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W.P(MD)No.23075 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	08.09.2023
Pronounced On	:	17.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

W.P(MD)No.23075 of 2022

M.Abubacker Siddiq

... Petitioner

Vs.

1. The Director,
Directorate of Vigilance and Anti-Corruption (DVAC),
No.293, M.K.N.Road,
Alandur, Chennai-16.
2. The Superintendent of Police,
Office of the SP office,
Thanjavur District.
3. The Deputy Superintendent of Police,
Vigilance and Anti-corruption,
Tamil University campus,
Thanjavur District.
4. The Director,
Directorate of Town and Country Planning,
2nd, 3rd and 4th Floor,
CMDA Complex,
C and E Market Road,
Koyambedu, Chennai.



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5. The Assistant Director,
Directorate of Town and Country Planning,
Thanjavur Zone, Ganapathy Nagar 2nd Street,
Medical College Road, Thanjavur.

6. Muhammadhupaisal

... Respondents

(R4 and R5 are impleaded vide Court Order dated 17.04.2023 in WMP(MD).No.7086/2023 in WP(MD).No.23075/2022 by KMSJ)

(R6 is impleaded vide Court Order dated 15.06.2023 in WMP(MD).No.11772/2023 in WP(MD).No.23075/2022 by KMSJ)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to pass any order or direction or in particular issue a Writ of Certiorari-fied Mandamus to call for the records of the 1st respondent proceeding Petn.No.241/2022/TCP/TH, dated 12.01.2022 and to quash the same and consequently direct the 3rd respondent to conduct enquiry on the basis of the complaint given by the petitioner regarding the officials involved in corruption activities.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor
for R1 to R5

: Mr.H.Mohammed Imran for
M/s.Ajmal Associations



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ORDER

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This writ petition has been filed to quash the proceeding of the 1st respondent's in Petn.No.241/2022/TCP/TH, dated 12.01.2022 and consequently to direct the 3rd respondent to conduct enquiry on the allegations mentioned in the petitioner's complaint.

2. The petitioner made allegations against the respondent No.6 stating that without following G.O.Ms.Nos.78 and 79 dated 04.05.2017, he obtained a layout permission in collusion with the remaining official respondent. According to the petitioner, the sixth respondent made the layout in Sulamangalam Village. For approval of layout, he obtained false recommendation certificate from the Executive Officer Ayyampatti Town Panchayat. Thereafter, he got regularization from the Director of Town and Country Planning authorities. On the basis of the said regularization, he registered a document before the Sub Registrar Office and divided the land into 68 house sites and sold. Thereby, the fourth and fifth respondents and the other officials have conspired together and made the illegal regularization of layout and hence he committed offence. Therefore he made a representation to the first respondent on 28.12.2021



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to take action.

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3. The first respondent passed the impugned order stating that the allegation in the representation is vague and hence the same was forwarded to the Director, Town and Country Planning, Chennai for necessary action. Challenging the same, the petitioner filed this writ petition.

4. The learned counsel for the petitioner submitted that when the representation prima facie constitutes the offence, as per the vigilance manual, the department has to atleast initiate a preliminary enquiry. In this case, it is specifically averred that all the authorities acted contrary to the G.O.Ms.No.78 and approved the lay out of the sixth respondent and hence, it is submitted that the impugned order is liable to be quashed with a further direction to the first respondent to conduct enquiry as per law.

