

In the High Court of Judicature at Madras

Dated : 30.11.2015

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.17107 of 2015 and MP.No.1 of 2015

B.Udayarani

...Petitioner

Vs

1. The Secretary to Government,
Housing & Urban Development
Department, Secretariat, Chennai.
2. The Commissioner of Town & Country
Planning, Chennai-2.
3. The Deputy Director, Town & Country
Planning, Chengalpattu Region,
Chengalpattu-603001.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in O.Mu.No.1100/2015/SEMA.3 dated 8.4.2015, quash the same as illegal, arbitrary and non-est in law and consequently direct the respondent to issue necessary permission for reconversion of community hall lands into residential plots covered in approved layout plan in Ma.Va.Na. U.E.No.41/2009 issued by the third respondent.

For Petitioner : Mr.B.Vijay

For Respondents : Mr.S.Diwakar,
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The petitioner seeks to quash the order passed by the third respondent dated 08.04.2015, in and by which, the petitioner, who sought conversion, was directed to use the site reserved in an approved layout for the purpose of constructing a community hall alone. The only reason assigned in the impugned order is that in terms of condition No.4 of the approved layout, the area has to be reserved for construction of a community hall.

3. The case of the petitioner is that out of the total extent of 18.40 acres, totally 238 plots were provided and the area, over which the petitioner had to execute a gift deed in favour of the Local Authority being 10.22% of the total layout area, has already been handed over to the Local Body. In so far as the shops are concerned, the percentage is 1.29. With regard to the community hall and primary school area, reservation is 5.18% and it is stated that the petitioner has already utilized the area reserved for primary school and a primary school is being constructed. In so far as the area reserved for community hall is concerned, the petitioner had no buyers and therefore, now seeks reconversion.

4. In fact, similar issue was considered by this Court in W.P.No.19600 of 2014 dated 29.01.2015. In the said case, the conversion sought for was in respect of school site and shop site, which were admittedly lying vacant and there were no takers. This Court, therefore, permitted the writ petitioner therein to seek for such conversion and accordingly, the said writ petition was allowed and the matter was remanded to the Authority concerned to take note of the legal position and pass fresh orders. The operative portion of the order dated 29.1.2015 in W.P.No.19600 of 2014 reads as follows :

"3. The petitioner promoted a layout and sought for approval from the first respondent. The first respondent, by the proceedings in L.A.1-74/97 dated 22.2.1997, granted approval subject to certain conditions. The details with regard to the extent of layout, the number of plots, etc., are quoted from the order dated 22.2.1997 as hereunder :

அங்கீகரிக்கப்பட்ட மனைப்பிரிவின் ஒதுக்கீடு விவரம்

	பரப்பளவு	வீழுக்காடு
மனைப்பிரிவு இடத்தின் பரப்பளவு	2195 ஏக்கர்	
ஒதுக்கிய மனைகள்	204	
பூங்கா (ம) திறவீடம்	97761.5 ச.அடி	10.12
குழந்தைகள் விளையாடும்பீடம்	-	
திறவீடம் சிறுவர் பள்ளி	7080.0 ச.அடி	0.74
கடைகள்	15373.0 ச.அடி	1.60
சமுதாயக் கூடம்	11640.0 ச.அடி	1.21

4. There is no dispute to the fact that the areas, which have been reserved for park as well as for roads, etc., have been gifted in favour of the first respondent. Now, the layout having been promoted in 1997, the space, which were reserved for schools and shops remain unoccupied. There

were no takers or purchasers to the land, even after several years. It appears that the Government also did not evince interest to start school nor the panchayat to start the school in the said area. Therefore, now the petitioner sought for permission to convert the site into saleable plots. This was rejected by the first respondent by the order dated 3.7.2014 relying upon the Division Bench judgment dated 12.4.2007 in W.A.No.156 of 2000.

5. The issue involved in the said writ appeal pertains to a reserved site and the Honourable Division Bench took note of the various decisions including the decision of the Honourable Supreme Court in the case of Pt.Chet Ram Vashist Vs. Municipal Corporation of Delhi reported in 1995 (1) SCC 47. The decision rendered by the Division Bench is clearly distinguishable on facts. In that case, the land in question was reserved as a park and therefore, the Division Bench rejected the prayer made by the promoter to convert the same into saleable plots. However, the facts of the present case are entirely different.

6. There is no dispute that the park site measuring an extent of 97761.5 sq.ft has already been gifted to the Local Body and that remains intact. Now, conversion is sought for only in respect of school site and shop site, which admittedly, are lying vacant without any takers. The purpose for which, the reservation made cannot be fulfilled that too after 15 years. Therefore, this Court is of the view that the petitioner is entitled to seek conversion."

5. In the light of the above legal position, the petitioner is entitled to seek conversion of the said site and the second respondent is bound to consider the same on merits and that the reasoning assigned in the impugned order is not tenable.

6. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the second respondent for fresh consideration. The second respondent shall take note of the legal position in the order dated 29.01.2015 in W.P.No.19600 of 2014

and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the above MP is closed.

RS

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary to Government,
Housing & Urban Development
Department, Secretariat, Chennai.
2. The Commissioner of Town
& Country Planning,
Chennai - 600 002.
3. The Deputy Director, Town
& Country Planning, Chengalpattu Region,
Chengalpattu-603001.

+1 C.C. To The Government Pleader in Sr.No.65197

WP.No.17107 of 2015
and MP.No.1 of 2015

Lrs (CO)
sd : 30/12/2015

सत्यमेव जयते

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