

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Orders Reserved on 08.12.2017 and 18.12.2017

Orders pronounced on : 22.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.11119 of 2016 and 24486 of 2008

and

M.P.No.1 of 2008 in W.P.No.24486 of 2008

N.Raman,
Rep. by his Power Agent T.R.Sahadevan
.. Petitioner in W.P.No.11119 of 2016

S.V.N.Natarajan
.. Petitioner in W.P.No.24486 of 2008

Vs.

1. The Commissioner,
Corporation of Chennai,
Chennai-600 003.
.. First respondent in W.P.No.11119 of 2016
and respondent in W.P.No.24486 of 2008
2. The Assistant Engineer/Asst. Executive Engineer,
Corporation of Chennai,
Town Planning Approval Section,
Regional Office South,
Greater Chennai Corporation,
115, Dr.Muthulakshmi Salai,
Adyar, Chennai-600 020.
3. The Deputy Director of Town Planning,
Chengalpattu Region,
GST Road, Chengalpattu.
4. Tahsildar, Velacherry, Chennai-600 113.

(Respondents 3 and 4 are impleaded vide-
Order of Court, dated 26.04.2016 in
W.M.P.No.12942 of 2016 in W.P.No.11119 of 2016).

.. Respondents 2 to 4 in W.P.No.11119 of 2016

Writ Petition No.11119 of 2016 filed under Article 226 of
the Constitution of India, praying for issuance of a Writ of
Certiorari to call for the concerned records relating to the
order No.W.D.C.No.T.P.SD/WDCN13/00056/2016, dated 06.04.2016

passed by the second respondent and quash the same. (Prayer amended as per Order dated 07.06.2016 in W.M.P.No.16669 of 2016 in W.P.No.11119 of 2016).

Writ Petition No.24486 of 2008 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondent not to interfere with the petitioner's peaceful possession and enjoyment of the property at Plot No.79-A in the approved lay out N.L.B.D.M.D.D.A.B.No.152/1973, comprised in Vinayagar Nagar, Survey No.317/1A2A 1, Velacherry Village.

For Petitioner : Mr.L.Chandrakumar for
Mr.M.Gnanasekar in
W.P.No.11119 of 2016
Mr.R.Saravanakumar in W.P.No.24486 of 2008

For Respondents : Mr.K.Venkatramani,
Addl. Advocate General,
assisted by Mr.T.C.Gopala Krishnan
for RR-1 & 2 in W.P. No 11119/2016
Mr.S.Diwakar, Spl.G.P. for RR-3 and
4 in W.P.No.11119 of 2016

ORDER

Writ Petition No.11119 of 2016 is filed praying for issuance of a Writ of Certiorari to call for the concerned records relating to the order No.W.D.C.No.T.P.SD/WDCN13/00056/2016, dated 06.04.2016 passed by the second respondent and quash the same. (Prayer amended as per Order dated 07.06.2016 in W.M.P.No.16669 of 2016 in W.P.No.11119 of 2016).

2. Writ Petition No.24486 of 2008 is filed praying for issuance of a Writ of Mandamus to direct the respondent not to interfere with the petitioner's peaceful possession and enjoyment of the property at Plot No.79-A in the approved lay out N.L.B.D.M.D.D.A.B.No.152/1973, comprised in Vinayagar Nagar, Survey No.317/1A2A 1, Velacherry Village.

3. Originally, the petitioner in W.P.No.11119 of 2016 has filed the Writ Petition for issuance of a Writ of Mandamus to direct the respondents to grant building planning permission as requested by the petitioner in his building plan Application No.SD/WDCN13/00056/2016, dated 05.02.2016. Subsequently, the prayer in W.P.No.11119 of 2016 is amended as stated supra, vide order dated 07.06.2016 in W.M.P.No.16669 of 2016 in W.P.No.11119 of 2016.

