

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18795 of 2010

M.P.No.2 of 2010 & M.P.No.1 of 2011

1. Mukesh Kumar
2. Meena Jain
3. Vinesh M.Kumar
4. Rekha

...Petitioners

Vs.

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

- 2.The Senior Planner
Enforcement Cell,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned order of the 1st respondent dated 10.06.2010 in Letter No.C3/524/2009 and quash the same and consequently, direct the respondents to sanction planning permission to the petitioners' property in S.No.89/3A4, 89/3A5, 89/3A6, