

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 27.03.2018

ORDER PRONOUNCED ON:16.05.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Original Application No.267 of 2018
in CS No.1051 of 2010

P.A.Towers Residential Service Society
(Reg. No.288/88)
Rep by its Secretary Mr.G.Arjun,
Flat No.B34, 8th Floor, P.A.Towers,
New No.218/34 (old 869),
E.V.R. Periyar High Road, (P.H.Road),
Kilpauk, Chennai 600 010.

... Applicant

Vs

1. M/s.P.A.Constructions,
Rep. By its Proprietor, Mr.K.Ponuswamy,
"P.A.Building" No.42, Venkatakrishna Road,
Raja Annamalai Puram, Chennai 600 028.
2. M/s. Kumaran Hospital
Rep. By Dr.S.Palnichamy
No.214 (old 869 A) Poonamallee High Road
Kilpauk, Chennai 600 010.
3. Dr.S. Palinichamy
Kumaran Hospital
No.214 (old 869 A) Poonamallee High Road
Kilpauk, Chennai 600 010.

4. Dr.P.Manimekalai
W/o.Dr.S.Palinichamy
Kumaran Hospital
No.214 (old 869 A) Poonamallee High Road
Kilpauk, Chennai 600 010.
5. Mrs.M.Jayalakshmi
6. Mr. M.Raja
7. Mr.K.Murgasan
8. Mrs.K.R.Najammal (Deceased)
9. M/s.MSK Constructions Pvt Ltd.,
Rep. By its Director M.Jayalakshmi
No.220 (old 868) Poonamallee High Road
Kilpauk, Chennai 600 010.
10. M/s. Pride Group of Hotels
(formerly Kings park Hotel)
Rep by its Director Mr.K.Murgesan
No.216, Poonamallee High Road
Kilpauk, Chennai 600 010.
11. M/s.Somti Hotels Pvt Ltd.,
Rep. By its Director Mr.K.Murugesan
No.220, Poonamallee High Road
Kilpauk, Chennai 600 010.
12. M/s. J.L. Builders Pvt. Ltd.
Rep by its Executive Director, Mr.K.Murugesan
No.216 (Old 869 B) Poonamallee High Road
Kilpauk, Chennai 600 010.
13. M/s. Inderlok Hotels Pvt Ltd.,
Rep by its Director, Mr.M. Raja
No.216 (Old 869 B) Poonamallee High Road
Kilpauk, Chennai 600 010.
14. Mr.V.Gomathinayagam
15. M/s. KGS Developers Limited,
(Formerly M/s.KGEYES Builders Pvt Ltd)
Rep by its Managing Director, Mr.P.V.Sanmugam

No.43, Besant Avenue Road, Adayar,
Chennai 600 020.

16. Mrs.S.V.R.Saroja
 17. Mrs.R.Vijaya
 18. Mr.S.V.R.Ramprasad
 19. Mrs.N.Renuka Devi
 20. Mrs.R.S.P.Dhanurmathi
 21. Chennai Metropolitan Development Authority
Rep by its Member Secretary,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
 22. Corporation of Chennai
Rep by its Commissioner,
Rippon Building, Chennai 600 003.
 23. Kulandayal
 24. S.Nanjammal
 25. The Authorised Officer
Canara Bank,
Kasturba Nagar Branch,
Adayar, Chennai 600 020.
- ... Respondents

PRAYER: This Original Application has been filed seeking to grant an order of ad-interim injunction restraining the 25th respondent/defendant, their men, agents, servants or any one claiming under them from in anyway taking possession of the suit schedule property.

For Applicant : Mr.R.Thiyagarajan

for M/s.S.Hemalatha

For Respondents : Mr.M.Selvaraju, for RR 2 to 7, 9 & 12

Mr.R.Parthasarathy, for 15th Respondent

Mr.V.Baskaran, for RR 16 to 20

Mr.P.H.Aravind Pandian,
Additional Advocate General
for Mr.C.Johnson, for 21st respondent.

Dr. C.Ravichandran, for 22nd Respondent

Mr.M.L.Ganesh, for 25th Respondent
and Mr.S.Arunkumar

ORDER

The applicant/plaintiff seeks an order of injunction restraining the 25th respondent viz. the Authorised Officer, Canara Bank, Kasturba Nagar Branch, Adayar, Chennai 600 020, from in any way taking possession of the suit schedule property pending disposal of the above suit.

