

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:05.03.2015

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.31451 of 2014

R.Selvamani, Secretary,
SMS Nagar's Residents Welfare Association-Koyambedu,
No.3/18, Mangamma Nagar, Koyambedu,
Chennai - 600 107.

... Petitioner

V.

1. Corporation of Chennai,
Represented by its Commissioner,
Rippon Buildings, Chennai.
2. D. John Alfred
3. Jeyanty John
4. Sf. Alfred Educational Trust,
Represented by its Trustee H. Christopher,
No.42/1, Sreenivasa Nagar,
Koyambedu, Chennai - 600 017.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the 1st Respondent to demolish the illegal construction in the public land at SMS NAGARS approved vide DTCP No.LPDM/DDTP 219/73 in Survey No.162 (part), 184 (part), Koyambedu Village, Saidapet Taluk, illegally converted as Plot No.57 and 58 as per letter dated 06.06.2014 in R.D.C.C.No.Legal Cell/110/2014 by the Respondents 2 to 4 and restore the land for public purpose to SMS NAGARS' RESIDENTS' WELFARE ASSOCIATION.

For Petitioner	: Mr.N.Kishore Kumar
For 1 st Respondent	: Mr.A.Nagarajan
For 2 nd & 3 rd Respondents	: Not Ready - No appearance
For 4 th Respondent	: Served - No appearance

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

The Petitioner/Association has preferred the present Writ Petition praying for passing of an order by this Court in directing the 1st Respondent to demolish the illegal construction in the public

land at SMS NAGARS approved vide DTCP No.LPDM/DDTP 219/73 in Survey No.162 (part), 184 (part), Koyambedu Village, Saidapet Taluk, illegally converted as Plot No.57 and 58 as per letter dated 06.06.2014 in R.D.C.C.No.Legal Cell/110/2014 by the Respondents 2 to 4 and to restore the land for public purpose to SMS Nagars' Residents' Welfare Association.

2.According to the Petitioner/Welfare Association, the land measuring an extent of 4 acres 10 cents comprised in Survey No.162 (part), 184 (part), in Paimash No.556, 563, 556, 564, 569, 570 and 574 with a water well of 16 feet diameter and an extent of land of Acre 0.58 cents in Paimash No.575 was originally owned by Jayakanthaammal, who had converted the said lands in housing site after obtaining approval in DTCP No. LPDM/DDTP 219/73 consisting of Plot Nos.1 to 56, after allocating land for public purpose as per DTCP rules.

3.The stand of the Petitioner is that the said public purpose land was illegally converted into Plot Nos.57 and 58 by fabrication and fraud and the same was purchased by 2nd and 3rd Respondents under make belief and invalid Sale Deeds dated 06.12.1993 [registered as Document Nos.5300 of 1993 and 5301 of 1993 on the file of Sub Registrar Office, Anna Nagar]. The 2nd and 3rd Respondents, after purchasing the aforesaid Plots, had constructed a multi storey building for running a school, without obtaining planning permission. Also that, they had formed the 4th Respondent Trust to evade and make illegal gains. The then Secretary of the Petitioner's Association raised an objection in regard to the said multi storey building constructed by 2nd and 3rd Respondents. In fact, the construction is of very poor quality and poses threat not only to the residents living adjacently but also to those who may be inside the building, which is stated to be a School.

4.The Petitioner/Association, by a letter dated 07.07.2012, had sought for information under RTI regarding the land which is marked red in colour in the DTCP approved layout plan from the Public Relations and Head Quarters Deputy Tahsildar, Egmore - Nungambakkam Taluk, Chennai. A reply dated 11.07.2012 was sent by the said Tahsildar stating that the public purpose land was still classified as sarkar poramboke, which is not correct as it could be seen from the approved layout that it is a public purpose land allotted to the welfare of public of SMS Nagar which can only be vest with the Association and under the control of the 1st Respondent/Chennai Corporation. The 2nd and 3rd Respondents had obtained Patta Nos.1711 and 1712 by means of fraud and fabricated documents in their name.

The Petitioner had sought for details from the 1st Respondent under the RTI Act and a reply was given stating that at the time of sanction, it was not known that it is a public purpose land and that the layout that was submitted to the 1st Respondent was found to be bogus and further, the sanction was revoked thereafter. Also that, the 1st Respondent had categorically stated that the sanctioning of a plan in a public purpose land was not lawful.