5. The sixth respondent filed a counter stating that the petitioner filed this petition without any truth in the allegation. Earlier he filed a petition before this Court seeking the following relief:



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(i) *W.P.(MD).No.19713 of 2020 has been filed to declare the action of the respondent No.4 granting approval to the Layout of the respondent Nos.9 and 10 in the name and style as "IBN BATTUTA CITY" at Soolamangalam, Second Seithi Revenue Village, Ayyampettai Town Panchayat, Papanasam Taluk, Thanjavur.*

(ii) *W.P.(MD).No.14737 of 2020 has been filed to direct the respondent Nos.1 to 6 to consider the petitioner's representation dated 01.10.2020 restore the Serumaakkanallur Water Channel and distributaries canal SR.No.363/1 and to forbearing the seventh and eight respondents from converting the agriculture lands ad measuring about 17 acres comprised in S.R.No.359/3B2, 363/3, 365/1, 370/1, 370/5, 376/1B, 376/5C, 376/6, 376/3, 376/5B1, 356/9A, 370/3A, 372/2 and 380/2B situated in the revenue village Soolamangalam, II Sethi, Papanasam Taluk, Thanjavur District into layout by violating the G.O.Ms.No.79 dated on 04.05.2017 issued by the Housing and Urban Development Department.*

6. The Hon'ble Division Bench of this Court, considering the argument of the petitioner, made a detailed discussion about the allegation and specifically held that the petitioner's averment to the effect



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that the official respondent cancelled the approval relating to the water channel in Survey No.363/2A, 3, 4, 5 and for the remaining layout only, they confirmed the approval. Further, they challenged the approval granted in favour of the private respondent in a subsequent writ petition in W.P.(MD)No.1770 of 2022, which was also dismissed. Thereafter, another writ petition filed through the another person was dismissed as withdrawn. In view of the above position, the private respondent seeks to dismiss this petition.

7. The learned Additional Public Prosecutor also reiterated the same and in view of the specific findings, there is no case for investigation by the department. The department also filed a counter stating that the allegation that the official respondent demanded and accepted the bribe to grant and regularize the layout is vague and without any materials. In the said circumstances, he seeks for dismissal of the writ petition.

8. This Court considered the rival submission made by the learned counsel appearing on either side and perused the materials available on record.

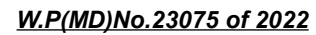


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9. It is the case of the petitioner that the private respondent submitted the layout including the water channel. According to the petitioner, the said water channel was encroached by the said private respondent and included in the layout. Subsequently, this Court set aside the layout to the extent of water channel and confirmed the layout in respect of the remaining portion. Now, the petitioner seeks criminal action against the officials, who granted layout for the water channel. According to the department, the petitioner's case of payment of bribe by the private respondent to the official respondent to grant lay out including the water channel is without any material. As per the judgment of the Hon'ble Division bench, the said inclusion is not intentional and hence, the Hon'ble Division Bench set aside the lay out in respect of the water channel.

10. For the aforesaid reasons, this Court does not find any criminal intention on the part of the official respondents in granting the layout approval and there is no merits in the contention of the petitioner.



11. Apart from that the Hon'ble Division Bench in Writ Appeal No.

“8.Regarding the applicability of the Regularization Rules, in para 10 of the counter affidavit filed by the first respondent it is specifically mentioned that 68 house sites has been sold prior to 20.10.2016. The same was not specifically refuted by filing any rejoinder affidavit. Therefore, there is no reason to disbelieve the first respondent.

9. As far as the violation of the other rules relating to verification of title is concerned, it can be seen from the records that this is not a case where the technical approval is granted without any claim for title by the promoters or without the production of supporting documents or without scrutiny thereof. Therefore, there is no violation of Rule 5(8) or 5(9)(b) (v) as claimed by the appellant. It is the case of the appellant that out of the entire layout, she has title over 50 cents. When the dispute is raised by her, it cannot be decided by the respondents 1 and 2. Merely because a dispute is raised, the approval cannot be refused. Therefore, it is for the appellant to approach the Civil Court and establish her title and seek for



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other reliefs. Thus the order of the learned Single Judge does not call for any interference.”

12.In view of the above factual circumstances, this Court is not inclined to entertain this writ petition. Accordingly, the same is dismissed. There shall be no order as to costs.

17.11.2023

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

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6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K. RAMAKRISHNAN. J.,

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Dated :17.11.2023