

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.07.2017
CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
W.P.No.16871 of 2004
and
W.P.M.P.No.19985 of 2004

K.Ganesan

.. Petitioner

Vs.

1. The Commissioner and Secretary,
Rural Development and Land Administration

2. The Assistant Director of Panchayats,
Office of the Collectorate,
Tiruvallur, Tiruvallur District.

3. The Commissioner,
Villivakkam Panchayat Union,
Ambattur, Chennai-600 053.

4. The Chairman,
Villivakkam Panchayat Union,
Ambattur Taluk, Chennai-600 053.

5. The President,
Ayyapakkam Panchayat,
Ayyapakkam, Ambattur Taluk,
Chennai-600 077.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus against the third respondent, the Commissioner, Villivakkam Panchayat Union, Ambattur, Chennai-600 053 in Ref.Na.Ka.2091/04 A3, dated 24.05.2004, whereby the third respondent has rejected the planning application of the petitioner and to further direct the third respondent to issue a building permit in accordance with law in favour of the petitioner for developing Plot No.24, in Survey No.77/10 of Ayapakkam Village, Villivakkam Panchayat Union, Ambattttur Taluk.

For Petitioner : Mr.A.Aridas for M/s.S.A.Rajan
For Respondents : Mr.K.V.Dhanapalan,
Spl.G.P. for RR-1,2,4 and 5
Mr.R.Arun Mozhi for R-3

ORDER

The petitioner has come forward with the above Writ Petition seeking to issue a Writ of Certiorarified Mandamus against the third respondent, the Commissioner, Villivakkam Panchayat Union, Ambattur, Chennai-600 053 in Ref.Na.Ka.2091/04 A3, dated 24.05.2004, whereby the third respondent has rejected the planning application of the petitioner and to further direct the third respondent to issue a building permit in accordance with law in favour of the petitioner for developing Plot No.24, in Survey No.77/10 of Ayapakkam Village, Villivakkam Panchayat Union, Ambattur Taluk.

2. It is the case of the petitioner that he is the owner of the approved lay out of land bearing Plot No.24 in Survey No.77/10 of Ayapakkam Village and Ayapakkam Panchayat limits. The lay out approval of the petitioner's land was accorded in K.No.1769/74 by the Deputy Director of Town Planning, Chengalpattu and Chennai Zone. At the time when the planning approval was granted, the property was allotted for public use. According to the petitioner, without knowing that the property was meant for public use, sale deed dated 19.08.1974 was executed and the petitioner purchased the property from the person who obtained the lay out sanction. Thereafter, the petitioner applied for patta relating to the property. He has also got Chitta and Adangal extracts from the concerned Revenue official. According to the petitioner, he continued to be in possession of the property without any interference from any one and that the plot was treated as open space allotted for public purpose. As the property was not required by any of the respondents herein, the petitioner approached the third respondent to sanction a building plan. The third respondent advised the vendor to deposit a sum of Rs.2,650/- as reservation charges to regularise the lay out to obtain sanction for putting up a building, which was deposited by the vendor of the petitioner on 09.09.1980. This amount was for the purpose of executing a gift deed in favour of the Panchayat Union in respect of the public land and roads that were forming part of the lay out. According to the petitioner, the property was not included in the gift deed and the petitioner continued to be in possession and the third respondent suggested that after the execution of the gift deed, the plan would be sanctioned in petitioner's favour.

3. It is the further case of the petitioner that he obtained a sanctioned plan and planning permit to put up the building, which was granted on 24.02.1989 by the Block Development Officer, Villivakkam Panchayat Union, Ambattur, Chennai. When

the construction was about to commence, the fourth and fifth respondents obstructed the activities of construction stating that the property was allotted for public use. Hence, the petitioner filed W.P.No.17089 of 1991 and the same was dismissed on 08.04.1999, as the petitioner has not made out any case for quashing G.O.Rt.No.558, Housing and Urban Development Department, dated 27.12.1990 challenged therein. Subsequently, the petitioner made a representation, dated 23.12.2001 to the Chennai Metropolitan Development Authority (CMDA) for exempting the petitioner's property from public use and to permit him to use the land privately for putting up construction. The CMDA, vide letter dated 20.03.2003 directed the third respondent to issue planning permission for approval under the delegated powers for the property owned by the petitioner for residential development of the property, subject to satisfying the Development Control Rules and stipulations. The respondents 3 to 5 have not challenged or disputed the said order. The petitioner further alleges that on 24.04.2004, when the petitioner presented an application for obtaining a sanctioned plan to put up a residential construction, the third respondent, by letter dated 24.05.2004, rejected the application on the ground that the property has been allotted for public purpose.