5.The Petitioner/Association sent a representation dated 04.03.2013 requesting to secure and to restore the land which is an illegal occupation of 2nd and 3rd Respondents, as they are public purpose land for the use of the public of SMS Nagars' Residents' as per the original DTCP approved layout plan, by vacating them from the premises and demolish the existing superstructure in the interest of public life safety and hand over the same to the Association for utilising it for public purpose.

6.The 1st Respondent had not vacated the 2nd and 3rd Respondents or the 4th Respondent/Trust from the premises and demolished the existing superstructure in the interest of public life safety etc. Hence, the Petitioner/Association filed W.P.No.17812 of 2013 before this Court and on 31.10.2013, this Court was pleased to direct the 1st Respondent/Corporation of Chennai to consider the issue after providing opportunity to the Petitioner/Association and to pass appropriate orders. The 1st Respondent/Corporation of Chennai had provided a hearing to the Petitioner/Association and on 06.06.2014 passed the following order:

"... After scrutinizing the entire facts that Thiru. D.John Alfred, (the School Management Person) who purchased the suit schedule property situated at Plot Nos.57 and 58 and Door No.42/1, and 42/2, Srinivasa Nagar Main Road, Koyambedu Village, Saidapet Taluk in R.S.No.162 (Part) and R.S.No.184 (Part) measuring 7194 Sq. ft., which is earmarked for public purpose as per the sanctioned layout in DTP proceedings LPDM/DTP/219/1973 and obtained improper approval from Town Panchayat, Municipality, and the Property Tax was assessed in his favour. However due and diligence verification of the land records, it is found that it belongs to the Corporation of Chennai. Hence, the Corporation revoked the assessment and sanctioned plan. Thiru. D.John Alfred filed a suit in O.S.No.3344/97 and 3650/1997 "Praying for

declaration of title and for declaring to cancel the plan in W.D.C.No.05/PPA/25/97 Dt: 10.05.1997."

In which, the Hon'ble Principle City Civil Court passed an orders in A.S.No.258/2004 and A.S.No.259/2004 EH: 09.10.2006 as follows: "It is deposed that that the appellate court while rendering judgment referred about the fraud played by the plaintiff while dismissing the appeals and confirming the findings of the trial court. The plaintiff is not having any Propriety to institute the suit for the very same subject matter as it is hit by prejudiced. As such the suit has been filed deliberately without any legality and the same is liable to be dismissed. Plaintiff has given imaginary numbers as Plot No.57 and 58 when there are 56 plots. As such it is stated that the claim made by the plaintiff is not maintainable and the plaintiff is not entitled for the relief sought for".

Even after the above said order through their Trust Thiru. D.John Alfred filed a suit in O.S.No.7937/06 against the Corporation at Chennai before the III Asst. City Civil Court praying for permanent Injunction and in which Hon'ble III Asst. City Civil Court passed an order dt: 09.04.2010 as follows: ...

"In these circumstances it is found that in the Interest of students community who are pursuing education and also in the interest of Justice. Plaintiff who apparently appears to be in possession of the schedule referred property by running colleges and educational institutions cannot be interfered by the defendant without adopting, procedures known to laws. Hence, it is found that the plaintiff is entitled for permanent Injunction as the possession of the plaintiff is attempted to be interfered without adopting any procedure known to law.

The above matter has been scrutinized and found that Thiru.D.John Alfred (the School Management person) encroached the suit land which is reserved for public purpose based on the SMS Nagars approval layout vide DTCP.No.LPDM/DDTP/219.73 and in which Thiru.D.John Alfred constructed building and he

is running educational Institution in the name and style of "A.A. Matriculation School". However, Thiru D.John Alfred has no right over the suit property, being the said property is reserved for public purpose as per the sanction layout, and he is mere encroacher. Further action shall be taken against the unauthorized Construction and to remove the encroachment by due process of law."

7.The core grievance of the Petitioner/Association is that in spite of their efforts, no legal action has been initiated to recover the lands by the 1st Respondent/Corporation of Chennai. The Regional Deputy Commissioner and Assistant Commissioner Zone X have to take immediate steps to vacate the illegal occupants of the premises and demolished the existing superstructure in the interest of public and hand over the same to them for utilising it for public purpose considering the order passed by this Court. Hence, the Petitioner has filed the present Writ Petition.

