

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.18139 of 2017
and WMP.No.19680 of 2017

Chinnaiya Gounder ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 099.

2.The Special Commissioner,
Town and Country Planning Department,
No.807, Anna Salai,
Chennai-600 002.

3.The Member Secretary,
Coimbatore Local Planning Authority,
Corporation Shopping Complex,
Raju Naidu Street, Tatabad,
Sivananda Colony,
Coimbatore-641 012.

4.The Commissioner,
Coimbatore City Municipal Corporation,
Town Hall, Coimbatore-641 001. ... 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 impugned notice dated 14.06.2017 in Ref.No.4822/2017 issued by the 4th respondent under Section 258 and 441 of the Coimbatore City Municipal Corporation Act and quash the same as illegal as the petitioner's property, house ground and premises bearing Plot No.8, Sri Balaji Nagar, Kalapatti, Coimbatore, forming part of the approved layout 177/89/A2 in No.989 of 1989 is deemed to be released from any reservation, allotment or designation as park or for any public purposes under section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.R.Manickavel
For Respondents : Mr.R.Udhayakumar
Additional Government Pleader
for R1 to R3
Mr.S.Saravanan for R4

O R D E R

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

The petitioner claims that he owns a house property along with a site bearing Plot No.8, Sri Balaji Nagar, Kalapatti Village, which now falls within the limits of Coimbatore City Municipal Corporation, comprised in S.Nos.307, 308, 318, 354 (Part) and 355 (Part) of the said village admeasuring to an extent of 3840 sq.ft and it forms part of approved layout of Sri Balaji Nagar, vide approval No.177/89/A2 dated 03.01.1991. The petitioner would aver that he purchased the plot through a registered sale deed dated 04.07.1991, registered as Doc.No.4146 of 1991 on the file of the Sub-Registrar Office, Gandhipuram, Coimbatore from one Thiru.D.Ashok, for the purpose of constructing a residential unit. The petitioner would further aver that, after effecting purchase, he applied for planning permission/approval to the erstwhile local body and it was also granted, vide approval No.611/200809 dated 18.09.2008 and the petitioner has also put up construction/superstructure in accordance with the sanctioned plan and residing there right from the year 2009 and it is also subjected to statutory levies.

2. The petitioner would further aver that in the year 2011, Kalapatti Town Panchayat came within the jurisdiction of Coimbatore City Municipal Corporation and however, to his shock and surprise, he was issued with the impugned notice dated 14.06.2017 under Sections 258 and 441 of the Coimbatore City Municipal Corporation Act, 1981 [in short "CCMC Act"] by the fourth respondent calling upon the petitioner to vacate from the site/superstructure within 24 hours, failing which criminal prosecution would be launched under Section 441 of the CCMC Act and the encroachments made would also be removed. The petitioner, challenging the legality of the said notice, has filed this Writ Petition and it was entertained and an interim order was also granted.

3. The third respondent has filed a counter affidavit stating among other things that the plot purchased by the petitioner was part of 15.66 acres of land originally belonging to one Mr.D.Ashok, who applied for converting the said lands to housing sites and the same was approved by the second respondent in Na.Ka.No.10738/1989LA dated 22.08.1939 and based on which, the third respondent has also granted approval/permission in

Na.Ka.No.400/89, vide approval No.LP/DT&CP.No.989/89 and one of the conditions for granting approval is that lands admeasuring 1.50 acres is to be gifted and reserved for public purpose i.e., for parking. It is further averred by the third respondent that as per the terms and conditions of the layout approval accorded by the second respondent, the promoter of the layout has to surrender the land earmarked for public purpose and once it is reserved, no officer is competent to modify the layout approval and also took a stand that the Executive Officer of the Panchayat has no authority to revise the planning permission granted by the Director of Town and Country Planning and therefore, prays for dismissal of this writ petition.

4. The fourth respondent has filed a counter affidavit and apart from reiterating the stand taken by the third respondent, has also made a similar plea that the Executive Officer is not competent to modify the sanctioned plan and once the land admeasuring to an extent of 1.50 acres was reserved for public purpose for putting up a park, it cannot be diverted for any other purpose and the Town and Country Planning Authority has no power to modify the same and prays for dismissal of this writ petition.

5. Mr.R.Manickavel, learned counsel appearing for the petitioner has invited the attention of this Court to Chapter IV of the Tamil Nadu Town and Country Planning Act, 1971 [in short "TCP Act"], more particularly to Sections 37 and 38 of the TCP Act and would submit that lands are to be acquired within three years from the date of publication of the notice in the Tamil Nadu Government Gazette under Section 26 or Section 27 of the said Act, otherwise the said land shall be deemed to be released from reservation and admittedly, planning permission was granted as early as in the year 1989 and since within 3 years from the date of publication it has not been acquired, it is deemed to be released and as such, the petitioner has acquired right and title and that apart, after obtaining approval from the erstwhile local body, the petitioner has put up superstructure strictly in accordance with law and it is also subjected to statutory levies. It is the further submission of the learned counsel appearing for the petitioner that even for the sake of arguments that the site reserved for public purpose has been alienated for some other purpose, the impugned order of the fourth respondent is per se unsustainable for the reason that the petitioner has not been given fair and reasonable opportunity to put forward their stand and therefore, the impugned order warrants interference. The learned counsel appearing for the petitioner, in support of his submissions, has placed reliance upon the following decisions:

- (i) Pillayar P.K.V.K.N. Trust thru Ramanathan v. Karpaga N.N.U.S. Rep. By Secretary and Others [CDJ 2010 SC 769].
- (ii) The Commissioner, Aruppukottai Municipality v. K.S.Kamakshi Chetty & Others [CDJ 2011 MHC 4909]
- (iii) Kottivakkam Vaidehi Nagar Residents Association v. The District Collector, Kancheepuram District & Others [CDJ 2017 MHC 6554]

6. Per contra, Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the respondents has drawn the attention of this Court to the conditions of the layout approval and would submit that as per the said conditions, land has to be gifted for park, playground, open space and library and admittedly, the original developer, namely Mr.D.Ashok did not gift the land and though the petitioner may be an innocent purchaser, he is equally bound to abide the conditions of layout approval and since the petitioner has purchased the lands reserved for public purpose and put up construction, it cannot be stated that he has derived right, title and possession in respect of the site and would further add that the local body ought not to have accorded planning permission to the petitioner to put up superstructure and prays for dismissal of this writ petition.

7. This Court has considered the rival submissions and also perused the entire materials placed before it.

8. It is not in dispute that the original developer, namely Mr.D.Ashok had got approved layout, vide Approval No.LP/DT&CP No.989/89 and as per the conditions stipulated therein, lands approved for public purpose have to be gifted and it appears that it has not been done. The local body, namely Kalapatti Town Panchayat, which was in existence at the time of granting layout approval did not insist for gifting of the said site and in fact they went further and granted approval to the petitioner to put up construction/superstructure, which is also subjected to statutory levies. The said local body got merged with the Coimbatore City Municipal Corporation in the year 2011 and nearly for 6 years they went into deep slumber and woke up in the year 2017 by issuing the impugned notice.

9. In the considered opinion of the Court, Sections 37 and 38 of the TCP Act has no application to the case on hand for the reason that it is not even the case of the petitioner that the alleged house site is sought to be acquired for the purpose of development of town panchayat and admittedly, it remains only as approved layout consisting of house sites.

10. In the light of the said position, the decisions relied on by the learned counsel appearing for the petitioners viz., Pillayar P.K.V.K.N. Trust thru Ramanathan v. Karpaga N.N.U.S. Rep. By Secretary and Others [CDJ 2010 SC 769], (ii) The Commissioner, Aruppukottai Municipality v. K.S.Kamakshi Chetty & Others [CDJ 2011 MHC 4909] and (iii) Kottivakkam Vaidehi Nagar Residents Association v. The District Collector, Kancheepuram District & Others [CDJ 2017 MHC 6554] have no application to the case on hand for the reason that the facts of the said cases would disclose that after obtaining approval of the layouts, necessary gift deeds have also been executed and thereafter, once again insistence was made to gift the lands and the Hon'ble Supreme Court of India, taking into consideration of the fact that the local planning authority has also prepared a detailed development plan which also cover the lands belonging to the appellants, held that as per Section 38 of the TCP Act, deemed release would come into operation.

11. Admittedly, in the case on hand, no acquisition proceedings have been initiated over the lands, a portion of which has been purchased by the petitioner. The Court has also considered the alternative plea made by the learned counsel appearing for the petitioner as to the legality of the impugned notice on the ground that no fair and reasonable opportunity has been afforded to him and he has been merely granted 24 hours time to vacate from the site and to remove the encroachments and if reasonable opportunity would have been afforded, he would have effectively put forward his case.

12. In the light of the reasons assigned above, this Court is of the considered view that the provisions of Chapter IV of the TCP Act has no application to the case on hand. However, this Court, taking into consideration that the petitioner has been denied fair and reasonable opportunity to put forward his case in response to the impugned notice, is inclined to pass the following order:

The impugned order passed by the fourth respondent dated 14.06.2017 in Ref.No.4822/2017 shall be treated as a show cause notice, for which the petitioner is at liberty to submit his detailed response in terms of Section 258 of the Coimbatore City Municipal Corporation Act, 1981 by enclosing relevant and authenticated document within a period of six weeks from the date of receipt of a copy of this order to the fourth respondent, who, upon receipt of the same, shall afford fair and reasonable opportunity to the petitioner and consider and dispose of the same on merits and in accordance with law within a period of

ten weeks thereafter and communicate the decision taken, to the petitioner and till such time, the respondents shall defer further decision to demolish the superstructure/dispossess the petitioner from the site in question. It is made clear that the petitioner, till the disposal of the representation/response by the fourth respondent, shall not create any third party rights in respect of the site/superstructure in question and shall not alter it's physical features also.

13. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Secretary,
The State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 099.
- 2.The Special Commissioner,
Town and Country Planning Department,
No.807, Anna Salai, Chennai-600 002.
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Sivananda Colony, Coimbatore-641 012.
- 4.The Commissioner,
Coimbatore City Municipal Corporation,
Town Hall, Coimbatore-641 001.

+1cc to Mr.R.MANICKAVEL, Advocate, S.R.No.29466
+1cc to Mr.S.SARAVANAN, Advocate, S.R.No.29394
+1cc to the Government Pleader, S.R.No. 29968

W.P.No.18139 of 2017

KAN(CO)
TR(14/05/2018)