

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on:
22..10..2018

Orders Pronounced on:
23..11..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition Nos.29859, 29865 & 29866 of 2011

1.S.Vijayalakshmi
2.B.Lakshmi Gayathri
3.V.R.Ratika

.... Petitioners in W.P.No.29859 of 2011

1.B.Ramanadhan
2.R.Padmapriya

.... Petitioners in W.P.No.29865 of 2011

1.R.Ganeswaran
2.G.Pravin Raja

.... Petitioners in W.P.No.29866 of 2011

-Versus-

1.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore 641 001.

2.The Member Secretary,
Coimbatore Local Planning Authority,
Sivananda Colony,
Coimbatore 641 012.

... Respondents in all the Writ Petitions

Prayer in W.P.No.29859 of 2011: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned letter of the 1st respondent dated 26.08.2011 in B.A.NO.251-11-MHU(S) and to quash the same and for a consequential direction to the 1st respondent to approve the plan submitted by the petitioners on 06.05.2011.

Prayer in W.P.No.29865 of 2011: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned letter of the 1st respondent dated 12.09.2011 in

B.A.NO.249-11-MHU(S) and to quash the same and for a consequential direction to the 1st respondent to approve the plan submitted by the petitioners on 21.04.2011.

Prayer in W.P.No.29865 of 2011: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned letter of the 1st respondent dated 12.09.2011 in B.A.NO.250-11-MHU(S) and to quash the same and for a consequential direction to the 1st respondent to approve the plan submitted by the petitioners on 06.05.2011.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.R.Shivakumar for R1

Mrs.P.Shanthi for R2

COMMON ORDER

Challenge in these writ petitions are to the order dated 26.08.2011, 12.09.2011 and 12.09.2011 made by the 1st respondent on the applications submitted by the respective petitioners thereby refusing to grant building license to them, on the ground, that the area which was earmarked for public purpose in the lay out had been converted into house sites and for which building permit had been sought for.

2. Since the issues involved in these writ petition are common, they were taken up together, heard and are being disposed of by this common order.

3. The common case of the petitioners is that a wet land measuring an extent of 37 cents comprised in Old T.S.Nos.3/1139, 1140, 1141, 1142 and New T.S.No.3/540 of Komarapalayam Village, Coimbatore District was originally belonged to one Thiru.N.R.Karuppanna Nadar who by way of registered deed of settlement, settled the property in favour of his son Thiru.K.Rangasamy and he in turn sold the same to Tmt.Madhu Chandrakanth in the year 1979 by way of a registered deed of sale dated 26.02.1979. It is a private property and got nothing to do with the 1st respondent which came into existence only in the year 1981. The entire area in and around the property in question, was divided into house sites and house were built and it has been regulated by the Directorate of Town and Country Planning Act and at that time, the 1st respondent did not have any jurisdiction over the land in question. While so, One Thiru.Arun kalro filed a suit for specified performance, in O.S. No.415 of 1999 on the file of the Subordinate Judge, Coimbatore, and pursuant to the decree dated 18.12.2002, a sale deed in respect of the property in question was executed in his favour.

Thereafter, the petitioners purchased their respective house sites by means of registered sale deeds in the year 2009. After purchase, when they had submitted applications for building license before the 1st respondent, they were denied building license on the ground that the land in question was ear marked for public purpose in a lay out and therefore, the petitioners are not entitled for planning permission. It is this order, which are under challenge in the instant writ petitions.

4. The 1st respondent corporation filed a counter affidavit stating that during the year 1990, the original owner of the land had applied for lay out approval in respect of 1 Acre and 69 cents to the Deputy Director, Town and Country Planning, Coimbatore and The Nilgiris Region, and the lay out was approved by the Deputy Director in and by his proceedings L.P./R/CN) No.90 of 80 with certain conditions that the developer must reserved specific extent of land in the lay out towards place for "public purpose" apart from forming roads and streets. Pursuant to such approval, the developer had reserved an extent of 5782 square feet of land for public purpose. The area which was reserved for public purpose had been clearly indicated in the approved lay out plan. The land which the petitioners claimed to have purchased is the portion of the land which was reserved for public purpose and the developer had no right to convey the same to the petitioners. As the land which had been reserved for public purpose meant for the beneficial enjoyment of all the residents of the said layout, the petitioner cannot claim any exclusive right over the same.

