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W.P.Nos.30203 of 2023 & 801 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.Nos.30203 of 2023 & 801 of 2024

and

W.M.P.Nos.826 & 827 of 2024

W.P.No.30203 of 2023 :

Boomidevi

Represented by her Power Agent

C.Sactivel

... Petitioner

Vs.

1.The Chief Secretary,
Secretariat, Beach Road,
Pondicherry – 605 001.

2.The Secretary (Housing),
Secretariat, Beach Road,
Pondicherry – 605 001.

3.The Member Secretary,
Town and Country Planning Board,
Town and Country Planning Department,
Puducherry.



W.P.Nos.30203 of 2023 & 801 of 2024

4.The Member Secretary,
Puduchery Planning Authority,
Puduchery.

5.R.Sankari

6.M.Karthikeyan

... Respondents

Prayer in W.P.No.30203 of 2023 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the official respondents to take appropriate demolition action against the illegal constructions made by the 5th and 6th respondents at R.S. No. 239pt, T.S. No.112, Ward 'D' Block 17 , Yanam Venkatachalam Pillai Street, Puducherry Revenue Village, Puducherry Municipality, Puducherry and at R.S. No.63/87, West Street, Villianur Revenue Village, Villiyanur Commune, Puducherry respectively through the representation of the petitioner dated 27.09.2023.

For Petitioner	:	Mr.S.P.Sudalaiyandi
For R1 to R4	:	Mr.J.Kumaran Additional Government Pleader (Pondicherry)
For R5	:	Mr.J.Raj Mohan
For R6	:	Mr.M.Magesh



W.P.Nos.30203 of 2023 & 801 of 2024

W.P.No.801 of 2024 :

R.Sankari

... Petitioner

Vs.

1.The Member Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry.

2.The Secretary (Town Planning) cum Chairman,
Puducherry Planning Authority,
Chief Secretariat,
Puducherry.

3.The Commissioner,
Puducherry Municipality,
Puducherry.

4.A.Boumidevi

... Respondents

Prayer in W.P.No.801 of 2024 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records in respect of the order vide receipt No.8374/PPA/Online/2022/4978, dated 22.12.2022 and the consequential order vide letter No.8374/PPA/Online/2022/Demolition Notice/615 dated 28.02.2023 passed by the 1st respondent herein and quash the same.



W.P.Nos.30203 of 2023 & 801 of 2024

For Petitioner : Mr.J.Raj Mohan
For R1 to R3 : Mr.J.Kumaran
Additional Government Pleader
(Pondicherry)
For R4 : Mr.S.P.Sudalaiyandi

COMMON ORDER

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

The petitioner in W.P.No.30203 of 2023 has filed the writ petition for issuance of a Writ of Mandamus directing the official respondents to take appropriate demolition action against the illegal construction put up by the respondent 5 and 6 at R.S.No.239pt, T.S. No.112, Ward 'D' Block 17, Yanam Venkatachalam Pillai Street, Puducherry Revenue Village, Puducherry Municipality, Puducherry and at R.S. No.63/87, West Street, Villianur Revenue Village, Villianur Commune, Puducherry.

2.The 5th respondent in W.P.No.30203 of 2023 has filed the writ petition in W.P.No.801 of 2024 for issuance of a Writ of Certiorari to call for the records in respect of the impugned order dated 22.12.2022 and the



W.P.Nos.30203 of 2023 & 801 of 2024

consequential order for demolition of the building dated 28.02.2023 passed by the 1st respondent in the writ petition in W.P.No.801 of 2024.

3.Since these two writ petitions are connected, they are disposed of by this common order.

4.Brief facts that are necessary for the disposal of these two writ petitions are as follows :

4.1.The petitioner in W.P.No.30203 of 2023 is the absolute owner of the premises in which the 5th respondent has now put up construction. The petitioner in W.P.No.30203 of 2023 purchased the property through registered sale deeds dated 28.09.1966 and 18.11.1967. It is not in issue that petitioner has also obtained patta in her name. It appears that the petitioner is a dual citizen of Pondicherry and France and at present, she is living in Pondicherry.

4.2.It is the case of the petitioner in W.P.No.30203 of 2023 that, taking advantage of her absence, the 5th respondent has created a Power of Attorney Deed through a third party and purchased the property by creating



W.P.Nos.30203 of 2023 & 801 of 2024

a document of sale in her favour.

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4.3.The petitioner in W.P.No.30203 of 2023 made a complaint to the Government and the sale deed was cancelled by the 5th respondent in view of the criminal case pending.

4.4.However, the 5th respondent, on the basis of the same sale deed which was later cancelled, obtained planning permission. The said planning permission was later revoked, as admitted by the 5th respondent, pursuant to the cancellation of the sale deed. Following the cancellation of the planning permission, the official respondents have initiated proceedings for demolition of illegal construction. Based on the representation of the petitioner in W.P.No.30203 of 2023, the respondents issued the notice which is challenged in the subsequent writ petition filed by the petitioner in W.P.No.801 of 2024.

