



W.P.No.28207 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.28207 of 2023

1. Vijayakumar
S/o Thiagarajan
 2. Vasanthakumar
S/o Thiagarajan
 3. Azhagiri
S/o Thiagarajan
- .. Petitioners

v.

1. The Chairman
Puducherry Planning Authority (PPA)
Puducherry
2. The Member Secretary
Puducherry Planning Authority
Jawahar Nagar, Pondicherry
3. Ravi
S/o Srinivasan @ Sivanesan
4. Murugan @ Selvam
S/o Srinivasan @ Sivanesan
5. Amudha
D/o Srinivasan @ Sivanesan



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6. Sengeni
D/o Srinivasan @ Sivanesan

7. Keesagan
S/o Velayudham

8. Rukumani
W/o Keesagan

9. Ravikumar
S/o Keesagan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1 & 2 respondents to remove the unauthorised construction put up by the respondents 3 to 9 in Door No.3/4 at Villianur Road, comprised in Ward “N”, Block No.10, T.S.No.144, R.S.No.126/6B part, Cadaster No.505 part with an area of 93 Ca., in Murungapakkam, Puducherry.

For Petitioners :: Mr.K.S.Karthik Raja

For Respondents :: Mr.A.Tamilvanan
Addl. Government Pleader (Pondy)
for R1 & R2
Mr.K.Kannadhasan for R3, R5 & R6
Mr.Prakash Adiapadam for R7, R8 &
R9
R4-Refused

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

W.M.P.No.27728 of 2023 seeking to permit the petitioners to file a



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single writ petition stands allowed.

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2. The petitioners are claiming right over the property wherein the private respondents have put up construction. The respondents 3 to 6 appear to have put up a small construction in the disputed property to an extent of 200 square feet, which is now sold in favour of the respondents 7 to 9.

3. Brief facts that are admitted in this proceeding are as follows:-

There is a dispute between the petitioners and the respondents 3 to 6, who are the children of one Srinivasan @ Sivanesan. The father of the petitioners filed a civil suit in O.S.No.79 of 2010 as against the respondents 3 to 6 and their father for partition of his one half share in the suit property including the property that is the subject matter of this writ petition. The said suit filed by the father of the petitioners was heard on merits and ultimately dismissed by the learned Principal Subordinate Judge, Puducherry by a judgment and decree dated 22.12.2011. It is pertinent to mention that the civil Court came to the conclusion that the plaintiff had not filed any document to prove his share in the suit property, whereas the



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defendants have proved that they are the owners of the suit property. From the records it is also seen that the father of petitioners, after losing the battle in the suit, has executed a settlement deed dated 20.02.2012 in favour of his wife, namely, the mother of petitioners, suppressing the fact that the suit filed by him was dismissed holding that he has no semblance of right over any property. The mother of petitioners executed a settlement deed in favour of petitioners on 23.04.2012.

4. It is now admitted before this Court that the petitioners have filed another suit in O.S.No.108 of 2021 on the file of the III Additional District Court, Puducherry, again for the relief of partition of one half share in their favour. From the reading of plaint, it is seen that there is identity of cause of action as well issues. Almost on identical averments on the basis of which the father of the petitioners had filed the earlier suit, the petitioners have filed the subsequent suit by describing that the judgment in the earlier suit was obtained by fraud. However, there is no prayer in the suit questioning the judgment in O.S.No.79 of 2010. Having regard to the sequence of events and the admitted fact that the father had executed the settlement deed even



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after the dismissal of his earlier suit as against the contesting respondents herein, this Court finds that there is no prima facie material to show that the judgment and decree in the previous suit in O.S.No.79 of 2010 is vitiated by fraud or collusion.

5. Despite the dismissal of the first suit and the pendency of the second suit filed by the petitioners, the petitioners have come to this Court by way of the present writ petition for issuing a direction to the respondents 1 & 2 to remove the unauthorised construction put up by the respondents 3 to 9. The only contention raised by the petitioners in this writ petition is that the construction is unauthorised, in the sense that the private respondents have not obtained any planning permission.

6. However, in the counter affidavit filed by the second respondent, it is stated that the eighth respondent has submitted an application on 18.04.2023 to the Puducherry Planning Authority requesting for approval of the construction for two storeyed commercial building in the disputed property and that the said request for issuance of approval was refused.



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Since the planning permission was refused, it is further contended that the official respondents have now issued a refusal-cum-demolition notice to the eighth respondent on 26.05.2023.

7. From the contentions raised by the petitioners, this Court is unable to find any merit in their submission that the eighth respondent is in unauthorised possession. The application for planning permission submitted by the eighth respondent was refused mainly on the ground that the eighth respondent has put up construction more than the area to which the eighth respondent is entitled to. The further reason stated in the order is without an application of mind. The construction alleged is only in a small area of 200 square feet. The reason for rejecting the request for planning permission is on the ground that the eighth respondent has not provided the required parking area and that the foundation details shown in the plan is not as per execution at site and it needs to be corrected. The observations made in the order dated 26.05.2023 give the first impression that the official respondents are under pressure, probably due to influence.



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8. Be that as it may, this Court is not deciding the present writ petition

whether the planning permission was rejected for proper and justifiable reasons. However, having regard to the admitted facts, this Court finds that the writ petition is vexatious and aimed to grab the property, even though the petitioners have an alternative and efficacious remedy, which has been availed of by the petitioners. So far as the order rejecting the planning permission is concerned, it is open to the eighth respondent to challenge the same or to apply afresh in the manner known to law. If a revised application is submitted by the eighth respondent, it will be considered by the official respondents without considering the objection that may be raised by the petitioners on the ground that they have substantial right over the property. In other words, the official respondents may favourably consider the application submitted by the eighth respondent for approval, if they find that the plan and the construction are in adherence to the building rules. It is open to the official respondents to take appropriate action for the deviations, if any, by the eighth respondent on their own. They shall not hear the objections of the petitioners for the purpose of considering any issue relating to the construction. However, it is open to the petitioners to prosecute their



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suit. When the civil Court proceeds to decide the suit, it is clarified that the decision shall be uninfluenced by any of the observations made by this Court in this petition. It is also open to the eighth respondent to raise an issue as to the maintainability of the suit on the ground that it is barred by res judicata. With these observations, the writ petition stands dismissed. Consequently, W.M.P.No.27729 of 2023 is also dismissed. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
13.06.2024

ss

To

1. The Chairman
Puducherry Planning Authority (PPA)
Puducherry
2. The Member Secretary
Puducherry Planning Authority
Jawahar Nagar, Puducherry



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S.S.SUNDAR,J.
AND

N.SENTHILKUMAR,J.

SS

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