

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2019

PRONOUNCED ON : 06.11.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.23335 of 2019 and  
W.M.P.Nos.23094 and 23096 of 2019

1.Ranganayaki  
2.M.Vijayalakshmi

... Petitioners

Vs

1.The Member Secretary,  
Chennai Metropolitan Development  
Authority,  
Gandhi Irwin Road,  
Egmore,  
Chennai - 600 008.

2.The Commissioner,  
Corporation of Greater Chennai,  
Rippon Building,  
Park Town,  
Chennai - 600 003.

3.The Zonal Officer,  
Corporation of Greater Chennai,  
Valasaravakkam,  
Chennai - 600 087.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified mandamus calling for the records culminating in the Approval of lay out ref PPD.LO.No.61 of 1986 of Villivakkam Panchayat Union, Moorthy Nagar, which is a proposed layout of house sites in S.No.35/1, 35/2A pt & 36 of Chettiyar Agaram Village, Then Saidapet Taluk, Chengalpet District, now Maduravoyal Taluk and Chennai District, quash the same in so far it relates to lands comprised in S.Nos.35/1, 35/18, 35/19 & 35/21, 35/20B & 35/21B measuring 0.17.0 ares, situated in Chettiyar Agaram Village, Madurovoyal Taluk, Chennai District and consequently forbear the respondents 2 and 3 from in any way interfering with the petitioners

possession and enjoyment of the lands measuring 0.17.0 ares comprised in S.Nos.35/1, 35/18, 35/19 & 35/21, 35/20B and 35/21B situated in Chettiyar Agaram Village, Then Saidapet Taluk, Chengalpet District, now Maduravoyal Taluk and Chennai District.

For Petitioners :Mr.B.Harikrishnan

For 1<sup>st</sup> Respondent :Mr.S.Thiruvengadam,  
Standing Counsel

For Respondents 2 & 3: Mrs.Karthika Ashok,  
Standing Counsel

#### ORDER

The petitioners has joined together and filed the present writ petition seeking writ of certiorarified mandamus to call for the records pertaining to the approved layout in S.No.35/1, 35/2A pt & 36 of Chettiyar Agaram Village, Then Saidapet Taluk, Chengalpet District, now Maduravoyal Taluk and Chennai District, which they have alleged to have been purchased from one Kirubanidhi through his Power Agent - Mahadevan.

2.Facts involved in this case, as narrated by the petitioners in their affidavit, indicates that one Kirubanidhi who was the owner of the vast extent of the land in S.Nos.35/1, 35/18, 35/19 & 35/21, 35/20B & 35/21B, Chettiyar Agaram Village, Then Saidapet Taluk, Chengalpet District, now Maduravoyal Taluk and Chennai District, has executed a Power of Attorney deed in favour of Mahadevan on 08.06.1981. The said power of attorney deed being coupled with interest more particularly power to plot out the land and sell it @ Rs.7,000/- per plot within six months or @ Rs.5,000/- thereafter, if plots are not sold, towards discharge the loan of Rs.1,65,000/- availed by the Principal - Kirubanidhi from the agent Mahadevan.

3.Pursuant to this power of attorney deed, a portion of the land has been sold out by the Power Agent. Thereafter, some misunderstanding between the Principal and Power Agent has been cropped up crept out which has led to filing of suit in O.S.No.554 of 1983 before the District Munsif Court, Poonamallee, by the Power Agent against the Principal. It is a suit for permanent injunction to restrain the Principal - Kirubanidhi from alienating the property. The said suit was decreed in favour of the Power Agent also confirmed by the First Appellate Court and the Second Appellate Court.

4.The case of the Mahadevan- Power Agent that the landlord - Kirubanidhi entered into an agreement for sale of the land and gave power of attorney to him for selling the land and applying the sale proceeds for the amount due was accepted by the Courts and reached finality on 01.12.1995 when the Hon'ble High Court dismissed the second appeal in S.A.No.1807 of 1991 filed by Kirubanidhi. Pending the above said litigation, Kirubanidhi has applied for lay out approval and had got permission from the first respondent in PPD.LO.No.61 of 1986 in respect of the lay out in S.Nos.35/1, 35/2A pt & 36. The area reserved for road and park in the lay out were gifted to the local panchayat on 30.06.1986.

5.While fact being so, each of the petitioners herein had purchased 9120 sq.ft of vacant land comprised in S.Nos.35/1 and 35/2A part, situated in No.77, Chettiar Agaram Village, Karambakkam limit Villivakkam through sale deed dated 08.08.1994 under two different sale deeds. These sale deeds were registered at Parasala Sub Registrar Village, Kerala since, along with the properties at Chettiar Agaram Village, Saidapet Taluk, Chennai District, a piece of land at Parasala village, Kerala was also purchased by the petitioners from Kirubanidhi through his Power Agent - Mahadevan, under these sale deeds.

