

V. Ashhokan and Others Vs. The Secretary to Government, Housing and Urban Development, Fort St. George and Others

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Court : Chennai Madurai

Decided On : Sep-29-2016

Judge : S. Nagamuthu & M.V. Muralidaran

Appeal No. : W.P.(MD)Nos. 6199 & 12793 of 2016 & WMP(MD)Nos. 5483 & 5484 of 2016 & WMP(MD)No. 12777 of 2016

Appellant : V. Ashhokan and Others

Respondent : The Secretary to Government, Housing and Urban Development, Fort St. George and Others

Judgement :

(Prayer in WP(MD)No.6199 of 2016:Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records in respect of the impugned orders in letter No.1342/tP/T/r/1/2015-2 dated 15.06.2015, passed by the 1st respondent and quash the same and consequently direct the 5th respondent Society to drop the proposal of constructing multi-storied building with 40 flats in Plot No.400, 401 and 402 of NGGO Colony, Alwar Nagar, after demolishing existing Community Hall situated on the Wellington Road (Keela Kuyil Kudi Road).

Prayer in WP(MD)No.12793 of 2016:Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Declaration, to declare the Resolution passed by the Respondent No.6 vide Resolution No.09/2016 dated 26.02.2016 and the Building Plan Approval issued by the Respondent No.6 vide Plan No.17/2016 dated 17.03.2016 for the construction of multi-storied building in Plot No.400, 401 and 402 situated at NGGO Colony, Alwar Nagar, Nagamalai Pudukkottai, Madurai District for the 7th Respondent Society as illegal and violative of the original Building Plan approval along with Lay Out issued by the Respondent No.2 vide his Proceedings in D.Dis.No.18767/58 dated 15.05.1959 and consequently for a direction, forbearing the Respondent No.7 from constructing any building in the plot No.400, 401 and 402 situated at NGGO Colony, Alwar Nagar, Nagamalai Pudukkottai, Madurai District.)

Common Order

1. This writ petitioner in WP.No.12793 of 2016 has filed the Public Interest Litigation petition seeking prayer for the issuance of a Writ of Declaration, to declare the Resolution passed by the Respondent No.6 vide Resolution No.09/2016 dated 26.02.2016 and the Building Plan Approval issued by the Respondent No.6 vide Plan No.17/2016 dated 17.03.2016 for the construction of multi-storied building in Plot No.400, 401 and 402 situated at NGGO Colony, Alwar Nagar, Nagamalai Pudukkottai, Madurai District for the 7th Respondent Society as illegal and violative of the original Building Plan approval along with Lay Out issued by the Respondent No.2 vide his Proceedings in D.Dis.No.18767/58 dated 15.05.1959 and consequently for a direction, forbearing the Respondent No.7 from constructing any building in the plot No.400, 401 and 402 situated at NGGO Colony, Alwar Nagar, Nagamalai Pudukkottai, Madurai District.

2. The case of the petitioner is that the writ petitioner is one of the founder members of the 7th respondent Housing Society A2498 Madurai NGGO's Rural Co-Operative Housing Society Limited, Madurai and he is interested in the welfare of the members of the 7th respondent Society. He is a retired Deputy Registrar of Co-operative Department and he has offered several useful suggestions and guidance for the past 25 years for the efficient functioning of the 7th respondent

Society. Despite his efforts, the 7th respondent Society is not functioning in accordance with Rules and Regulations.

3. The writ petitioner also come forward by saying that the 2nd respondent vide his Proceedings in D.Dis.No.18767/58 dated 15.05.1959 has issued Building Plan Approval along with layout for the whole 77.03 Acres in which the entire area is divided into House Plots, Open Places, Park, Children s Play Area, Shopping Complex etc. The said Building Plan Approval granted by the 2nd respondent consists of several conditions.

