



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.3949 of 2013

and

M.P. (MD) .Nos.1 & 2 of 2013

V.Manoharan

.. Petitioner

Vs.

1. The Revenue Divisional Officer,
Kulithalai,
Karur District.

2. The Tahsildar,
Kulithalai Taluk,
Kulithalai, Karur District.

3. The Commissioner,
Kulithalai Municipality,
Kulithalai, Karur District.

4. Subbiah .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records, relating to the proceedings of the impugned order in Na.Ka.No.A1/2089/2012 dated 06.03.2013 on the file of the first respondent and quash the same.

For petitioner	: Mr.G.Prabhu Rajadurai
For Respondents 1 & 2	: Mr.M.Govindan Special Government Pleader
For R3	: Mr.J.Gunseelan Muthiah
For R4	: Mr.S.Jayavel

O R D E R

[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

The Writ Petitioner challenges the order dated 06.03.2013 in Na.Ka.No.A1/2089/2012, passed by the Revenue Divisional Officer, Kulithalai. By the said order, the first respondent has cancelled the sale deed standing in favour of the writ petitioner and directed the Kulithalai Municipality to change the patta in respect of Survey No.85/2 in Vaiganallur North village and also treat it as a common pathway and remove the encroachments therein.



2. According to the petitioner, the land in Survey No.85/2, NGGO Colony, Kulithalai Municipality, Karur District measuring an extent of 1.10 sq.ft. forming part of a large extent originally belonged to one Natarajan and his family members. The said Natarajan prepared a layout and by gift deed dated 05.05.1980 (D.O.C. No.1070 registered on the file of Sub Registrar Office, Kulithalai), gifted the road portion in favour of the local body.

3. According to the Writ Petitioner, by the registered sale deed dated 30.03.1990 the said Natarajan conveyed the housing plot which is the subject matter of the impugned order in favour of one Raja Mohammed, who in turn sold it to one Gopala Krishnan from whom the Writ Petitioner purchased by a registered document .

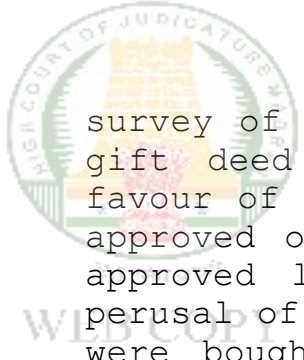
4. According to the Writ Petitioner what was purchased by him was not gifted as road portion in favour of the local authority. On the other hand, in the impugned order, it has been mentioned that the property in question was gifted as road portion in favour of Kulithalai Panchayat. However, during UDR, patta came to be issued in favour of Natarajan on Survey No.85/2. Taking advantage of this erroneous grant of patta and erroneous entry in the UDR, the said Natarajan sold the vacant land measuring at 1104 sq.ft. in favour of one Raja Mohammed on 30.03.1990. Based on the same subsequent conveyances had taken place. The first respondent has therefore proceeded to cancel such sales and directed the Kulithalai Municipality to change the patta and also remove the encroachments found in the said Survey Number.

5. Heard Mr.G.Prabhu Rajadurai, learned counsel for the writ petitioner.

6. The learned counsel contended that it is not open to the first respondent to cancel the sale deed executed in his favour. It is also not open to the first respondent to nullify the past sale transactions. This contention of the learned counsel for the writ petitioner is certainly correct and we hold that the first respondent has no jurisdiction to cancel the sale transactions referred to in the impugned order. However, it must be noted that it is open to the first respondent to ignore such sale transactions, if they pertain to portion earmarked as road in the original layout. When a layout is prepared and certain portion are shown as roads and approval is also obtained for the layout, there cannot be any subsequent sale of this road portion earmarked as roads. In the present case, it is to be seen if what was shown as road portion and settled in favour of local body by way of gift deed dated 05.05.1980 came to be purchased by the Writ Petitioner.

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7. We therefore direct the first respondent to conduct a



survey of the lands in question based on the layout and also the gift deed dated 30.05.1980 executed by the said Natarajan in favour of local authority. It appears that the layout was not an approved one. Be that as it may still even in the case of unapproved layout sketches and plans have to be prepared and a perusal of the said documents would show the road portions. Lands were bought and sold individually. Therefore, it is certainly possible to identify the road portion in the said layout. Of course, there is also a gift deed bearing document No.1070/80 on the file of the Sub-Registrar Office, Kulithalai.

8.The first respondent shall issue notice to the writ petitioner and afford opportunity of hearing. In the enquiry, if it is borne out at the end of the enquiry that the land purchased by the writ petitioner vide sale deed dated 30.03.1990 was actually one earmarked as a road, the first respondent shall take action for removal of the encroachments.

9.We therefore set aside the impugned order dated 06.03.2013 passed by the first respondent and remit the matter with a direction to hold an enquiry and take action in accordance with law. We make it clear that the first respondent shall take action to remove the encroachments only if in the enquiry, it is found out that the land purchased by the petitioner was actually earmarked as a road in the said layout.

10.This Writ Petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To:

1. The Revenue Divisional Officer, Kulithalai, Karur District.
2. The Tahsildar, Kulithalai Taluk, Kulithalai, Karur District.
3. The Commissioner, Kulithalai Municipality, Kulithalai, Karur District.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate, SR No. 68202.

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 68625

SSS

PSM/MR-KKR/SAR2/23.08.2017/3P/6C

ORDER MADE IN

W.P. (MD) No.3949 of 2013

and

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