8.At this stage, it is to be pertinently pointed out that this Court on 10.02.2015 had passed an order, inter alia, observing in para 3 as follows:

"3.It appears that the officers are not interested in performing their statutory obligations. Seemingly, it is a case of nonfeasance. Thus, the Commissioner, Corporation of Chennai, is directed to file an affidavit indicating as to what steps have been taken by the officers pursuant to the order aforesaid dated 06.06.2014. If no steps have been taken to give effect to the order, the officers responsible for not complying with the order be identified and the Commissioner is further directed to inform us as to what action has been taken against the concerned officers. Post on 25.02.2015."

9.Further, on 25.02.2015, this Court had passed the following order:

"It appears that the Commissioner, Corporation of Chennai, the first respondent herein, has not understood the contents of the order dated 10.02.2015 passed by this Court,

wherein, the Commissioner himself was directed to file an affidavit indicating non-compliance of the statutory obligations by the authorities. However, counter affidavit has been filed by the Regional Deputy Commissioner (Central), Corporation of Chennai, in derogation of the order passed by this Court. At the request of the learned Standing Counsel for Chennai Corporation, post on 05.03.2015, to comply with the order dated 10.02.2015 passed by this Court."

10.The Learned Counsel for the 1st Respondent/Corporation of Chennai submits that the 1st Respondent/Commissioner of Chennai Corporation had filed an Affidavit before this Court dated 27.02.2105, among other things, stating that the 2nd and 3rd Respondents are holding the title ownership of the property in the schedule property situated at Door No.42/1 & 42/2, Srinivasa Nagar Main Road, Koyambedu Village, Saidapet Taluk comprised in R.S.No.162 (part) and R.S.No.184 (part) presently R.S.No.162/12 & 162/13 etc. and they had alleged to have purchased the same under Sale Deed dated 06.12.1993, whereas the site is earmarked for the public purpose as per the sanctioned layout in DTP proceedings LPDM/DTP/219/1973.

11.The Learned Counsel for the 1st Respondent brings it to the notice of this Court that the patta purported to have been obtained by 2nd & 3rd Respondents was based on the false and invalid sale deeds and in fact, the 2nd and 3rd Respondents had obtained the property tax assessed for the suit schedule property clandestinely by submitting a false document to the 1st Respondent/Corporation of Chennai during 1/93-94 itself and they had allegedly obtained the building plan sanction under PPA No.2512/1997 dated 29.04.1997. However, after due inspection, the officials of the 1st Respondent found that the layout plan furnished by the 2nd and 3rd Respondents was a bogus one. Therefore, a show cause notice was issued by the 1st Respondent to the 2nd and 3rd Respondents and later, the Joint Director, Town and Country Planning, through letter No.Na.Ka.No.3059/95-4, dated 19.09.1995, had confirmed that no layout sanction was accorded for the altered layout plan submitted for the property at Villivakkam Panchayat Union, Koyambedu Village, Saidapet Taluk, comprised in R.S.No.162 (Part) and R.S.No.184 (Part) measuring 4.99 acres.

12.The Learned Counsel for the 1st Respondent proceeds to contend that the 2nd and 3rd Respondents had encroached upon the 1st Respondent's property and they created all the transactions appearing to be genuine with an intent to grab the Corporation land and after due inspection and verification of the land records, it was found

that the land belongs to the 1st Respondent/Corporation of Chennai and hence, the Corporation of Chennai revoked the Property Tax Assessment and sanctioned plan.

13.The Learned Counsel for the 1st Respondent draws the attention of this Court that the 2nd and 3rd Respondents had filed a civil suit in O.S.No.3344 of 1997 and O.S.No.3650 of 1997 on the file of trial Court praying for declaration of title and for further declaration to declare that the cancellation of the plan in W.D.C.No.05/PPA/25/97 dated 10.05.1997 is without jurisdiction and also for consequential permanent injunction against the 1st Respondent. However, since there was suppression of material facts and the 2nd and 3rd Respondents had obtained sanctioned plan from the 1st Respondent/Corporation of Chennai for the suit schedule property in a clandestine manner, the said suits came to be dismissed on 11.08.2013 itself. Even A.S.Nos.258 & 259 of 2004 filed by the 2nd and 3rd Respondents (being aggrieved against the Judgment and Decree passed by the trial Court in O.S.No.3344/1997 and 3650/1997) were dismissed by this Court on 03.05.2006. Also that, the 2nd and 3rd Respondents had deliberately filed another suit in O.S.No.7937 of 2006 in the name of the 4th Respondent/Trust seeking the relief of permanent injunction on the file of the III Assistant Judge, City Civil Court, Chennai and a decree was passed on 09.04.2010 wherein permanent injunction was granted against the Defendant stating that the 2nd and 3rd Respondents are running an educational institution.