5.From the factual averments made in the affidavits filed in support of these writ petitions, the fact that the 5th respondent in W.P.No.30203 of 2023 has obtained a sale deed through a person who is not the Power of Attorney Agent of the petitioner in W.P.No.30203 of 2023, is not in dispute. In the



W.P.Nos.30203 of 2023 & 801 of 2024

said circumstances, the sale deed obtained by the 5th respondent in W.P.No.30203 of 2023, even if it is not cancelled by process known to law, is void and not enforceable. Based on the void document of sale, the petitioner in W.P.No.801 of 2024 has obtained planning permission and the planning permission was rightly cancelled by the impugned order dated 22.12.2022 passed by the 1st respondent in W.P.No.801 of 2024. While revoking the building plan approval which was granted to the petitioner in W.P.No.801 of 2024 earlier, the 1st respondent has directed the petitioner in W.P.No.801 of 2024 to restore the land to its original position. Consequently, by the impugned order dated 28.02.2023, the 1st respondent in W.P.No.801 of 2024 has called upon the petitioner in W.P.No.801 of 2024 to demolish the building constructed within one month from the date of notice. It was further stated that, failing which, action will be taken as per the provisions of the Pondicherry Town and Country Planning Act, 1969 and as per the Puducherry Building By-laws and Zoning Regulations, 2012. It is against the order dated 22.12.2022 revoking the planning permission and the consequential order dated 28.02.2023 for demolition, the 5th respondent in W.P.No.30203 of 2023 has filed the writ petition in



W.P.Nos.30203 of 2023 & 801 of 2024

W.P.No.801 of 2024.

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6.Learned counsel appearing for the petitioner in W.P.No.801 of 2024 has admitted before this Court that the sale deed obtained in favour of the petitioner in W.P.No.801 of 2024 is cancelled pursuant to the complaint lodged by the petitioner in W.P.No.30203 of 2023. The fact that the sale deed obtained in favour of the petitioner in W.P.No.801 of 2024 is fraudulent, is not in issue. The cancellation of the sale deed has been admitted by the petitioner in W.P.No.801 of 2024. It is therefore, the 1st respondent in W.P.No.801 of 2024 has revoked the approved plan by impugned order dated 22.12.2022. By virtue of cancellation of sale deed, the construction put up by the petitioner in W.P.No.801 of 2024 is unauthorised, as she is not the owner of the property. Since the sale deed on the basis of which building plan approval was originally granted to the petitioner in W.P.No.801 of 2024 has been cancelled, the revocation of planning approval is inevitable. Following the revocation of the planning approval, the 1st respondent in W.P.No.801 of 2024 is expected to initiate proceedings for removal of unauthorised construction and it has been rightly



W.P.Nos.30203 of 2023 & 801 of 2024

done by the 1st respondent. Therefore, this Court finds no merit in the writ petition in W.P.No.801 of 2024 and hence, the same is liable to be dismissed.

7.As regards the prayer in W.P.No.30203 of 2023, this Court finds that the 5th respondent in W.P.No.30203 of 2023, who has no right in the property, cannot protect his illegal construction after the cancellation of the sale deed. Learned counsel appearing for the 5th respondent in W.P.No.30203 of 2023 submitted that the 5th respondent was in fact made to believe that she is getting the property from a proper person, i.e., from the petitioner's son and daughter-in-law and that therefore, there was a settlement by which the petitioner in W.P.No.30203 of 2023 has agreed to compensate the 5th respondent in W.P.No.30203 of 2023 by paying some amount for the construction which has been put up by the 5th respondent in the disputed property.

8.This Court finds that such dispute cannot be resolved here. If the petitioner in W.P.No.30203 of 2023 or her son had promised to compensate



W.P.Nos.30203 of 2023 & 801 of 2024

the petitioner in W.P.No.801 of 2024, it may be open to the petitioner in W.P.No.801 of 2024 to enforce his right if any by filing a suit before the Civil Court. However, as long as the construction put up by the petitioner in W.P.No.801 of 2024 is unauthorised, the 1st respondent in W.P.No.801 of 2024 is entitled to initiate proceedings in the manner known to law. Fraud vitiates every solemn transaction, and therefore, the petitioner in W.P.No.801 of 2024, on the basis of a fraudulent sale deed, cannot claim any right to the property or construction put up by him in the disputed land. For the reasons stated above, the petitioner in W.P.No.30203 of 2023 is entitled to succeed.

9.As a result, **W.P.No.801 of 2024 is dismissed** and **W.P.No.30203 of 2023 is allowed** by issuing a direction to the official respondents to proceed with the impugned orders and pull down the structure put up by the petitioner in W.P.No.801 of 2024 within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.



W.P.Nos.30203 of 2023 & 801 of 2024

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11.Post the matter after twelve weeks for reporting compliance.

(S.S.S.R., J.) (N.S., J.)
06.02.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No



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S.S. SUNDAR, J.
and
N. SENTHILKUMAR, J.

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W.P.Nos.30203 of 2023 & 801 of 2024

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