



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 12.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.1950 of 2017
and
W.M.P. (MD) .No.1360 of 2018

K.Karunamurthy

... Petitioner

Vs.

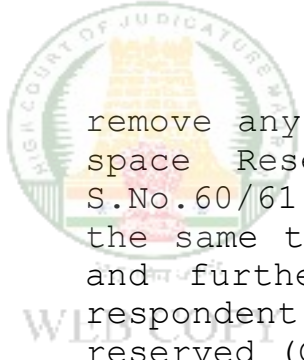
1. The District Collector,
Thanjavur District,
Thanjavur.
2. The Block Development Officer(Village Panchayat)
Panchayat Union Office, Panagal Building,
Thanjavur.
3. The President,
Nanchikottai Panchayat,
Nanji Street,
Thanjavur,
Thanjavur.
4. Anbalagan
General Secretary,
Thanjavur Bank Staff Employee Association,
19/2480 Javuli Chetty Street,
Thanjavur.
- 5.R.Shanmugam
- 6.S.Bhuvaneswari
- 7.The Deputy Director of Town and Country Planning,
Thanjavur.

(R7 impleaded as suo-motu by order dated 12.02.2018

in WP(MD).No.1950/2012)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in Na.Ka.No.Nil dated 24/10/2016 and to quash the same and consequently direct the official respondents to



remove any encroachments made by 5th and 6th respondent in the open space Reserved (OSR) land for public purposes comprised in S.No.60/61 in the approved lay out dated 10/04/1978 and to restore the same to its original position for the usage of general public and further to take appropriate legal action against the 3rd respondent for having permitted construction in the open space reserved (OSR) for public purpose in the approved lay out.

For Petitioner : Mr.G.Sankaran

For R1 : Mr.V.R.Shanmuganathan
Spl. Government Pleader

For R2 & R3 : Mr.S.Chandrasekaran

For R4 : Mr.M.P.Senthil

For R5 & R6 : Mr.G.Karnan

O R D E R

[Order of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.G.Sankaran, learned counsel appearing for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the first respondent, Mr.S.Chandrasekaran, learned counsel appearing for the second and third respondents, Mr.M.P.Senthil, learned counsel appearing for the fourth respondent and Mr.G.Karnan, learned counsel appearing for the fifth and sixth respondents.

2.Considering the direction we propose to pass an order in the writ petition, the Deputy Director of Town and Country Planning, Thanjavur, is suo-motu impleaded as the 7th respondent. The Registry is directed to make necessary correction in the cause title.

3.The petitioner has filed this writ petition challenging the proceedings of the third respondent, dated 24.10.2016 and for a consequential direction to the Official respondents to remove the construction put up by the respondents 5 and 6 on the ground that they have put up construction on the land, which has been used as a Open Space Reserved(hereinafter referred to as "OSR") land for public purpose.

4.One common feature is that the petitioner and the respondents 4 to 6 are the purchasers of the plot in a lay-out, which was approved during 1978. The lay-out was formed by the Thanjavur Bank Staff Employees Association. The petitioner and



the fourth respondent are the members of the said Association. The petitioner now claims himself to be the Secretary of the Resident Welfare Association and the 4th respondent is the Joint secretary of the Thanjavur Bank Staff Employees Association, the promoters of the lay-out. The dispute in the present case lies in a narrow campus and it pertains to an extent of 2346 sq.ft., of land in the said lay-out purchased by the respondents 5 and 6 from one David, vide sale deed, dated 28.12.2015.

5.The petitioner's case is that the land has been kept as the OSR land and the fourth respondent being the subsequent purchaser could not have sold the property and it should have been retained as OSR land. Though there has been various counter allegations in the affidavit and the counter affidavit made by the petitioner and the fourth respondent, we are not inclined to go into those issues at this juncture.

6.The counter affidavit filed by the second respondent/Block Development officer is to the effect that the layout was approved on 10.04.1978 by the erstwhile Panchayat Council through a resolution. The said property, according to the approved plan, is a vacant land meant for public purpose, which was not handed over to the Village Panchayat. It is further stated that as of now, the residents of the locality have constructed a Temple in 3,000 sq.ft., in Survey No.60/1 of the lay-out plan and there is a Over Head Tank constructed in the common pathway located in the same survey number. It is further submitted that the places meant for public uses like Park, Play field, have been left open in the layout and the same was not being developed in the locality. Thus, the stand of the second respondent is that the open space was not handed over to the local body. We find that the layout was approved in the year 1978, by efflux of time, several transactions would have taken place. The petitioner has brought to the notice of this Court that certain inconsistencies between the impugned order dated 24.10.2016 and the counter affidavit filed by the Block Development Officer. Be that as it may, the competent authority should verify as to what is the exact factual position though it appears that there are certain internal disputes between the Association, represented by the petitioner and the promoters Association.

7.As pointed out earlier, we do not propose to go into those controversies and what it required to be done is to verify the original layout plan, conduct a inspection of the area and examine the factual position and decision should be arrived at. Since already the respondents 2 and 3 have taken a stand in the counter affidavit, we deem it fit and proper that the higher level officer should take a decision in the matter, for which purpose, we have ~~severed the court's jurisdiction~~ ^{referred} the Deputy Director of Town and Country Planning, Thanjavur, as the 7th respondent.



8. After an enquiry is conducted by the 7th respondent, the controversies can be put to rest. There is yet another allegation made against the respondents 5 and 6 that the construction put up by them is blocking the water lines and the same is denied by the respondents 5 and 6. This aspect also should be examined by the 7th respondent. The learned counsel for the writ petitioner, on the other hand, would point out that the construction, proceeded, in violation of the interim order of injunction.

9. In the light of the above, the writ petition stands disposed of by directing the respondents 2 and 3 to place the entire papers pertaining to the said layout along with original files before the 7th respondent. The 7th respondent is directed to issue notice to the petitioner as well as the vendor of the respondents 5 and 6 viz., David, S/o. Raja, who is the purchaser of the plot in the said layout. The 7th respondent is directed to enquire into the matter and verify the documents and pass a reasoned order and communicate the same to the parties. The above direction shall be complied with by the 7th respondent within a period of three weeks from the date of receipt of the files from the respondents 2 and 3, who are directed to forward the files within one week from the date of receipt of a copy of this order.

10. Till the orders are passed by the 7th respondent, status-quo, which is prevailing as on today (12.02.2018) in respect of the construction put up by the respondents 5 and 6, shall be maintained. When we made this observation, the learned counsel for the respondents 5 and 6 submitted that already construction has been completed and the house is ready for occupation. Let status-quo be maintained. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-III)

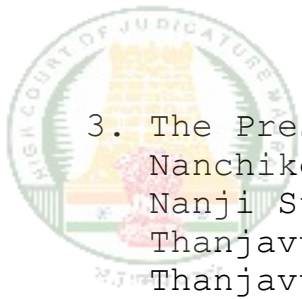
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Sub Assistant Registrar

To

1. The District Collector,
Thanjavur District,
Thanjavur.

2. The Block Development Officer (Village Panchayat)
Panchayat Union Office,
Panchayat Union Office,
Thanjavur.



3. The President,
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Nanji Street,
Thanjavur,
Thanjavur.

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4. Anbalagan
General Secretary,
Thanjavur Bank Staff Employee Association,
19/2480 Javuli Chetty Street,
Thanjavur.

5. The Deputy Director of Town and Country Planning,
Thanjavur.

+ 1 cc TO Mr.M.P.Senthil , Advocate in SR No. 48512
+ 1 cc TO Mr.G.Karnan , Advocate in SR No. 47738
+ 1 cc TO Mr.S.Chandrasekar , Advocate in SR No. 47702
+ 1 cc TO The Special Government Pleader in SR No. 48523

Ns

AE/KKR/SAR2/20.03.2018/5P/10C

**W.P. (MD) .No.1950 of 2017
and
W.M.P. (MD) .No.1360 of 2018
12.02.2018**