



W.P.No.12127 of 2021 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.12127, 12135, 12138, 12140 and 12141 of 2021

and

W.M.P.Nos.12896, 12905, 12908, 12911 and 12912 of 2021

D.Shanmugam	..Petitioner in W.P.12127 of 2021
M.Dhanasekaran	..Petitioner in W.P.12135 of 2021
S.Dhamodiran	..Petitioner in W.P.12138 of 2021
S.Sunderasan	..Petitioner in W.P.12140 of 2021
N.Anbarasu	..Petitioner in W.P.12141 of 2021

-Vs-

1.The Member Secretary
Directorate of Town and Country Planning
Hosur New Town Development Authority
Hosur, Krishnagiri District

2.The Commissioner
Hosur Municipal Corporation
Hosur, Krishnagiri District.

..Respondent in all the WPs

Prayer in W.P.No.12127 of 2021: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's order in Na.Ka.No.3585-1734/2018/F1 dated 26.03.2021 and quash the same and consequently direct the 2nd respondent to confirm the approval of regularisation order dated 20.05.2019 in Na.Ka No.3585-1734/2018/F1.



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Prayer in W.P.No.12135 of 2021: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's order in Na.Ka.No.3585-1736/2018/F1 dated 26.03.2021 and quash the same and consequently direct the 2nd respondent to confirm the approval of regularisation order in Na.Ka No.3585-1736/2018/F1 dated 20.05.2019.

Prayer in W.P.No.12138 of 2021: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's order in Na.Ka.No.3585-1735/2018/F1 dated 26.03.2021 and quash the same and consequently direct the 2nd respondent to confirm the approval of regularisation order in Na.Ka No.3585-1735/2018/F1 dated 20.05.2019.

Prayer in W.P.No.12140 of 2021: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's order in Na.Ka.No.3585-1737/2018/F1 dated 26.03.2021 and quash the same and consequently direct the 2nd respondent to confirm the approval of regularisation order in Na.Ka No.3585-1737/2018/F1 dated 20.05.2019.

Prayer in W.P.No.12141 of 2021: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's order in Na.Ka.No.3585-1733/2018/F1 dated 26.03.2021 and quash the same and consequently direct the 2nd respondent to confirm the approval of regularisation order in Na.Ka No.3585-1733/2018/F1 dated 20.05.2019.



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For Petitioner : Mr.S.Gunaseelan
(in all WPs)

For Respondent : Mr.S.Jayachandran for R1
(in all Wps) Government Advocate
Mr.N.Subbarayalu for R3
Standing Counsel

COMMON ORDER

These Writ Petitions have been filed challenging the order passed by the second respondent dated 26.03.2021, thereby rejected the request made by the petitioners to revoke the cancellation of approval for their respective plots.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioners had purchased the vacant house plots comprised in survey No.745/1A1A, New survey No.745/7 situated at Chennathor Village, Hosur Taluk, Krishnagiri District from the original owners of the property by a registered sale deed. The vendors of the said plots were issued patta and they were absolute owners of the said property. Since, it is unapproved house plots, as per G.O.No.78, Town Planning (UD3)(3) Department dated 04.05.2017 and G.O.No.122, Town Planning (UD3) (3) Department dated 03.10.2017, the



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petitioners had applied for regularisation of their respective plots. Initially, the first respondent approved their respective plots and applied for regularisation.

However, subsequently, the same was cancelled, in view of the fact that the said land was earmarked as school and play ground as per the original layout 61/1982, and therefore, it cannot be converted into house plots. It was challenged before this Court and this Court, by setting aside the said order, directed to issue notice to the petitioners, after giving an opportunity to submit their explanation and pass final orders in accordance with law. As directed by this Court, the petitioners were given opportunity to submit their explanation along with the documents and the request made by the petitioners was rejected and confirmed the order of cancellation of regularisation for their respective plots. Hence, the present writ petition.

4. The learned counsel appearing for the petitioners would submit that as per the original layout plan 61/1982, the subject land was earmarked as school and play ground. However, the said land was not gifted to the second respondent at any point of time. All the revenue documents shows that the land stands in the name of the original owners. It was never gifted to the second respondent. In fact, the petitioners' vendors had executed gift deeds dated 02.05.1989, 03.05.1989 and 07.05.1990 in favour of the second respondent



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registered vide Document Nos.2591/89, 2590/89 and 1920/90 in respect of the land comprised in survey Nos.743, 744 and 745 to an extent of 15570 sq.ft and 19200 sq.ft. for roads. Insofar as the land admeasuring 16440 sq.ft. is concerned, it was gifted for the purpose of park. Though in the approved layout, the land is earmarked for school and play ground, it was not utilized for the said purpose.

