



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED **03.09.2025**

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P.No. 11808 of 2025

And

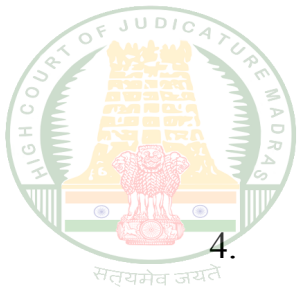
W.M.P.No. 13378 of 2025

S.Arthi

... Petitioner

..Vs..

1. The Secretary to the Government
Department of Town and Country Planning
C & E, Market Road, Koyambedu
Chennai – 600 107.
2. The Director
Directorate of Town and Country Planning
No.134/4, Mariamman Koil 10th Street
Manlurpet Road,
Thiruvannamalai – 606 601.
3. The Assistant Director
Directorate of Town and Country Planning
No.134/4, Mariamman Koil 10th Street
Manlurpet Road,
Thiruvannamalai – 606 601.



WEB COPY

4. The Block Development Officer (V.P),
Tiruvannamalai Taluk/Panchayat Union
Kosalai Village/Panchayat
Tiruvannamalai District.
5. The Registrar,
No.II, Joint Sub Registrar Office
Tiruvannamalai,
Tiruvannamalai District.
6. R.K.Balasubramanian
7. K.Shakthikumar
8. N.Rajasekar
9. K.Bharathi Velu
10. S.Ravindran
11. The Village Panchayat President
Adiannamalai Village Panchayat,
Thiruvannamalai District.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the third respondent in SWP/DTCP/ Tiruvannamalai District – Layout Number 2/2025, 3/2025 and 4/2025 dated 02.01.2025 and the records of the 11th respondent in vide VP/Resolution No. 88/01/2025, dated 01.02.2025 and quash/cancel the same as null and void and consequentially direct the second and third respondents not to grant layout approval in respect of the schedule property till the disposal of the suit in O.S.No. 17 of 2021.



WEB COPY



3

For Petitioner

:: Mr. S.R.Raghunathan
for Mr.Vigneshwar Elango

For RR 1 to 3

:: M/s. Meera Arumugham
Additional Government Pleader

For 4th Respondent

:: Mr.Naveen Kumar

For 5th Respondent

:: Mr. Stalin Abi Manyu
Additional Government Pleader

For RR 6 to 8

:: Mr. P.Valliappan
Senior Counsel
for Mr.P.Dinesh Kumar

For RR 9 to 10

:: Mr.S.Parthasarathy
Senior Counsel
for Mr.Navin Balaji

ORDER

Heard Mr. S.R.Raghunathan, learned counsel for the petitioner, M/s.C.Meera Arumugham, learned Additional Government Pleader appearing for the respondent Nos. 1 to 3, Mr.Naveen Kumar, learned counsel appearing for the fourth respondent, Mr.Stalin Abi Manyu, learned Additional Government Pleader appearing for the fifth respondent, Mr.P.Valliappan, learned Additional Government Pleader appearing for the



respondent Nos. 6 to 8 and Mr.S.Parthasarathy, learned Senior Counsel for Mr.Navin Balaji, appearing for the respondent Nos. 9 and 10.

2. This Writ Petition has been filed in the nature of a Certiorarified Mandamus calling for the records of the third respondent in SWP/DTCP/ Tiruvannamalai District – Layout Number 2/2025, 3/2025 and 4/2025 dated 02.01.2025 and the records of the 11th respondent in vide VP/Resolution No. 88/01/2025, dated 01.02.2025 and quash/cancel the same as null and void and consequentially direct the second and third respondents not to grant layout approval in respect of the schedule property till the disposal of the suit in O.S.No. 17 of 2021.

3. The petitioner's father, one, Selvaraj is said to have purchased the property which is the subject matter of the Writ Petition, from one, Kallappan. He had executed a sale deed in favour of the sixth respondent on 16.04.2009 and 05.08.2009. Selvaraj took a plea that the sale deeds were not meant to convey title but had been executed as the security for a loan transaction between himself and the sixth respondent. In pursuance thereof, Selvaraj is said to have lodged complaint with the Land Grabbing Cell of



the police. As the complaint did not progress further, he presented a suit in O.S.No. 17 of 2021 on the file of the Principal District Judge at Thiruvannamalai. The suit is for declaration of his title and for the relief of permanent injunction.