2. The suit in CS No.1051 of 2010 has been filed by the applicant seeking the declaration that the vacant land, which is described in Schedule "A", the passage morefully described in the Schedule "B" and use of open space surrounding the Block A and Block B of P.A. Flats, morefully shown in Schedule "C" absolutely vests with the plaintiff, for permanent injunction restraining the defendants 1 to 20, their men agents or any other person claiming through them from interfering with the plaintiff's peaceful

possession and enjoyment of the same and for Mandatory Injunction directing the defendants 21 and 22 to maintain the Open Space Reservation Area and the passage as per G.O.Ms.1030 dated 11.07.1986 and G.O.Ms.709 of 02.06.1987, Housing and Urban Development and the planning permit approved by CMDA No.C/7871/87 dated 28.07.1988.

3. In this Application, we are concerned only with the area shown as Open Space Reservation in Survey No.3121/31 bearing Door No.869 of Poonamallee High Road, Kilpauk, Chennai 600 010. According to the plaintiff, the said area measuring about 4 grounds and 300 sq.ft. was set apart as OSR land, when the portion of the property was developed in the year 1985. As per the original sanctioned plan the Open Space Reservation Area was shown on the southern side abutting the Poonamallee High Road, subsequently the same was shifted to the rear side and the said shifting was approved by G.O.Ms.1030, Housing and Urban Development Department dated 11.07.1986.

4. The applicant/plaintiff is the Association of the owners of the apartments that were constructed, pursuant to the planning permission granted to the 1st respondent. Subsequently, the owner of the land on the Eastern side of the property developed by the 1st respondent, viz. the 2nd

respondent had sought for additional approval for construction of additional floors from CMDA in 1995-1996. While doing so, the set back area and the common passage of the property situate on the western side bearing DoorNo.869, Poonamalle High Road, was shown as the set back area for the said building and since the planning permission was sought for, for an area above 3000 sq.meters, the applicant was required to either provide open space reservation or to pay the charges. It is learnt that the charges were paid, however, since no patta was issued for the set back area the planning permission was not granted. While so, the applicant would further contend, that the owners of the land bearing No.869, Poonamalle High Road, had applied for construction of additional floors during the year 1987 and the said permission for construction of additional floors was granted, by the Government in G.O.Ms.706 dated 02.06.1987, wherein also a condition was laid to the effect that they should undertake to shift the existing open space to a place in the rear side satisfying the development control rules in respect of the construction under reference. Therefore, according to the plaintiff Association, the land shown as open space reservation on the north western side of the property in question, marked as F, H, I, J, in the plan annexed to the plaint is actually the Open Space Reservation left by the 1st respondent, who promoted the apartment complex and the same should be maintained as a open space.

5. Claiming that the 25th respondent, viz, the Authorised Officer, Canara Bank, Kasturba Nagar Branch, Adayar, Chennai 600 020, had issued a notice under SARFAESI Act, seeking to take possession of the said property, the plaintiff had come forward with this Original Application, seeking an order of injunction restraining the Bank from taking over possession of the property. The Authorised Officer of Canara Bank was impleaded as the 25th respondent in this Application. This Application is opposed by respondents 2, 12, 15 and 16 to 20 and the Authorised Officer, Canara Bank, Kasturba Nagar Branch, Chennai 600 020.

6. The 18th Respondent has filed the Counter affidavit on behalf of the respondents 16 to 20. According to the 18th respondent, the property in question originally belonged his father Sri.S.V.Ramasamy Mudaliar, he had agreed to sell the land of an extent of 40 grounds and 670 sq. feet to M/s.Lakshmi Builders or its nominees under an agreement of sale dated 30.08.1980. The said S.V.Ramakrishna Mudaliar died on 31.12.1980, leaving behind respondents 16 to 20 herein, as his legal heirs. The legal heirs accepted the said agreement of sale, however, the sale deeds could not be executed in view of several litigations, ultimately there was a compromise in the said litigations and as per the compromise, the legal

heirs of Sri.S.V.Ramasamy Mudaliar, were directed to sell an extent of about 30 grounds in favour of M/s.Lakshmi Builders or to their nominee or nominees for a sale consideration for Rs.42,00,000/- and to sell 10 grounds for Rs.14,00,000/- after resolving the disputes as per the terms of the decree in CS No.469 of 1981.

