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W.P.Nos.24119 & 24151 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.Nos.24119 & 24151 of 2021

and

W.M.P.Nos.25423, 25473 of 2021,

23488 & 23518 of 2023

M.Mohammed Shafi

... Petitioner
in W.P.No.24119 of 2021

Thakira

... Petitioner
in W.P.No.24151 of 2021

Vs.

1.The Director,
Town and Country Planning,
Anna Salai,
Chennai – 600 002.

2.The Assistant Director of
Town and Country Planning,
Villupuram Region,
TADCO Building, G.H. Road,
Villupuram – 605 602.



W.P.Nos.24119 & 24151 of 2021

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3. The Commissioner,
Villupuram Municipality,
Villupuram.

4.A.Jahir Hussain

... Respondents
in both writ petitions

Prayer in W.P.No.24119 of 2021 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent made in Na.Ka.No.6602/2021/F2 dated 30.09.2021 and quash the same and consequently, direct the 2nd respondent herein to consider the application for regularisation submitted by the petitioner on 27.03.2019 under the provisions of Tamil Nadu Regularisation of Unapproved Plots and Approval Laws and Rules.

Prayer in W.P.No.24151 of 2021 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 3rd respondent made in Na.Ka.No.6602/2021/F2 dated 30.09.2021 and quash the same.

For Petitioner : Mr.M.Gnanasekar
in both writ petitions

For R1 and R2 : Mrs.V.Yamuna Devi
Special Government Pleader



W.P.Nos.24119 & 24151 of 2021

in both writ petitions

For R3 : Mr.P.Srinivas
Standing Counsel
in both writ petitions

For R4 : Mr.I.Kowser Nissar
in both writ petitions

COMMON ORDER

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

W.P.No.24119 of 2021 is filed by M.Mohammed Shafi, for issuance of Writ of Certiorarified Mandamus calling for the records of the 3rd respondent made in Na.Ka.No.6602/2021/F2 dated 30.09.2021, and quash the same and consequently, directing the 2nd respondent herein to consider the application for regularisation submitted by the petitioner on 27.03.2019 under the provisions of Tamil Nadu Regularisation of Unapproved Plots and Approval Laws and Rules.

2.W.P.No.24151 of 2021 is filed by Thakira, for issuance of Writ of Certiorari to quash the proceedings of the 3rd respondent made in



W.P.Nos.24119 & 24151 of 2021

Na.Ka.No.6602/2021/F2 dated 30.09.2021, directing the petitioner to remove the unauthorised construction in terms of Section 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971.

3.Since the property which is subject matter of these writ petitions is same, both these writ petitions are disposed of by this common order.

4.Brief facts that are stated by the petitioners in the affidavits filed by them in respective writ petitions are as follows :

The petitioner in W.P.No.24119 of 2021 had applied for regularisation of plot as well as layout and the application is dated 27.03.2019. The petitioner in W.P.No.24151 of 2021 had applied for regularisation of plot as well as layout and the application is dated 28.03.2019. The petitioner in W.P.No.24119 of 2021 earlier filed a writ petition in W.P.No.10691 of 2019. The petitioner in W.P.No.24151 of 2021 earlier filed a writ petition in W.P.No.8534 of 2019. This Court dismissed the writ petitions after holding that the petitioners had put up construction without building permission from the 3rd respondent Municipality. This Court has observed that the



W.P.Nos.24119 & 24151 of 2021

petitioners cannot be shown any indulgence having regard to the facts stated in the affidavit filed therein.

5.The 4th respondent has filed a counter affidavit stating that the property in which the petitioners had put up construction is the property of Waqf. It is stated that the property comprised in S.Nos.347/1 to 5, 350/1 to 28 and 563/1, bearing Door No.2, Vandimedu, Villupuram Taluk, belongs to the Waqf known as "Abesha Thaikka". It is also stated that the Waqf is registered and that the property is shown, even in the Proforma, as registered with the Waqf Board.

6.Though the Waqf Board has filed petitions to implead itself as a party to these writ petitions, this Court is not inclined to consider the same as the facts in this case are admitted as established by records. Hence, the impleading petitions in W.M.P.Nos.23488 and 23518 of 2023 are dismissed.

7.The 4th respondent has submitted a representation to the official respondents for initiating action to remove the unauthorised construction



W.P.Nos.24119 & 24151 of 2021

put up by the petitioners. It is only at the instance of the 4th respondent, proceedings were initiated against the petitioners for removal of unauthorised construction. It is brought to the notice of this Court that proceedings have been initiated under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, by the Estates Officer at the instance of the Waqf. Even the order that was passed by the official respondents to demolish the building, was upheld by this Court. It is thereafter, the petitioners appear to have applied for regularisation on the basis of some Revenue documents claiming ownership. Even though this Court is not inclined to go into the issue relating to title, the fact that the construction has come in a disputed property, is not in issue. *Prima facie*, this Court is not convinced with the documents filed by the petitioners to prove their title. Though the petitioners may establish their title before the Civil Court, the question whether the construction put up by the petitioners is unauthorised has already been decided in the earlier writ petitions filed by the petitioners themselves. After putting up construction in a property where the title is in dispute, the petitioners cannot seek regularisation. Their application for regularisation is not likely to be considered, unless the



W.P.Nos.24119 & 24151 of 2021

petitioners establish their title, especially when the Waqf as well as the Waqf Board have serious objections for permitting any construction in the property. It is in these circumstances, this Court is unable to take a view which would go contrary to the earlier order passed by this Court in the writ petitions filed by the petitioners themselves in W.P.Nos.10691 of 2019 and 8534 of 2019.

8.As a result, these writ petitions are dismissed for want of merits. However, the petitioners can apply for fresh approval for building after establishing their title by filing a Civil Suit. No costs. Consequently, W.M.P.Nos.25423 and 25473 of 2021 are closed.

(S.S.S.R., J.) (N.S., J.)
05.02.2024

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Index : Yes / No
Neutral Citation : Yes / No



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