4. The writ petitioner also states that the Plot No.400, 401 and 402 were earmarked as Community Hall and was used a public utility building for the past 55 years. But, as per the Original Building Plan, several places were earmarked for public purposes, all those places earmarked for public purposes were not properly maintained by the Respondent Society and the land in Survey No.110/1A2 which was earmarked as Park was later on converted into Elementary School. Further, the land in Survey No.124/1 which was earmarked for Public purpose was converted as Sirumalar Girls Higher Secondary School. The children s play ground in Survey No.108/12 has been converted as House sites. This writ petitioner also states that though he has raised objections against these irregularities, no action has been taken till date. The 7th respondent Society is keep on violating the Original Building Plan and presently all the areas reserved for public purposes were illegally sold by the 7th respondent Society and the only left out public place is the Community Hall constructed in Plot No.400, 401 and 402 and the said Community Hall was constructed in the year 1972 and the people of NGGO Colony are utilizing the community hall.

5. The writ petitioner further states that the 7th respondent Society is attempting to violate the building plan approval once again with an intention to construct multi-storied building in which the community hall is constructed. Hence, aggrieved by the same, one of the resident of NGGO Colony, Alwar Nagar, Nagamalai Pudukkottai, Mr.Asokan has preferred a Writ Petition in WP(MD)No.6199 of 2016 against the proposal for construction of multi storied building in violation of the original building plan approval. In the said writ petition, the permission granted by

the 1st respondent dated 15.06.2015 was challenged and this Court issued notice to the respondents in the above said case and the said writ petition is pending adjudication before this Court.

6. When the writ petition is pending, without even awaiting the outcome of the writ petition, has unlawfully demolished the Community Hall in Plot No.400, 401 and 402, Alwar Nagar, NGGO Colony, Madurai District, which is totally unlawful and against the settled principle of law to demolish a public utility building for commercial purpose. The 7th respondent Society without obtaining proper permission for modification of the original plan has demolished the Community Hall which is unjust and unlawful.

7. The writ petitioner also states that the 6th respondent by order dated 17.03.2016 granted permission for construction of multistoried building vide resolution No.09/2016 dated 26.02.2016 and later on Building Plan Approval has been granted vide Plan No.17/2016 dated 17.03.2016. It is totally unlawful and unjust on the part of the 6th respondent to grant building plan approval for construction of multistoried building in violation of the original Building Plan Approval granted by the 2nd respondent in the year 1959. Therefore, challenging the said order dated 17.03.2016 the present writ petition has been filed before this Court for quashing the said order dated 26.02.2016 and 17.03.2016. The writ petitioner also sought for the prayer that the 7th respondent Society as illegal and violative of the original building plan approval along with the Lay out in Plot No.400, 401 and 402.

8. The Writ Petition(MD) No.6199 of 2016 was filed by one Mr.V.Ashokan along with 7 others for the issuance of Writ of Certiorarified Mandamus, calling for the records in respect of the impugned orders in letter No.1342/tP/T/r/1/2015-2 dated 15.06.2015, passed by the 1st respondent and quash the same and consequently direct the 5th respondent Society to drop the proposal of constructing multi-storied building with 40 flats in Plot No.400, 401 and 402 of NGGO Colony, Alwar Nagar, after demolishing existing Community Hall situated on the Wellington Road (Keela Kuyil Kudi Road).

9. The case of the writ petitioners are that the NGGO Colony, Alwar Nagar, Nagamalai Pudukkottai, Madurai, the 1st residential colony established in the

Southern Districts for the welfare State and Central Government employees on 12.01.1958. The Government of Tamil Nadu acquired an extent of 77.03 acres of land for the purpose of dwelling houses for them. The whole site of 77.03 acres was divided and classified into House Plots, open places, park, play ground, and children s play area, shopping complex and Community Hall etc., and approved by the Director of Town Planning. A co-operative society namely A2498 Madurai NGGO s Rural Co-operative Housing Society Limited was established to administer the project.

10. The writ petitioner has also come forward by saying that house plots were allotted to the members of the Society only for the construction of dwelling house in accordance with the instructions of the Director of Town and Country Planning in his proceedings in D.Dis.No.18767/58, dated 15.05.1959, that the member shall construct only one dwelling house in the site and shall not sub divide or utilize the site for the construction of more than one dwelling house at any time and that the people, who administered the Society till now are not functioning properly and dispose of the common properties for their selfish end. The places earmarked for shopping area, children s play area and the road adjacent to Madurai-Theni Highway were allowed to encroach and sold to the encroaches by the Society.