4. The affidavit filed in support of W.P.No.11119 of 2016 is sworn to by the Power of Attorney Agent of the petitioner-N.Raman and the principal (writ petitioner) has executed the Deed of Power of Attorney in favour of the Agent on 30.12.2014, which was registered as Document No.242/2015, before the Sub-Registrar, Velacherry. According to the petitioner in W.P.No.11119 of 2016, he has produced necessary documents asked for by the authorities for considering his application for sub-division approval in respect of the property in Door No.T.S.No.1/128, Block No.189, Plot No.NIL, Bhuvaneshwari Nagar, Velacherry, Chennai-600 042. The following are the documents sought for by the second respondent in respect of the above said application for sub-division approval of the said property:

Sl.No.	Description	Remarks
1	To furnish the following document duly Notarised	2. Suit pending in Court regarding the proposed land with Chennai Corporation to be clarified. 3. Proposed site sub-divided before 31.12.1989 evidence to be furnished.
2	It is requested to clarify the following	1. The following documents to be furnished: a) GPA Document 472/2011 b) GPA cancel document 8405/2014 c) settlement documents 4719/2012 and 4849/2012 d) Settlement cancel deed 4848/2012 e) sale agreement deed 2706/2015 f) sale deed 7045/2015

According to the petitioner in W.P.No.11119 of 2016, he has given reply to the above said documents sought for by the second respondent. He has purchased the property in Lay Out No.152/1973 and that the approval application of the petitioner was returned unapproved. According to him, pursuant to the earlier order dated 07.03.2012 in W.P.No.5456 of 2012, filed by the petitioner for measuring the property in question, the representation of the petitioner, dated 30.12.2011 was considered by the Tahsildar, Guindy-Mambalam Taluk, who issued a letter dated 02.05.2012 mentioning that the petitioner's principal is entitled for patta in his name for area of 525.24 Sq.Meters (5654 Sq.Ft) as against the total area of Acre 1.08 cents.

According to the petitioner in W.P.No.11119 of 2016, pursuant to the above said communication, dated 02.05.2012 of the said Tahsildhar, he made an application dated 06.06.2012 to the said Tahsildhar, in which the petitioner has accepted to receive the patta for the lands in Survey No.317/1 part, T.S.No.1/1, Block No.189 in Velacherry Village for the area of 525.24 Sq. Metres (5654 Sq.Ft).

5. Thereafter, the petitioner in W.P.No.11119 of 2016 approached this Court by filing W.P.No.24596 of 2013 seeking to direct the Assistant Commissioner, Corporation of Chennai, Ward 13, Adyar, Chennai and the Executive Engineer, Corporation of Chennai, Flood Water, Drainage Department, Ward 13, Adyar, Chennai, to consider the representation of the petitioner, dated 20.08.2013 within stipulated period with regard to the removal of the cement works in the petitioner's site in Survey No.317/1 Part, T.S.No.1/1, Block No.189, Velacherry Village. This Court disposed of the said W.P.No.24596 of 2013 on 11.09.2013 directing the second respondent therein to consider and dispose of the representation, dated 20.08.2013 of the petitioner on merits and as per law within a period of 12 weeks from the date of receipt of a copy of the order. Subsequently, since the said order of this Court was not implemented, the petitioner filed Contempt Petition No.3285 of 2014, after which, the said representation was considered and the cement works were removed in Survey No.317/1 part, T.S.No.1/1, Block No.189, Velacherry Village to the extent of 55 cents.

6. According to the petitioner in W.P.No.11119 of 2016, he has been paying necessary tax like vacant land tax, land tax etc. to the authorities concerned till date. There is no dispute over the title and possession of the property and the petitioner requested the Tahsildar, Velacherry on 10.03.2015 for issuance of patta. Thereafter, the petitioner in W.P.No.11119 of 2016 filed W.P.No.15808 of 2015 to direct the respondents 2 and 3 therein to remove the notice board put up by the respondents in the property of the petitioner. During the pendency of the writ proceedings, the Tahsildar, Velacherry granted patta in favour of the petitioner. The petitioner submitted Tamil Nadu Building Plan Application on 05.02.2016, which was registered as SD/WDCN13/00056/2016. The petitioner was asked to produce certain documents extracted supra, and the same were produced, but unfortunately, the application of the petitioner for planing permission, was returned unapproved by the impugned order dated 06.04.2016 of the second respondent. Challenging the same, the petitioner filed W.P.No.11119 of 2016 before this Court with the amended prayer stated supra.

7. It is the case of the petitioner in W.P.No.24486 of 2008 that he is the absolute owner of the property, which was purchased by a registered sale deed, dated 07.07.2000 on the file of the SRO, Velacherry, measuring about 2880 Sq.Ft. He has been in possession and enjoyment of the said property and the property has been sub-divided into larger extent of lands and layout of plots have been formed, which was approved by the authority concerned. The petitioner applied for the grant of patta. The respondents attempted to evict the petitioner from the premises in question without any intimation or any right whatsoever. Hence, he has filed W.P.No.24486 of 2008 for the relief stated supra.

