

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2015

CORAM:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A Nos.1006 of 2002 and 1016 of 2003
and MP.No.625 of 2010

SA.1006/2002

Indira Gopalan

... Appellant/1st
Respondent/Plaintiff

vs.

1.Commissioner, Coimbatore Municipality
Coimbatore.

... 1st Respondent/Appellant/
2nd Defendant

2.Senior Deputy Director of Town
and Country Planning
Nilgiris Region,
Coimbatore Municipality Buildings,
Coimbatore.

... 2nd Respondent/2nd
Respondent /1st Defendant

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 21.12.2001 made in AS.No.47 of 2001 on the file of the I Additional Sub Court, Coimbatore reversing the judgment and decree dated 28.6.2000 made in O.S.No.545 of 1995 on the file of II Additional District Munsif Court, Coimbatore.

For Appellant : Mr.R.G.Narendhiran

For Respondents : Mr.R.Sivakumar (R1)
Mrs.Saraswathi Sivaraman Iyer (R2)
Government Advocate (CS)

SA.1016/2003

The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

... Appellant/Appellant/
2nd Defendant

vs.

1.T.Sivabaghyam

... 1st Respondent/1st Respondent/
Plaintiff

2.The Senior Deputy Director,
Town and Country Planning,
Coimbatore.

... 2nd Respondent/2nd Respondent/
1st Defendant

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 13.12.2000 made in AS.No.165 of 2000 on the file of the Principal District Judge, Coimbatore confirming the judgment and decree dated 27.3.2000 made in O.S.No.543 of 1995 on the file of II Additional District Munsif Court, Coimbatore.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.N.Anand Venkatesh (R1)
Mrs.Saraswathi Sivaraman Iyer (R2)
Government Advocate (CS)

COMMON JUDGMENT

While SA.1006/2002 is filed by the individual plaintiff in O.S.545/1995 and the first respondent in AS.No.47/2001, SA.1016 of 2003 is filed by the second defendant in O.S.543/1995 and the appellant in AS.165/2000. As the issue involved in both the second appeals is one and the same, both the second appeals are disposed of by a common judgment.

2.For the sake of convenience, the parties are referred to as per their rank in the suits.

3.Both the suits are filed in respect of site nos.4 and 5 measuring 2800 sq.ft. or 6 cents and 186 sq.ft. and measuring 3966sq.ft. or 9 cents and 46 sq.ft. respectively in T.S.No.1277 part (SF No.196 Part, 197 part) Ward 11, in B.K.R.Nagar, Ganapathy Village. The plaintiff in both the suits purchased the suit property as unapproved house sites from the promoters of B.K.R.Nagar under registered sale deeds dated 24.6.1981 and the purchasers were on the date of sale deeds, put in possession and enjoyment of the suit property. While so, the second defendant Corporation put up fence with barbed wires with stones on all four sides around the property and put up a board reciting "nfhit khefuhl; rpf; F brhe; jkhd ,lk;@. On verification, the plaintiff in both the suits came to know that the suit property was shown as reserved site for nursing school in the layout submitted by the vendor of the property and the vendor got the approval from the first defendant Town and Country Planning.

Immediately thereafter, the plaintiffs issued legal notice to their vendor and to the defendants 1 and 2, calling upon them to remove the fence put up in the suit property and to pay damages. On their failure to do so, the plaintiffs also approached the Coimbatore District Consumer Disputes Redressal Forum by way of OP.Nos.354 and 355 of 1991 to delete the suit plots from BKR Nagar approved layout and to restore the suit plots as house sites.

4. During the pendency of OPs the parties i.e. Plaintiffs, vendor and the defendants 1 and 2 arrived at a settlement and the defendants 1 and 2 agreed to de-reserve the suit property on deposit of value of the suit plots with 12% interest by vendor of the suit plots and the settlement was reduced into writing as joint endorsement. Accordingly, the vendor also deposited the amount in the second defendant Corporation. However, the second defendant Corporation did not release and de-reserve the suit plots from BKR Nagar approved layout, which compelled the plaintiffs to approach the civil court by way of present suits by directing the defendants officials and their subordinate to delete the suit plots from the layout formed under the name and style of BKR Nagar in Ref.Nos.231/1982 and 237/1982 dated 06.09.1982 and to restore the suit plots as house sites by removing the fence as well as the board laid down in the same.

5. The reliefs sought for in both the suits were seriously contested by the defendants/ officials by relying on the layout plan submitted by the promoter reserving the site as play ground and the grant of approval based on the same. It is also contended by them that the remedy available to the plaintiff is only to approach the Corporation and not civil court by way of civil suit. It is also contended that as the complaint made before the Consumer Disputes Redressal Forum was dismissed on 4.12.1992, the suits filed in the year 1995 were hit by limitation.

