

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.17598 of 2017
and
W.M.P.No.19107 of 2017

G.Venugopal

.. Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.

2. Zonal Officer,
Corporation of Chennai, Zone-11,
Chennai-600 087.

3. T.N. Local Body Ombudsman,
100, Anna Salai,
Guindy, Chennai-600 032.

4. P.V.Kishore

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in passing of the order dated 13.06.2017 in Reference No.Z011.C.No.A3/2041/2017 and quash the same and thereby forbear the first and second respondents, their agents/officials/servants from in any manner interfering with the peaceful possession and enjoyment of the property at S.Nos.51, 52, 53, 56 in Ramapuram Village by the petitioner and others.

For Petitioner : Mr.Rohan Rajasekaran

For Respondents : Mr.K.Venkatramani, Addl. Advocate General
assisted by Mr.T.C.Gopalakrishnan for RR-1 & 2
Mr.B.Nedunchezian for R-3
Mr.T.Ramachandran for R-4

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in passing the order dated 13.06.2017 in Reference No.Z011.C.No.A3/2041/2017 and quash the same and thereby forbear the first and second respondents, their agents/officials/servants from in any manner interfering with the peaceful possession and enjoyment of the property at S.Nos.51, 52, 53, 56 in Ramapuram Village by the petitioner and others.

2. The case of the petitioner is that there was a sale deed in the year 1974 and the lands have been acquired by M/s.Rayala Corporation in S.Nos.51/2, 52, 53, 56/1, 56/2, 59 and 61 at Ramapuram Village. Three grounds with an extent of 865 Sq.Ft. of land was set apart for public purpose and an extent of six grounds and 1395 Sq.Ft. for children's school. A sanctioned lay-out was earmarked for the said public purpose. A suit with regard to the title of the lands in question, was filed in O.S.No.206 of 1997 before the District Munsif Court, Poonamallee. The lands have been leased out to one M/s.Rayala Corporation Private Limited Workers Progression Union and subsequently, for non-adherence of the conditions, the property has come back to the petitioner of an extent of the lands that have been set apart for public purpose mentioned supra. In the said suit, written statement was filed and the suit is pending. Since the property has devolved upon the petitioner for not taking the ownership by the said M/s.Rayala Corporation, the petitioner made an application to the CMDA for construction of Kalyana Mandapam and Community Centre which are for public purpose.

3. According to the petitioner, the Corporation of Chennai attempted to perform pooja for laying park in the land earmarked for public purpose and that the same was objected to by the writ petitioner. The Corporation officials, on scrutinising the documents relating to the ownership of the petitioner, dropped the proposal for having a park in that area. It is further stated that the fourth respondent has no jurisdiction to question anyone, much less the petitioner, and stated that the property is meant for school and other public purposes and objected to the said proposal. He has also made a complaint to the third respondent. The third respondent-Ombudsman was notified in 2014 and the Tamil Nadu Local Bodies Ombudsman Act, 2014 came into effect. The third respondent passed an order on 22.11.2016 declaring the subject lands as public lands and direction was issued to the Corporation to take the lands. Aggrieved by the same, the petitioner preferred W.P.No.1582 of 2017, in which, by interim order dated 15.03.2017, status-quo was directed to be maintained till 22.03.2017. Subsequently, the

said Writ Petition was disposed of on 22.03.2017 by this Court giving liberty to the first and second respondents to take appropriate action against the petitioner by issuing a show cause notice indicating the proposed action and after receiving the reply of the petitioner, the first and second respondents, as the case may be, pass final order in that regard and it was also observed by this Court that the fourth respondent also be issued with notice and he shall be heard before passing the final order on the reply to be filed by the petitioner. Thereafter, a show cause notice dated 18.04.2017 was issued in compliance of the order of this Court dated 22.03.2017 in W.P.No.1582 of 2017. The petitioner sent detailed reply and ignoring the contentions of the petitioner, order dated 13.06.2017 has been passed by the second respondent, which is the subject matter of the present Writ Petition. In the said order dated 13.06.2017, the second respondent informed that three pieces of vacant lands in Survey Nos.51/2, 52, 56/2 of Ramapuram Village, Maduravoyal Taluk in Dn.155, Z-XI were earmarked for public purpose, community centre and children's school site, as mentioned in the approved lay-out, vide LPDM/DDTP No.235/74 and 241/74 belong to the Greater Chennai Corporation, which are protected with compound wall as per the direction of the Tamil Nadu Local Body Ombudsman, dated 22.11.2016 in Reference No.170 of 2016.

