



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2018

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A.(MD)No.1121 of 2014

Vasanthanagar Kudieruppor Sangam,
Rep. by its President,
M.Chandrasekaran,
Vedachandur,
Dindigul District.

... Appellant/Petitioner

vs.

- 1.The District Revenue Officer,
Dindigul District,
Dindigul.
- 2.The Revenue Divisional Officer,
Palani Taluk,
Dindigul District.
- 3.The Tahsildar,
Vedachandur,
Dindigul District.
- 4.The President,
Thattarapatti Village Panchayat,
Vedachandur Taluk,
Dindigul District.

5.Abdul Muthalif

6.A.Abdul Rahman

7.S.A.B.Mohamed Salavudee ... Respondents / Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, to allow the appeal and set aside the order passed in W.P(MD)No.16228 of 2012, dated 30.07.2014.

Prayer in WP(MD). 16228/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records relating to the impugned order bearing No Na.Ka. NO. 28204/2010/Aa4 dated 29.10.2012 passed by the 1st respondent and quash the same.



For Appellant

: Mr.T.Antony Arul Raj

For R-1 to R-3

: Mrs.J.Padmavathi Devi,
Special Government Pleader

For R-4

: No Appearance

For R-5 to R-7

: Mr.R.Ramadurai

JUDGMENT
PUSHPA SATHYANARAYANA, J.

The writ appeal is directed against the order passed in W.P (MD)No.16228 of 2012, dated 30.07.2014.

2. The brief facts of the case are as follows:

(i) One Association known as 'Vasantha Nagar Kudiyiruppor Sangam' at Vadachandur, Dindigul District, represented by its President filed the writ petition. It is stated that the said Vasantha Nagar was promoted and a layout was drawn in the year 1983 in an extent of 3 acres and 46 cents. The lands were plotted out and were sold by the promoters namely Abdul Rahman, Salavudeen, Boologam and Chandrasekaran. One Nagasundram was acting as their Power Agent. The plot owners are the members of the said 'Vasantha Nagar Kudiyiruppor Sangam'.

(ii) It is further stated that Gift Deeds were executed to the local panchayat for the formation of roads. In the layout, Survey No.661/1B1 and 661/1B30 were allotted for a temple namely Arulmigu Vinayagarkoil, Vasanthanagar. Survey No.661/1B45, 661/1B61 and 661/2B3, were standing in the name of 'Vasantha Nagar Kudieruppor Sangam' and some plots have been earmarked for common purposes like Temple, Children's Park, Well and Overhead Water Tank. Though in the place earmarked for temple, an idol was placed, it is stated to have been unlawfully removed.

(iii) It is the further case of the appellant - Sangam that the total extent of the land earmarked for the public purpose is about 22 cents. While so, the original promoters were trying to alienate the the lands meant for public purposes. Hence, apprehending the same, O.S.No.78 of 2010 was filed by the said Sangam before the District Munsif Court, Vedachandur and the suit is said to be still pending. The fifth respondent is a purchaser from the above said promoters in respect of Survey No.661/1B1. After purchase, he applied for mutation of patta. Though the appellant Sangam entered its appearance and filed its objection, the first respondent allowed the application and issued patta in the names of the erstwhile promoters namely Abdul Rahman, Salavudeen, Boologam and Chandrasekaran. Aggrieved by the same, W.P(MD)No.16228 of 2012 was filed.

3. The learned single Judge having found that there was no separate title deeds in the name of the temple or in the name of the Sangam, dismissed the writ petition.



4. As already stated, the suit is pending before the civil Court. The learned single Judge directed them to work out their remedy before the civil Court. Aggrieved by the order passed by the learned single Judge, the above writ appeal is filed.

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5. Heard the submissions made on either side and perused the materials available on record.

6. It is argued by the learned counsel for the appellant that patta in the name of the temple has been standing for more than 27 years. He further contended that as the land in dispute was already earmarked for the purpose of public use, the promoters have got no right to alienate the same and any such alienation is void ab initio. Survey No.661/1B1 is in the name of the Vinayagar Temple even at the time of UDR proceedings and patta was also issued in the name of the temple in the year 1985, whereas the fifth respondent had purchased the property only in the year 1989 and has applied for the patta in the year 2011 after 22 years.

7. However, it is seen that the civil suit is pending before the District Munsif Court, which is filed only for declaration of title and for permanent injunction not to alienate the property. Curiously, the Revenue Authorities were not added as parties in the suit. In fact, in O.S.No.364 of 1989 filed before the District Munsif Court, Dindigul, a Commissioner was appointed, who has stated that there is a Vinanayagar Temple in the said survey number 661/1B1.