6. Both the plaintiff and defendant in support of their respective contentions adduced oral and documentary evidence before the trial court. The trial court on the basis of the available evidence, arrived at the conclusion that the suit property was sold to the plaintiff much before the application for approval of layout plan and the defendant Corporation was party to the joint endorsement made before the Consumer Disputes Redressal Forum for releasing the property on payment of agreed sum by their vendor and the defendant Corporation resiled from its Undertaking without giving any notice to the plaintiff and the defendants were unable to make out any ground for giving up performance of their part of the obligation and both the parties were bound by the endorsement and accordingly decreed the suits. Aggrieved against the same, the second defendant Corporation preferred two appeals in AS.165/2000 against OS.543/1995 and AS.47/2001 against O.S.545/1995.

7.While the lower appellate court, who dealt with AS.165/2000 agreed with the findings of the trial court and dismissed the appeal filed by the corporation, the lower appellate court who dealt with AS.47/2001, arrived at the finding that the defendant Corporation is entitled to withdraw the endorsement in the interest of public welfare and accordingly allowed the appeal filed by the defendant Corporation, thereby dismissing the suit. Hence, these two second appeals before the court. While SA.No.1006/2002 is filed by the individual plaintiff against the reversing judgment made in AS.No.47/2001, SA.No.1016/2003 is by the second defendant Corporation against the concurrent judgment made in O.S.543/1995.

8.Both the second appeals are admitted on the following substantial questions of law:

SA.No.1006/2002 :

Whether the lower appellate court is right in rejecting Ex.A4 endorsement on the ground that it was not signed by the standing counsel for the Corporation and only his junior has signed, especially when the parties to the litigation have admittedly made such endorsement under Ex.A4 in OP.No.355/1991?

SA.1016/2003 :

1.The first appellate court ought to have seen that the alleged joint memo which is said to have been entered during the course of proceedings in OP.No.354 of 1991 on the file of D.C.D.R.F. Coimbatore which was ultimately withdrawn by the plaintiff/petitioner herein, ought to have smelt the mischief played by the plaintiff against the Corporation by abusing the process of law and ought to have reversed the order passed by the trial court in toto.

2.Whether the trial court erred in law by allowing a suit for mandatory injunction against the Corporation in respect of an immovable property, while the title over the property and their possession over the property had not been established by the plaintiff?

9.At the time of hearing, additional substantial question of law framed in SA.No.1006/2002 is as follows:

Whether the lower appellate court erred in dismissing the suit for mandatory injunction in respect of immovable property belonging to the individual plaintiff, when the same was sold to the individual plaintiff by way of registered sale deed much before the submission of lay out plan for approval?

10.Heard the rival submissions made on both sides and perused the records.

11.It is not in dispute that the plaintiffs purchased the suit

plots as unapproved house sites from the power agent of the original owners and the sale deeds do not contain any recital to the effect that the sale is subject to approval, if any, to be obtained from the Corporation. The recital contained in the sale deeds proceed to say that the owners being unable to carry out the agricultural operation jointly, decided to sell the same and divided the property into plots and the subject matter of the sale deed is one of such plots and the purchaser has been put in possession of the same on the date of sale deed. As seen from Ex.B2 in OS.No.543/1995, the vendor applied for lay out approval only in 1983 i.e. much after the plots were sold to the plaintiffs. As rightly argued by the learned counsel for the plaintiffs, since the date of purchase, the plaintiffs became the owner of the property purchased by them and any lay out plan submitted by the vendor thereafter should not have included the suit plots. The vendor, having lost their right in respect of the suit plots before approaching the Corporation for layout approval, ought to have prepared fresh layout excluding the plots already sold. As it is nobody's case that only approved plots could be sold, this Court finds greater force in the argument so advanced on the side of the plaintiffs/plot owner.

12.The learned counsel for the plaintiffs has also drawn the attention of this court to the evidence of defendant side official witnesses to the effect that the application for layout plan shall be filed by the owner along with EC and field map and the office, before granting any approval will scrutinize the ownership of the property. Whereas, in the present case, the owner filed the application for approval without furnishing actual particulars and the approval was granted without verifying the ownership of the plots in question. The suit plots having been sold as unapproved house sites and the plaintiffs already having already become the owners of the unapproved house sites, the approval granted to the original owner in respect of the suit plots, that too, reserved as play ground/nursery school, without verifying the ownership and without giving notice to the actual owner is arbitrary, contrary to law and in violation of the procedure laid down and in violation of the principles of natural justice, as such, the individual plaintiffs are entitled to get the suit relief as sought for i.e, releasing the property from the lay out approval. Accordingly, the additional substantial question of law framed in SA.No.1006/2002 and the second substantial question of law in SA.No.1016/2003 are hence answered in favour of the plaintiffs/plot owners.

