



Writ Petition No.10314 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2025

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

Writ Petition No.10314 of 2025
and W.M.P.No.11622 of 2025

K.Jagadeesan,
S/o.Kaliyappa Gounder

...Petitioner

Vs.

1. The Government of Tamil Nadu
rep. by its Additional Chief Secretary,
Housing & Urban Development Department,
Fort St.George,
Chennai – 600 009.
2. The Secretary,
Housing & Urban Development Department,
Fort St.George,
Chennai – 600 009.
3. The Deputy Director of Town and Country Planning
Office of District Town and Country Planning
Tiruppur District.
4. The District Collector,
Tiruppur District.
5. The Joint Director,
Agricultural Department,
Tiruppur District.
6. The Tashildar,
Dharapuram Taluk, Tiruppur District.



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7. The Block Development Officer,
Dharapuram, Tiruppur District.

8. The Dhalavoipattinam Panchayat,
Rep. by its Secretary,
Dhalavoipattinam Village,
Dharapuram Taluk, Tiruppur District.

9. P.Murugesan,
S/o.Palanisamy

10. M.Shanmugam,
S/o.Muthusamy gounder

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 24.01.2025 in G.O(3D) No.9, passed by the 1st respondent, quash the same and consequently direct the respondents 1 to 3 to cancel the layout approval in Ma.Va/Na.U(Thi.Maa) No.303/2021 dated 25.11.2021.

For Petitioner : Mr.N.Ponraj

For Respondents : Mrs.Meera Arumugham
Additional Govt. Pleader [R1 to R6]
Mr.Yogesh Kannadasan,
Special Government Pleader [R7 & R8]
Mr.K.V.Muthu visakan [R9]
Mr.K.Babu [R10]



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ORDER

The writ petitioner seeks for the following relief:

To quash the order dated 24.01.2025 in G.O(3D) No.9, passed by the 1st respondent and consequently direct the respondents 1 to 3 to cancel the layout approval in Ma.Va/Na.U(Thi.Maa) No.303/2021 dated 25.11.2021.

2. Heard Mr.N.Ponraj, learned counsel for the petitioner, Mrs.Meera Arumugham, learned Additional Government Pleader for the respondents 1 to 6, Mr.Yogesh Kannadasan, learned Special Government Pleader for the respondents 7 and 8, Mr.K.V.Muthu Visakan, learned counsel for the 9th respondent and Mr.K.Babu, learned counsel for the 10th respondent.

3. The petitioner has a brick kiln situated in R.S.No.141, Dhalavoipattinam Village, Dharapuram Taluk, Tiruppur District. He is running this brick kiln in the name and style of "Sri Guru Chamber". The owner of the property is his wife, Vedhanayaki. The respondents 9 and 10 are the owners of the property situated at R.S.No.146/3. This land is



adjacent land of the petitioner. The respondents 9 and 10 proposed to develop their property as a layout for residential purposes. They applied for the same, and obtained an approval of layout for the property from the Deputy Director of Town and Country Planning, Tiruppur/3rd respondent in his proceedings Na.Ka.No.1406/2023/Thi.ma. This led to a flurry of litigations at the hands of the writ petitioner.

4. Originally, challenging the approval dated 05.12.2023, he filed a writ petition in W.P.No.1534 of 2024. The said writ petition was disposed of granting him liberty to file an appeal before the first respondent. He preferred an appeal before the first respondent, which came to be rejected by an order dated 24.01.2025, which is being impugned in the present writ petition.

5. The grievance of the writ petitioner is that, in case the layout adjacent to his property is developed into residential plots, it might affect his business, as there cannot be any residence within a distance of 2 kms from brick kiln. He relies upon a Division Bench judgment of this Court made in W.P.No.1064 of 2009 dated 23.10.2009 for the said purpose.



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6. Mr.N.Ponraj, in addition to this, points out that the respondents 9 and 10 have suppressed the existence of a stream/pathway running in S.No.145 of the same village. He points out that in terms of the approval granted, in case there is any suppression, the respondents are duty bound to cancel the layout approval.

7. Mr. K.V.Muthu Visakan, learned counsel appearing for the 9th respondent pleads that the 9th and 10th respondents have applied for the layout approval after complying with all the requirements of the Tamil Nadu Combined Development and Building Rules of 2019. He points out that the petitioner has indulged in one litigation after another. A suit is also said to be pending in O.S.No.299 of 2022 on the file of the District Munsif Court at Dharapuram. The cause of action for the said suit being dishonour of the cheque issued by the 9th respondent to the writ petitioner to an extent of Rs.28,900/-. The cheque had been issued for purchase of a portion of the lands by the 9th respondent. On the merits of the objections raised by Mr.N.Ponraj, Mr.Muthu Visakan points out that the access to their property, which has been shown as S.No.149 of the aforesaid village, had been sold by the writ petitioner to the respondents



9 and 10. He further adds that the allegation of a stream crossing the layout is absolutely imaginary, and it has been specifically denied by the concerned statutory authorities.