7. Pursuant to the said compromise, the respondents 16 to 20 have sold an extent of 5 grounds to the nominee of the M/s. Lakshmi Builders the 2nd respondent herein. A Memorandum of understanding was entered into between the 1st respondent M/s.P.A.Constructions and M/s. Lakshmi Builders on 26.02.1984, for purchase of property of an extent of 25 grounds. As per the Memorandum of Understanding, the 1st respondent constructed the Apartments now belonging to the members of the applicant Society. The Original Plan approved by 21st and 22nd respondents was later modified by G.O.Ms.709, Housing and Urban Development Department. According to respondents 16 to 20, there were the disputes between the developer M/s.P.A.Constructions and the CMDA regarding additional constructions, OSR land etc. It is claimed that in that regard WP No.4532 of 1988 was filed seeking exemption over OSR land and execution of gift deed to the 22nd respondent herein. It is stated that in WP No.4532 of 1988, there was an order of interim stay granted by this Court and finally, it is claimed that

the Writ Petition was withdrawn some time in 1995. It is also claimed by the respondents 16 to 20 that an extent of 10 grounds of land on the Western side was sold by them to the 9th respondent herein, viz. M/s.MSK Constructions Pvt Ltd, who was the nominee of M/s. Lakshmi Builders. It is also claimed that respondents 2 to 15, though are identified by different names they all belong to one group being the close relatives of one Mr.S.Muthuswamy, who was politically powerful during 1980s and 1990s.

8. The Internal transactions between the respondents 2 to 15 like exchange of lands, resale, lease, etc set out in detail in the Court affidavit on behalf respondents 16 to 20. It is also claimed that the applicant/Society members also worked in tandem with the respondents 2 to 15 to suit their own benefits and entered into various agreement for shifting of the passage, shifting of the open space reservation area etc. It is also claimed that OSR area can be only 2.5 grounds and not 4 grounds 300 Sq.feet as contended by the applicant. It is also claimed that the 4 grounds and 1880 sq.feet was conveyed by M/s.Lakshmi Builders to the 1st respondent herein under Sale deed dated 26.02.1983 and the 1st respondent subsequently assigned all his rights, possession and the common areas in favour of the 12th respondent, who in turn assigned all their rights in favour of the 9th respondent herein, who became the ultimate nominee of M/s.P.A.Constructions and the

respondents 16 to 20 executed a sale deed in favour of the 9th respondent. It is also claimed that the suit itself suffers from latches and defects.

9. I have heard Mr.R.Thiyagarajan, learned Senior Counsel appearing for M/s.S.Hemalatha, for the Applicant/Society, Mr.M.Selvaraju, learned counsel appearing for the respondents 2 to 7, 9 and 12, Mr.R.Parthasarathy, learned counsel appearing for the 15th respondent, Mr.V.Baskaran, learned counsel appearing for the respondents 16 to 20, Dr. C.Ravichandran, learned counsel appearing for the 22nd respondent, Mr.P.H.Aravind Pandian, learned Additional Advocate General appearing for Mr.C.Johnson, learned counsel for the 21st respondent and Mr.M.L.Ganesh, learned counsel appearing for the 25th respondent.

10. The dispute in this Application relates to the nature of the land in question. While, it is claimed by the applicant as well as the official respondents, viz. the Chennai Metropolitan Development Authority and the Chennai Corporation (Respondents 21 and 22) that the disputed property has been shown as Open Space Reservation in the Development Plan and therefore, there could not have been a valid conveyance of the property in favour of M/s.MSK Constructions Pvt. Ltd., the 9th respondent herein, and therefore the further sale of the property in favour of M/s.KGS Developers

Limited, the 15th respondent herein, and the mortgage by the 15th respondent in favour of Canara Bank are invalid.

