

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.NO.3483 OF 2016

AND CONNECTED MISCELLANEOUS PETITIONS

K.Natarajan
(cause title amended as per order
dated 16.02.2016 in WMP No.4372
of 2016 in W.P.No.3483 of 2016) ... Petitioner

Versus

- 1.The Director
Directorate of Town and Country Planning
807, Anna Salai, Chennai - 600 002.
- 2.The Commissioner
Coimbatore City Municipal Corporation
Big Bazaar Street, Coimbatore - 641 001.
- 3.The Town Planning Officer
Coimbatore City Municipal Corporation
Coimbatore - 600 001.
- 4.Singai Reliance Garden Residents
Welfare Association
Rep. by its President
No.1, Reliance Garden,
242, Trichy Road, Singanallur,
Coimbatore - 641 005. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order made Na.Ka.15068/2015/LA2 dated 07.08.2015 passed by the 1st respondent, quash the same, and consequently forbear the respondents from erecting any fencing in the middle of the park by altering the physical features of the Reserve Site which is being used by the members of the petitioner association for their morning and evening walk by considering the petitioner's representation dated 25.01.2016.

For Petitioner : Mr.N.Manokaran
For Respondents: Mr.T.R.Rajagopalan
1 & 4 Senior Counsel for
Mr.K.S.Karthikraja
For Respondents
2 & 3 : Mr.J.Sathya Narayana Prasad

O R D E R

This is an extension of litigation initiated by the petitioner's association and the fourth respondent before the First Additional District Munsif, Coimbatore, in O.S.Nos.2484 of 2008 and 64 of 2015. The petitioner is a resident of Krishna Garden, for which, a lay out has been approved in the year 1997. The fourth respondent is an Association of the allottees of the land owners situated in Ward No.62. This forms part of the approved lay out in the year 2006. Both the approved lay outs have got Parks. The Parks are adjoining to each other. In the second lay out approved in favour of the fourth respondent, it has been stated that both the Parks should be combined and used as one. Admittedly, the Park now vests with the second respondent.

2. The fourth respondent has filed a suit inter alia alleging that the petitioner is seeking to use a part of the Park, situated in Ward No.63 for construction of a Gym and apart from using it as a road. The fourth respondent has filed the said suit seeking a decree restraining the petitioner herein from using the Park as a pathway. A suit has been filed on behalf of the petitioner by his association seeking to restrain the fourth respondent from interfering with the construction of the Gym. Thus, both the suits have been filed by the petitioner's side and the fourth respondent against each other. Now the present writ petition has been filed in pursuant to the order passed by the first respondent directing the second respondent to put up fence with respect to both shown in the subsequent approved lay out granted in the year 2006.

3. The learned counsel appearing for the petitioner would submit that the order impugned in this writ petition is contrary to the approved lay out granted in the year 2006, which mandates that both the Parks situated in Ward Nos.62 and 63, to be treated as a one. Incidentally, it is submitted that the road has been in existence for quite number of years and therefore, the same shall not be interfered with. The learned counsel questions the impugned order on the jurisdiction of the first respondent after the Parks having been vested with the second respondent. The impugned order is also sought to be interdicted for want of notice to the petitioner and his association.

4. The learned Senior Counsel appearing for the respondent nos.1 and 4 would submit that the petitioner and his association are indulging in conversion of the Park for some other purpose. That is the reason why the suit has been laid. So long as the Park mentioned in the approved lay out of the petitioner's association and the fourth respondent are maintained as such, there is no grievance for the fourth respondent.

5. The learned counsel appearing for the respondent nos.2 and 3 would submit that after the vesting, the respondents would maintain it as a Park. Since the impugned order has been addressed to the second respondent by the first respondent, steps have been taken to demarcate the area allotted for the Park under both the lay outs into two. Any order passed by this Court in this regard, for maintenance of the Park would be complied with in letter and spirit.

