward and file a writ petition questioning an official act in which he has not direct right. This is not a public interest litigation could not be since by filing the suit the petitioner claims a right in person and therefore, could not maintain the writ as a public interest litigation. Eitherway the petitioner will first have to set his house in order.

34.There has been reference to a judgment reported in *AIR 2004 SC 2421* in *S.J.S Bunsiness Enterprises (P) Ltd.,-vs-State of Bihar and Ors.* The Hon'ble



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Supreme Court had examined whether suppression of filing of a suit would be fatal to seeking a declaration in a writ petition. It had been stated that the suit should be material and suppression could then play upon the adjudication of the writ petition. Even in that case, the fact of filing of the suit was not disclosed in the writ petition. It had been stated that the suit was also withdrawn two weeks after it had been instituted. The plaintiff therein then consciously pursued the writ petition.

35.That is not the fact here. A suit had been filed. It is a suit on land. The writ petition is also primarily on approval granted for a layout and could be termed as a writ petition on land. Alleast when the survey number of a portion of the land overlaps, the filing of the suit is a material fact and should have been disclosed by the writ petitioner at the earliest instance.

36.My attention had also been drawn to Section 76 of the Tamil Nadu Town and Country Planning Act, 1971, which has an appeal provision.

37.The learned counsel for the petitioner stated when the locus of the petitioner to file a writ petition itself is questioned then even if an appeal is filed then also the locus also be questioned. It is for that reason I have stated earlier that locus goes to the root of the institution of any judicial proceedings.



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If the petitioner or the plaintiff had no locus to institute a proceedings before any judicial forum then, he becomes a third party stranger to the proceedings.

38.The order which is now questioned is appealable in nature. If the petitioner makes out a case for locus to maintain the writ petition, there is no reason as to why he did not file an appeal against the respondent. When there is an efficacious alternate remedy available in the Act, the petitioner should exhaust such remedy. The writ Court cannot sift through documents and decide title. The writ Court cannot sift through an affidavit to examine whether the particular certificate issued is based on false facts. The writ Court can never come to any conclusion on the basis of an affidavit and documents which have not passed the tests of proof of admissibility and of relevancy.

39.These are issues which can be adjudicated only before a civil Court. The petitioner should work out his remedy elsewhere, but unfortunately he has knocked the doors of a wrong forum.

40.With the above observations, the writ petition stands dismissed. 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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**C.V.KARTHIKEYAN, J.**

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WEB COPY

To

- 1.The Director of Town and Country Planning,  
2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> floor, C&E Market Road,  
Koyembedu,  
Chennai-600 107.
- 2.The District Collector,  
Collector Office,  
Thanjavur District.
- 3.The Assistant Director of Town and Country Planning Authority,  
2<sup>nd</sup> Street, Ganapathy Nagar,  
M.C Road,  
Thanjavur District.
- 4.The Executive Officer,  
Ayyempettai Town Panchayat,  
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