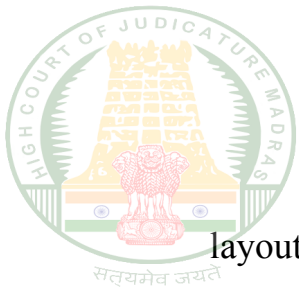
4. Pending the suit, he took out an application for ad-interim injunction restraining the registration department/5th respondent from registering any documents. The Sub Registrar filed an affidavit of undertaking before the learned Principal District Judge that he will not register any documents with respect to the subject matter of the suit till the disposal of the same. Thereafter, the application for injunction was withdrawn by the plaintiff. Consequently, the undertaking died a natural death. This withdrawal took place on 11.08.2023. Prior to the undertaking affidavit filed by the fifth respondent, the sixth respondent herein alienated the property in favour of the seventh respondent. The seventh respondent, in turn, alienated the property in favour of the eighth respondent on the very same day through a sale deed registered as Doc.No.1063/2023. This transaction was for an extent of 5.96 acres. On the very day that the aforesaid transactions took place, namely, 27.01.2023, the sixth respondent



alienated the property in favour of the eighth respondent by way of a separate document to an extent of 4.07 acres.

5. The sixth respondent had filed an application for layout approval. It came to be rejected by the respondent No.3 by an order dated 02.11.2023. Subsequently, the respondent Nos. 7 to 10 had filed an application seeking approval to develop this property into a layout. Three separate applications had been filed and were pending consideration.

6. In the meantime, Selvaraj passed away on 26.04.2021, leaving behind four legal heirs. The writ petitioner is one such legal heir. Catching scent of the application seeking approvals having been filed, the writ petitioner gave a representation to the third respondent on 18.02.2024 setting forth the facts relating to the transaction between Selvaraj and the sixth respondent, and sought for rejection of the application filed for layout approval on the ground of pendency of the litigation. Soon thereafter, she moved a writ petition before this Court in W.P.No. 10637 of 2024, seeking for a Mandamus to direct the third respondent herein to conduct an enquiry on her representation dated 18.02.2024 and to reject the application filed for



layout approval by the eighth respondent herein.

WEB COPY

7. When the writ petition came up for admission, the learned counsel appearing for the writ petitioner restricted his prayer seeking a direction for the third respondent herein to dispose of her representation. Considering the limited scope of the prayer concerned, this Court directed the second respondent to dispose of the representation affording a reasonable opportunity of hearing to the petitioner, as well as to any other affected parties. A time limit of 12 weeks was granted to complete the said exercise. At the same time, the Court left it open to the petitioner to move the jurisdictional Civil Court to ventilate her grievance by filing an appropriate application. Despite the directions issued by this Court, the third respondent passed no orders regarding the representation dated 18.02.2024.

8. As her attempts at the office of the third respondent had reached an end, the petitioner has come forward with the present Writ Petition, asking the aforesaid reliefs.

9. Mr.S.R.Raghunathan contended as follows:-

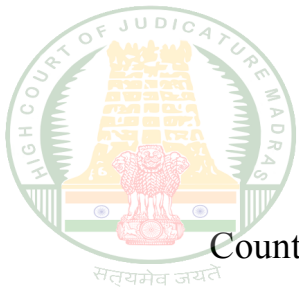


WEB COPY

(i) The pendency of the suit having been taken into consideration by the third respondent earlier, he erred in granting approval on the basis of the application filed by the purchasers of the property from the sixth respondent;

(ii) Relying upon Section 4(2)(l)(B) of the Real Estate (Regulation and Development) Act, 2016, he states that the private respondents ought to have disclosed about the pendency of the suit. He relies upon Rules 6(i), 7 and 10 & Annexure-I to the Tamil Nadu Combined Development and Building Rules, 2019 in order to plead that though the forms demand disclosure of a suit, the same not having been done, the application ought not to have been approved.

10. In response, M/s. Meera Arumugham, learned Additional Government Pleader states that it is not the role and duty of the authorities under the Town and Country Planning Act to probe into the title of a property. She states that the authorities scrutinise the application, and once they find that the application answers the requirements of the Town and



Country Planning Act as well as the Tamil Nadu Combined Development and Building Rules of 2019, they grant approval. She states that it is left open to the parties to agitate their title before the jurisdictional Civil Court.

11. The arguments of M/s. Meera Arumugham, has been adopted by the counsels, who represented the other State respondents.

12. Mr.P.Valliappan, learned Senior Counsel for the respondent Nos. 6 to 8, put forward that the petitioner has an effective alternate remedy before the Appellate Authority. Without prejudice to this statement, he urges as follows:-

(i) That the petitioner has no locus standi because on an earlier occasion, the father of the writ petitioner had stood by the sale deeds executed by him in favour of the sixth respondent on 05.09.2009. With respect to the non disclosure of the pendency of suit in the application filed before the third respondent, Mr.Valliappan urges that they are not parties to the suit and hence, were not aware of the same when they filed the application.



WEB COPY

13. Mr.S.Parthasarathy, learned Senior Counsel states that the remedy for the writ petitioner is only to approach the jurisdictional Civil Court where the suit is pending and she does not have a right to indirectly assert her title by way of the present Writ Petition.

14. I have carefully considered the submissions on all sides. I have gone through the records.

15. The facts of the case have already been set forth as above, and hence, need not be reiterated. Since Mr.Valliappan has raised a preliminary objection on the maintainability of the writ petition, I will have to go into that first before proceeding further.

16. When the Writ Petition was moved before this Court, my learned Predecessor had entertained the Writ Petition and had ordered the respondents to go on record by way of a counter affidavit. He had also granted an interim order, being prima facie, satisfied with the case of the writ petitioner.



WEB COPY

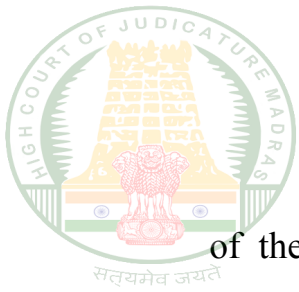
17. From time to time, the interim order has also been extended and the matter was adjourned for filing of counter affidavits by the respective parties. In obedience to the orders passed by this Court, the contesting respondents, namely, the third, sixth and ninth respondents have also completed their pleadings. This shows that the parties had not objected to this Court entertaining the Writ Petition, and had not raised the issue of maintainability at any earlier stage.

18. Furthermore, it has been a practice of this Court that when parties have joined together and have decided to further proceed with the writ petition on the merits of the case, at the stage of final hearing of the writ petition, this Court does not show the door to the writ petitioner to avail the alternate remedy. Apart from this, I recollect the Judgment of the Supreme Court in *Godrej Sara Lee Ltd., v. Excise & Taxation Officer-cum-Assessing Authority & Others*, 2023 SCC Online SC 95 where under Justice Dipankar Datta had clearly urged that there is a difference between “maintainability and entertainability”. Maintainability goes to the root of the matter. No order can be passed by this Court when a writ petition is not



maintainable. In a stark distinction to maintainability, the Court held the writ petition to be maintainable but not entertainable as it decides not to exercise its discretion as there is alternate remedy. Hence, it is a discretion of the Court and not a right of a party to insist that a writ petition shall not be entertained, owing to the existing alternate remedy. Sending a litigant to an alternate remedy is only a matter of discretion, and is adopted by the Courts in order to ensure that the *lis* that has arisen between the parties reaches a quick solution. Hence, though the term “effective alternate remedy” has been invoked, as parties have joined together, argued the matter on merits, filed counter affidavits and argued the matter in detail, I do not wish to turn the parties out on the ground of alternate remedy. Having held the Writ Petition is maintainable & entertainable, I will go into the merits of the case.

19. The long and short of the plea of Mr.S.R.Raghunathan is that, as a suit is pending before the jurisdictional Civil Court, which questions the title of the predecessor in title of the respondent Nos. 7 to 10, namely, the sixth respondent, they are not entitled to file an application for layout approval. The process of obtaining a layout approval is found to Section 49



of the Tamil Nadu Town and Country Planning Act, 1971. Under this Section, there is no bar for a party to file an application seeking approval for development of layout, if a suit or proceeding is pending. If I were to agree to the plea of Mr.S.R.Raghunathan, by adopting that rule of interpretation, I would be indirectly amending the statute by making it a condition precedent for a person to seek for approval to compete all the litigation that is pending over the property. However, while the powers of this Court is wide and expansive, it does not extend to amending statutes. In case, there was to be a statutory rule which bars an approval to be granted when the suit is still pending, this Court will certainly be entitled to quash and prohibit the Town and Country Planning Authorities from proceeding further with the application. When there is no statutory indict, I am not in a position to come to the rescue of the writ petitioner.

20. When this aspect was pointed out by Mr.S.R.Raghunathan, he invited my attention to the forms that had to be filled by the parties prior to getting an approval as stipulated by the Town and Country Planning authorities. In the said forms, it has been stated that an applicant will have to disclose the pendency of any suit over the property. The answer to this is



two fold. The statutory forms with respect to the layout approval is found under Annexure -I of the 2019 rules. It does not contemplate a party to disclose about the pendency of any suit. No doubt, it enables an authority to demand further particulars as she/he may desire. Yet, the rule making authority under the Town and Country Planning Act under Section 32(4), read with Section 122 of the Tamil Nadu Town and Country Planning Act, has not thought it fit to include such a condition in the statutory forms. When the statutory forms are clear, any additional demand that may be made by the Town Planning authority cannot be treated on the same plane as Annexure-I. The rule making authority has given a discretion only in order to give some play in the joints to the Town and Country Planning authorities. Any condition precedent that authority may seek for de hors Annexure – I cannot be treated as mandatory. It is too well settled, but I will have to reiterate for this purpose that where the statute does not state the effect of non-compliance with a condition, then such a condition should only be treated as directory and not as mandatory.