6.According to the petitioners, they entered into an agreement with Mahadevan in the year 1981 itself. The sale deeds got registered belatedly in the year 1994 since, there was dispute between Maghadevan and his Principal - Kirubanidhi. The present grievance of the petitioners is that, Kirubanidhi having been restrained from alienating the property, the act of Kirubanidhi gifting a portion of the land to the Corporation of Chennai is illegal. The sanction of lay out by the first respondent pending suit and interim injunction is arbitrary, illegal and suffers from incurable defect apparent on the face of the record.

7.The petitioners contend that the gift deed purported to have been executed by Kirubanidhi in the year 1986, gifting the land to the Corporation of Chennai pursuant to lay out sanction do not have any force of law. When the petitioners sought for transfer of patta in respect of S.Nos.35/1, 35/18, 35/19 & 35/21, 35/20B and 35/21B to an extent of 0.17.0 ares of land situated at Chettiar Agaram Village, Maduravoyal, Chennai, based on the title and copies of judgments and decree of the Courts the same was not considered. Similar request made by the Corporation of Chennai in respect of the land gifted to it for

public purpose, was also not considered in view of the rival claim.

8.The learned Standing Counsel for the third respondent has filed counter affidavit wherein, the contention of the petitioner stoutly denied. According to the third respondent, land measuring 0.17.0 ares comprised in S.Nos.35/1, 35/18, 35/19 & 35/21, 35/20B and 35/21B situated at Chettiar Agaram, Saidapet Taluk found part of the larger extent of the land measuring around 12 acres which was plotted out into housing sites in the name "Murthi Nagar" by Kirubanidhi between 1980-1983. The said lay out was approved by erstwhile Villivakkam Panchayat Union vide PPD.LO.No.61 of 1986. As per the requirement of Town and Country Planning Act, 1971, 10% of the total extent of the land was reserved for open space and public amenities. The land which the writ petitioners claim to have been purchased from the Power Agent of Kirubanidhi are the area reserved for public park. Having purchased the land reserved for public park contrary to the lay out permission granted in the year 1986, the petitioners cannot seek to nullify the lay out approval granted 8 years prior to their purchase.

9.The learned Standing Counsel for the third respondent also submitted that the patta was wrongly issued in the name of the petitioners. Hence, steps are taken to cancel the same. It is pointed out by the learned Standing Counsel for the third respondent that strangely, the petitioners claiming right through the Power Agent of Kirubanidhi challenge only the land gifted by Kirubanidhi to the third respondent for road, park and reserved for public purpose.

10.Referring paragraph No.9 of the trial Court judgment in O.S.No.554 of 1983, the third respondent submitted that the Civil Court has observed that in case where the Kirubanidhi has not transferred or conveyed the disputed land, Mahadevan (Plaintiff) is entitled to sell/deal with the same. Further, the land in S.No.35/1 was transferred by gift deed by one Venkataramanayalu who is the purchaser of the land from said Kirubanidhi. Therefore, the land in S.No.35/1 which is not the subject matter of O.S.No.554/1983 and the same been already transferred in favour of the third respondent, the petitioners are not entitled for relief sought in the writ petition.

11.In the counter, the third respondent has also emphasise that, according to the portion of open space and parks, the land which are reserved for park has to be maintained and used for purpose mentioned as such and cannot be converted even by its owner. The relief claimed by the petitioners after 34 years suffers laches and delay. Therefore, the writ petition has to be

dismissed in limine.

12.The learned counsel for the petitioners relying upon the sale deed dated 08.08.1994 executed by Mahadevan as power of attorney of Kirubanidhi in favour of Vijayalakshmi, the second petitioner herein and the joint patta issued in the name of the petitioners would submit that the third respondent cannot have any right over the said property based on alleged gift deed.

13.The sale deed referred by the petitioners indicate that Item No.1 of the property extended 9120 sq.ft falls in S.No.35/1 and 35/2A part. Item No.2 vacant land 907 ½ sq.ft falls in S.No.35/2A part whereas, the joint patta issued in the name of the petitioners is in respect of S.Nos.35/18, 35/19, 36/8, 35/20B and 35/21B. The schedule of property mentioned in the plaint in O.S.No.554/1983 filed by Mahadevan (the vendor of the petitioners) indicate that the injunction suit pertaining to land in S.Nos.35/3A, 36, 37/1, 37/2, 38 and 45/1 at Chettiar Agaram Village, Saidapet Taluk.

14.On reading the judgment of the learned District Munsif Court in O.S.No.554 of 1983, this Court finds that the recital of power of attorney though confers power to the power agent to sell the plot @ Rs.5,000/-, it does not de-bar the Principal also to deal with the property. No doubt, there was an interim injunction restraining the Principal from alienating the property, but if the defendant/Principal has breached the interim order, the plaintiff/Power Agent ought to have proceeded against him for breach of interim order. Instead, the Power Agent had sold the property on the strength of power of attorney deed to the petitioners. The petitioners had purchased property without proper verification of the records.