13.Other ground to be considered herein is the conduct of the parties in arriving at settlement/agreement by way of joint endorsement in the course of enquiry into the complaint filed before the District Consumer Disputes Redressal Forum (shortly referred to as Consumer Forum) and unilateral revocation of the same by the

defendant corporation. As already stated, the plaintiffs on the failure of the defendants and vendor in responding to the notice for releasing the plots from the layout formation, approached the Consumer Forum by way of separate complaint. It is not in dispute that the parties i.e., the plaintiffs, vendor and the defendant Corporation, arrived at an agreement in the complaint pending before the Consumer Forum and the same was reduced into writing and as per the terms of the agreement, the defendant corporation agreed to de-release the house site on payment of value of the site along with interest at 12% by the vendor. The vendor in pursuance of the same, as evident from the plaintiffs' evidence deposited the sum on 29.12.1992 and the complaint in view of joint endorsement so made, was dismissed as not pressed. However, in spite of such deposit of amount and the dismissal of the complaint as not pressed, the defendant corporation did not think it fit to pass appropriate order, releasing the plots from layout approval, which compelled the plaintiffs to approach the Civil Court.

14. According to the plaintiffs, the defendant Corporation who was party to joint endorsement, which induced other party to part with his amount and which compelled the complainant not to press the complaint, is estopped from rescinding the same. The learned counsel for the defendant corporation would at this juncture cite the authority of the Hon'ble Supreme Court reported in (1997) 3 SCC 398 (Shrijee Sales Corporation and another v. Union of India) for the legal proposition that the principle of promissory estoppel cannot be enforced against the Government, if it is against the public interest and the Government in the public interest, can act otherwise than in accordance with the promise. This court is no doubt bound by the principle so laid down by the Apex Court.

15. However, in other decision in Motilal Padampat Sugar Mills Co. Ltd. v. State of UP, AIR 1979 SC 621 the Supreme Court has clearly observed that the burden is on the Government to show that one such public interest exists and what is required is a highly rigorous standard of proof in the discharge of this burden. The Apex Court though has gone to the extent of saying that even where there is no such overriding public interest, the Government is competent to resile from the promise, but insisted 'on giving reasonable notice, giving the promises a reasonable opportunity of resuming his position' provided of course, it is possible for the promisee to restore status quo ante. If however, the promisee cannot resume his position, the Apex Court is of the view that the promise would become final and irrevocable. Whereas in the present case, the defendant corporation has not satisfactorily made out the existence of overriding public interest. The defendant Corporation has also not rescinded the promise, after giving due notice to other parties to the joint endorsement and after giving them reasonable opportunity of resuming the original position.

16. The defendant Corporation has also relied on other Division Bench judgments of this Court reported in (i) (2007) 3 MLJ 990 (Sri Devi Nagar Residences Welfare Association rep. By its President G.P.Godhanavalli, Coimbatore and another v. Subbathal and others) and (ii) 2011 (1) CTC 257 (K.Rajamani and others v. Alamunagar Residents' Welfare Association and others) in support of his stand that the land once reserved for public purpose in a layout, cannot be used for any other purpose than the one specified therein.

17. In my considered view, the observation of the Division Bench of our High Court cited above is not applicable to the facts of the present case, wherein, the vendor at the time of submitting the application for lay out approval, has no right to include the suit plots in the layout plan. As on the date of the filing the application for approval, the vendor has right to deal with the plots in question, as such, the reservation of the same as play ground in the layout and the approval granted by the defendant authority without verifying the ownership is not binding on the plaintiffs. The other aspect which deserves serious concern is that the value of the property was already deposited by the vendor and the complaint was dismissed by the District Consumer Forum as not pressed, in view of the joint endorsement and the plaintiffs cannot be now permitted to restore the complaint, for adjudication on merits and the same deprived the plaintiffs of their right to have effective adjudication of their complaint.

18. Viewing from any angle, the defendant Corporation has no right to treat the plots in question as reserved site for public purpose and such reservation is legally not sustainable and the plaintiffs/plot owners are hence entitled to seek appropriate relief of releasing the same from lay out approval and are entitled to the relief of declaration of mandatory injunction as sought for in the suit and the substantial questions of law are accordingly answered in favour of the plaintiffs/plot owners in both the suits.

19. In the result, SA.No.1006 of 2002 is allowed by setting aside the judgment and decree of the lower appellate court in AS.No.47/2001 and by restoring the judgment and decree of the trial court in O.S.No.545/1995. Time for complying with the decree of the court below is two weeks from the date of receipt of the copy of this decree. No costs.

20. In the result, SA.No.1016 of 2003 is dismissed. Time for complying with the decree of the courts below is two weeks from the

date of receipt of the copy of this decree. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District Judge,
Coimbatore.
- 2.The I Additional Sub Judge,
Coimbatore.
- 3.The II Additional District Munsif,
Coimbatore.
- 4.The Record Keeper,
V.R.Section,
High Court, Madras.

+1cc to Mr.R.G.Narendhran, Advocate, S.R.No.17222

+1 cc to Mr.R.Sivakumar, Advocate, sr.17696 (11/09/2015)

SA.Nos.1006/2002 and 1016/2003

KM(CO)
CA(12/08/2015)

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