5. As per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, if no acquisition of land, as provided in sub-section (2) of Section 37, is made within five years from the date of layout approval in respect of any land reserved, allotted and designated for any purpose specified in a Regional Plan, Master Plan, such land would be deemed to be released from such reservation, allotment or designation. Since the subject land was originally earmarked to school and play ground purpose, it was not acquired and utilised by the second respondent so far, it automatically stands released as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

6. He further submitted that the total extent of land as per the original layout was 7.37 acres, in which 76 house plots and 2.12 acres were allotted for common area. The land admeasuring 1.25 acres was earmarked for



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school and play ground. The land admeasuring 37 cents was earmarked for park and 1.04 acres was earmarked for road. Accordingly, three settlement deeds were executed insofar as the road and park. It is more than 15% of the total areas. Therefore, more than 15% of land was already gifted in favour of the second respondent and the lands, which was originally earmarked for school and play ground, were not gifted in favour of the second respondent.

7. In support of his contention, he relied upon the Judgment of this Court reported in **2020(1) CTC 636** in the case of **Commissioner, Tiruppur Corporation, Tiruppur Vs. Vasanthakumari**, in which, this Court held that the ownership of the land never got transferred to the Municipality. Therefore, they cannot claim any title over the said property and it never vested in the municipality at any point of time. Further, it is held that the Act envisages acquisition of land which was shown as areas reserved for a public utility services. Though the plan was approved in the year 1982 no steps have been taken either by appellant or its predecessors to acquire the said land in question.

8. On the submissions of the learned counsel appearing for the respondents revealed that the subject land was originally earmarked for approved layout 61/1982 to an extent of 1.25 acres to school and play ground.

Though it was not gifted by gift deed in favour of the second respondent by the



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original developer/owner of the subject property, it cannot be used for other purpose. It is relevant to extract the provision under Section 38 of the Act, which reads as follows :

38. Release of land : - If within five years from the date of the publication of the Notice in the Tamil Nadu Government Gazette under Section 26 or Section 27 -

(a) no acquisition of land as provided in sub-section (2) of Section 37 is made in respect of any land reserved, allotted or designated for any purpose specified in a Regional Plan, Master Plan, [Detailed Development Plan, New Town Development Plan or a Land Pooling Area Development Scheme] covered by such notice ; or

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation:

Provided that the Government may, by notification, extend the period for such time as they may think proper, but such extended period shall in no case, exceed five years.]

9. The above provision is not at all applicable to the case on hand for the simple reason that the petitioners had purchased their respective house plots which was an unapproved layout. They sought for regularisation of their respective plots. It is not coming under the Regional Plan, Master Plan, Detailed Development Plan, New Town Development Plan or a Land Pooling Area Development Scheme. All the petitioners had purchased unapproved layout that too subdivided by the vendors. That apart, as per the original



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layout, the subject land was earmarked for school and play ground. The school and play ground are for the public purpose.

10. Initially, the first respondent wrongly issued the Government order in G.O.No.78, Town Planning (UD3)(3) Department dated 04.05.2017 and G.O.No.122, Town Planning (UD3) (3) Department dated 03.10.2017 and regularised the respective plots of the petitioners. Thereafter, on verification of regularization, the first respondent cancelled the regularization of the petitioners' respective plots.

11. The Hon'ble Supreme Court of India in the case of ***Bangalore Medical Trust Vs. B.S.Muddappa***, reported in ***1991 (4) SCC 54*** has held as follows :

“Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now, it is a fit from people to themselves. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development, it occupies an importance place in social ecology. A private nursing home on the other hand, is



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essentially a commercial venture, a profit oriented industry. Service may be its motto but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blueprint without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require even private house owners to leave open space in front and back for lawn and fresh air. In 1984 the B.D.Act itself provided for reservation of not less than 15% of the total area of the layout in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38-A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard.”

12. The very same question came up for consideration again before the Hon'ble Supreme Court of India in the case of ***Pt. Chet Ram Vashist Vs. Municipal Corporation of Delhi***, reported in ***1995(1) SCC 47***, wherein, the Hon'ble Supreme Court of India 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 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



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trust for the specific purpose specified by the colonizer 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. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.”

13. Thus, it is clear that certain lands were reserved for school and play ground in the development plan cannot be utilized for any other purpose. Once, the subject land was earmarked for school and play ground, the second respondent shall have the right to manage the land. However, the second respondent shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents and it is left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the layout plan was accorded.

14. It is not the case of the second respondent that the second respondent is the owner of the property. It is only the custodian of the subject



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property, for the purpose of maintaining the open space and to put to use the purpose for which it was earmarked and for the benefit of the inhabitants.

Therefore, the Judgment relied upon by the learned counsel for the petitioners is not helpful to the case on hand.

15. In view of the above, this Court finds no infirmity or illegality in the order passed by the second respondent dated 26.03.2021. Thus, these writ petitions are devoid of merits and are liable to be dismissed. Accordingly, these Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

29.08.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

G.K.ILANTHIRAIYAN. J.

Lpp

To

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