

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.10503 of 2004

M.K.Anwar Baig

... Petitioner

vs.

1. Government of Tamil Nadu,
rep. by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai 600 009.
2. The Commissioner for Town and Country Planning,
807, Anna Salai,
Chennai 600 002.
3. Tiruchirapalli Municipality,
rep. by its Commissioner,
Tiruchirapalli. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records relating to G.O.(M) No.138, dated 19.03.2004 issued by the Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Chennai 600 009, the first respondent herein and quash the same and consequently direct the first respondent to grant exemption as sought for by the petitioner so as to convert Plot No.13 comprised in R.S.No.19/B, Part, Sathanur Village, Tiruchirapalli District as house site.

For Petitioner : Mr.N.Damodaran

For Respondents: Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the the proceedings of the 1st respondent vide G.O.(M) No.138, dated 19.03.2004 and for a consequential direction to the 1st respondent to grant him exemption, so as to convert Plot No.13 comprised in R.S.No.19/B, Part, Sathanur Village,

Tiruchirapalli District as house site.

2. According to the petitioner, he is the owner of the property comprised in S.No.19/8 Part to an extent of one acre and four cents situated in K.Sathanur Village. He applied for layout approval with respect to the said property to the 2nd respondent through the local Panchayat Union, viz. Manikandam Panchayat Union and he was granted approval in respect of the said property, subject to certain conditions. Thereafter, the petitioner sold plots to various third party purchasers for meagre consideration to eke out his livelihood.

3. It is the case of the petitioner that an extent of 2340 square feet of vacant land that was earmarked for public purpose is still under his control and that he has been safeguarding the said land from third party encroachers for all these years with great difficulty. In this regard, the petitioner applied to the 2nd respondent for change of user vide letter dated 04.04.2002. However, the said request was rejected by the 2nd respondent on the premise that it could not be entertained, as the vacant plot earmarked for a public purpose in the approved plan cannot be changed as that of house site, as there is no provision for doing so in the Act. Thereafter, the petitioner filed a petition before the 1st respondent seeking exemption under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971. The 1st respondent called for a report from the 2nd respondent and also conducted a personal hearing and passed the impugned order dated 19.03.2004 rejecting the request of the petitioner for exemption. Aggrieved by the same, the petitioner is before this Court by way of the present Writ Petition.

4. Heard the learned counsel on either side. Learned counsel for the petitioner fairly submitted that the issue in question is covered by the decision of the Madurai Bench of this Court in the case of President, Thanjavur Diocese Society, Thanjavur Town vs. Nirmala Nagar, Thanjavur reported in (2008) 3 MLJ 723, wherein, it is held as follows:

"26. Admittedly, the respondents are not claiming ownership right in respect of the open space and the same continue to vest in the appellant, as there is no dedication of the earmarked portion in favour of the local body. In the absence of open space kept for community use, the respondents and their children would be denied of a healthy living. Right to live with human dignity enshrined in Article 21 of the Constitution of India includes protection of health and right to clean environment. The witness examined on the side of the appellant clearly admitted that the open space is also to be used by the general public and the said

admission if taken along with the other attending circumstances, like the resolution of the Municipality to open a vegetable market in the property, the steps taken by the Municipality to provide drinking water to the inhabitants of the area and all other similar circumstances would show that the property had all along been considered by the appellant as meant for community use and there is nothing to show that the appellant ever objected the use of the property by the respondents for such social purposes. In fact, the pleading as well as the evidence goes to show that the respondents have been using the reserved area for their social living and the same is proved by various exhibits marked on the side of the respondents. Therefore, considering the matter from any angle, the only possible conclusion is that the area earmarked as reserved plot in the lay out plan was earmarked only for the community use and no other inference is possible from the given facts."

5. Considering the facts and circumstances of this case and also in the light of the above decision, this Court is of the view that a vacant plot earmarked for public purpose in the approved plan cannot be changed as that of a house site. In such view of the matter, this Court holds that the relief sought by the petitioner cannot be granted.

Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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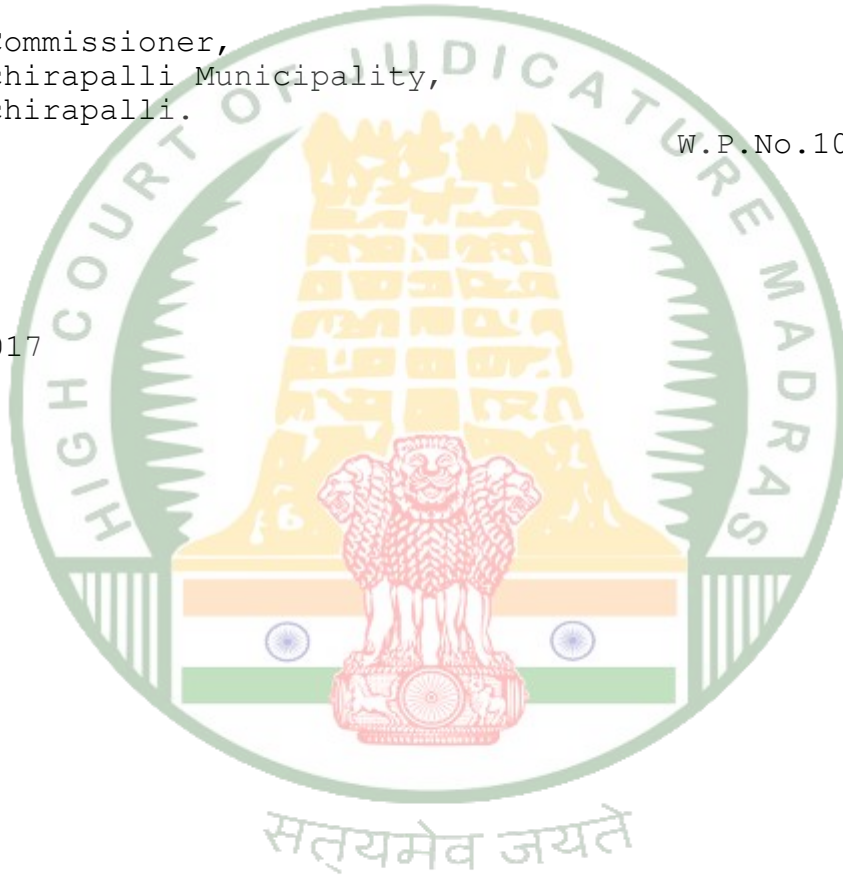
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