6. The learned Senior Counsel appearing for the respondent nos.1 and 4 would submit that considering the facts and circumstances of the case, the order impugned in the writ petition has been passed.

7. There is no dispute on the fundamental facts. Both the lay outs approved in the year 1997 and 2006 make clear mention about the Parks. Incidentally, in the lay out of the year 2006, issued in favour of the fourth respondent, it has been stated that both the Parks will have to be combined as such and treated as one. Therefore, there is no difficulty in holding that, in law, there is only one Park. Thus, there is no question of separating it into two. The Park is meant to be used for everybody. It vests with the respondent nos.2 and 3. As held by the Hon'ble Supreme Court in number of cases, once a place is earmarked for Park, the same cannot be utilised for any other private purposes, that too at the instance of the residents. In other words, when once it vests with the respondent nos.2 and 3, it is for the said authorities to maintain it as a Park. Therefore, no other person including the residents can have any exclusive right to use the Park for any other purpose. In such view of the matter, there is no question of constructing any Gym. In so far as the usage of a small extent of Park as a road is concerned, it is for the Corporation, namely respondent nos.2 and 3, to take a decision. There is an order of injunction granted by the First Additional District Munsif, Coimbatore, in the year 2009, which is in currency till now.

8. In such view of the matter, the writ petition and the suits in O.S.Nos.2484 of 2008 and 64 of 2015 on the file of the First Additional District Munsif, Coimbatore, are disposed of in the following terms.

i) The Park as shown in both the lay outs of the year 1997 and 2006 are to be treated as one.

(ii) There cannot be any fencing of the said Park by dividing it into two by anybody including the private parties and the official respondents.

(iii) The Park as indicated above would vests with the respondent nos.2 and 3 without any encumbrance.

(iv) Over the above said Park, nobody has got any right except respondent nos.2 and 3.

(v) There is no question of putting up any Gym in the Park by the petitioner.

(vi) There cannot be any question of creation of any road over the Park by the petitioner or any other third party.

(vii) On the question of permitting to use the existing road, if any, it is for the respondent nos.2 and 3 to take a decision. In such a case, before deciding, respondent nos.2 and 3 will have to put the petitioner, his association and the respondent no.4, on notice.

(viii) Since the Park having been vested with the respondent nos.2 and 3, they have to take appropriate steps to maintain and develop it for the purposes intended.

9. The suits are not called for, in view of the comprehensive order passed in this writ petition and moreso, the parties having been heard.

10. Though the suit in O.S.No.64 of 2015 has been filed by the petitioner's association, taking into consideration of the fact that the present writ petition has been filed on behalf of the association and the petitioner has been canvassing the case of the association, this order would bind his association as well.

11. In view of the vesting having taken place, the impugned order passed by the first respondent, cannot be sustained in the eye of law, as no such direction can be

maintained against the respondent nos.2 and 3 by respondent no.1.

12. The Registry is directed to send a copy of this order to the learned First Additional District Munsif, Coimbatore. The First Additional District Munsif, Coimbatore, will have to close the suits, in view of the order passed in this writ petition. If the suits are already transferred to any other Court, the First Additional District Munsif, Coimbatore, has to intimate the order passed to that Court which in turn would comply with the directions.

13. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CSV)

/true copy/

Sub Asst. Registrar

To

- 1.The Director
Directorate of Town and Country Planning
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- 2.The Commissioner
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Big Bazaar Street, Coimbatore - 641 001.
- 3.The Town Planning Officer
Coimbatore City Municipal Corporation
Coimbatore - 600 001.
- 4.The Ist Additional District Munsif,
Coimbatore.

+1 cc to mr.J.Satya narayana Prasad,advocate,sr.17469

+1 cc to Mr.N.Manokaran,advocate,sr.17663

+1 cc to Mr.K.S.Karthik Raja,advocate,sr.17438.

ss(co)
krd 5/4

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