8. Heard both sides and perused the materials available on record.

9. It is seen that by the said order dated 06.04.2016, the request for planning permission was returned as unapproved and remarks have been made that the proposed site was falling in the Community Hall purpose earmarked site as per the approved layout in LPDM/DTP.No.152/1973, and hence the proposal for sub-division plots could not be considered in the said site. The petitioner contended that the property in question was purchased on 04.06.1962.

10. In paragraph 6 of the counter affidavit filed by the fourth respondent in W.P.No.11119 of 2016, it is stated that the fourth respondent, after scrutinising the documents produced by the petitioner and after verifying the Revenue Records, issued patta on 29.07.2015 in the name of the petitioner in W.P.No.11119 of 2016, copy of which is filed in the typed set of papers in page No.60 in W.P.No.11119 of 2016. In paragraph 5 of the counter affidavit filed by the third respondent in W.P.No.11119 of 2016, it is stated that the petitioner submitted application for DTCP residential lay-out technical approval process to the local body, which after verifying the particulars given by the applicant, recommended and forwarded the application to the DTCP for technical approval. It is further stated in the counter of the third respondent that the technical approval DTCP No.152/1973 is nearly 43 years back and all the files related to the DTCP approval had been destroyed and only technical approval was issued by him and the final approval was given by the local body.

11. Learned counsel for the second respondent in W.P.No.11119 of 2016 drew the attention of this Court to paragraphs 5 and 6 of the counter affidavit filed by the second respondent and contended that the approved lay-out in LPDM/DTP.No.152/73 in respect of the sub-division of plots in the vacant land is earmarked as Community Hall purpose activity and hence, the sub-division of residential plot could not be

considered. It is further stated in the counter of the second respondent that the site in Block No.189, T.S.No.128 of Velacherry Village was shown as Community Hall purpose site as per the approved lay-out and the land adjoins the road Muthukrishnan Salai, VGP Selva Nagar, 2nd Main Road and VGP Selva Nagar 1st Main Road Extension.

12. Learned counsel for the petitioner in W.P.No.11119 of 2016 submitted that the action of the respondents in refusing to grant planning permission and rejecting the same as unapproved on the ground that the property is meant for Community Hall, is totally incorrect.

13. Mr.K.Venkataramani, learned Additional Advocate General appearing for the respondents, while drawing the attention of this Court to the counter affidavits filed in both the Writ Petitions, has produced the lay-out plan to show that the places in question said to have been owned by the petitioners, are meant for Community Hall. According to the learned Additional Advocate General, the petitioners have manipulated and colluded with the officials and got the documents. He also produced a communication dated 26.05.2015 addressed by the District Revenue Officer, Zonal Officer 13, Zone-XIII, Corporation of Chennai, Adyar, Chennai, to the fourth respondent-Tahsildar, wherein the Tahsildar was asked not to issue any patta in respect of the lay-out 152/1973.

14. From page No.60 of the typed set of papers filed in support of W.P.No.11119 of 2016, it is clear that the patta has been issued on 27.07.2015, signed on 29.07.2015 after the Tahsildar had been instructed not to issue patta, as the portion of the property which the petitioner in W.P.No.11119 of 2016 claims, is meant for Community Hall. On the face of the said page No.60 of the typed set of papers, indicating issuance of patta, it is clear that the fourth respondent-Tahsildar, Velacherry Taluk, has colluded with the petitioner in W.P.No.11119 of 2016 and issued the patta.

15. In this regard, it is useful to refer a decision of a Division Bench of this Court in the case of M.P.Aravinda Vs. The Commissioner, Corporation of Chennai and others, W.P.No.28311 of 2016, dated 04.10.2016, wherein the Division Bench held as follows in paragraph 7:

"7. However, before parting with this case, it would be useful to refer to the direction of this Court, in W.P.38432 of 2015, etc., wherein, by order dated 07.09.2016, this Court has observed that very many encroachments are found throughout the city of Chennai, which requires to be dealt with sternly, but for the ineffective steps taken by the authorities

concerned, such encroachments would not have continued. It is high time that dynamic action needs to be taken by the authorities concerned so as to avoid public lands being usurped by unscrupulous elements. This Court, in the abovesaid writ petition, has given certain guidelines for the authorities to follow in respect of any encroachments being brought to its notice. The relevant portion of the order, for better clarity is extracted hereunder:

"12. Whenever it is brought to notice that there is land encroachment on the roads or in any other place or violation of construction, it is open to the authorities concerned to call for the following details from the violator by issuing appropriate notice:

- (a) Registered Deed based on which the property has devolved upon the person;
- (b) Extent of square feet mentioned in the Schedule property;
- (c) Width of the road;
- (d) Actual constructed area;
- (e) Approved plan;
- (f) Whether set back space has been provided as per the Plan/Rules."

16. Though as discussed supra, paragraph 6 of the counter affidavit of the fourth respondent-Tahsildar in W.P.No.11119 of 2016, appears to be in favour of the petitioner, certainly it is not in favour of the petitioner. The Court will have to take into account the approved lay-out and also the communication given to the Tahsildar. In paragraph 5 of the counter affidavit filed by the third respondent in W.P.No.11119 of 2016, it is clear that the local body has verified the particulars given by the petitioner and recommended the application of the petitioner for DTCP residential lay-out technical approval process, but the approval has not been granted. From paragraph 5 of the counter affidavit filed by the second respondent in W.P.No.11119 of 2016, it is clear that the place for which the plan is sought for, is earmarked as Community Hall purpose and further the subdivision of the residential plot could not be considered. From paragraph 6 of the counter affidavit of the fourth respondent in W.P.No.11119 of 2016, it is clear that the patta has been issued by the then Tahsildar, who has been instructed not to issue patta.

17. It is clear that the petitioners are trying to usurp the properties in question meant for Community Hall. This Court will not grant the relief sought for by the petitioners in both the Writ Petitions. Merely because the petitioner paid the

statutory taxes for years, and that the properties in question are kept as vacant site, it cannot be a ground to grant the relief sought for by the petitioners. It is to be noted that the officials of the Corporation used to receive any amount tendered for any site without verifying the records. This is one such case. Moreover, merely because the amount has been paid to the Corporation or the authorities concerned, in respect of the vacant site, the same will not validate the illegal regularisation or illegal construction. This is one way of duping the Government and trying to usurp the property.

18. In this case, as the Tahsildar concerned of the Velacherry Taluk who issued patta by proceedings signed on 29.07.2015, in respect of the property of the petitioner in W.P.No.11119 of 2016, inspite of his instructions from his superior authority not to issue patta, shall be placed under suspension and disciplinary action shall be taken against him, which shall be proceeded on day-to-day basis. The authority concerned shall preferably pass an order of dismissal from service against the said Tahsildar, Velacherry Taluk, who was in-charge at that relevant point of time, and if the disciplinary authority is going to impose any other capital punishment less than the dismissal order, it is open for the authority to do so and the imposition of such major punishment shall be recorded in the Service Register of the Tahsildar and he is not entitled for any promotion and he shall be posted in any non-sensitive post, and if he is a direct recruit to any other post and promoted to the post of Tahsildar, he shall be reverted back to the lowest post in which he was appointed and he will be paid salary applicable to the lowest post in which he is posted.

19. The claim of the petitioner in W.P.No.24486 of 2008 to not to interfere with the possession and enjoyment of the property at Plot No.79-A in the approved lay-out in N.L.B.D.M.D.D.A.B.No.152/1973 comprised in Vinayagar Nagar Survey No.317/1A2A 1, Velacherry Village, also relates to the portion earmarked as Community Hall.

20. The properties in question in both the Writ Petitions, i.e. W.P.Nos.11119 of 2016 and 24486 of 2008, are meant for Community Hall and the Revenue Records have been created. It is very unfortunate that fake documents are getting registered by the Sub-Registrar, without even verifying the veracity of the properties in question.

21. The learned counsel for the petitioner in W.P.No.24486 of 2008 drew the attention of this Court to the Circular in Roc.No.2165/91-LA1, dated 30.05.1991 issued by the Director of Town and Country Planning, Chennai, which reads as follows:

"Sub: Town and Country Planning - Preparation of

layout

- Reservation of land for public purposes
- Conversion of such salable uses into residential plots - instructions - regarding.

While approving the layouts, 10% of the area is reserved for parks and open spaces besides 1% reservation for local shopping areas and wherever the extent of layout is less than 3000 Sq.metres the reservation is confined to 'local shops' only. In larger layouts, reservations are also made for public purpose like community centre, Kalyana-mandapam, School etc.