15.As pointed out, the survey numbers which are the subject matter of the writ petition is not identical to the survey numbers which are the subject matter of the Civil Suit. More particularly, S.No.35/1 was never the subject matter of the Civil Suit. Similarly, the survey number mentioned in the joint patta issued in favour of the petitioners also does not fully reflects in the sale deed produced by the petitioners before this Court.

16.When the facts, such as title, extent and genuineness of the document (sale deed dated 08.08.1994) are in dispute, issuance of writ of certiorarified mandamus exercising power under Article 226 of the Constitution of India, is improper. Parties have to work out their remedies before the competent Civil Court. If at all the petitioners or his vendors have any

grievance in respect of the land gifted to the local body, they have to seek redressal before the competent Civil Court.

17. Peculiarly, in this case, an approved lay out of the year 1986 is under challenge by way of writ petition filed in the year 2019. Admittedly, 12 acres of land has been plotted out and sold to various parties after identifying places reserved for public purpose and public road. The vendors of the petitioners along with his Principal has sold substantial portion of the land to third parties when they were in good terms. Now, the Power Agent had sold the property gifted to local body for public purpose and the area reserved for public purpose it to the petitioners. It is strange to know that the second petitioner M.Vijayalakshmi is none other than the wife of the Power Agent - Mahadevan. It appears that the land gifted to local body and reserved for public purpose in the approved lay out has been alienated by the Power Agent to his own wife, detrimental to the interest of the public who have purchased the plots.

18. For the said reasons, this Court finds no merit in the writ petition. Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

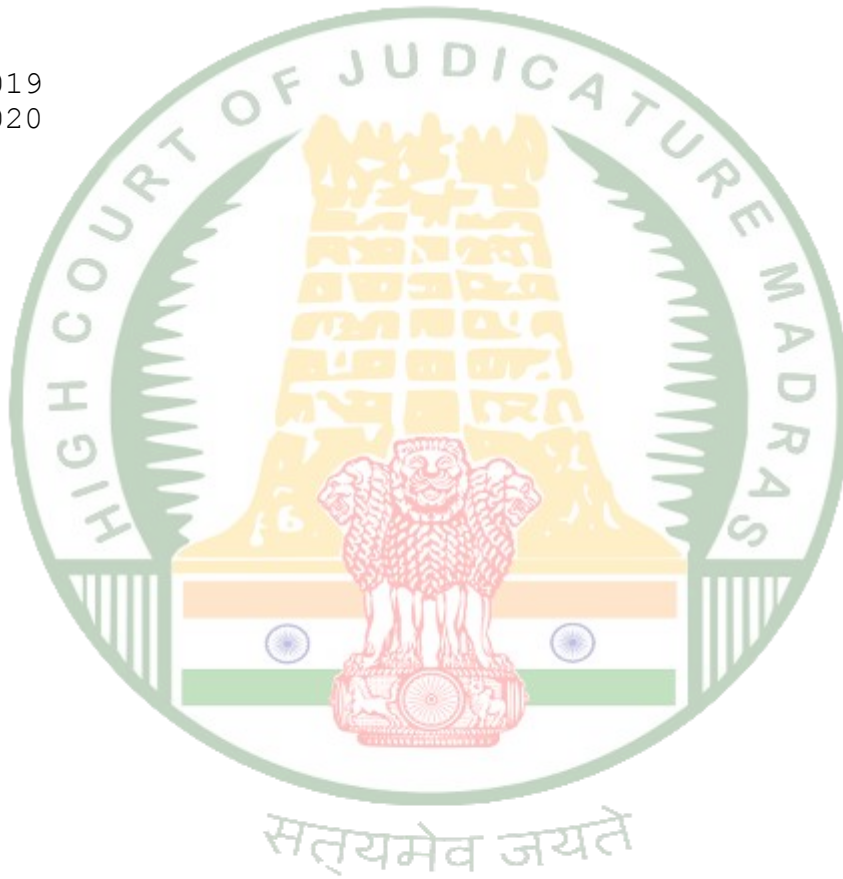
1. The Member Secretary,  
Chennai Metropolitan Development  
Authority,  
Gandhi Irwin Road,  
Egmore,  
Chennai - 600 008.

2. The Commissioner,  
Corporation of Greater Chennai,  
Rippon Building,  
Park Town,  
Chennai - 600 003.

3.The Zonal Officer,  
Corporation of Greater Chennai,  
Valasaravakkam,  
Chennai - 600 087.

+1 cc to M/s.J.Ashok advocate sr93123  
+1 cc to Mr.S.Thiruvengadam Advocate sr92348  
+1 cc to M/s.B.Harikrishnan Advocate sr91918 dt24/02/2020  
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