

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.29948 of 2017

M/s. Jain Housing and Construction Ltd.,
Rep. by its Vice-President,
Mr.Vasudevan

... Petitioner

vs.

1. The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai - 600 003.
- 2.Zonal Officer,
Zone No.VII, Greater Chennai Corporation,
C.T.H.Road, Ambattur, Chennai - 600 053.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to grant permission to the petitioner to develop and maintain Open Space Reservation area measuring 1185.15 sq.mts in S.No.292/1 and 292/2 part, T.S.No.6 part, Ward-B, Block No.72, Dunlop Quarters Road, Ambattur Village and Taluk, Thiruvallur District.

For Petitioner	:	Mr.L.Chandrakumar for M/s.M.V.Seshachari
For Respondents	:	Mr.T.C.Gopalakrishnan

O R D E R

The petitioner has come forward with this writ petition to direct the respondents to grant permission to the petitioner to develop and maintain Open Space Reservation area measuring 1185.15 sq.mts in S.No.292/1 and 292/2 part, T.S.No.6 part, Ward-B, Block No.72, Dunlop Quarters Road, Ambattur Village and Taluk, Thiruvallur District.

2. The case of the petitioner is that they are involved in the business of construction of multi-storied apartment in

Chennai, Bangalore and other places in South India. The petitioner had taken steps to construct multi-storied apartments in S.Nos.292/1 and 292/2 part, T.S.No.6 part, Ward-B, Block No.72, Dunlop Quarters Road, Ambattur Village and Taluk, Thiruvallur District. The planning permission was granted by the CMDA on 05.05.2015. As per the planning permission No.B/SPL BLDG/110-A to M/2015, the petitioner started constructing the multi-storied building comprising of five blocks each having stilt plus four floors, in all totally 252 dwelling units and the project is nearing completion.

3. The petitioner has executed a registered gift deed dated 30.03.2015, gifting a land measuring an extent of 1185.15 sq.mts. towards maintaining open space area to CMDA. The petitioner requested the respondent-Corporation seeking permission, vide its letter dated 24.10.2017 to develop and maintain the Open Space Reservation (OSR) area by developing a park and play area, but and no permission has been granted. It is submitted that if the park is developed by the respondents, it will affect the landscape, aesthetic effect and the commercial viability of the project of the petitioner. Hence, the petitioner requested for permission to maintain the OSR land as mentioned supra.

4. The learned Standing Counsel appearing for the respondents-Corporation of Chennai has filed a report, wherein it is stated that the said land has been gifted to Greater Chennai Corporation and the same is in possession of the Corporation. It is stated that the Corporation has decided to develop a park, for which, tender notification has been issued for the purpose of developing a park in the said place and another park in Division 92 for total value of Rs.84,42,000/- and the tender has been awarded to M/s.WASCO enterprises. The learned Standing Counsel verbally stated that work has not yet been commenced.

5. In reply, the learned Counsel appearing for the petitioner submitted that this Court has passed an order on 25.07.2017 in W.P.No.4995 of 2012, permitting the person who has gifted the land to maintain OSR land. On the same lines, the petitioner is also willing to maintain the OSR land and he is willing to adhere to any of the conditions that may be imposed by the Corporation or the authority concerned.

6. In reply, the learned Standing Counsel appearing for the respondents-Corporation of Chennai has submitted that the petitioner has adhered to the conditions stipulated and as it is a public place, the public should not be prevented from entering into the park, if it is maintained by the petitioner or by anyone.

7. It is true that for maintaining OSR land by means of park etc., tender notification has got to be issued and there should be transparency in the same. But when the owner of the land, who has gifted is willing to maintain it as Park, the Government should utilise the same. It is needless to point out that the conditions stipulated by the Corporation should be followed and there cannot be any complaint from anyone that the park is not maintained properly. If there are any violations, it is open to the Corporation to initiate action against the violator, much less the petitioner. Moreover, the Government also would receive periodical payment from one who maintains the park. Hence, even though the public auction was conducted and tender was awarded, as no work was started, the OSR land in question can be allotted to the petitioner, if there are no legal impediments. There is no hard and fast rule to maintain the park by Builders following the conditions laid down by the Authorities, and if they fail to do so, it is open to the respondents to proceed with the auction.

8. With the above observations and directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pvs

To:

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai - 600 003.

2.Zonal Officer,
Zone No.VII, Greater Chennai Corporation,
C.T.H.Road, Ambattur, Chennai - 600 053.

+1cc to Mr.T.C.Gopala Krishnan, Advocate, S.R.No.90143

+1cc to Mr.M.V.Seschadri, Advocate, S.R.No.91339

W.P.No.29948 of 2017

KAN(CO)
RRK(06/02/2018)