14.In the meantime, the Petitioner/Association filed W.P.No.17812 of 2013 before this Court praying for passing of an order by this Court directing the Respondents to demolish the illegal construction in the public land at SMS NAGARS approved vide DTCP No.LPDM/DDTP 219/13 in Survey No.162 (Part), 184 (Part), Koyambedu Village, Saidapet Taluk, illegally converted as Plot No.57 and 58 and restore the land for public purpose to SMS Nagars' Residents' Welfare Association etc. and this Court on 31.10.2013 had directed the Respondent therein to look into the representation of the Petitioner dated 04.03.2013 (which was pending for consideration) and to pass appropriate orders either by himself or through his officials, on merits in accordance with law, after hearing the Petitioner as well as the Management of the School, etc. within a period of eight weeks from the date of receipt of copy of this order and accordingly disposed of the Writ Petition.

15.It is represented on behalf of the 1st Respondent that based on the aforesaid order dated 31.10.2013 in W.P.No.17812 of 2013

passed by this Court, the Regional Deputy Commissioner (Central) passed a final order, after scrutinising the entire available records and based on the inspection report given by the Corporation Official, which runs as under:

"The 2nd and 3rd Respondents encroached the suit land which is reserved for public purpose based on the SMS Nagars approval layout vide DTCP.No.LPDM/DTP/219/1973 and in which Thiru.D.John Alfred constructed building and he is running educational Institution in the name and style of "A.A. Matriculation School". However, Thiru.D.John Alfred has no right over the suit schedule property, being the said property is reserved for public purpose as per the sanctioned layout, and he is mere encroacher."

The final order was passed by the Regional Deputy Commissioner (Central), Corporation of Chennai on 06.06.2014 and the same has been served to the 2nd and 3rd Respondents and as well as to this Writ Petitioner.

16.Apart from the above, the Learned Counsel for the 1st Respondent submits that in the mean time, the 2nd and 3rd Respondents filed O.S.No.3557 of 2014 on 30.06.2014 praying to declare the Plaintiff as the absolute owner of the property as the schedule property situated at Door No.42/1 & 42/2, Srinivasa Nagar Main Road, Koyambedu Village, Saidapet Taluk comprised in R.S.No.162 (part) and R.S.No.184 (part) presently R.S.No.162/12 & 162/13 and for grant of permanent injunction restraining the Respondent from interfering with the Plaintiff's running of institution, either by demolishing or cutting of amenities or otherwise or in any manner and obtained an interim stay on 16.07.2014 in I.A.No.9641 of 2014 in O.S.No.3557 of 2014 against the 1st Respondent/Corporation of Chennai. According to the 1st Respondent, it is unable to take further action against Respondents 2 and 3 in view of the passing of the order of interim stay which is in force.

17.Finally, it is the plea of the Learned Counsel for the 1st Respondent that the 1st Respondent/Corporation has every right to restore the suit schedule property from the hands of encroacher to the Corporation as the said suit schedule property is meant for public purpose as per the SMS Nagars approved Sanctioned Layout in DTP Proceedings LPDM/DTP/219/1973 and in which the 2nd Respondent had constructed a building and is running an educational institution in

the name and style of 'A.A. Matriculation School'.

