



W.P.(MD)No.11245 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

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Adiyanoothu Panchayat Union,
Dindigul East Taluk,
Dindigul District,
Rep. by its President,
A.Jeevanandam, S/o. P.Ammavasi Thevar,
Adiyanoothu Panchayat,
Dindigul East Taluk,
Dindigul District.

... Petitioner

Vs.

- 1.The Deputy Director,
Town and Country Planning,
Madurai Division,
Madurai.
- 2.The Member Secretary,
Local Planning Authority,
Eswari Store (Back Side),
Vivakananda Nagar,
Dindigul.
- 3.The Additional Director of Village Panchayat,
Near Old Court,
Dindigul.
- 4.Mr.Chowkathali



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5.Mrs.S.Abibunisa Bevi

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondent to initiate necessary proceedings to restore the public park situated in S.No.817/B, 817/2A at Adiyanoothu Panchayat, Dindigul East Taluk, Dindigul District, encroached by the 4th and 5th respondents by converting the same in to Housing Plots for sale.

For Petitioner : Mr.S.Sarvagan Prabhu

For Respondents 1 to 3 : Mr.M.Lingadurai
Special Government Pleader

For Respondents 4 & 5 : Mr.S.V.Durai Solai Malai

* * *

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

The petitioner has filed the Writ Petition as the President of Adhiyanoothu Panchayat Union for issuance of a Writ of Mandamus, directing the 2nd respondent to initiate necessary proceedings to restore the public park situated in S.Nos.817/B, 817/2A at Adiyanoothu Panchayat, Dindigul East Taluk, Dindigul District, encroached by the 4th and 5th respondents by converting the same into Housing Plots for sale.



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2. Heard Mr.S.Sarvagan Prabhu, learned counsel for the petitioner, Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.S.V.Durai Solai Malai, learned counsel appearing for the respondents 4 & 5.

3. It is the case of the petitioner that he is the elected President of the Adhiyanoothu Panchayat Union. The respondents appear to have promoted a layout in S.No.817/B and 817/2A, measuring an extent of 2.71 Acres at Adhiyanoothu Panchayat, Dindigul East Taluk, Dindigul District. It is also admitted that the layout was approved by the competent authorities. An extent of 11987 square feet of land was reserved in the said layout as a public park, at the time when approval was obtained by the respondents 4 and 5. Even though the reserved plots are used as a park by the residents of the layout for a long time, it is the case of the petitioner that the respondents 4 and 5 are trying to convert the area allotted for park into housing plots to further make money.

4. It is brought to the notice of this Court that by proceedings dated 06.04.2018, the President of Adhiyanoothu Panchayat has considered the application filed by the promoters to permit them to convert the land used from park to residential. This application was allowed by the President of the



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Panchayat and permitted 6 number of plots to be used as residential houses by conversion of the land use. Followed by the proceedings of President of Panchayat dated 06.04.2015, the Block Development Officer by proceedings dated 15.02.2018, has passed an order in the following lines:-

“மேற்படி வின்னப்பதாரின் வேண்டுகோளை ஏற்றும், தளர்த்திய மனைப்பிரிவு வரைபட அங்கீகாரமானது 1994 – ம் வருடத்திய தமிழ்நாடு ஊராட்சிகள் மனைப்பிரிவு வரைபடச் சட்டத்திற்கும் அதன் உப விதிகளுக்கும் கட்டுப்பட்டு குடியிருப்பாக செயல்பட வேண்டும் என்ற நிபந்தனை வரன்முறையின்படி, பார்வை(2)ல் கண்டுள்ள மனைப்பிரிவு வரைபட அங்கீகாரத்தில் பொது உபயோகத்திற்கென ஒதுக்கிய இடத்ததை பார்வை (3) ல் காணும் திருத்திய மனைப்பிரிவு வரைபடத்தில் காட்டப்பட்டுள்ளபடி, அடியனுத்து கிராமம் சர்வே 817/B, 817/2A ஆகிய புல எண்களுக்கு கட்டுப்பட்ட 13A, 13B, 13C, 26A, 26B, மற்றும் 26C இலக்கமிட்ட மனைகளை குடியிருப்பாக உபயோகம் செய்துகொள்ளவும், ஆவணப்பதிவு மேற்கொள்ள எவ்வித ஆட்சேபணையும் இல்லை என்று இதன்மூலம் உத்தரவிடப்படுகிறது.”

5. It is to be noted that the respondents 4 and 5 have sold the property to several persons showing the common area as a park. Despite reserving a substantial portion of the layout for the purpose of park and the residents have purchased the plots with the understanding that the park will be kept as such, the promoters, namely, respondents 4 and 5 for the purpose of selling the plots used as park as house site has gone for conversion and the President of the Panchayat and the Block Development Officer have also held at rest.



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6. The Hon'ble Supreme Court in ***PT. Chet Ram Vashist v.***

Municipal Corporation of Delhi reported in ***(1995) 1 SCC 47*** and Division Bench of this Court in ***T.M.Rajasekaran v. State of T.N.*** reported in ***2007-3-LW 995*** and in ***T.G.Naveen v. The Chairman, TNEB*** reported in ***2021 (5) CTC 648*** held that the land reserved for a public purpose in a layout is meant for the beneficial use of the residents / plot owners. Even the promoter / developer seeks to be the owner of the plots, as he holds it only to the benefit of plot owners.

7. The Hon'ble Supreme Court in ***PT. Chet Ram Vashist v.***

Municipal Corporation of Delhi reported in ***(1995) 1 SCC 47***, in paragraph No.6 held as follows:-

“6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true



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as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself.”

8. In this case, there is no dispute with regard to the reservation of the space as park at the time of approving the layout. In such circumstances, the promoters cannot use it for any other purpose than for the purpose for which the land was reserved i.e., public purpose. After selling the plots to several plot owners, it is not open to the promoters, namely, respondents 4 and 5 to convert the park and use it for any other purpose as held by the Hon'ble Supreme Court and the Division Benches of this Court.



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9. In view of the same, this Court finds that the permission or approval granted by the local body or Block Development Officer will have no value. The second respondent is directed to restore the public park in the layout, which is now sought to be converted as house site plots and the respondents 4 and 5 shall not deal with the same as owner of the property any more.

10. With the above directions and observations, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R., J.] [D.B.C., J.]
01.08.2023

NCC : Yes / No
Index : Yes / No
sj

To

1. The Deputy Director,
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2. The Member Secretary,
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D.BHARATHA CHAKRAVARTHY, J.

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