

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.36289 of 2007 &
M.P.Nos. 1 of 2017 and 1 of 2008

S.Parasuraman

... Petitioner

Vs.

1. The District Collector,
Thiruvallur Collectorate,
Thiruvallur,
Thiruvallur District.
2. The Commissioner,
Avadi Municipality,
Avadi, Chennai - 600 054.
3. The Director of Town and Country Planning,
Chennai.
4. M.Mangammal
5. M.Sundaramoorthy
6. M.Nagarathinam
7. M.Kalaiselvi
8. M.Venkatraman
9. M.Natarajan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents 1 to 3 to initiate appropriate proceedings under the Town and Country Planning Act 1971 forbearing the respondents 4 to 9 from dealing in any manner with the extent of 27 cents of vacant land, reserved for the playground in S.No.716/18A & 18B Paruthipattu Village, Poonamallee Taluk, Thiruvallur District and vested with the second respondent in accordance with the third respondents approval vide LPD/DTP No.114/66, except otherwise for public purpose.

For Petitioner : Mr.R.Gopi
for M/s.Ashok Menon

For RR1 & 3 : Mr.R.Venkatesh, G.A.

For R2 : Mr.O.Selvam, G.A.

For RR4 to 9 : M/s.A.L.Ganthimathi

ORDER

The petitioner has come forward with this petition to direct the respondents 1 to 3 to initiate appropriate proceedings under the Tamil Nadu Town and Country Planning Act, 1971 forbearing the respondents 4 to 9 from dealing in any manner with the extent of 27 cents of vacant land, reserved for the playground in S.No.716/18A & 18B Paruthipattu Village, Poonamallee Taluk, Thiruvallur District and vested with the second respondent in accordance with the third respondents approval vide LDP/DTP No.114/66, except otherwise for public purpose.

2. The respondents 4 to 9 in the present writ petition have filed W.P.No.2904 of 2003, in which the petitioner herein is the 5th respondent, for the following relief:

"forbearing the respondents, their men, agents, servants, subordinates or anybody claiming through the respondents from taking possession or interfering in any manner with the petitioners' peaceful possession and enjoyment of the property belongs to the petitioners situated in the Layout in Survey No.716/18A and 18B in an extent of 27 cents in Paruthipet Village within Avadi Municipality Limits, Poonamallee Taluk, Thiruvallur District."

3. In the said writ petition, the Hon'ble Mr.Justice P.N.Prakash has passed an order dated 14.12.2016, and the relevant paragraphs 6 and 7 are extracted below:

"6. The learned counsel for the petitioner submitted that for all the adjacent lands, only 10% of the land was earmarked for public purpose, whereas, in the present case 30% land has been earmarked, which is highly excessive.

7. In the considered opinion of this Court, the

fact remains that in the year 1967, Mannar was given the layout and he had accepted to give 27 cents for public purpose. Now, it is not open for his legal heirs to go back on it and contend that they have given excess of land for public purpose. There is no statutory duty cast upon the respondents to dispose of the petitioners' representation. Hence, the mandamus prayed for by the petitioners cannot be granted.

In the result, this writ petition is dismissed. No costs."

4. In the present writ petition, the learned counsel for the respondents 4 to 9 submitted that the excess land had been sought to be taken by the Government and that only 10% of the land is earmarked for the public purpose. The said contention raised by the respondents 4 to 9 herein has been reflected in paragraph 6 of the order dated 14.12.2016 in W.P.No.2904 of 2003 and taking note of the same, the said writ petition has been dismissed.

5. It is relevant to notice, paragraphs 7 and 8 of the counter affidavit filed by the 2nd respondent / Commissioner, Avadi Municipality, which are extracted below:

"7. I further submit that, the above said 27 cents land has been used and being used as children garden right from 1966 by the purchasers of the plots and it also serves the recreations and entertainment needs of the children and elders of the plot purchasers.

8. I further submit that, this respondent is ready to maintain the above said 27 cents with the approval of the council if the same is handed over duly to this respondent. Further there are several various and previous judgments favoring the maintenance of play grounds, children garden and other open places reserved in the layouts to be maintained by public authority in order to prevent private interference and encroachments. However, in order to prevent the above said open space from, any encroachment and unauthorised alienation, this respondent is ready and willing to maintain the above said open space of 27 cents exclusively for the purpose it was allotted provided the same is handed over to this respondent by way of registered gift deed by its owners."

6. In view of the above, the contention of the respondents 4 to 9 cannot be accepted. The writ petitioner is entitled to succeed and hence the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The District Collector,
Thiruvallur Collectorate,
Thiruvallur,
Thiruvallur District.
2. The Commissioner,
Avadi Municipality,
Avadi, Chennai - 600 054.
3. The Director of Town and Country Planning,
Chennai.

+1cc to Mr.AL.Ganthimathi, Advocate, S.R.No.84661

+1cc to the Government Pleader, S.R.No.85109

W.P.No.36289 of 2007

RRK(14/12/2017)

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