



WP.No.32098/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.32098/2022 & WMP.No.31528/2022

C.Bindu

... Petitioner

Vs.

1.The Member Secretary
Town and Country Planning
Suramangalam, Subramania Nagar
Salem 636 005.

2.Salem Corporation
rep.by its Commissioner
Salem 636 001.

3.Premchandar
4.P.Komalapriya

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India
for issuance of Writ of mandamus directing the 1st and 2nd respondents to



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remove the unauthorised construction being put up by the 3rd and 4th respondent at Survey No.73/3 part, Yuerial Poonga Road, Near Devi Hill Apartment, Gorimedu, Salem 636 008 pursuant to the petitioner's representation dated 18.01.2022.

For Petitioner	: Mr.K.Jeymohan
For R1	: Mrs.V.Yamuna Devi, Spl.GP
For R2	: Mrs.N.Devi, Standing counsel
For RR3 & 4	: Mr.B.Vijayakumar

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

(1)The present writ petition has been filed by the petitioner seeking for a mandamus to direct respondents 1 and 2 to remove the unauthorised construction being put up by the 3rd and 4th respondent at Survey No.73/3 part, Yuerial Poonga Road, Near Devi Hill Apartment, Gorimedu, Salem 636 008 pursuant to the petitioner's representation dated 18.01.2022.



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(2)The grievance of the petitioner is that respondents 3 and 4 have put up unauthorised construction adjacent to the plot which was purchased by the petitioner herein. She also stated that the construction put up by respondents 3 and 4 is not only confined to the property owned by them, but also encroaching into the public property. The petitioner has also purchased his flat. The petitioner purchased from one M/s.Devi Construction and it appears that respondents 3 and 4 are the relatives of petitioner's Builder. Petitioner has issues with her builder. The petitioner's allegations show the dispute on the question of title.

(3)This Court cannot go into the disputed questions of title.

(4)It is now admitted before this Court that the construction though commenced sometime in the year 2021, the work was stopped pursuant to the interim order passed by this Court in this writ petition.

(5)The learned counsel for the petitioner states that respondents 3 and 4 though applied for Building Plan Permission in the year 2009, they did not put up any construction in accordance with the Planning Permission and the Building Plan Approval had lapsed. Learned counsel therefore, submitted that the entire construction which is in existence on ground is



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unauthorised. It is also submitted that the respondents 3 and 4 who had failed to renew the Building Plan Permission originally obtained, cannot turn around and state that they had commenced the construction after getting Planning Permission or renewal.

(6) On the other hand, the learned counsel for respondents 3 and 4 pointed out before this Court that respondents 3 and 4 have put up construction only pursuant to the Planning Permission that was granted to them in the year 2009. Though the petitioner has annexed the Plan and Building Permission dated 17.03.2009, this Court is unable to consider the nature of construction put up and the actual Planning Permission that was granted to the respondents 3 and 4 in the absence of the Building Plan Approval originally.

(7) The learned counsel further admits that the respondents 3 and 4 have not gone for renewal due to financial difficulties at the appropriate time. It is the case of respondents 3 and 4 that they have stopped construction work in view of lapse of the Building Plan Permission granted to them. Since the respondents 3 and 4 have also applied for fresh approval for commencing construction, this Court is inclined to dispose of this writ



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petition in the following lines:

- Respondents 3 and 4 shall not put up any construction till such time they obtain the Building Plan Permission from the official respondents in accordance with law.
- The 4th respondent's online application dated 01.11.2023 submitted to the 1st respondent shall be considered in accordance with law after affording an opportunity of hearing to him.
- Till such time the online application of the 3rd respondent for Planning Permission is considered and disposed of, the 2nd respondent or any other respondent will not take any coercive action against the respondents 3 and 4.
- If there is any delay in considering the application on account of corrections/omissions, respondents 3 and 4 may be given a reasonable opportunity to make corrections.
- In case there is a dispute with regard to the ownership, it is open to the petitioner or anyone to approach the Civil Court and any obstruction by private individual claiming ownership



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over the land, need not be considered for the present and the matter cannot be decided either by the 1st respondent or the 2nd respondent. However, encroachment in public property cannot be permitted.

(8)The writ petition stands **disposed of accordingly.** No costs.

Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [N.S., J.]
26.02.2024

AP

Internet : Yes

To

1.The Member Secretary
Town and Country Planning
Suramangalam, Subramania Nagar
Salem 636 005.

2.The Commissioner
Salem Corporation
Salem 636 001.



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

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