4. Learned counsel for the petitioner submitted that the Government is empowered to take the land in terms of the Development Control Rules of the CMDA and the same should be taken within one year from the date of approval of the lay out and since no action has been taken, the respondents have no right to reject the request of the petitioner. The relevant Rule of the Development Control Rules for Chennai Metropolitan Area reads as follows:

"19(a)(vii): 10 percent of layout area, additionally shall be reserved for "Public Purpose" in those layouts which are more than 10000 Sq.M. in extent. Interested departments shall be given intimation of layout approval by the CMDA and requested to purchase the land from the owner or developer or promoter, on paying the cost of plots so reserved. The owner or developer or promoter has every right to sell the lands for residential purpose if no demand from any public departments is received within one year."

5. Learned counsel for the petitioner further submitted that in view of the judgment of this Court reported in 2010 (2) CTC 510 (Madurai Bench of this Court) (V.Nagamani Vs. The Director of Town and Country Planning), the entire process of construction should be completed within three years and if no such action is done for acquiring the land, the Government shall release the land in favour of the person who is the owner of the land.

6. In reply, even though no counter affidavit has been filed by the respondents 1, 2, 4 and 5, learned Special Government Pleader appearing for the respondents 1, 2, 4 and 5 submitted that it is incorrect to state that the petitioner was not aware of the land that has been allotted to the Panchayat for public purpose and the plan lay out has been approved on 23.4.1974 itself and the relevant paragraph of the earlier order of this Court in W.P.No.17089 of 1991, dated 08.04.1999 is extracted hereunder:

"5. The brief facts of the case of the petitioner herein, as seen from the affidavit are as follows:

One A.T.Parthasarathy, the owner of S.No.77 and 78 situate in Ayyapakkam Village, Saidapet Taluk, Chingleput District of an extent of Ac.1.92 applied for a layout after plotting out the same in the various house plots and obtained sanction in LAN.LPDM/DDTP No.61/74 from the Deputy Director of Town Planning on 23.04.1974. The said owner demarcated in the said layout sufficient space for roadways, pathways etc. By registered sale deed dated 19.08.1974 the petitioner herein purchased a plot in the aforesaid layout of an extent of 2 grounds 460 Sq.Ft. from the owner. In June 1979 he has also obtained patta in his name for the Plot and ever since the plot is in his exclusive possession. As the petitioner decided to develop the plot and made enquiries with the second respondent about the procedure and legal formalities that have to be complied with. Only then he came to know that his plot was treated as open space by his vendor. Thereafter, he contacted his vendor and then only he told him about the 'open space' and also informed him that apart from this he has demarcated and reserved places for conversion them into roads for the proposed colony."

7. Learned Special Government Pleader further contended that the land in question is reserved for open space for public purpose in an approved lay out and that the petitioner has admitted in the present affidavit in paragraph 1 that the lay out has been approved for his land and it was accorded in K.No.1769/74 by the Deputy Director of Town Planning, Chengalpattu and Chennai Zone.

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

9. The grievance of the petitioner is that he seeks for de-reserving the land which was reserved for public purpose in the approved lay out. From the extract of the contentions made by the petitioner in the earlier Writ Petition mentioned supra, and the sale deed dated 19.08.1974, copy of which is enclosed in the typed set of papers filed along with the Writ Petition, it is clear that the petitioner was well aware of the fact that he is purchasing the approved lay out and that the excess land is meant for open space in the approved lay out and the same is meant for public purpose. Probably, it may be true that the vendor of the petitioner, without disclosing the fact that the land was reserved for public purpose, would have sold the property to the petitioner. But the fact is that the petitioner is aware of the planning permission and from the impugned communication, dated 24.05.2004 is clear that Parthasarathy who has sold the property to the petitioner, has jointly, with the petitioner, fabricated the document/sketch containing the drawing and has got the document registered by including the land which is meant for public purpose. Thus, there is collusion and the document had been fabricated.

10. The reserve open space is intended for public purpose and the plot owners of the lay out have a right to use the open space commonly and the area reserved for open space may not be allowed to be sold by dividing the same for commercial plot. Hence, the respondents have refused to sanction the building permission sought for by the petitioner for construction of the building in the land in question. The petitioner has preferred statutory appeal before the CMDA, which refused permission on 01.12.1988. The planning permission has been refused for the reason that the approved lay out had been declared for public use and if the open space is converted to residential plot, it would put to inconvenience to others. When it is clear that the petitioner has purchased the land reserved as open space in an approved lay out, it is for the petitioner to seek remedy against the vendor who has sold the land reserved as open space to him without divulging the factum of open space. Even though the petitioner has relied on the communication, dated 20.03.2003 of the CMDA in support of his contention that as per the Development Control Rules, the plot reserved for public purpose can be used as residential purpose after the period of one year from the date of approval of the lay out, if there is no demand from the Government agencies. But the said contention will not be applicable to the facts and circumstances of the present case.

