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W.P.No.23799 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.23799 of 2024
and W.M.P.No.26045 of 2024

Kalaiselvi

... Petitioner

-Vs-

1. Director of Municipal Administration,
Municipality Office Campus,
75, Santhome High Road,
Raja Annamalaipuram, Chennai-600 028.
2. The Commissioner,
Municipal Corporation,
Kamarajar Road, Sirkali,
Mayiladurai-609 110.
3. The District Collector,
District Collectorate Office,
Mayildadurai District.
4. The Thasildhar,
Thasildhar Office,
Sirkali Taluk, Mayiladurai District.
5. Sivadevan
6. The Assistant Director,
The District Town And Country Planning Office,
Mayiladurai District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling the records of the NOC issued by the second respondent in Na.Ka. No.2324/ 2023/ F1 dated 05.01.2023 relating to the DTCP approval for the land bearing Block No.50, Old S.R.No/432, Ward A, measuring to an extent of 7.50 ares within the limit of Sirkali Town and Quash the same as illegal and arbitrary.

For Petitioner	: Mr.G.Mohammed Aseef
For R1 to R4	
and R6	: Dr.T.Seenivasan
	Special Government Pleader

ORDER

This writ petition has been filed challenging the certificate issued by the second respondent dated 05.01.2023, thereby certified that the land comprised in Old S.No.432 situated at No.50, Sirkali Village, Block No.50 ad-measuring 7.50 ares is lying vacant as Tharisu without any usage for the past 30 years.

2. Heard and perused the materials available on record.

3. One Sivagami Aachi and her husband Ramanatha Chettiyyar had



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leased out the property comprised in S.Nos.428 and 429 to an extent of 0.72.5 ares and 1.19 ares at Block No.50, Sirkali Village and Firka, Sirkali Taluk, Mayiladudurai in favour of the petitioner. The petitioner and her husband are doing agriculture for the past several years. While being so, the lessor agreed to sell the property in favour of the petitioner and also entered into an agreement for sale on 10.05.1994. The petitioner also paid the substantial amount as advance. Thereafter, they had constructed a house in the year 1990 in one part of the said property and living there. While being so, the petitioner's husband died in the year 2021 leaving behind the petitioner and their daughters as his legal heirs. The said Sivagami Aachi and her husband Ramanatha Chettiyar died and as such, the petitioner approached the legal heirs for registration of sale deed. However, they have not come forward to register any sale deed in favour of the petitioner. While being so, the legal heirs of the said Sivagami Aachi and Ramanatha Chettiyar had sold out the property in favour of the fifth respondent herein.

4. Therefore, the petitioner filed a suit for permanent injunction in



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O.S.No.147 of 2023, on the file of the District Munsif Court at Sirkali.

Thereafter, the said suit was withdrawn by the petitioner on 10.10.2023.

Thereafter, the petitioner filed an application to reopen the suit in I.A.No.3 of 2023 in O.S.No.147 of 2023 and it is pending for enquiry.

After purchase, the fifth respondent applied for approval of house plots comprised in R.S.Nos.428 and 429. The petitioner raised objection for approving the property which was purchased by the fifth respondent.

However, the objection was rejected by the second respondent and sent a report to the first respondent stating that the application submitted by the fifth respondent can be considered for approval by an order dated 19.03.2024.

5. After having been failed before the second respondent, now, the petitioner challenged the certificate issued by the second respondent dated 05.01.2023, thereby certified that the land comprised in Old S.No.423 situated at No.50, Sirkali Village, Block No.50 ad-measuring 7.50 ares is lying vacant as Tharisu without any usage for the past 30 years as burial ground. The subject property which was purchased by the



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fifth respondent is situated near to the property which is now certified by the second respondent as Tharisu and as such, the petitioner challenged the order dated 05.01.2023 that too after having been failed before the second respondent by raising objection to grant an approval and also withdrew the suit filed by her.

6. The learned counsel for the petitioner would submit that the said burial ground is situated within 50 metres from the subject land which was purchased by the fifth respondent. The burial ground is used by the general public. Without considering the same, the second respondent certified that the said burial ground is not under usage by the public and it is lying vacant as Tharisu. She further submitted that as per the DTCP Rules, “No layout permission should be granted when the proposed land is within 90 metres from burial ground”. Therefore, the second respondent ought not to have issued such certificate.

7. It is seen from the order dated 19.03.2024, issued by the second



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respondent to the first respondent revealed that already the property which was purchased by the fifth respondent has been laid out by the proceedings in ROC.No.1141/2023/24/TCP dated 11.01.2024 and accordingly, the house plots were divided and are under usage of general public. Therefore, now, the petitioner cannot challenge the certificate issued by the second respondent. That apart, already the petitioner filed a suit for bare injunction as against the fifth respondent in O.S.No.147 of 2023 and the same was withdrawn. In fact, the petitioner also did not file any suit for specific performance as against the legal heirs of the deceased land owners viz., Sivagami Aachi and Ramanatha Chettiyar who had entered into an agreement for sale with the petitioner.

8. If at all there is any right over the property which was already purchased by the fifth respondent, the petitioner ought to have filed a suit as against the original owners of the property as per the agreement for sale.

9. In view of the above, this Court finds no infirmity or illegality in



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the certificate issued by the second respondent dated 05.01.2023 and the writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

20.08.2024

Internet: Yes
Index : Yes/No
Neutral Citation: Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

mn

To

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Municipality Office Campus,
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Raja Annamalaipuram, Chennai-600 028.
2. The Commissioner,
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