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W.P. No.16070 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P. No.16070 of 2024

D.Amirthalakshmi
W/o.Dhananjeyan

.. Petitioner

Vs.

1. The District Collector
Collectorate Office,
Cuddalore
Tamil Nadu.
2. The Revenue Divisional Officer
Virudhachalam
Cuddalore District
Tamil Nadu.
3. The Tahsildhar
Virudhachalam
Cuddalore District
Tamil Nadu.
4. Dhanapandiyan
S/o.Rajavel

.. Respondents

Writ petition filed under Article 226 of the Constitution of India

praying to issue a writ of Mandamus, directing the respondents 1 to 3 to



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remove the illegal unauthorized construction of the 4th respondent in the agriculture land at sub-division Survey No.15/11 to an extent of 6 cents in Survey No.15/5A2A2 total extent of 78 cents of Nanjai land at Sottavanam Village, Virudhachalam Taluk, Cuddalore District, considering the petitioner's representation dated 06.02.2024 and pass order thereon on merit and in accordance with law, after holding an enquiry and affording an opportunity to the petitioner and other persons interested concerned.

For Petitioner : Mr.P.R.Thiruneelakandan
For Respondents : Mr.A.Selvendran
Special Government Pleader
for R1 to R3

ORDER

(Order of the Court was made by **M.Sundar, J.**)

The case of the writ petitioner is that her husband one Dhananjeyan (who is mentally ill / mental development is limited) owns 'lands admeasuring 1 acre or thereabouts comprised in S.Nos.15/11 and 15/5A2A2, Sottavanam Village, Virudhachalam Taluk, Cuddalore District' {hereinafter 'said land' for the sake of brevity and clarity}.



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2. Mr.P.R.Thiruneelakandan, learned counsel on record for writ petitioner, who was before us in the Admission Board i.e., Motion List submitted that fourth respondent, who is a private respondent has created a fraudulent Sale Deed dated 15.02.2022 (registered as document No.658 of 2022 on the file of District Registrar, Virudhachalam) as if the writ petitioner's husband Dhananjeyan has sold 6 cents of land from and out of said land (from and out of aforementioned 1 acre of land) and on this basis, fourth respondent is illegally putting up construction thereat i.e., in the '6 cents of land' {'land in question' for the sake of convenience and clarity} in violation of 'the Tamil Nadu Town and Country Planning Act, 1971' {hereinafter 'TNTCP Act' for the sake of brevity}, 'the Tamil Nadu Regularization of Unapproved Plots and Layouts Rules, 2017' {hereinafter 'TNRUPL Rules' for the sake of brevity} and 'the Tamil Nadu Change of Land Use (From Agriculture to Non-agriculture purposes in Non-planning Areas) Rules, 2017' {hereinafter 'TNCLU Rules' for the sake of brevity}.

3. Learned counsel pointed out that the writ petitioner has sent a 'representation dated 06.02.2024' {hereinafter 'said representation' for



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the sake of brevity} to R1 - District Collector, Cuddalore as regards the
aforementioned complaint.

4. Prayer in the captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} is to mandamus (direct) the respondents 1 to 3 i.e., District Collector, Cuddalore Revenue Divisional Officer, Cuddalore and Jurisdictional Tahsildar i.e., Tahsildar, Virudhachalam to remove alleged illegal unauthorised construction said to have been put up by R4 in the land in question. To be noted, prayer in captioned WP reads as follows:

'For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue an order, direction, writ more particularly a writ in the nature of WRIT OF MANDAMUS, directing the respondents 1 to 3 to remove the illegal unauthorized construction of the 4th respondent in the agriculture land at sub-division Survey No.15/11 to an extent of 6 cents in Survey No.15/5A2A2 total extent of 78 cents of Nanjai land at Sottavanam Village, Virudhachalam Taluk, Cuddalore District, considering the petitioner's representation dated 06.02.2024 and pass order thereon on merit and in accordance with law, after holding an enquiry and affording an opportunity to the petitioner and other persons interested concerned and pass such other orders as this Hon'ble Court may deem fit and proper and thus render justice.'



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5. Learned counsel emphatically submitted that no civil suit has been filed either by writ petitioner or by writ petitioner's spouse as regards the aforementioned complaint. Be that as it may, learned counsel drew our attention to Rule 15 of TNRUPL Rules which talks about 'Consequences of non-regularisation' and also Rules 6(1)(e) and 6(2)(i) of TNCLU Rules. To be noted, Rule 6 of TNCLU Rules which deals with guidelines to be followed by R1 for giving prior concurrence qua change of land use from agriculture to non-agriculture and it also talks about ascertaining whether the land is fit for continuing cultivation and Rule 6(2)(1) talks about status of land as in revenue records.

6. Primary complaint of writ petitioner is that land in question belongs to her husband but it has been fraudulently taken away by R4 by creating a fraudulent sale deed dated Sale Deed dated 15.02.2022 (registered as document No.658 of 2022 on the file of District Registrar, Virudhachalam) and by encroaching upon the same. It is also alleged that construction is being put up on this land in question in violation of TNRUPL Rules and TNCLU Rules. It is clear that these two i.e., alleged fabrication fraudulent grabbing of land in question taking advantage of



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her husband's limited mental development and alleged putting up of construction by R4 in land in question are distinct.