11. The respondents 2 to 7, 9, 12 and 15 would contend that though originally the property was shown as Open Space Reservation, subsequently, during the year 1995, the same was released pursuant to payment of OSR charges by the respondents 16 to 20. A type set has been filed by Mr.M.Selvaraju, learned counsel appearing for the respondents 2 to 7, 9 and 12, wherein, certain communications between the 16th respondent, the original owner and the Chennai Metropolitan Development Authority (CMDA) have been produced. The sum and substance of the contentions of the respondents 9, 12 and 15, as projected by Mr.M.Selvaraju and Mr.R.Parthasarathy is that the 16th respondent herein had filed the Writ Petition in WP No.4352 of 1988, seeking a Writ of Mandamus or any other appropriate writ or direction in the nature of a writ directing the 2nd respondent, to issue Planning Permission for construction at premises in TS Nos.3121/1 and 3121/4 of Poonamallee High Road, Kilpauk, Chennai 600 010, pursuant to G.O.Ms.1030, Housing and Urban Development Department dated 11.07.1986 and G.O.Ms.709, Housing and Urban Development Department 02.06.1987, without insisting the petitioner to hand over the Open Space Reservation area to the Corporation free of

encroachment through a gift deed and thus render justice.

12. According to Mr.R.Parthasarathy, learned counsel appearing for the 15th respondent, this Court had granted an order of interim stay in the said Writ Petition and even when the said Writ Petition was pending, the owners have addressed the letters to the 21st respondent, viz. Chennai Metropolitan Development Authority on 28.04.1995, offering to pay the OSR charges for the said land.

13. Drawing my attention to the letter dated 05.05.1995, Mr.R.Parthasarathy, would submit that CMDA had required the respondents 16 to 20, to withdraw the Writ Petition and thereafter, seek payment of OSR charges. It is also claimed that by a letter dated 22.05.1995, the respondents 16 to 20 have disputed the claim for interest on the OSR charges and by letter dated 07.06.1995, the respondents 16 to 20 had offered to pay the OSR charges and also withdraw the case. By a letter dated 12.06.1995, CMDA had fixed the Open Space Reservation charges at Rs.3,48,000/- and required the respondents 16 to 20 to pay the same with interest from 28.07.1988. It is claimed that the said charges were paid by way of two cheques, representing the principal claimed as well as the interest on 13.06.1995 and CMDA had also issued a receipt for the same.

By a letter dated 17.07.1995, the Member Secretary of CMDA had again requested the respondents 16 to 20 to withdraw the case in the Hon'ble High Court. By a letter dated 09.08.1995, the Member Secretary of CMDA had acknowledged the receipt of the final order passed by the High Court of Madras in WP 4532 of 1988. Therefore, according to Mr.R.Parthasarathy, learned counsel appearing for the 15th respondent, the Open Space Reservation charges were paid in lieu of surrendering physical possession of the land to the Chennai Metropolitan Development Authority even in the year 1995 and therefore, the land in question is ceased to be an open space reservation land.

14. Finding that there were some inconsistencies in the claim of the respondents 16 to 20, as well as the respondents 2 to 7, 9 to 12 and the 15th respondent, I had required the learned Additional Advocate General, Mr.P.H.Arvind Pandian to appear for the 21st respondent, viz. the Chennai Metropolitan Development Authority and to assist the Court regarding the status of the land in question.

15. Mr.P.H.Aravind Pandian, learned Additional Advocate General after taking instructions, had appeared and argued the matter. He also produced the original file of the CMDA relating to the area in question.

Mr.P.H.Aravind Pandian, learned Additional Advocate General would submit that the receipt dated 13.06.1995 does not relate to the development in question. Pointing out the note that is available in the original file relating to the Additional Planning Permission obtained by M/s.Kumaran Hospital, viz. the property on the Eastern side, Mr.P.H.Aravind Pandian would submit that the receipt relates to that development. The note that is available in the file reads as follows:

“As OSR has already been collected for the additional area vide its challen No.67512 dated 13.06.1995 in file No.C3/9354/95 dated 12.06.1995 for Rs.3,48,000/- plus interest Rs.2,88,840.”

