BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

W.P.(MD)No.5335 of 2025

Kayalvizhi ... Petitioner

vs.

The Sub-Registrar,
Devakottai, Sivagangai District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned letter issued by the respondent in pending Document No.117/2024 dated 14.10.2024 and to quash the same as void and illegal and consequently direct the respondent to register the sale certificate dated 29.08.2024 submitted by the petitioner with regard to T.S. Ward -A, Block No.17, T.S.No.159 and T.S.No.161 of Devakottai Sub-Division, Sivagangai District.

For Petitioner : Mr.Ragul Priyan
for Mr.K.Hemaraj

For Respondent : Mr.N.Ramesh Arumugam
Government Advocate

O R D E R

The petitioner had purchased the property from one Mr.K.R.Ramu and Mr.B.Albhonsamary. The sale deed was registered on 29.08.2024. Prior to execution of this sale deed, the vendors K.R.Ramu and Albhonsamary had obtained approval from the Commissioner of Devakottai Municipality on 28.08.2024. The Commissioner passed an order approving the plan submitted in P.P.No.4 of 2024. By the impugned order, the respondent informed the petitioner that as the sale deed does not comply with the requirements of G.O.(MS).No.78, Housing and Urban Development (UD4(3)) Department, dated 04.05.2017. It cannot be registered. Challenging the same, the present writ petition.

2. I heard Mr.Ragul Priyan representing for Mr.K.Hemaraj for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate for the respondent.

3. Mr.Ragul Priyan for the petitioner submits that approval had been obtained from the Commissioner, Devakottai Municipality and therefore, the petitioner and their vendors have complied with the requirements of G.O.(MS).No.78, Housing and Urban Development (UD4(3)) Department, dated 04.05.2017. He further points out that K.R.Ramu had executed a sale deed in favour of one Vino on 30.08.2024 and the very same respondent did not find any error in the said document and had registered the same as Doc No.5178/2024. He pleads selective approach adopted by the respondent violates the principles of Article 14 of the Constitution of India and hence, is liable to be struck down.

4. Per contra, Mr.N.Ramesh Arumugam on the basis of written instructions received from the respondent in Na.Ka.No.45 of 2025, dated 27.02.2025 submits that G.O.(MS).No.78, Housing and Urban Development (UD4(3)) Department, dated 04.05.2017, contemplates a two stage approval. According to him, the first stage approval has to be granted by the Director of Town and Country Planning and second stage being the approval granted by the local body. In the present case, he states that the local body had granted approval. The in-principal

approval that ought to have been granted by the DTCP, earlier to the order dated 28.02.2024, had not been obtained and therefore, order of the respondent cannot be found fault with. In this regard, he relies upon the clarification issued by the Commissioner of Town and Country Planning in ROC.No.13193/2017 -LA1, dated 09.10.2017.

5. I have carefully considered the submissions of both sides and gone through the records available.

6. The respondent does not dispute two aspects in the case. The first one being that the Commissioner of Devakottai Municipality, the appropriate local planning authority for the area, had granted approval in C.No.110/CP/24-25/0002896. According to the respondent, prior to this order, the petitioner ought to have obtained approval from the Director of Town and Country Planning. Since that approval is not in place, the respondent urges that the impugned order is correct.

7. A perusal of G.O.Ms.No.78 shows that there are two stages before an approval should be granted. The first stage being in-principle

"approval to be granted by DTCP" and the second stage being the collection of regularization fee by the local planning authority and passing the final regularization order.

8. In this case, there is a final regularization order without the earlier in-principle approval. It is too late in the day for the respondent to contend that in-principle approval had not been granted, this is because the jurisdictional local planning authority had granted approval. If there is being a mistake committed by one branch of the Government, that does not mean it automatically nullifies the order of regularization that has already been passed.

9. Even an order passed irregularly is deemed to be valid, till it is set aside. There is an order of regularization, which has become final. It has not been challenged by any person in Devakottai, who would be affected by the same. The Sub-Registrar cannot be treated as a person aggrieved to challenge the proceedings of the Commissioner of Devakottai Municipality. His role is to see whether an approval has been granted or not, and not act as supervisory authority over the local

planning authority and find out if the local planning authority had followed G.O.Ms.No.78, dated 04.05.2017. If the Commissioner of Devakottai Municipality had committed an error, it is for his/her superior to decide on the next course of action administratively for a mistake committed by the Government authority. Due to the error committed by one authority, a citizen cannot be visited with adverse consequences.

10. In so far as the proceedings in ROC.No.13193/2017-L.A.1, dated 09.10.2017, issued by the Commissioner of Town and Country Planning, I have to point out that it applies on a total different plane. A careful perusal of the proceeding shows that Sub-Registrars started registering documents immediately after "in-principle approval granted by the DTCP authority" without waiting for the regularization order passed by the local planning authority. Taking into consideration of the spirit of G.O.Ms.No78, dated 04.05.2017, the Commissioner of Town and Country Planning had directed that the 'in-principle' approval granted by her department is not sufficient, but it has to be followed up by a regularization order of the local authority.

11. The situation contemplated in this proceedings is entirely different from the one presented before me. In the proceedings cited by Mr.N.Ramesh Arumugam that 'in-principle' approval was available without regularization order. In the case before me, there is a regularization order, without an 'in-principle' approval. Therefore, I am not in a position to apply the clarification dated 04.05.2017 to the converse case covered by that clarificatory letter.

12. G.O.Ms.No.78, dated 04.05.2017, requires an approval of the local planning authority and the approval as discussed earlier, is in place from 28.04.2024. Therefore, the respondent erred in passing the impugned order. Consequently, the impugned letter issued by the respondent in pending Document No.117/2024 dated 14.10.2024 is set aside. There shall be a direction to the respondent to register the sale certificate dated 29.08.2024 submitted by the petitioner with regard to T.S. Ward -A, Block No.17, T.S.No.159 and T.S.No.161 of Devakottai Sub-Division, Sivagangai District without any delay.

13. At this stage, Mr.N.Ramesh Arumugam pleads that the property has been undervalued by the writ petitioner. That is an issue, which has to be gone into after registration as contemplated under Section 47A(1) of the Indian Stamp Act. It is left open to them to exercise the power under Section 47A(1) of the Act.

14. In the light of the above discussion, this Writ Petition succeeds. Accordingly, this Writ Petition is allowed. No costs.

Index :Yes / No **27.02.2025**
NCC :Yes / No
Rmk

To

The Sub-Registrar,
Devakottai, Sivagangai District.

V. LAKSHMINARAYANAN, J.

Rmk

W.P.(MD)No.5335 of 2025

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