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W.P.No.14176 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.14176 of 2024

and

W.M.P.No.15365 of 2024

S.J.Pappaiyan

... Petitioner

Vs.

1. The Member Secretary,
Chennai Metropolitan Development Authority (CMDA)
Thalamuthu Natarajan Maaligai
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
2. The Chief Planner,
Chennai Metropolitan Development Authority (CMDA)
Multi-Storeyed Buildings, High Rise Buildings, Layouts
Thalamuthu Natarajan Maaligai,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
3. The Chief Planner - Area Plan Unit,
Chennai Metropolitan Development Authority (CMDA)
Non-High-Rise Building - (North) Section,
Thalamuthu Natarajan Maaligai
Gandhi Irwin Road,
Egmore, Chennai - 600 008.



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4. M/s. Noble Realtors,
Represented by its Partner,
Nos.19 & 20, Ram Lakhan Chambers,
General Muthaiah Mudali Street,
Sowcarpet, Chennai - 600 001.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1, 2 and 3 not to grant any approval for development in respect of the undivided share of lands comprised in S.No.83/4, situate at Noombal Village, Poonamallee Taluk, Thiruvallur District, belonging to petitioner and the 4th respondent herein, until the same is divided by metes and bounds.

For Petitioner : Ms.A.Dipthi Munoth

For R1 to R3 : M/s.P.Veena Suresh

ORDER

This Writ Petition has been filed seeking a direction to the respondents 1 to 3 herein not to grant any approval for development in respect of the undivided share of lands comprised in S.No.83/4, situate at Noombal Village, Poonamallee Taluk, Thiruvallur District, belonging to petitioner and the 4th respondent herein, until the same is divided by metes and bounds.



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2. The case of the petitioner is that the vacant land situate at No.41, Noombal Village, Poonamallee Taluk, Thiruvallur District, comprised in Old Survey No.42/9, 42/11, 42/110, 43/1, New Survey No.83, measuring an extent of about 3.87 Acres was originally purchased by the petitioner's grandfather, Late Mr.Thambaiya Naidu, under a Sale Deed dated 09.06.1959, registered as Document No.1541 of 1959. Subsequent to the death of Late Mr.Thambaiya Naidu, the aforesaid lands were partitioned between the sons of the said Late Mr.Thambaiya Naidu by way of a Koor Chit dated 25.03.1973, whereby an extent of 2.04 Acres from and out of the said larger extent of 3.87 Acres was allotted to the share of the petitioner's father Late Mr.S.T.Jayarama Naidu and Patta bearing No.144 was issued in favour of the petitioner's father in respect of Survey No.83/4, after sub-division of the larger extent. The petitioner's father died intestate on 14.09.2002 leaving behind the petitioner's mother Mrs.J.Kuppammal, the petitioner and 8 others as the surviving legal heirs. Thereafter, on 23.05.2003, the petitioner's mother also died intestate leaving behind her sons and daughters as the surviving legal heirs, each entitled to 1/9th share over the aforesaid land comprised in S.No.83/4. By a Sale deed dated 16.08.2023, registered as Document No.15775 of 2023 and Sale deed dated 12.09.2023, registered as Document No.17935 of 2023, 8/9th undivided share of the land comprised in S.No.83/4,



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was conveyed in favour of the 4th respondent Partnership Firm. In all, the 4th respondent has purchased a total extent of 1.81 Acres of undivided share from and out of the larger extent of 2.04 Acres of the land. Thus, the petitioner and the 4th respondent have become co-owners of the lands comprised in S.No.83/4 and a joint Patta bearing No.7514 has also been issued in favour of the petitioner and the 4th respondent.

3. The petitioner states that, subsequent to purchase of the said lands, the 4th respondent is attempting to develop the entire larger extent of 2.04 Acres of the land comprised in S.No.83/4 which is inclusive of the petitioner's undivided share of 23 cents, without the consent of the petitioner. Further, it was understood that the 4th respondent has submitted an application before the respondents 1 to 3 seeking grant of approval for development of the said lands. The undivided share of lands comprised in S.No.83/4 have not been partitioned by the petitioner and the 4th respondent between themselves till date. On 17.04.2024, the petitioner gave a representation to the respondents 1 to 3 not to grant any approval in favour of the 4th respondent until a partition is executed between the petitioner and the 4th respondent. Despite receipt of the same, the said representation did not evoke any response or action from the respondents 1 to 3. The 4th respondent



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and its representatives are attempting to carry out development activities over the undivided share of lands without obtaining any prior permission from the concerned authorities, besides no consent or NOC has been given by the petitioner for carrying out any development over the undivided share of lands in S.No.83/4. Thus, there is an urgency, warranting interference by this Court. Hence, this Writ Petition was filed.

4. The 4th respondent filed a counter affidavit denying the averments in the affidavit of the petitioner. It is the contention of the 4th respondent that, the subject property measuring about 2.04 acres out of the larger extent of 3.87 acres was the property of one Mr.S.T.Jayaraman Naidu and thereafter on his demise in the year 2002, the said property devolved on family members numbering about nine of them. Thereby every member got a 1/9th share. Out of the nine members, except the writ petitioner herein, all others have combinedly came forward to convey the same and accordingly, a common sale deed was executed in favour of the 4th respondent. The petitioner who has its own avaricious and ambitious objective refused to cooperate with the family members in the matter of sale of the property. He has been further insisting for a major share over the sale proceeds of the property or otherwise, the price expected by the petitioner need to be paid is the basic



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requirement of the petitioner. Notwithstanding the worth of the share expectation of the petitioner is high flying without any reason or rhyme.

Since the same is very exorbitant and unreasonable, the portion of the share, through undetermined being left and the combined purchase was made with regard to entire remaining share of the property.

5. It is the further contention of the 4th respondent that, unless and until proper determination of the shares and apportioning of the petitioner, portion of the shares from and out of the whole extent in respect of the shares acquired by the 4th respondent, the same cannot be developed unless the writ petitioner also cooperate and consented. In the absence of such probabilities, the question of development or endeavouring the development in the property is not possible is much known and for which, there cannot be any attribution of grievances at the end of the writ petitioner. They have been contemplating to apportion the property by resorting to the process of law in accordance and not as such the petitioner is putforthing in the Writ Petition. Further, unless and until proper approval or license being granted, such a vast land cannot be developed and they are not such foolish to invest in the big scale after the said project wherein the situation is not resolved in all respect to focus on probable development. It is only a rouse on the part of the petitioner to



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approach this Court, such allegation being made without any reality or truth attach to the same. It is not the matter that the Writ Petitioner is in apprehensive he can approach this Court by invoking the extraordinary jurisdiction without any basis. On the sole reason, the Writ Petition is liable to be dismissed, since there is no concrete material being placed or any sort of record is made available for this Court to act on the same. Mere apprehension is not sufficient to knock this Court for remedy. Only after the property is demarcated, there can be approval being granted for construction.

6. The learned counsel appearing for R1 to R3 would submit that no application for approval on development has been filed by the 4th respondent in respect of the subject property till date before them.

7. In view of the above, this Court makes it clear that the petitioner and the 4th respondent can go for partition of the property to enable them to make subdivision and later only, they can develop the property as per their own wishes.

8. In view of the above facts and circumstances, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is



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Index : yes/no

Internet : yes/no

To

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V.BHAVANI SUBBAROYAN, J.

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