7. Learned counsel argued emphatically that aforementioned Rules have to be implemented.

8. There can be no two ways that implementation of aforementioned Rules is imperative but the point here is that primary complaint of writ petitioner is alleged grabbing of land in question (private land) from her spouse by R4. This complaint has to necessarily be redressed by way of a civil suit i.e., *inter alia* by challenging the sale deed.

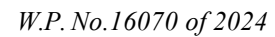
9. As of today, land in question has been transferred by writ petitioner's spouse to R4 vide aforementioned Sale Deed dated 15.02.2022 (registered as document No.658 of 2022 on the file of District Registrar, Virudhachalam)

10. We find that writ petitioner has not filed the captioned WP as a 'PIL' ('Public Interest Litigation'). This means that writ petitioner has



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filed captioned WP ventilating her grievance qua her private land. This clearly is a civil right which has to be exercised by writ petitioner and / or her husband / spouse by taking recourse to Section 9 of 'the Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of brevity, convenience and clarity]. Writ petitioner not having chosen to file a civil suit, has now come up with captioned WP with mandamus qua R1 to R3 as regards said representation (to be noted, prayer in WP has already been extracted and reproduced supra) now we extract and reproduce said representation as placed before us and the same is as follows:



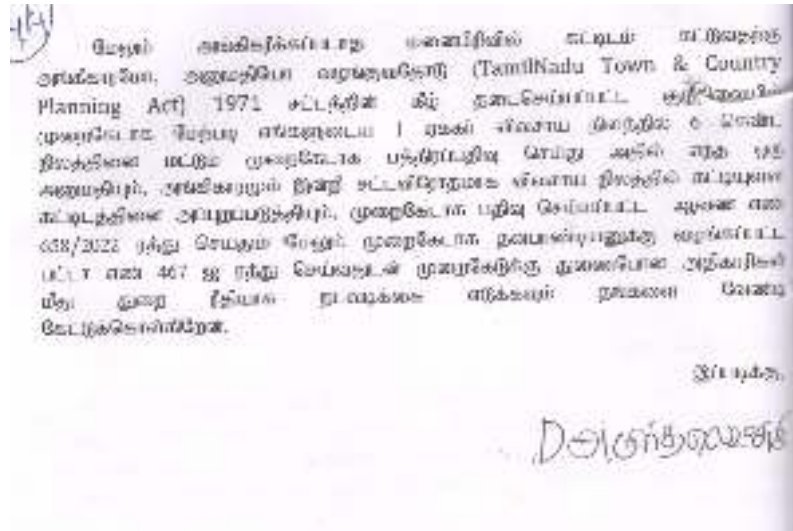
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11. A careful perusal of said representation and more particularly, first paragraph thereof makes it clear that primary complaint of writ petitioner is that land in question which is private land has been grabbed by R4 from her spouse and that R4 has obtained Sale Deed dated 15.02.2022 (registered as document No.658 of 2022 on the file of District Registrar, Virudhachalam) by taking advantage of the fact that writ petitioner's spouse has mental illness. We express no opinion on this submission. If the writ petitioner's spouse is having mental illness and if it is factually true, there are adequate provisions in CPC for such a person to be represented by writ petitioner or any other person. Whether this allegation of writ petitioner qua said land is true turns heavily on facts and it cannot be decided on affidavits and counter affidavits.



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12. Writ petitioner not having chosen to file a civil suit is now canvassing her case on the basis of alleged construction and alleged conversion of agricultural land for non-agricultural use. Under normal circumstances, as regards unauthorized construction in violation of TNTCP Act, TNRUPL Rules and TNCLU Rules or unauthorized construction in agricultural land for non-agricultural purpose, we would intervene / interfere but in the case on hand, primary complaint of writ petitioner is that her husband's private land has been allegedly grabbed by R4 by creating fraudulent Sale Deed dated 15.02.2022 (registered as document No.658 of 2022 on the file of District Registrar, Virudhachalam). Therefore, we refrain from entertaining the captioned WP.

13. As regards any other complaint regarding unauthorized construction or improper conversion of agricultural land into non-agricultural purpose or for that matter any proceedings pertaining to fraudulent sale deed if initiated or if triggered, the same will taken its course in accordance with law on its own merits and in accordance with law by the authorities concerned with this order not serving either as an impetus or an impediment.



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14. Notwithstanding very many averments in the support writ affidavit and grounds thereat, learned counsel predicated his argument in the hearing on the above points and we have given our dispositive reasoning on the points that were urged before us.

15. Ergo, the sequitur is captioned WP does not cut ice with us i.e., it does not pass muster in the Admission Board.

16. Apropos, further sequitur is captioned WP is dismissed. Considering the nature of the matter, we refrain from imposing costs.

(M.S.J.) (K.G.T.J.)
21.06.2024

Index: Yes
Neutral Citation: Yes
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M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

mk

To

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2. The Revenue Divisional Officer
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