18. On a careful consideration of respective contentions and although the Regional Deputy Commissioner (Central) of 1st Respondent on 06.06.2014 in R.D.C.C.No. Legal Cell/110/2014 had passed a final order inter alia stating that it was found that the 2nd Respondent had encroached the suit land which is reserved for public purpose based on the SMS Nagars approval layout vide DTCP.No.LPDM /DDTP/219/73 and in which he had constructed building and running Educational Institution in the name of 'A.A. Matriculation School' and further, he has no right over the suit property, being the said property was reserved for public purpose as per the sanction lay out, and he was mere encroacher and also this Court, taking note of the fact that the 2nd Respondent had filed a suit in O.S.No.7937 of 2006 against the 1st Respondent/Corporation of Chennai before the III Assistant Judge, City Civil Court, Chennai, in which, on 09.04.2010 it was found that the Plaintiff was entitled for permanent injunction as the possession of the Plaintiff was admitted to be interfered without adopting any procedure known to law and furthermore, in I.A.No.9641 of 2014 in O.S.No.3557 of 2014 filed by the 2nd and 3rd Respondents against the 1st Respondent/Corporation, an interim order of stay was obtained on 16.07.2014 and the same being in force, this Court comes to a resultant conclusion that the 1st Respondent/Corporation cannot be found fault with in regard to the further action being taken against the 2nd and 3rd Respondents and also in view of the final order passed by the 1st Respondent's Regional Deputy Commissioner (Central), on 06.06.2014, addressed to the Secretary of the Petitioner/Association, among other things, that further action would be taken against the unauthorized construction and to remove the encroachment by due process of law and also this Court, taking note of the overall attendant facts and circumstances of the present case in an encircling fashion, holds that the Petitioner is not entitled to claim the relief of demolishing the illegal construction in the public land at SMS NAGARS approved vide DTCP No.LPDM/DDTP 219/73 in Survey No.162 (part), 184 (part), Koyambedu Village, Saidapet Taluk etc. Viewed in that perspective, the Writ Petition sans merits.

19. In the result, the Writ Petition is dismissed, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

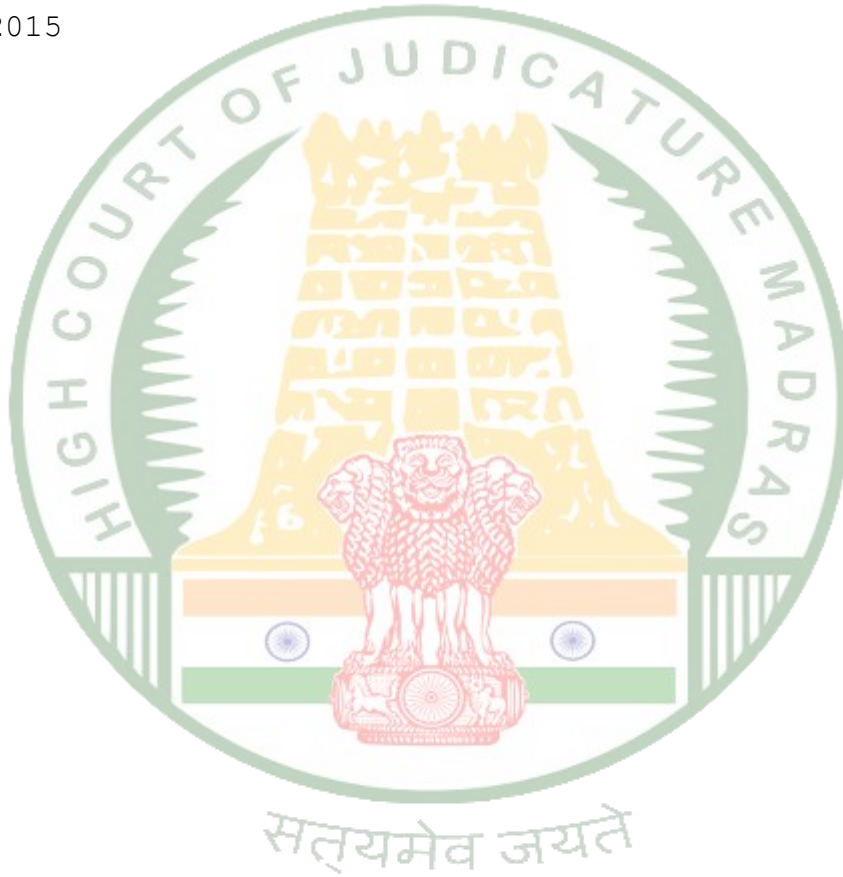
The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai.

1 cc to Mr. A.Nagarajan, Advocate, SR.No.12265

1 cc to Mr.N.Kishore Kumar ,Advocate, SR.No.12313

W.P.No.31451 of 2014

sai(co)
pmk.20.3.2015



WEB COPY