16. Contending that the letter No.C3/9354/95 dated 12.06.1995 and the receipt bearing No.67512 dated 13.06.1995, do not relate to the payment of OSR charges for the property in question, but it relates to the property on the Eastern side, Mr.P.H.Aravind Pandian, learned Additional Advocate General, would submit that there has been no payment of OSR charges and therefore, the land continuous to be held as OSR land. Yet another startling factor pointed out by learned Additional Advocate General is the letter of the Member Secretary, CMDA, dated 09.08.1995 and the contents of the said letter reads as follows:

“With reference to above, the receipt of copy of the final orders of Hon’ble High Court of Madras received along with your letter

2nd cited is hereby acknowledged. It is also observed that since you have paid all amounts as per the demand raised in this office letters cited 1st, your contention in the letter that there is no case pending in the court 3rd cited is accepted."

17. Though, in the letter dated 29.06.1995, it is stated that the copy of the final orders of the Madras High Court in WP No.4532 of 1988 is enclosed and the same is acknowledged in the letter dated 09.08.1995, the said final order copy is not made available by any of the parties to this litigation. I had required the Registry to get the final order in WP No.4532 of 1998, alleged to have been passed sometime in June 1995, the Registry has placed before me the papers that are available in WP No.4532 of 1988.

18. A perusal of the same shows that the said Writ Petition in WP No.4532 of 1988 was disposed of, along with the batch of other cases on 29.08.1991, there is no order available in the Registry of the year 1995 made in WP No.4532 of 1988. Therefore, the very claim that the said Writ Petition was pending till 1995 and the Writ Petition came to be withdrawn in 1995 and pursuant to the said withdrawal the respondents 16 to 20 paid a sum of Rs.6,36,840/-, as evidenced by the receipt dated 13.06.1995 bearing No.67512 itself is highly doubtful.

19. Yet another factor which impels me to disbelieve the claim of the respondents is that the sale deed in respect of the property, shown as Open Space Reservation in the Development Plans, its dated 19.05.1995, that is even prior to the payment of the Open Space Reservation charges and the same has been registered at Palakad in Kerala. Of course, the respondents have produced certain communications between the respondents 16 to 20 and the CMDA to show that they had paid the OSR charges. It is claimed by CMDA that the payment was not in relation to this property, but it relates to the adjacent property and from the correspondence produced by the 9th respondent in the form of the type set, it is not shown that the OSR land has been reclassified or declared to be the land belonging to respondents 16 to 20.

20. Mr.R.Parthasarathy, learned counsel would raise yet another contention that even assuming that the land is OSR land since the same has not been gifted by execution of proper Gift Deed, the same will not vest in the Corporation of Chennai, viz, the 22 respondent. This question of Law is well settled now. As early as in 1991, the Hon'ble Supreme Court in **Bangalore Medical Trust v. S.Muddappa and others** reported in **AIR 1991 SCC 1902**, has held that conversion of an OSR land or land reserved for public purpose cannot be done and it has been held that non execution

of the gift deed would not affect the classification of the land as land meant for public purposes or open space reservation. The said judgment of the Hon'ble Supreme Court has been followed and reiterated by the Division Bench of this Court in ***Kirubakaran and others v. The commissioner (East), Corporation of Coimbatore, Coimbatore***, reported in **2013 (6) CTC 441**,

21. I am, therefore, of the considered opinion that there is enough and more doubt about the very nature of the land in question and the plaintiff has made out a *prima facie* case for grant of injunction as prayed for. Therefore, the order of interim injunction granted on 22.03.2018 and extended by order dated 27.03.2018 is made absolute. It is made clear that none of the parties to these proceedings shall put up any construction, whatsoever over the said property, pending disposal of the above suit and the property shall be maintained as a vacant land, till the rights of parties are crystallized in the suit. It is also made clear that all my observations made above, are only *prima facie* in nature and they shall have no bearing on the decision in the suit, which is to be rendered after evidence is recorded.

jv

16.05.2018

Note: The original file produced by the CMDA is directed to be placed in a sealed cover and kept in safe custody in the suit. The same shall be made part of the records in the suit.

R.SUBRAMANIAN,J.

Jv

Index : Yes/No
Internet: Yes/No
Speaking order/Non Speaking order



Pre Delivery Order
Original Application No.267 of 2018
in CS No.1051 of 2010

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16.05.2018