Experience has shown that such reserved salable lands like Kalyanamandapam, School, Shops etc. are being converted as residential plots due to the fact that there is no demand for such use as reserved in the layout and such land are being vacant for a long time and not effectively used and consequently number of cases are received from layout owners for conversion of such salable reserved uses into residential plots.

This matter was discussed during the Officers meeting held at the Directorate on 6.5.91. It was pointed out that such reserved uses are allowed for conversion into residential plots after one year from the date of approval, by Madras Metropolitan Development Authority.

Keeping this aspect in view it was decided that if there is no demand for such salable public purposes like Kalyanamandapam Community Hall, School Shop etc. for 5 years the layout owners may be permitted to seek conversion of such salable public purposes into Residential plots and such requests from the layout owners may be considered favourably by this Directorate. The 10% open space, however has to be handed over to the local body, by a gift deed. This may be treated as a guideline for dealing with such cases."

22. Admittedly, the petitioners have not produced any document to show that the land owners have been permitted with regard to the conversion of land salable for public purpose into residential plots and it is also admitted that the Directorate has not passed any such order. Firstly, in the light of the provisions of the Tamil Nadu Town and Country Planning Act, such

Circular, in the absence of any G.O., is contrary to the provisions of the statute. Even assuming that the Circular is valid, the petitioners have also admitted that there is no favourable order by the Directorate of Town and Country Planning with regard to such conversion. In support of his contentions, the learned counsel for the petitioner in W.P.No.24486 of 2008 relied on a decision of the Supreme Court in the case of PT.Chet Ram Vashist Vs. Municipal Corporation of Delhi, reported in 1995 (1) SCC 47.

23. From the above said Circular and the decision of the Supreme Court cited supra, it is clear that the place in question cannot be sold. The contention that the petitioners may be permitted to have Community Hall, cannot be accepted. If such a contention is accepted, this Court will legalise the illegal act and perpetuating the illegality. Mr.T.C.Gopalakrishnan, learned Standing Counsel appearing for the Corporation of Chennai submitted that even assuming that the said Circular is genuine and valid, there is no conversion and there is no reason as to how, after the plot(s) has/have been approved as layout, the place had been identified as Community Hall, which is sold and that the patta has also been obtained. Learned Standing Counsel for the Corporation of Chennai further submitted that unless and otherwise, the officials are in collusion with the petitioners and others who have sold the properties, this would not happen. Learned counsel also accepted that there are several Tahsildars not acting in accordance with the provisions of the Act(s)/guidelines, and they have also issued certificate(s) and created documents/lay-outs at their whims and fancies by obtaining money under the table.

24. Hence, for the above stated reasons, this Court finds no merit in both the Writ Petitions, which are accordingly dismissed. Till such time the Community Hall is constructed, the properties in question in W.P.Nos.11119 of 2016 and 24486 of 2008 shall be maintained as park(s) by the respondents. This order will not preclude the petitioners in both the Writ Petitions from claiming the amount(s) parted with by them for the registration of the so-called sale deeds from the persons from whom the properties in question have been purchased, apart from claiming damages.

25. No costs. The Miscellaneous Petition is closed.

26. Before parting with the case, it is observed that in this State of Tamil Nadu, there are more than one document for a particular property duly shown as Registered. Unless there is

collusion between the land grabbers and the persons in the office of the Sub-Registrar including the Sub-Registrar and Document Writer in and around the Sub-Registrar Office, these fraudulent documents can't be created.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

CS

To

1. The Commissioner, Corporation of Chennai,
Chennai-600 003.
 2. The Assistant Engineer/Asst. Executive Engineer,
Corporation of Chennai,
Town Planning Approval Section,
Regional Office South,
Greater Chennai Corporation,
115, Dr.Muthulakshmi Salai,
Adyar, Chennai-600 020.
 3. The Deputy Director of Town Planning,
Chengalpattu Region,
GST Road, Chengalpattu.
 4. Tahsildar, Velacherry, Chennai-600 113.
- +1 CC to Mr.T.C. Gopalakrishnan, Advocate sr 92273.
+1 Cc to Govt. Pleader sr 92529.
+1 Cc to MR.R. saravanakumar, advocate sr 91919.
+1 cc to Mr.M. Gnanasekar, Advocate sr 92369.

W.P.Nos.11119 of 2016
and 24486 of 2008

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SP(26/12/2017)