4. It is further submitted by the petitioner that in this Writ Petition, on 12.07.2017, this Court has directed the parties to maintain status-quo for a period of four weeks. On the face of the interim order of this Court, it is seen that the respondents-Corporation of Chennai are constructing the Temple, and as against the said order of this Court, dated 12.07.2017, Contempt Petition in Cont.P.No.1919 of 2017 is pending before this Court, in which, notice has been ordered to be issued to the contemnors.

5. Mr.K.Venkatramani, learned Additional Advocate General, assisted by Mr.T.C.Gopalakrishnan, learned counsel for the first and second respondents, by filing counter affidavit, contended that the place in question is meant for public purpose and by order dated 22.11.2016, the third respondent directed the Corporation of Chennai to take over the land(s). The petitioner, aggrieved by the decision of the third respondent, approached this Court by filing W.P.No.1582 of 2017, in which, this Court, by order dated 22.03.2017, directed that the fourth respondent be heard by the Corporation officials before passing orders on the reply of the petitioner on the show cause notice to be issued by the first and second respondents. Thereafter, show cause notice was issued on 18.04.2017 by the second respondent, to which the petitioner sent reply, on which, the impugned order dated 13.06.2017 is passed by the second respondent. In the meantime, for disobedience of the interim order of this Court, dated 12.07.2017 passed in this W.P.No.1582 of 2017, a Contempt Petition was filed in Cont.P.No.1919 of 2017, which is stated to

be pending. Learned Additional Advocate General further submitted that Rayala Corporation was formed, pursuant to the approved lay-out in Nos.235 of 1974 and 241 of 1974, consisting of 208 plots by leaving public purpose land, community centre and children's school and any OSR land earmarked for public purpose like park, play ground, school, community hall etc., in any approved lay-out, vest with the local body.

6. Learned Additional Advocate General further submitted that one Mr.A.Ramamoorthy filed a civil suit in O.S.No.206 of 1997 on the file of the District Munsif Court, Poonamallee, which is pending. De-hors the civil suit, the fourth respondent has filed a petition before the third respondent-Ombudsman in Application No.169 of 2015 to direct the second respondent to take over the possession of the land which was earmarked for public purpose. The third respondent-Ombudsman passed order on 22.11.2016 in Order No.170 of 2016 directing the second respondent to take over the possession of the public purpose land. Aggrieved by the same, the petitioner preferred W.P.No.1582 of 2017, in which, this Court, by order dated 22.03.2017, gave liberty to the first and second respondents to take appropriate action against the petitioner by issuing a show cause notice indicating the proposed action, and after receiving the reply of the petitioner, the first and second respondents shall pass final order in that regard and the fourth respondent be issued with notice and he shall be heard before passing the final order. Thereafter, after hearing the petitioner and the fourth respondent, final order has been passed on 13.06.2017 by the second respondent, which is impugned in this Writ Petition.