8. Mrs.Meera Arumugham, learned Additional Government Pleader, relying upon the counter affidavit filed by the third respondent states that in terms of the Tamil Nadu Combined Development and Building Rules of 2019, there is no bar for developing a residential layout within 2 kilometres of a brick kiln. She adds that the third respondent, by way of abundant caution had consulted the Tamil Nadu Pollution Control Board to check if there were any such bar. The Pollution Control Board had responded by reply dated 16.10.2023 that there are no such conditions for forming a residential layout near a brick kiln area.

9. The arguments of Mrs.Meera Arumugham and Mr.Muthu Visakan are adopted by Mr.K.Babu and Mr.Yogesh Kannadasan.

10. I have carefully considered the submissions of both sides. I have gone through the records.

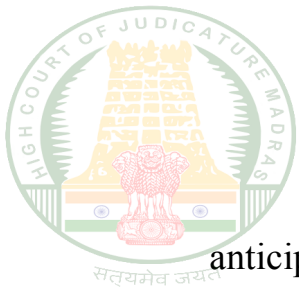


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11. The statutory rule, which deals with the development of a layout is the Tamil Nadu Combined Development and Building Rules of 2019. Mr.N.Ponraj, is unable to point out any statutory provision, which bars the development of a residential layout adjacent, or within two kilometers of circumference of an existence brick kiln. He relies upon a judgment of this court in the case of ***V.K.Mani Vs. The Chairman, Tamil Nadu Pollution Control Board & Ors.*** in ***W.P.No.1064 of 2009*** to state that this Court has barred the establishment of any brick kiln within two kilometers of an existing residential area.

12. When the area is governed by a statutory rule and when those rules have not brought in any embargo, it is not possible to read into the statute on an non-existing embargo. The Division Bench judgment of this Court had directed that there cannot be a brick kiln, which can be established within two kilometers of a residential layout.

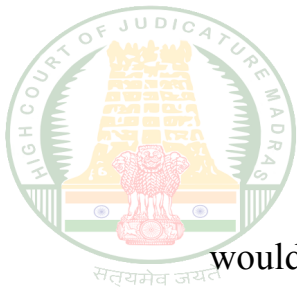
13. The proposition that Mr.N.Ponraj wants me to apply is the reverse. To that effect, there is no finding or ruling by the Division Bench. I feel that this writ petition itself is in the nature of an



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anticipatory objection. The anticipation being that the purchaser of the property from the respondents 9 and 10 might object to the existence of a brick kiln. It is a well settled position of common law, and also accepted in this country, that a person who comes to a nuisance cannot turn around and plead that a nuisance exists and therefore, should be abated. If a purchaser of the property from respondents 9 and 10 enters into possession, obviously they would be aware that there is a pre-existing brick kiln in and around the property, and it would not lie in their mouth to plead that, having purchased the property, the brick kiln established by the writ petitioner has to fold up and cease its nature of business operations.

14. The counter affidavit filed by the official respondents specifically states that there is no bar under the statutory rules. They have pointed out that they have obtained a clarification from the Tamil Nadu Pollution Control Board, that the establishment of the residential layout near a brick kiln is also not prohibited. If Mr.N.Ponraj's argument is to be accepted, then there cannot be development of any residential layout in and around the brick kiln. In other words, the owner of a brick kiln

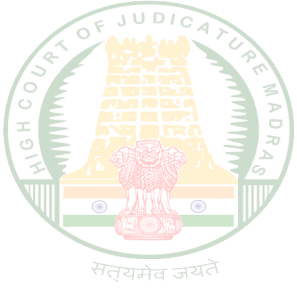


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would effectively prevent the owners of the adjacent properties to an extent of 2 kilometers in circumference around his factory, from enjoying the fruits of their ownership. That, on the face of it runs contrary to Article 300A of the Constitution. Right of property was a fundamental right, but as on today it is a constitutional right, which can be restricted only in accordance with law, by a statute or under statutory rules.

15. While I was completing the order, Mr.N.Ponraj, produced a notification issued by the Ministry of Environment, Forest and Climate Change in G.S.R. 143(E) dated 22.02.2022 and directed my attention towards clause (6) of the said notification, which bars the creation of a residential layout. This notification to my view does not help Mr.N.Ponraj in this case. The reason is twofold:

- (1) the notification is not retrospective in operation;
- (2) as per the very clause Mr.N.Ponraj, relies upon viz., Clause (6), a brick kiln should not be established within a distance of 800 meters from habitation.



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I have already stated that the brick kiln in the present case is not being established, but it is a pre-existing one. Therefore, the notification does not apply.

16. In the light of the above discussions, I do not find any reason to entertain this writ petition. Writ petition is dismissed with the aforesaid observations. No costs. Connected miscellaneous petition is closed.

02.09.2025

mp

To

1. The Registrar of Co-op. Societies,
N.V.N.Maligai, Kilpauk, Chennai – 10.
2. The Joint Registrar of Co-op. Societies,
Krishnagiri Region, Krishnagiri District.
3. The Deputy Registrar of Co-op Societies,
Krishnagiri Region, Krishnagiri District.
4. Central Co-operative Bank Limited,
Poochampalli Branch,
Dharamapuri District.



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V.LAKSHMINARAYANAN, J

mp

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