11. The writ petitioner also further states that the Society is going to demolish the remaining one and only common place Community Hall which is utilized for common purpose for the past 50 years, situated on Wellington Road (Keela Kuyilkudi Road) in Plot No.400, 401 and 402 and planned to construct multi storied building (40 flats) and all the public spirited people, the residences including the petitioner herein are not welcoming the proposal and wish to maintain the status quo of the Community Hall as there is no other common place for public utility.

12. The writ petitioner also states that all the residents of NGGO colony, Alwar Nagar are educated and enlightened people, various organizations, individuals and representatives of political parties started raising objections in order to maintain the status quo of the only common place Community Hall. They also cited environmental and other issues involved in demolishing the existing Community Hall and construction of multi storied building (40 flats) in that place.

13. The petitioner also states that Makkal Nala Sangam a registered society submitted a petition to the village Panchayat President and requested him not to approve the scheme, since there is no underground sewage system in the Village Panchayat and there is no way to discharge the drainage and sewage, if 40 flats are built in the place where the Community Hall is existing and the representations were also sent to the President of the Society itself and to the District Collector to drop the plan by the General Public. Mr.P.Gurusamy in his petition to the District Collector, requested to drop the plan of building 40 flats in the place of existing Community Hall. He explained elaborately that the sub-soil of the Community Hall is red soil with hard rock below 5 feet and to construct 40 flats, soil should have to be ducked to 30 feet deep to raise pillars, which would certainly cause unimaginable damage to all the dwelling houses surrounding Community Hall.

14. The writ petitioner also states that the legal notice was sent to the respondents, but no reply has been received. Finally, one P.Sivasankar and more than 100 public have sent their petition to the Chief Minister s Cell in order to get redressal of the grievance that the 3rd respondent rejecting the request by ignoring the grievance sated in the above said petitions and notice, citing the approval of the 1st respondent for demolishing Community Hall and constructing 40 flats in that place in letter No.1342/tP/T/r/1/2015-2 dated 15.06.2015. Challenging the said letter, the writ petitioners were filed the writ petition for the above relief.

15. Counter affidavit filed by the 3rd respondent / Regional Deputy Registrar (Housing), K.K.Nagar, Madurai denying the allegations they stated in the counter that the 5th respondent is a Co-operative Institution constituted under the provisions of the Tamil Nadu Co-operative Societies Act and the Rules (TNCS Act and TNCS Rules) framed there under. A Larger Bench of 5 Judges of this Court in Marappan v. The Deputy Registrar of Co-operative Societies (2006) 4 CTC 869 held that no writ will lie against a Co-operative Institution as it is neither a State nor instrumentality of State Government nor discharging a public duty. Accordingly, the writ petition is unsustainable and to be rejected ex-facie.

16. The 3rd respondent also states that the writ petitioner has challenged an internal communication of the 1st respondent granting permission to the 5th

respondent Society to construct multi-storied houses, to allot them to the Central and State Government employees as constructed houses, in the plot Nos.400, 401 and 402 belonging to the 5th respondent Society, as a matter of routine administrative sanction as required under the procedure of the Housing Societies, since, it involves huge finance. It is not at all an order passed under any law or in exercise of power under any law in force. Such an internal communication is not challengeable under Article 226 of the Constitution of India.

17. The 3rd respondent also states that the writ petitioner namely Ashokan is neither a member of the 5th respondent Society nor a beneficiary of any service provided by the 5th respondent Society nor an adversary by any means over the impugned communication. He is just a purchaser of Plot No.386 from the original allottee of the Society, of course, contrary to the provision of the By-law and term No.5 of the Sale Deed i.e. that the member shall not alienate the property to any person except to the Central or State Government or to a Co-operative Society for the purpose of raising any loan. The member may however sell or transfer the plot and any structure put up there on to a person who is a member of the society or who is one whom the Committee of the society is willing to admit as a member, provided also that prior sanction in writing of the Committee of the society is given to such alienation and that the cost of the plot of such alienation shall be the cost covered under this deed incorporated by the 5th respondent Society while assigning the plot to the original allottee Mr.R.Ramasubbu (Member No.12) a member of the Society. The petitioner never informed about his purchase of the plot to the Society. Neither had he sought prior permission before proposing to purchase the site nor has got written consent of the committee of the 5th respondent Society to effect the transfer and the petitioner so far has not enrolled as a Member in the Society, as required under term No.5 above, thus an usurper or illegal occupant. As such, the petitioner is a 3rd party unconnected to the affairs of the 5th respondent Society and he has no legal right or locus standi to challenge the communication relating to the affairs of the Society and on that ground itself the writ petition deserves to be dismissed, as not maintainable.

