IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 10.12.2018

CORAM
THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.33976 of 2016
and WMP No.29320 of 2016

H. Venkatesh ... Petitioner

Vs

The Commissioner,
Hosur Municipality,
Hosur .... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to respondent's Na.Ka.No.--/2016/F1 dated 12.09.2016 and quash the same and consequently direct the Respondent to forthwith ratify and regulate the occupancy insofar as the Petitioner's survey No.774/1A is concerned.

For petitioner : Mr.L. Chadrakumar

For Respondent : Mr.P. Srinivas
Standing Counsel

ORDER

(Order of the Court was made by M VENUGOPAL,J.,)

Heard both sides.

2. According to the Petitioner, he is the absolute owner of the Property situate at Survey No.774 which was sub divided as Survey No.774/1A and was converted into house plots as per approval of the then Panchayat in Approval No.Ma.Pa.(Ve.Pa) No.75/83 Ma.Pa.No.21/83 (75/83) as per Lay-Out and also approved by the Director of Town and Country Planning, Chennai way back in 1983. Out of total extent of dry hectares 0.17.5, the Petitioner had purchased an extent of about 5760 sq.ft jointly by him and one Sivappa Reddy and based on the planning permission approval granted by the then Panchayat, which has now become the Respondent Municipality the Petitioner has put up temporary structures/sheds and had rented the same to third parties for commercial activities as regular public bus stand which was sought to be renewed as well as for expansion, the

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area, in question, was made a temporary bus stand, however, only with temporary sheds. Thereafter, the tenants/shops are being there over a decade and many families are solely dependent on the day-today business avocation for their livelihood.

3. The prime plea taken on behalf of the Petitioner is that the construction was made as per the planning permission sanctioned in Na.Ka.No1302/83 dated -11-1983 as per the competent authority's description. The Government High School has sprang up fully constructed by the Government and adjoining the said school, these shops came into existence, causing hindrance or inconvenience to the school going children. While that be the factual situation, the impugned Order dated 12.09.2016 was passed by the Respondent/Commissioner, Hosur Municipality based on improper application of mind.

4. Further, it is represented on behalf of the Petitioner that the aggrieved parties were not put on notice and not provided with any opportunity of personal hearing. A perusal of the impugned order dated 12.09.2016 shows that the Respondent had a predetermined mind to evict the Petitioner and moreover, the impugned Order does not spell out any of the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or under the Tamil Nadu Town and Country Planning Act, 1971, wherein, there are provisions to evict the encroachers or illegal occupants.

5. Per contra, it is the submission of the learned Standing Counsel for the Respondent/Municipality that the land, in question, is a part of the 'Approved Layout' that has been formed in the year 1983 in Ma.Pa/Va (Ve.Tha)No.75/83 issued by the Deputy Director of Town and Country Planning, Vellore. The said layout consisted of the lands in S.Nos.766, 768, 769, 774 and 989, Chenathur Village. In the said Layout, the area for the plots and the other amenities in the same have been set out clearly. As per the same, the Lands for the Park and Public purposes has been reserved. The said portion was encroached by the Petitioner herein and other similar persons who had put up temporary shops in the area pursuant to the temporary shifting of the Hosur Bus Stand to the adjacent lands that were vacant at the time. At that time, the bus stand was shifted for the purpose of renovating the Municipal Bus Stand.

6. The Learned Counsel for the Respondent/Municipality points out that when the renovation work was completed, the Bus Stand was shifted to the original location. At the time of the temporary operation of the Bus Stand in the area adjacent to the Layout, the shops that were in the Bus Stand had temporarily shifted to the Layout lands that were vacant. Because of the reason that the Bus Stand was shifted temporarily to the area near the Layout Lands, the occupation by the Shops was not

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objected to. Later, the Bus Stand was returned to its original location and the 'Layout' was developed into Houses and Streets.

7. After perusing the details of Layout and the Public lands being identified, it was found that the public purpose land and the Park site was encroached by the Petitioner along with others. Inasmuch as the sites are public purpose that are to be reserved and protected for public use, steps were taken to firstly identify the lands properly and thereafter, the encroachers have been issued with notice to remove their occupations in the Park site. The said Order dated 12.09.2016 is challenged in the present Writ Petition and the impugned Order is perfectly valid in Law.