5. So far as the suit referred to by the petitioners, it was a suit filed by one Arun Kalro for specific performance against one Tmt.Madhu Chandrakanth who was the developer of the lay out and subsequently, the suit was decreed in favour of the plaintiff. But, the decree passed in that suit has nothing to do with the respondents as the suit was between two private individuals.

6. The 2nd respondent has filed his counter affidavit contending that in the year 1980, the entire area was regulated by the DTCP. The 1st respondent being the local body in whose jurisdiction the land falls got power to regularize and approve the layout and the 2nd respondent has nothing to do with the lay out regularization by the local bodies.

7. The learned counsel for the petitioner submitted that the house sites which were purchased by the petitioners were ear-marked for public purpose and not as open space reserved area (OSR) and the area ear marked for OSR alone is inalienable and whereas the developer of the layout has always got right over the area which was reserved for public purpose and he can convey the same on payment of necessary land costs and the land

reserved for public purpose has to be notified for sale to any Government Department or institution or agency for locating governmental office, such as, police station, post office, Aavin parlour, Fair Price Shop, fisheries bunk, etc. telephone exchange, etc., and if there is no such demand, within the period of one year from the date of approval, the owner/promoter/developer can convert such land for residential purposes and sell the same to any individual prospective buyer. Thus, according to the learned counsel, the OSR land alone have to be handed over to the local body for free of costs, whereas the title of the area ear-marked for public purpose is always vested with the developer/promoter/owner of the land.

8. The learned counsel for the petitioner has taken this court through the provisions in Section 19 of The Development Control Rules framed under The Tamil Nadu Town and Country Planning Act, 1971 and also the provision in sub-section 36 of Section 2 of the Tamil Nadu Town and Country Planning Act in an attempt to distinguish the words "area reserved for open space reservation" and "area reserved for public purpose".

9. On the other hand, the learned counsel for the 1st respondent contended that the house site for which the petitioners had sought for planning permission were reserved only for public purpose in the original lay out and subsequently, the promoter had converted it into house sites and sold away the same to the petitioners. The area reserved for public purpose was mean only for the beneficial enjoyment of all the residents of the lay out and the original developer had ceased to have any right or title over the area reserved for public purpose, but, in the instant case, the developer had sold away the area which was reserved for public purpose with a mala fide intention to the petitioners and therefore, the petitioners cannot claim any right over the lands based on such illegal and void sale. Further, according to him, the land which was reserved for public purpose could not be used for any other purpose. The learned counsel relied upon number of judgments of the Hon'ble Supreme Court as well as this court in support of his submissions.

10. I have considered the rival submissions and also perused the records carefully.

11. The petitioners are not disputing the fact that the house sites which they claimed to have purchased by way of registered sale deed, were the part and parcel of the portion which had been reserved for public purpose in the approved lay out. But, it is the case of the petitioners that the area which has been ear-marked for open space reservation (OSR) alone is inalienable, whereas the land reserved for public purpose, the title is always vested with the promoter/owner/developer of the

house site and it is alienable and the land owner or promoter of the house sites can sell the same to any one. This contention of the petitioner cannot be countenanced for the simple reason that it is the settled principle of law that once an area has been earmarked for public purpose, it shall be utilized for the use of the general public and it can be used only for the purpose for which it has been reserved and not for any other purpose. Once the area has been ear-marked for the public purpose, the owner / promoter of the land hold the land only for the benefit of the public in general and he is precluded from alienating his interest in it.