8. The said Sangam is formed by the individual purchasers of plots in the said Vasantha Nagar. The District Revenue Officer had mentioned in the order that during the UDR proceedings patta has been issued for the survey numbers 661/1B1 and 661/1B30 as belonging to the temple. Now the question is whether the patta has to be issued in favour of the fifth respondent or not. The District Revenue Officer in his order had issued patta in the names of Abdul Rahman, Salavudeen, Boologam and Chandrasekaran though the application is filed by the fifth respondent.

9. The learned single Judge also dismissed the writ petition on the ground that the writ petitioner Sangam can work out their remedy before the civil Court. When the lands are left out for a specific purpose to be used by the public, it is not open to the promoters or anybody to sell the same. When the patta is standing in the name of the Vinayagar temple and also in the name of the petitioner Sangam, even without looking at the same, the District Revenue Officer has passed an order cancelling the patta standing in the name of the sangam and the temple and issued patta in the name of the respondents 6 and 7 and two others.

<https://hcservices.ecourts.gov.in/hcservices/>

10. The learned counsel appearing for the appellant relied on

the judgment in Pt.Chet Ram Vashist (Dead) by Lrs. v. Municipal Corporation of Delhi reported in (1995) 1 Supreme Court Cases 47, wherein it has been held as follows:

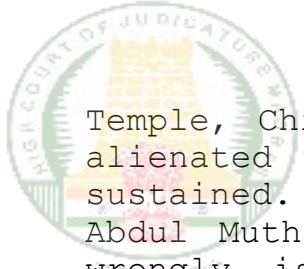
"6.Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and 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. It may be true as held by the High Court that interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost..."

11. The learned counsel appearing for the appellant produced the layout for survey No.661/1-B, Marambady Road at Vedasandur. The disputed portions are marked as Temple, Children's Park, Well & Overhead Tank and for general purposes. This layout has been done in the year prior to 1986. The FMB sketch produced also shows that there has been subsequent sub-divisions in Survey No.661 at various point of time.

12. The term 'public purpose' is defined under Section 2(36) of the Town and Country Planning Act, 1971, as 'any purpose which is useful to the public or any class or section of the public'.

13. In the present case, it appears that the alienation of property is done after the property is earmarked for public/general purpose. Once such layout is filed pointing out that such area is required to be used for public/general purpose, the owner, promoter or developer cannot afterwards wriggle out of such situation. For obtaining approval of any layout, the owner is required to earmark certain area for common purpose under Section 250(2) of Madurai City Municipal Corporation Act, 1971. The said area is only to be dedicated for the same use. Therefore, while dedicating a particular area for common purpose, it cannot be said that the owner or developer gives up such promise to such person and once such promise fortifies in the planned layout, he cannot be permitted to take a different stand.

14. Further, in the present case, the area earmarked happened to be for Temple and Children's Park. Even presuming that the promoter had sold the property, it can be validated subject to the condition that they cannot be put to any purpose other than the purpose for which they were earmarked, namely, construction of



Temple, Children's Park etc. When the open public space has been alienated without any right, the impugned order passed cannot be sustained. Even otherwise, the application is filed only by one Abdul Muthaliff alleging that during the UDR Scheme, it has been wrongly issued patta in names of Vinayagar Koil and Sangam. Whereas, the impugned order is passed by the District Revenue Officer, in favour of Abdul Rahman, Salavudeen, Boologam and Chandrasekaran, without considering any of these factors.

15. In view of the above, we are of the view that the impugned order passed by the District Revenue Officer, the first respondent is not correct and the same is liable to be set aside.

16. In the result, this writ appeal is allowed and the order of the learned single Judge, dated 30.07.2014 made in W.P(MD)No.16228 of 2012, is set aside and the matter is remitted back to the first respondent, by setting aside the order passed by the first respondent dated, 29.10.2012, for fresh consideration by issuing notice to the appellant and respondents herein and any other persons interested by affording them opportunity of personal hearing and pass appropriate orders. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No Costs.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar(CS-III)

PM

To:

- 1.The District Revenue Officer,
Dindigul District,
Dindigul.
- 2.The Revenue Divisional Officer,
Palani Taluk,
Dindigul District.
- 3.The Tahsildar,
Vedachandur,
Dindigul District.

+1cc to Mr.T.Antony Arulraj, Advocate in SR No.93889
+1cc to Mr.R.Ramadurai, Advocate in SR No.94490