

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.2443 of 2008

and

M.P.1 of 2008

1. Dr.N.Kannan

2. K.Suguna

... Petitioners

Vs

1. The President,
Nandivaram - Guduvancherry Town Panchayat,
Guduvancherry 603 202.

2. The Executive Officer,
Nandivaram Guduvancherry Town Panchayat,
Guduvancherry-603 202.

3. The Block Development Officer,
Kattangulathur-603 203.

4. The District Collector,
Kancheepuram.

5. Mrs.Radha Annal

6. Mr.A.P.Krishnamoorthy

7. Mr.A.P.Sivasankaran

8. Mr.A.P.Ravichandran

9. Mr.A.P.Premkumar

10.Mr.A.P.Suresh Babu

11.Mr.A.P.Mahesh Kannan

12.Mrs.Kala Malini

13.Mrs.Indira Priyadarshini

14.Mrs.Renuka

15.Mr.A.P.Satish Kumar

16.The Tahsildar,
Chengalpattu District,
Chengalpattu.

17.The Sub-Collector,
Chengalpattu District,
Chengalpattu.

... Respondents

(R16 & R17 are impleaded as per order dated 18.06.2018 by VBSJ in W.M.P.No.17122 of 2018 in W.P.No.2443 of 2008)

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to maintain the area set apart as park and open space in the approved layout plan No.CSAR/DTCP/M86/344 LP 258 Nandivaram-Guduvancherry Town Panchayat in Survey Nos.391/1, 393, 394/5, 392/1, 392/2 & 394/4 as park and open space only and consequently forbearing them from, in any way, alienating or using it for any other purpose except as park and open space.

(Survey Nos. 392/1, 392/2 & 394/4 are adding in prayer as per dated 18.06.2018 by VBSJ in W.M.P.No.17123 of 2018 in W.P.No.2443 of 2008)

For Petitioner : M/s.Ramya for
Mr.T.V.Krishnamachari

For R2 to R4 & R16 & R17: Mr.R.S.Selvam
Government Advocate

For R7 to R15 : Mr.V.Manisekaran

O R D E R

The petitioner has filed the writ petition for a writ of Mandamus, to direct the Respondents to maintain the area set apart as park and open space in the approved layout plan No.CSAR/DTCP/M86/344 LP 258 Nandivaram Guduvancherry Town Panchayat in Survey Nos.391/1, 393, 394/5 and Survey Nos.392/1, 392/2 & 394/4 and consequently, forbear them from, in any way, alienating or using it for any other purpose except as park and open space, by this Court.

2. The case of the petitioners is that the respondents 5 to 15 in the Writ Petition have sold the schedule mentioned plots to the petitioners by means of registered sale deeds dated 19.08.1988, 17.04.1997, 26.03.1999, 22.11.2000 and 26.02.2001 respectively. The respondents 5 to 15 herein represented to the petitioners that they have got an approved layout from the Director of Town Planning by the approval No.CASR/DTCP/M86/344 LP 258 and it was approved by the Nandivaram-Guduvancherry Town Panchayat also and the respondents 5 to 15 herein sold Plot Nos. 2 to 6 by registered sale deeds and they have also sold Plot Nos. 10 to 20 to the wife of the Petitioner, namely, Dr.Mrs.K.Suguna/ second petitioner herein by means of registered sale deeds cited supra.

3. The learned counsel for the petitioners would contend that the respondents 5 to 15 had enclosed the approved layout plan marking the plots, sold to the petitioners and they have set apart open space for park and for other public purposes forming part of the approved layout, which was also clearly delineated in the approved layout plan. The said park and common open space were also gifted to the Nandivaram-Guduvancherry Town Panchayat by means of registered gift deeds. The possession of the same was with the said Nandivaram-Guduvancherry Town Panchayat. In the said layout, various houses have been built up and the park and open space set apart for the public purpose remain vacant.

4. That being the case, one fine day, in the open space, which was in the custody of the Nandivaram-Guduvancherry Town Panchayat, where bushes have grown by nature, some persons started clearing the said area with the help of bulldozers. When the petitioner enquired about the same, it was informed that the vendors of the petitioners herein had decided to sell the open area set apart for park and open space gifted to the Nandivaram-Guduvancherry Town Panchayat and it is in the physical possession of the said Panchayat and the act of the vendors of the petitioners was illegal. The petitioners immediately contacted the local Panchayat Executive Officer regarding the said issue and he assured that he would look into the matter; but, no action was taken by the Executive Officer and the Petitioners were not able to move further. Hence, they sent a representation to the President of the Nandivaram-Guduvancherry Town Panchayat, The Executive Officer, Kattangulathur and the District Collector, Kancheepuram on 17.01.2008 and also gave a complaint to the local Police Station. On the same day, i.e., 17.01.2008, they also sent a registered letter to all the respondents, including the vendors, namely, the respondents 5 to 15 stating that they have no right to sell the property which was gifted to the panchayat and the property has been ear-marked for the park. Since there was no action on the part of the authorities, the petitioners have filed this Writ Petition with the above prayer.