12. In *P.T.Chet Ram Vashist (Dead) by LRs v. Municipal Corporation of Delhi*, (1995) 1 SCC 47 considering a number of its earlier judgement, the Hon'ble Supreme Court has held as follows:

"6. Reserving any site for any street, open space, park, school etc., in a lay out plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it."

13. In *Sri Devi Nagar Residences Welfare Association v. Subbathal*, (2007) 3 MLJ 990, a Division Bench of this Court had an occasion to consider the term "public purpose" and has ultimately held as follows:-

"5. It is a settled law that the object of approving the layout, before converting the land into house sites, is to regulate the development in the locality so as to secure the present and future inhabitants sanitary conditions, amenity and convenience, with the prior permission of the fifth respondent. The approval of the lay out, is, therefore, intended to secure amenity and convenience to the present and future residents in connection with laying out and use of lands. Therefore, regard is to be had in the making of a clear Town Planning in the locality to the laying out and use of neighbouring lands as well as to that of the land which is the actual subject matter of the layout. The result should be that as successive areas are developed, they should fit into one another

and eventually form a harmonious whole. One of the most important things for consideration in the preparation of the layout is not only formation of roads, but also utilisation of the lands reserved for public purpose."

14. In *Kirubakaran v. Commissioner (East) Corporation of Coimbatore*, (2013) 8 MLJ 257, another Division Bench of this Court has held thus:-

9. The Division Bench of this Court in (2007) 3 MLJ 990 (supra) considered the earlier decisions of the Supreme Court and held that "public purpose", though cannot be precisely defined, broadly means the general interest of the community as opposed to the interest of an individual. In the Judgment of the Supreme Court reported in AIR 1952 SC 252 (*State of Bihar v. Kameshwar Singh*) it is held that public purpose will be construed to promote the welfare of the people at large and if there is dispute regarding public purpose, the Courts have jurisdiction, and it is their duty to determine the matter whenever a requisition is made to acquire the land according to the spirit of the times in which particular legislation is enacted. The Supreme Court in the decision reported in AIR 1956 SC 294 (*State of Bombay v. R.S.Nanji*) also took a similar view. When the use of land earmarked for public purpose was unauthorisedly allotted to a School, the Supreme Court set aside the same and the said decision is reported in AIR 1996 SC 253 : (1995) 5 SCC 762 (*G.N.Khajuria (Dr) v. Delhi Development Authority*). The Division Bench in the above referred judgment held that, "a portion of land reserved for public purpose in a layout or in a development plan or master plan approved by the Local Body cannot be used for any other purpose, than the one specified therein."

15. Yet another Division of this court, in *K.Rajamani v. Alamunagar Residents' Welfare Association*, 2011 (1) CTC 257, after considering the various judgments of the Hon'ble Supreme Court, has held as follows:-

"21. A survey of the above law shows that the land once earmarked for public purpose cannot be earmarked for any other purpose and, particularly, to dereserve or put to use as housing plots. (See *Krishna Nagar Residents'*

Welfare Association v. Director of Town and
Country Planning, 2001 (3) LW 828).

16. In view of the above settled proposition , the promoter of the land has got no right to alienate the land which was reserved for public purpose in the approved lay out and the petitioners being purchasers of the such land cannot claim any right or title over the land in question. In such view of the mater, this court finds no illegality or irregularity in the orders impugned in these writ petitions and the writ petitions which are devoid of merits deserve only to be dismissed.

17. In the result, the writ petitions are dismissed. No costs. Consequently, connected, MPs are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

kmk
To

- 1.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore 641 001.
- 2.The Member Secretary,
Coimbatore Local Planning Authority,
Sivananda Colony,
Coimbatore 641 012.

+1 CC to Mr.T.Ranganathan, Advocate sr 79985.
+1 CC to Mr.R.Shivakumar, Advocate sr 79832

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& 29866 of 2011

NRJK (CO)
SP(18/12/2018)

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