11. Admittedly, in the lay out, the land has been mentioned as reserved for open space for public purpose. The reliance placed upon by the learned counsel for the petitioner on the judgment of this Court reported in 2010 (2) CTC 510 (cited supra) may not be applicable to the facts of the present case. In that case, the land belongs to

the owners and in the approved lay out, the land is mentioned as meant for public purpose. Moreover, the document in the case on hand had been manipulated, as the land which is meant for public purpose, has been illegally registered. The decision of this Court cited above will not be applicable to the facts of the present case and that as per the approved lay out, the petitioner herein is not the owner. If any land is purchased legally, and that could not be taken up for public purpose, then the principles laid down in the said judgment reported in 2010 (2) CTC 510 (cited supra) will be applicable. It is seen that the petitioner has purchased the land based on the sale deed, dated 19.08.1974 and the approval for the lay out was sanctioned on 23.04.1974. The petitioner has purchased the property from the vendor, wherein the records are said to have been manipulated to include the land meant for public purpose.

12. Taking note of the fact that at the time of registration itself, the purchaser has manipulated the records and ensured that the land is registered for the public purpose, the contention that the land has not been developed within the period of three years from the date of execution of the gift deed for public purpose, cannot be accepted.

13. In view of the above discussion, I find that there is no merit in the Writ Petition, which is accordingly dismissed, and if any fresh plan for approval is submitted, leaving the portion of the land meant for public purpose, it can be scrutinised and approved by ensuring that the set back and other norms is in accordance with law. No costs. W.P.M.P. is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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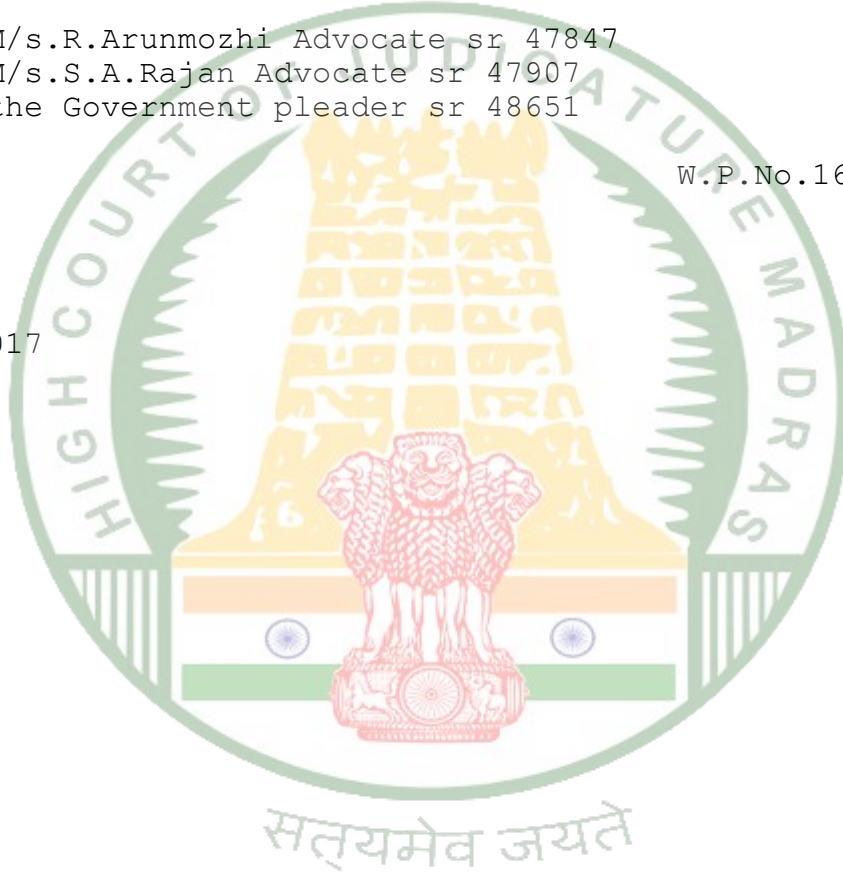
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Chennai-600 077.

+1 cc to M/s.R.Arunmozhi Advocate sr 47847
+1 cc to M/s.S.A.Rajan Advocate sr 47907
+1 cc to the Government pleader sr 48651

W.P.No.16871 of 2004

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