7. According to the learned Additional Advocate General, when once the property vested with the Corporation of Chennai or the authority concerned, and that approved lay-out has been given, the petitioner has no locus-standi to contend that the property will vest with him technically. M/s.Rayala Corporation Private Limited Workers Progressive Union offered to purchase the lands and a sale deed was executed on 02.08.1979 and since the consideration for the sale deed was not paid, the original title documents were in possession with the petitioner. Admittedly, since the consideration has not been paid, another sale deed had been entered into by the Rayala Corporation Workers Union in favour of the petitioner. It is further submitted by the learned Additional Advocate General that when the place is meant for public purpose, no one, much less the petitioner is entitled to deal with the property and that the respondents-Corporation of Chennai in intending to have a school and a park. He prayed this Court to make such observation in favour of the Corporation of Chennai.

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

9. It is not in dispute that there was a sale deed in the year 1979 and that the property in question devolved upon the petitioner subsequently. It is also not in dispute that the

civil suit in O.S.No.206 of 1997 is pending before civil Court. There is approved lay-out in respect of S.Nos.51, 52, 53 and 56 in Ramapuram Village, Maduravoyal Taluk, which has been earmarked and to be utilised for public purpose. The contention of the petitioner is that when the land has not been utilised for the purpose for which it has been vested, automatically, it will devolve upon the petitioner and it will be open for the petitioner to utilise the land(s) in any manner he wants. As per Clause 19(a)(vii) of the Development Control Rules for Chennai Metropolitan Area issued by the Chennai Metropolitan Development Authority (CMDA), 10% of lay-out area, additionally shall be reserved for 'public purpose' in those lay-outs which are more than 10000 Sq.m. in extent and interested departments shall be given intimation of lay-out approval by the CMDA and request to purchase the land from the owner or developer or promoter, on paying the cost of plots so reserved and the owner or developer or promoter has every right to sell the lands for residential purpose, if no demand from any public department is received within one year.

10. Admittedly, on a bare reading of the above said Clause 19(a)(vii), it is clear that the petitioner will have to hand over 10% of the area for public purpose. When once it is given, it is open for the interested Department to take the land and they shall be given intimation of lay-out approval by the CMDA. The wordings in the said Clause 19(a)(vii) are clear that the entire land barring the open space alone can be sold, otherwise, the purpose of showing the reserved area for public purpose will be defeated. The contention that the owner or developer or promoter has a right to sell the land for residential purpose, if no demand from public department is received within one year, would have to be construed that the place meant for public purpose can be utilised for public purpose. When once the land is given for public purpose, if any other public department is likely to take it, it cannot be said that it would devolve upon the owner. Since it is meant for public purpose, and that it has been assured by the learned Additional Advocate General that school is going to be constructed and a park has to be maintained, it should be maintained as a park till a decision is taken for using the place for better public purpose. It is very unfortunate to note that the respondents-Corporation of Chennai, having taken over the property, has not utilised the same for any public purpose and keeping it idle without developing, will not only create confusion, but also allow the encroachers to usurp the property, as there are several land grabbers in the State of Tamil Nadu and even some are holding public office.

11. With regard to the contention that a Temple had been constructed in the place earmarked for public purpose, learned Additional Advocate General submitted that Corporation officials are not constructing any Temple and the construction of the Temple is not for public purpose. I entirely agree with his contention, as no prayer hall for any community shall be

constructed which is earmarked for public purpose. If any Temple/Mosque/Church had been constructed, the petitioner is entitled to make his submissions in the Contempt Petition that is pending in Cont.P.No.1919 of 2017 and the same will be considered by the Court.

12. The property(ies) in question shall be maintained as a park till a decision is taken with regard to the usage of public purpose by the Corporation of Chennai.

13. With the above observations, the Writ Petition is dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

cs

To

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.
2. Zonal Officer,
Corporation of Chennai, Zone-11,
Chennai-600 087.
3. T.N. Local Body Ombudsman,
100, Anna Salai,
Guindy, Chennai-600 032.

+ 1 cc to Mr.B.Nedunchezian Advocate,SR.82176

+ 1 cc to Mr.T.C.Gopalakrishnan Advocate,SR.82210

+ 1 cc to M/s.P.Elango, Advocate,SR.83040

W.P.No.17598 of 2017

NR 21/12/2017