21. I could have concluded the Judgment with this, but since Mr.P.Valliappan has raised an objection regarding the written statement filed by the father of the writ petitioner, I will have to state that it is up to



the private respondents to confront the writ petitioner about the same during the course of trial. It will be improper on me, without oral and documentary evidences, to give any finding as regards the validity of the written statement filed by the deceased Selvaraj in O.S.No. 158 of 2014 on the file of the Additional District Munsif at Tiruvannamalai. The second point, which will go against Mr.S.R.Raghunathan, is that respondent Nos. 7 to 10 were not parties to the suit in O.S.No. 17 of 2021. A person can disclose a detail to an authority only if he has knowledge of the same. The word suppression implies that the party had knowledge of the same but still did not disclose the same when called upon, or when ought to have been disclosed. Since I have found that the respondent Nos. 7 to 10 were not parties to the pending suit, the plea of Mr.S.R.Raghunathan that they had not disclosed the same in the application made to the third respondent does not have legs to stand upon. Consequently, that plea too stands rejected.

22. When there is no statutory violation or when the rule position does not insist upon disclosure of suits, this Court has come to the conclusion that the layout approval granted by the third respondent on the application made by the respondent Nos. 7 to 10 does not suffer from any infirmity.



WEB COPY

23. With respect to the arguments invoking the Central Act 16/16, a reference to Section 4 shows that a sanction plan is one of the necessary documents while making an application for registration of a real estate project. It is agreed across the bar that till date, the respondents 6 to 10 have not approached the competent authority under Act 16 of 2016 seeking for approval of the real estate project. It is always open to the writ petitioner to take such steps as she is entitled to under law when such an application is made out. Since the plea is premature, this Court is not going into that issue.

24. Finally, the reliance upon the order passed by the third respondent on 02.11.2023, in my view is misplaced. This is because that was a rejection order, that had been passed by an executive authority. The day on which the rejection was passed, the sixth respondent had already alienated the property in favour of the other private respondents. Therefore, such an order will not bind the third respondent from considering the application filed afresh at the instance of persons, who claim to be owners of the property.

25. It has to be noted that the order dated 02.11.2023, has not been sent to any of the private respondents. An un-communicated order is no



order at all. The effect of the order commences not while it continues to remain on the file of the authority but only after it is communicated to a person affected by the order.

26. In the light of the above discussion, I conclude that the Writ Petitioner is not entitled to any relief. The Writ Petition stands dismissed. The usual mantra that none of the findings given in this Writ Petition will bar the petitioner and the private respondents from agitating their rights before the pending civil suits has to be repeated and is done so.

27. It is always open to the petitioner to invoke the liberty granted by Hon'ble Ms. Justice Bhavani Subbaroyan, on the previous occasion and move an appropriate application for injunction or any other relief that she so desires in the pending suit. Consequently, connected Civil Miscellaneous Petition stands closed. No order as to costs.

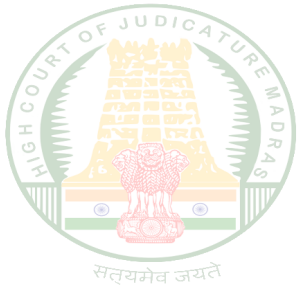
03.09.2025

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order



WEB COPY

To

1. The Secretary to the Government
Department of Town and Country Planning
C & E, Market Road, Koyambedu
Chennai – 600 107.
2. The Director
Directorate of Town and Country Planning
No.134/4, Mariamman Koil 10th Street
Manlurpet Road,
Thiruvannamalai – 606 601.
3. The Assistant Director
Directorate of Town and Country Planning
No.134/4, Mariamman Koil 10th Street
Manlurpet Road,
Thiruvannamalai – 606 601.
4. The Block Development Officer (V.P),
Tiruvannamalai Taluk/Panchayat Union
Kosalai Village/Panchayat
Tiruvannamalai District.
5. The Registrar,
No.II, Joint Sub Registrar Office
Tiruvannamalai,
Tiruvannamalai District.



WEB COPY



19

V. LAKSHMINARAYANAN, J.,

vsg

**W.P.No. 11808 of 2025
And
W.M.P.No. 13378 of 2025**

03.09.2025