8. At this juncture, the Learned Counsel for the Respondent/Municipality takes an emphatic stand that the Government School that is referred to by the Petitioner is not part of the Layout lands, either plots or the public purpose lands and the same is on its own Lands and are not falling within the Layout Lands at all and the School is immediately adjacent to the Layout.

9. Moreover, there is no building approval for the Petitioner and that, the Petitioner's structures have sprung up only much later and that too during the temporary shifting of the Bus Stand during the renovation work. The Layout was falling under the Chennathur Panchayat and the said Panchayat was merged with the Hosur Municipality in the year 2011. Till such time, as the Panchayat was in existence, there were only one Panchayat Secretary and the President of the Panchayat who were in charge of the Panchayat. They being non technical persons would not have had any proper knowledge regarding the Layout and the rights of the Local Body. The Layout being a sanctioned Layout, the Local Body is the custodian of the public purpose sites within the same provisions of the Statute.

10. The Learned Counsel for the Respondent/Municipality projects an argument that the site is under encroachment by the Petitioner and were identified as the public purpose land and Park in the Layout No.75/1983 and only in order to clear the encroachment and to develop the park into proper use, the present impugned order has been issued. In reality, the Petitioner has created patta and sale deeds in order to consolidate their illegal occupation, the fact remains that the private Layout has been laid with proper amenities for the residents of the Layout as well as the public as public breathing places. Such reservations are perpetual and cannot be modified at all. The Developer of the Layout cannot sell away the park site and public purpose site at any point of time. Apart from that, mere issuance of patta is not document, conferring title. The Petitioner, having encroached the park

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site, as admittedly rented out the same to third parties and is reaping benefits from the illegal actions.

11. In this connection, a mere running of the eye over the contents of the impugned notice dated 12.09.2016 latently and patently indicates that the Petitioner was described as an 'Encroacher', measuring an extent of 45 sq.ft and also building was constructed for commercial/residential use. The Layout in Ma.Pa/Va (Ve.Tha)No.75/83 consisted of the lands in S.Nos.766, 768, 769, 774 and 989, Chenathur Village. Residential plots were approved by the Town and Country Planning Department as per Layout No.75/1983 and in this land portion, the place meant for Park and public purpose was encroached by the Petitioner and therefore, he was informed of the encroachment made by him and the said encroachment was measured by the Revenue Inspector on 28.09.2016 and that he was informed to remove the encroachment within ten days by himself voluntarily etc.,

12. Admittedly, the Petitioner, without submitting a 'Reply' to the impugned Notice dated 12.09.2016, had approached this Court straight away and has filed the present Writ Petition. As such, keeping in mind with the principles of natural justice and also with a view to provide a reasonable opportunity of hearing and also to prevent an aberration of justice and in furtherance of substantial cause of justice, this Court is of the considered opinion that the Petitioner is to project his version of his stand in the subject property by submitting a detailed explanation before the Respondent within a period of two weeks from the date of receipt of copy of this Order. At the time of submitting explanation, it is open to the Petitioner to submit relevant documents, kist receipt etc., at his command. These documents can be looked into by the Respondent/Municipality and the Commissioner, Hosur Municipality is to pass a reasoned speaking order of course on merits in a qualitative and quantitative terms, assigning necessary reasons by adverting to both the Factual and Legal pleas raised by the Petitioner, at the time of 'Personal Hearing', to be provided by the Respondent.

13. The Respondent/Commissioner, Hosur Municipality is directed to pass 'Final Orders', in question, in an unbiased, fair and dispassionate manner, uninfluenced with any of the observations made by this Court in the present Writ Petition. It is open to the Petitioner to raise Factual and Legal pleas before the Respondent and it cannot be gainsaid that the Respondent/Commissioner, Hosur Municipality is to advert to the points raised (Both the Factual and Legal pleas) in a complete and comprehensive manner within the time adumbrated by this Court. The Petitioner is directed to lend his unstinted co-operation and assistance to the Respondent/Municipality. Till Final Orders are passed, the possession and enjoyment of the

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subject property by the Petitioner shall not be disturbed.

14. With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sr

To

The Commissioner,
Hosur Municipality,
Hosur

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.85022

W.P.No.33976 of 2016

SKV(CO)

rrs 02/01/2019

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