18. The 3rd respondent also states that the rear compound wall of the petitioner's house forms a portion of the compound wall of Plot No.400 belonging to the 5th

respondent Society and he made some construction in that compound wall contrary to the approved building plan of his house, thereby unauthorized encroaching the boundary of Plot No.400 that was objected by the 5th respondent. Apart from that his request to sell the Plot No.400 to him, was rejected by the 5th respondent, thereby his plan to have short cut path way to the main road and his plan to develop commercial constructions in the earmarked house plot was defeated, caused grudge against the 5th respondent and in his move to vindicate his ire he filed this writ petition as an after math and causing threat by an indirect pressurizing tactics.

19. The 5th respondent also states that after getting the administrative sanction to construct multi storied houses, the 5th respondent society sent proposals to the Member Secretary, Local Planning Authority, procedurally seeking approval to construct so, with blue prints for its plan and the layout of the Alwar Nagar as approved. The authority after visiting the spot and satisfying that the proposed construction is approved the construction plan through the order in LPA No.17/2016 dated 07.03.2016.

20.The 3rd respondent also states that as the plan approved for the Alwar Nagar has no provision, reserving any area for the use of the members or residents or created an obligation on the part of the 5th respondent to construct any structure for public utility, it was not at all the look after of the 5th respondent. Any how, procedurally, earmarked / reserved places for maternity centre was taken over by the Nagamalai Pudukkottai Panchayat and constructed a maternity centre, primary health centre, ration shop, women s self help group building, over head water tank and also a Community Hall at about 1000 sq. ft. for the use of public at large from the fund provided by the Government.

21. The 3rd respondent also states that more than 400 residential houses are in existence in Alwar Nagar, surrounded by Venkataraman Nagar, E.B. Colony, Gurusamy Colony, Malayan Nagar, etc. with existence of more than 1500 houses and still many more constructions are coming up at about 200 in the same area, the petitioner raised no objection or questioned the approval granted to those new constructions, that may also touch the existing water table, ecology, etc.

22. The reply sent to the Lawyer notice issued by the petitioner was returned.

23. The 3rd respondent also states that as per the regulation framed for the 5th respondent Society that has come to operation from 07.09.2015 onwards, the Society has to obtain prior permission of the Registrar of Co-operative Societies (Housing), Chennai before executing any scheme of construction of houses, apartments and other buildings in order to sell its member. Accordingly, the proposal sent by the 5th respondent seeking for permission of the Registrar of Co-operative Societies (Housing) 2nd respondent for the construction was forwarded and in turn the Registrar sent the same to the 1st respondent for administrative sanction and the 1st respondent after satisfying that everything was in order granted the formal approval / permission and sent the same to the 5th respondent through the 2nd respondent to decide.

24. The 3rd respondent also states that when no public interest involved in the affairs of the alleged Community Hall, no public interest involved over the same, the writ petition is without cause of action, except with imaginary allegations. The 4th respondent after taking into consideration of every thing that is demolishing, excavating, drilling, laying, construction, etc. involved in the proposed scheme approved the same. No question of environmental problem exists. Water scarcity may not arise for the only reason that 40 more houses are constructed. If that phenomena alone is taken into consideration there should be a total ban for fresh construction in the entire area or at least in and around Madurai Town and its suburbs.

25. The 3rd respondent also states that already the Nagamalai Pudukkottai Village Panchayat in which the Alwar Nagar is situated, supplies water through pipe lines and arranging for all public convenience. For the purpose of arranging for sewerage etc. the Panchayat is collecting charges not only with the existing residents and also from all the proposed constructions while allowing approval for construction. It is for the Panchayat to raise doubts in this respect to the 5th respondent and but also permitting yet more such new constructions within its jurisdiction. The same rules apply to the instant construction also and there is no substantial valid ground to discriminate. Therefore, the writ petition is not

maintainable and the same should be dismissed.

