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C.R.P. (PD) .No. 648 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2024

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THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 648 of 2024

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C.M.P.No. 3248 of 2024

M/s.Sivasankar Real Assets Pvt.Ltd.,
Rep. by its Director Mr.A.Sivasankar,
S/o.Mr.S.Asokan,
No.1/460, Mount Poonamallee Road,
Ayyappanthangal,
Chennai – 600 056.

...Petitioner

Vs.

1.Devadoss

2.The Member Secretary, CMDA,
Thalamuthu Natarajan Maligai,
No.8, Gandhi-Irvin Road,
Egmore, Chennai – 600 008.

3.The Commissioner,
Kattankulathur Panchayat Union,
B.D.O. Kattankulathur,
Near TITAN Township,
Kancheepuram District.

...Respondents



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Prayer: Petition is filed under Article 227 of the Constitution of India to set aside the order dated 30.10.2024 in I.A.No.6 of 2023 in O.S.No.167 of 2019 on the file of the District Munsif at Chengalpattu.

For Petitioner : Mr. V.Ayyapparaja
For Respondent 1: Mr. K.G.Vasudevan
For Respondent 2 : No Appearance
For Respondent 3 : Mr. V.Ramesh
Government Advocate.

ORDER

This Civil Revision Petition arises out of the order passed by the learned District Munsif, Chengalpattu, in I.A.No.6 of 2023 in O.S.NO.167 of 2019.

2. The civil revision petitioner is the 4th defendant in the suit. The plaintiff is the owner of the suit property. He had executed a power of attorney in favour of the 4th defendant on 29th March 2019.



The said power of attorney was subsequently cancelled by way of a registered deed dated 27.05.2019. In the meantime, the 4th defendant states that he had formed road over the B schedule property and handed over the same to the 2nd defendant.

3. The plaintiff pleaded that even before the power of attorney was granted in favour of the 4th defendant, an application had been filed on his behalf unauthorisedly, for approval of layout. He specifically pleaded that proposed plan dated 14.02.2019 could not have been processed by the 4th defendant as power of attorney itself was given to the 4th defendant on 29.03.2019. Hence, the suit for the following reliefs:

“a) For declaration declare that the Layout Approved plan No.56/19 given by, the 1st defendant dated 30-04-2019 without perusing entire records is as null and void

b) Mandatory injunction and thereby directing: the 1st defendant to cancel the approval dated 30-04-2019 in



*respect of the B Schedule property, under CMDA
Approved No.56/2019.*

*c) Directing the 2nd defendant to cancel the gift deed
dated 2-4-2019 in respect of the B schedule property
executed on 5-4-2019 under Doc.No.4299/2019*

*d) for permanent injunction, and thereby restraining
the 4 to 7 defendants, their men, agents ,subordinates,
heirs or anybody claiming under them from interfere with
the peaceful possession and enjoyment of the suit property
in any manner;*

*e) for permanent injunction and thereby restraining
the 4 to 7 defendants, their men, agents, subordinates,
heirs or anybody; claiming, under them from alienating
the suit property with any other third parties or among
them in any manner;”*

4. Pending the proceedings, the 4th defendant took out an
application pleading that the suit is barred by virtue of Section 101 of



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the Tamil Nadu Town and Country Planning Act. Since there is a bar under the said Act, the 4th defendant urged that the suit is liable to be rejected.

5. A counter was filed by the plaintiff pleading the usual defense of it being an abuse of process of Court. He urged that the act of getting the approvals is tainted by forgery and that the application for reclassification of agricultural lands had been filed in the year 2014 even without his knowledge. He added that signature of a dead person had been forged in the year 2016 and therefore sought for dismissal of the said application.

6. The learned District Munsif, Chengalpattu, after considering the entire plea came to the conclusion that the application does not deserve consideration and dismissed the same. Hence, this revision at the instance of the 4th defendant.



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7. Heard Mr.V.Ayyapparaja for the civil revision petitioner, Mr.K.G.Vasudevan for the 1st respondent and Mr.V.Ramesh, Government Advocate for the 3rd respondent.

8. The plea of Mr.V.Ayyapparaja is that in terms of power of attorney, the petitioner had been granted the power to ratify any acts done by the plaintiff. Therefore, even though the power was only granted on 29.03.2019, he had the power to ratify the act of the principal. Once he has the power of ratification, Mr.V.Ayyapparaja argues that the layout plan having been properly made out, it is barred by virtue of Section 101 of the said Act.

9. Mr.K.G.Vasudevan draw my attention to paragraph No.5 of the counter and argues that according to the application that had been made to CMDA, one Mr.Dayalan is said to have submitted application before the CMDA on behalf of the plaintiff / respondent. He adds the said Dayalan had died a year earlier. He pleads that it is an impossible task for a dead person to have filed an application for approval. He



urges since disputed facts are involved, the learned Trial Judge rightly dismissed the petition and that it requires confirmation.

10. The learned Government Advocate appearing for the 3rd respondent submitted that being a statutory authority they will abide by any orders of the Civil Court.

11. I have carefully considered the submissions of Mr.V.Ayyapparaja and Mr.K.G.Vasudevan.

12. A reading of the plaint goes to show that complicated issues of facts have been pleaded by the plaintiff. The plea of Mr.Ayyapparaja that he merely processed the application already filed and therefore the suit is not maintainable is not admitted in the plaint. The plaintiff, on the contrary, pleads that he had authorised the 4th defendant by way of power of attorney dated 23.09.2019 and soon thereafter cancelled the same on 27.05.2019. The plaint also shows that a sum of Rs.11,86,00,000/- made as a part payment by the 4th



defendant to the plaintiff and it was returned to the 4th defendant less the amount of Rs.9,90,000/-, paid as a broker commission.

13. In the matters of rejection of plaint, the averments made in the plaint have to be taken to be true. If the statement are taken to be true, then it is clear that the 4th defendant who had made payment of Rs.11,86,00,000/-, had taken return of the said amount, less the deduction mentioned above.

14. Having taken back the entire amount that has been paid by him, it is not lie in the mouth of the 4th defendant to plead that he is still entitled to prosecute the alleged application that is said to have been filed by the plaintiff before the CMDA.

15. The issue whether the plaintiff had actually filed an application in the year 2016 seeking approval for layout over his land and for its conversion at the hands of the District Collector are all matters which requires evidence. When it requires evidence, the plaint



WEB COPY



C.R.P. (PD) .No. 648 of 2

cannot be rejected. Further, when the very filing of the layout approval application is denied, the consequent approval cannot bind the plaintiff. Therefore, Section 101 of the Tamil Nadu Town and Country Planning Act, will not operate.

16. Leaving it open to the 4th defendant to demonstrate before the Court after evidence that he had merely processed the application already filed by the plaintiff seeking approval, this Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

30.10.2024

Index : Yes/No
Internet : Yes/No
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C.R.P. (PD) No. 648 of 2

To
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WEB COPY



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V.LAKSHMINARAYANAN, J.

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