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W.P.No.4819 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.4819 of 2014

and

W.M.P.Nos.2 & 3 of 2014

S.Chinnaswamy

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai – 600 009.

2.The Director of Town and Country Planning,
807, Anna Salai,
Chennai – 600 002.

3.The Member Secretary/Joint Director,
Coimbatore Local Planning Authority,
Corporation Shopping Complex, 1st Floor,
Tatabad, Sivananda Colony,
Coimbatore – 641 012.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the 1st respondent relating to G.O.(2D) No.59, Housing and Urban Development [UD 4(1)] Department dated 21.06.2013, quash the condition Nos. (ii) and (iii) contained in Paragraph 4 of the said G.O., direct the first respondent to accord permission for re-classification of the land of the petitioner bearing Survey Nos.380/1A2B and 380/1B admeasuring 71½



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cents situated in Irugur Village, Sulur Taluk (formerly Palladam Taluk), Coimbatore District as residential use, pursuant to the applications of the petitioner dated 1.8.2007 and 2.9.2009 within the time fixed by the court.

For Petitioner : Mr.V.Sanjeevi

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government
Pleader [R1 & R2]
Mr.P.Chinna Durai [R3]

ORDER

This Writ Petition has been filed seeking for a Certiorari, to call for the records of the 1st respondent relating to G.O.(2D) No.59, Housing and Urban Development [UD 4(1)] Department dated 21.06.2013, quash the condition Nos. (ii) and (iii) contained in Paragraph 4 of the said G.O., direct the first respondent to accord permission for re-classification of the land of the petitioner bearing Survey Nos.380/1A2B and 380/1B admeasuring 71½ cents situated in Irugur Village, Sulur Taluk (formerly Palladam Taluk), Coimbatore District as residential use, pursuant to the applications of the petitioner dated 1.8.2007 and 2.9.2009 within the time fixed by the court.

2. According to the petitioner, the Government of Tamil Nadu, by



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G.O.Ms.No.661 Housing and Urban Development Department dated

12.10.1994, approved the Master Plan for Coimbatore, Local planning

area which includes Irugur village. As per the approved Master plan,

Survey No.378 has been classified as industrial area and Survey No.380

has been reserved, allotted or designated as 'channel/vari'. In both

Survey Nos.378 and 380, the petitioner owns lands to the extent of 4

Acres and 40 ½ cents. Aggrieved by the Master plan, the petitioner made

an application seeking variation in the Master Plan for re-classification of

the petitioner's land. As there was no response, he filed a Writ Petition in

W.P.No.14420 of 2009, which was disposed of by this Court vide order

dated 27.07.2009, directing the petitioner to make a detailed

representation to the 1st respondent herein, who in turn shall consider and

pass appropriate orders. Pursuant to the orders of this Court, the 1st

respondent vide impugned G.O.2(D) No.335, Housing and Urban

Development Department, dated 20.07.2010 rejected the request of the

petitioner for re-classification. Aggrieved by the G.O., the petitioner has

again moved a Writ Petition in W.P.No.27834 of 2010, wherein, this

Court, while passing a detailed order, dated 20.09.2012, set aside the

G.O.2(D) No.335, dated 20.07.2010 and consequently, directed the 1st

respondent to consider the detailed representation made by the petitioner



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dated 02.09.2009 and pass orders afresh. Thereafter, the 1st respondent passed the impugned G.O.(2D) No.59 Housing and Urban Development Department dated 21.06.2013, permitting the conversion of land in S.No.378/5, 6 to an extent of 3.69 acres in Irugur village from industrial use to residential use in the approved Coimbatore Master plan, subject to the following conditions, viz.,

i) The petitioner has to widen the narrowed approach road in the south western side of the site and make it straight;

ii) He has to provide a minimum of 15 meter wide buffer zone in the western side of the odai;

iii) He has to further provide a mandatory 50 meters buffer to mitigate industrial pollution to residential use being proposed.”

3. Heard the learned counsel for the parties and perused the materials available on record.

4. The petitioner is aggrieved by the above said conditions, particularly, condition Nos.(ii) and (iii) as according to him, they are totally unsustainable inasmuch as there was no industry within 200



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meters from the petitioner's land, the question of providing a mandatory meters buffer to mitigate industrial pollution does not arise and that there is no basis for the observation that a residential use amidst industrial use requires a mandatory 50 meters buffers to mitigate industrial pollution to residential use being proposed, since there is no industrial unit within 200 meters from the petitioner's land and hence, the condition (iii) is not sustainable.

5. As regards condition no.(ii) is concerned, since the petitioner intended to use the area for residential purpose, as there is odai existing, if he proposes to construct any residential building, it is mandatory for him to provide a minimum of 15 meter wide buffer zone in the western side of the odai in order to prevent contamination of any drainage from the building passing into the water body and to protect water course and also not to obstruct water flow. Therefore, imposition of the said condition by the respondent, is justifiable.

6. As regards condition no.(iii) is concerned, the petitioner was directed to further provide a mandatory 50 meters buffer to mitigate



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industrial pollution to residential use being proposed, which is not sustainable since the respondent has no power to impose such condition while dealing with re-classification of the zone as per the rules including building rules and only when development of the property by way of construction of residential building takes place, this condition can be imposed. Therefore, the condition no.(iii) is liable to be set aside.

7. Accordingly, the Writ Petition is partly allowed and the condition no.(iii) imposed by the 1st respondent in the impugned order, dated 21.06.2013 alone is set aside, while the other conditions are confirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

14.08.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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