

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.27063 of 2017

and

W.M.P.Nos.28875 and 28876 of 2017

Smt.T.Nagalakshmi

.. Petitioner

Vs.

1. The District Collector,
Tirupur,
Tiurpur District.

2. The Director of Town and Country Planning,
Dr.Nanjappa Road,
Coimbatore-18.

3. The Commissioner,
Udumalpet Taluk, Tiurpur District.

4. The Sub-Registrar,
Udumalpet, Tiurpur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the impugned order passed by the third respondent in impugned Order Na.Ka.No.6818/2016/F1, dated 26.12.2016 and quash the same.

For Petitioner : Mr.K.Rajesh Mani

For Respondents : Mr.S.Diwakar, Spl.G.P. for RR-1, 2 and 4
Mr.A.S.Thambusamy for R-3

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records of the impugned order passed by the third respondent in impugned Order Na.Ka.No.6818/2016/F1, dated 26.12.2016 and quash the same.

2. It is the case of the petitioner that she has purchased the property from Malarkodi and Sakthivel Raja in S.F.No.157, Ward No.4, Block No.4, T.S.No.64/1 of total extent of 1545 Sq.Ft., on 26.05.2016, which was registered in Sub-Registrar

Office, Udumalpet in Document No.3932 of 2016. According to the petitioner, she has purchased a portion of the land which is in approved lay out meant for residential purpose. According to the petitioner, she has applied for planning permission on 16.12.2016, which was rejected by the third respondent by the impugned order. According to the petitioner, the second respondent issued an order dated 17.08.1987, whereby the promoters of the lay-outs approved prior to the implementation of the Tamil Nadu Town and Country Planning Act, were permitted to convert the reserve sites earmarked for forming playground and park into house plots. The above property was developed into house sites and lay-out plan was prepared under the name and style of Sankaran Nagar, which was approved by the second respondent. The petitioner has been paying the property tax. According to the petitioner, without giving an opportunity of hearing to the petitioner, the third respondent has passed the impugned order, which is contrary to the provisions of the Tamil Nadu Town and Country Planning Act. The place earmarked which has been purchased by the petitioner, is not a lay-out reserved for park, but it has to got to be notified into one of house sites and that a portion of the park is situated in the other place in the lay-out filed and produced before this Court.

3. Learned counsel for the third respondent-Commissioner of Udumalpet Municipality, by filing counter affidavit, submitted that originally, the place was omitted for park and that a portion of the park was sought to be de-notified as residential place, for which, another place to an extent of same area which has got to be de-notified, has got to be allotted for the purpose of park. For the reasons known to the promoter, he has sold the property. Though proposals have been sent by the second respondent in 2011 itself, a Resolution was passed by the Udumalpet Municipal Council with regard to conversion of an extent of plan to be notified for the purpose of residential purpose, as on date, no decision has been taken. Even if it is de-notified, a portion to that extent will have to be identified for park. Since no further steps have been taken by anyone, till date, the area is mentioned as park and not de-notified as residential purpose, and hence, the petitioner will not be entitled to any relief in this Writ Petition.

4. In reply, learned counsel for the petitioner submitted that originally, a portion of the area in S.No.61-B was mentioned as park and that the portion which the petitioner has purchased, has been classified as residential area, but however, learned counsel for the petitioner submitted that the land in question has been sold and constructions have been made.

5. As long as there is no de-notification, the petitioner cannot be said to be the owner of the public property. If the petitioner is the owner of the property, the place to that extent will have to be identified in that locality for the purpose of public park and only thereafter, the de-notification can be issued. Probably, the petitioner would have been duped by

the seller and he would have purchased the property and this Court cannot render any finding on that aspect, as admittedly, the seller is not before this Court, apart from the fact that it is disputed question of fact, which has got to be decided before appropriate forum. As long as the portion meant for park has not been de-notified by providing alternative place for park, the petitioner will not be entitled to the relief sought for in this Writ Petition.

6. Hence, the Writ Petition is dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

cs

To

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Tirupur,
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3. The Commissioner,
Udumalpet Taluk,
Tiurpur District.
4. The Sub-Registrar,
Udumalpet,
Tiurpur District.

+ 1 cc to Mr.K.Rajesh Mani Advocate,SR.83085

+ 1 cc to Mr.A.S.Thambusamy Advocate,SR.82180

+ 1 cc to The Govt.Pleader, SR.82914

W.P.No.27063 of 2017

nr 19/12/2017