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W.P. No. 27587 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 27587 of 2023

V. Ponnusamy

... Petitioner

-VS-

1. The District Collector
and Inspector of Panchayats,
Kallakurichi District,
Kallakurichi.
2. The Assistant Director,
Panchayats,
Kallakurichi District,
Kallakurichi.
3. The Assistant Director,
Town and Country Planning,
Kallakurichi District,
Kallakurichi.
4. The Chief Educational Officer,
Kallakurichi District,
Kallakurichi.
5. The Block Development Officer,
Village Panchayats,
Kallakurichi Panchayat Union,
Kallakurichi District,
Kallakurichi.
6. The President,
Madhavacherry Village Panchayat,
Kallakurichi Panchayat Union,
Madhavacherry,
Kallakurichi District.

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 6th respondent dated 07.09.2023 in Resolution No.76/2023 and quash the same, consequently, direct the 6th respondent to grant final approval for the residential layout of Petitioner as per the approval/permission granted by the 3rd respondent dated 20.06.2023 in ROC No.WOMVK48G/11489/2023/2022/TCP with regard to his property in S.Nos.181/2B1, 2C, 2D1, 2E1, 184/13A and 184/13B1 to an extent of 83 cents, situated at Madhavacherry South Village, Chinnasalem Taluk, Kallakurichi District.

For Petitioner : Mr. M.R.Jothimanian

For Respondents : Mr. S.Prabhakaran (For R1 to R3)
Government Advocate

Mr. E.Sundaram (For R4)

Mr. V.Manoharan (For R5 and R6)

ORDER

Heard M.R.Jothimanian, Learned Counsel for the Petitioner, Mr. S.Prabhakaran, Learned Government Advocate appearing for the First to Third Respondents, Mr. E.Sundaram, Learned Counsel for the Fourth Respondent, and Mr. V.Manoharan, Learned Counsel for the Fifth and Sixth Respondents and perused the materials placed on record, apart from the pleadings of the parties.



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2. The grievance ventilated by the Petitioner is that despite technical approval/permission granted in Proceedings No. WOMVK 48G/11489/2023/TCP dated 20.06.2023 by the Third Respondent and 'no objection' certificate dated 10.02.2023 granted by the Fourth Respondent, the final approval for residential lay-out sought by the Petitioner has been rejected by the Sixth Respondent by Resolution No. 76/2023 dated 07.09.2023, which is assailed in this Writ Petition.

3. According to the Sixth Respondent, there is no proper access by road to the property of the Petitioner for which lay-out approval has been sought and during verification, the Fourth Respondent has not been able to confirm the grant of 'no objection' certificate produced by the Petitioner to use the road exclusively granted for Government School, apart from objections received from the public in that regard. In that backdrop, this Court on 12.12.2023, had directed the First Respondent along with the jurisdictional Tashildar along with Surveyor, after due notice to the Petitioner, Fourth, Fifth and Sixth Respondents and all other persons concerned, to inspect the locality and measure the respective properties of the Petitioner and the Government School with revenue records to ascertain as to whether the prescribed norms of road access for grant of lay-out approval to the Petitioner for his property exists and file report with



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FMB sketch, before the next hearing. In furtherance to the said order, an inspection report dated 20.02.2024 has been filed by the Tahsildar, Chinnasalem, stating as follows:-

" *It is most respectfully submitted that as per the order of this Hon'ble Court, Kallakurichi District, Chinnasalem Circle, Madhavachery Village High School Madhavachery South Village No.183/2A, 183/2B, 183/2C, 183/2D, 183/2E, 183/2F, 183/2G, 184/136, 184/13H, 184/13I, 184/13L, 184/13M and 184/13N are the filed numbers of land and four field numbers 203/1A, 203/18, 203/1C, and 203/1D currently as tract Vadakanandal Registrar's Office Document No: 1623/2006 Donated for the benefit of the public and for the establishment of an educational institution and is now granted in the name of Villupuram District Principal Education Officer in Patta No: 1114. The road leading to the school is Plot No: 203/1A1, 181, 101, 1D1-06 15 feet wide cement road and the south side of the public have been fenced off to access their houses and agricultural land.*

Investigation revealed that while the road leading to the school has been fenced with a wire fence, a cement road



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has been constructed by the Panchayat. Also, to go to school, a 10 feet wide road has been constructed on the south side of the cement road (Tirupathi Nagar) and houses have been built and sold. It is known that a 12 feet wide road has been constructed on the north side of the road leading to the school and the Assistant Director of Villupuram Urban Development is in the process of being consulted. At this point, the 15 feet wide road leading to the said Madhavachery Village Government High School is fenced on both sides and other people are not allowed to enter. Also, I am kindly informed that the said land owner has left 10 feet road space for houses on the south side of the wire fence of the school road and 12 feet road space for the houses on the north side."

In view of the aforesaid explanation, which deserves acceptance, it is evident that the nature of relief claimed by the Petitioner falls within the realm of disputes question of fact, which cannot be effectively determined by this Court in proceedings under Article 226 of the Constitution following summary procedure. It must be recapitulated here that the Hon'ble Supreme Court of India in the decision in **Roshina T. -vs- Abdul Azeez K.T.** [(2019) 2 SCC 329] has cautioned that such claims relating to property rights would have to be



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answered one way or the other only in a properly framed suit impleading necessary parties before the civil court. It is needless to add here that no view has been expressed by this Court on the merits of the controversy involved.

In the result, the Writ Petition is disposed with the aforesaid observations.

No costs.

20.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 31.05.2024.

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To

1. The District Collector
and Inspector of Panchayats,
Kallakurichi District,
Kallakurichi.
2. The Assistant Director,
Panchayats,
Kallakurichi District,
Kallakurichi.
3. The Assistant Director,
Town and Country Planning,
Kallakurichi District,
Kallakurichi.
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5. The Block Development Officer,
Village Panchayats,
Kallakurichi Panchayat Union,
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P.D. AUDIKESAVALU, J.

gsa

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