26. The 5th respondent in WP(MD)No.12793 of 2016 has filed the counter which was already given the statement in WP(MD)No.6199 of 2016.

27. The 5th respondent also come forward by saying that the writ petitioner is relied on some decision of the Hon ble Supreme Court with regard to reservation of any land earmarked for the public purpose cannot be earmarked for any other purpose. But, in this case, the above said disputed property only earmarked for housing purposes and not any other public purposes or any other purposes. Hence the judgments relied on by the writ petitioner is not applicable to the case of the writ petitioner.

28. The 6th respondent is concerned, on satisfying about the plan of proposed construction, applying required parameters, granted permission for construction. The petitioner is not competent to challenge the same and if there were any deviation or defect or irregularity in granting approval by the 6th respondent it is for the petitioner to challenge the same appropriately before the Appellate Authority and he has no right to invoke writ jurisdiction. Therefore, he sought for the dismissal of the writ petition in WP(MD)No.12793 of 2016.

29. We heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner in both the WPs, Mr.T.R.Janarthanan, learned Government Pleader, appearing for the respondents 1 to 4 in WP(MD)No.6199 of 2016 and respondents 1 to 6 in WP(MD)No.12793 of 2016 and Mr.Veerakathiravan, learned Senior Counsel, appearing for the 5th respondent in WP(MD)No.6199 of 2016 and 7th respondent in WP(MD)No.12793 of 2016.

30. As per the judgment of a Larger Bench of 5 Judges of this Court in Marappan v. The Deputy Registrar of Co-operative Societies (2006 (4) CTC 869) held that no writ will lie against a Co-operative Institution as it is neither a State nor instrumentality of State Government nor discharging a public duty. Accordingly, the writ petition is unsustainable and to be rejected ex-facie.

31. The respondent also pointed out that the writ petitioner challenging an internal communication of the 1st respondent granting permission to the 5th respondent society to construct multi storied houses, to allot them to the Central and State Government employees as constructed houses, in the plot numbers 400, 401 and 402 belonging to the 5th respondent Society, as a matter of routine administrative sanction as required under the procedure of the Housing Societies, since it involves huge finance.

32. The respondent also pointed out that the writ petitioner Mr.V.Ashokan in WP(MD)No.6199 of 2016 is neither a Member of the 5th respondent Society nor a beneficiary of any service provided by the 5th respondent Society nor an adversary by any means over the communication. He has only purchased the property from the Member one Mr.R.Ramasubbu (Member No.12) a Member of the Society. Since the Society, contrary to the provision of the By-law and term No.5 of the Sale Deed that the member shall not alienate the property to any person except to the Central or State Government or to a Co-operative Society for the purpose of raising any loan. Therefore, the very purchaser of Plot No.386 of the writ petitioner is not maintainable.

33. Hence both the writ petitions WP(MD)No.6199 and 12793 of 2016 are not maintainable as per the judgment rendered by the Larger Bench of 5 Judges of this Court in the above referred case.

34. When the purchaser for construction of the Flats made in the Plot Nos.400, 401 and 402 for allotting the said plot to the Central and State Government Employees, there are huge finance were involved and the Flats are constructed with proper approval of the authorities concern. It seems that there is no violation as alleged by the writ petitioners. Therefore, these writ petitioners have no right to challenge the same before this Court.

35. The 7th respondent has also produced several photographs by way of typedset in which there are several construction on various plots that was not questioned by the writ petitioners. The photographs really shows that some of them are constructed the above plots and the same are in existence for the past several decades in that area.

36. If at all the writ petitioners wanted to challenge the order, they should go before the Appellate Forum since an appeal remedy is available with the Tamil Nadu Town and Country Plan Act, but without resorting the same, directly approach this Court and filed the writ petitions. Apart from this, the writ petitions are not maintainable as per the order of the Constitutional Bench of this Court made in *Marappan v. The Deputy Registrar of Co-operative Societies* (2006) 4 CTC 869. Therefore, for the above reasons, both the writ petitions are not maintainable before this Court. Hence, both the writ petitions are liable to be dismissed.

37. In the result, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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