5. Meanwhile, on 10.06.2018, when the matter was listed for final disposal, the learned counsel for the petitioners has filed an additional affidavit before this Court stating that there was an Interim injunction granted by this Court at the time of admission and notice was ordered to the respondents herein. The learned counsel for the petitioners would further contend that no such trespassing took place after filing of this Writ Petition. Meanwhile, some other persons attempted to encroach into the said area set apart for open space. They also attempted to encroach the petitioners' Plot Nos. 2 to 6 adjacent to the 30 feet road. The Petitioner also prevented the same by

lodged a police complaint on 11.12.2017 and also enclosed the copy of the interim order granted by this court in M.P.No.1 of 2008.

6. The second respondent also issued a letter dated 12.12.2017 to the Inspector, Guduvancherry, to take appropriate action against the trespassers. During the enquiry, the police inspector had given a copy of the letter dated 09.12.2017, said to have been produced by one Radhammal, wife of Ganesan, residing at 7/232, 176th Street, Muthamizh Nagar, Kodungaiyur, Chennai-600 168. They also showed a Patta No.1231. Since the property has been set apart for park, road and open space in the approved road, no authority can issue a patta and the area has been vested in the local body.

7. The second respondent, in his proceedings dated 21.12.2017 has made it clear that the areas which are set apart for public purpose, road, park and open space, have been necessarily protected and that action have been taken against those persons, trespassing right over open space area. A copy of the proceedings dated 21.12.2017 of the respondent was sent to the said Mrs. Radhammal, wife of Ganesan, residing at 7/232, 176th Street, Muthamizh Nagar, Kodungaiyur, Chennai-600 168 and also to the petitioners. The petitioners have also given a representation to the respondents on 27.03.2018, namely, Sub-Collector, Chengalpattu, The Tahsildar, Chengalpattu, The collector, Kancheepuram, that some persons were attempting to encroach in the areas set apart for public purposes, such as road, open space, park etc.,

8. It was also contended by the petitioners herein that the vendors of the petitioners is one Mrs.Radha ammal, who has been the main person to sell the property to the petitioners. But, the same person imprisoned by one, Mrs.Radhammal, wife of Ganesan, belong to Muthamilarasar has got forged patta from the authorities and the said persons, who had tried to encroach upon the property, have given a letter to the Executive Officer, Nandivaram-Guduvancherry Town Panchayat and the proceedings dated 21.12.2017. The said claim was rejected by the Executive Officer.

9. Meanwhile, the petitioners have also filed a petition for impleading three persons, namely, The Tahsildar, The Sub-Collector and Mrs.C.Radhammal, wife of Ganesan, before this Court in the Writ Petition in W.P.No.2443 of 2008, in which, to the Tahsildar and the Sub-Collector, notice was ordered returnable by three weeks to show cause as to why they should not be added as a party in the Writ Petition, the notice sent to the said Radhammal was returned as "deceased". The respondent, namely, the Tahsildar has passed an order vide his proceedings dated 14.07.2018 in Na.ka.No.2078/2018/A2, stating that the said

land, which were gifted by one Mrs.Radhammal, daughter of Chinnappan and w/o.Mr.O.Madurai and one Mr.Perumal S/o.Chinnappan, to the Executive Officer, Nandivaram-Guduvancherry Town Panchayat and the same was maintained by Panchayat.

10. The patta was wrongly issued bearing in Patta No.1231 in the name of Mrs.Radhammal, wife of Ganesan and one Mr.Chinnappan. It is found that the property had been gifted by Mrs.Radhammal, daughter of Chinnappan and w/o.Mr.O.Madurai and one Mr.Perumal, son of Chinnappan to Panchayat. But, one person in the same name of Radhammal, wife of Ganesan has claimed right over the property. The said land in Survey Nos. 391/1, 392/1,2, 393, 394/4, 5 has been set apart for park, open space and road and has been sub-divided into T.K. 8A 1067/1414 on 03.01.2005. As per the order dated 03.01.2005, the properties situated at Survey Nos.391/1A, 391/1C, 392/3, 393/1, 394/4A1A, 394/4A3 have been mutated and the owners' names have been changed and the Executive Officer name has been included as beneficiaries and Survey No.392/1A1A in (part) is being maintained as road and the same has been registered in the name of Nandivaram-Guduvancherry Town Panchayat.

11. As per the letter dated 12.12.2017 itself, the Sub-Registrar of Guduvancherry, was directed not to register any document in the above said Survey numbers to any third parties and they were also taking necessary action for constructing a compound wall in the said area and necessary directions have been issued to the Engineer, necessary permission will be obtained for constructing the same.

12. Based on the above submissions and the actions taken by the authorities, the name has been mutated in the Revenue records. As the property has been vested with the Executive Officer, Nandivaram-Guduvancherry Town Panchayat, nothing survives for further adjudication in this petition.

13. In view of the above facts and circumstances of the case, this Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

dss/pgs

To

1. The District Collector,
Kancheepuram.
 2. The Sub-Collector,
Chengalpattu District,
Chengalpattu.
 3. The President,
Nandivaram - Guduvancherry Town Panchayat,
Guduvancherry 603 202.
 4. The Executive Officer,
Nandivaram Guduvancherry Town Panchayat,
Guduvancherry-603 202.
 5. The Block Development Officer,
Kattangulathur-603 203.
 6. The Tahsildar,
Chengalpattu District,
Chengalpattu.
- +1 CC to Mr.T.V.Krishnamachari, Advocate sr 76238.
+1 CC to The Govt. Pleader sr 76452.

W.P.No.2443 of 2008

GP (CO)
SP (01/04/2019)

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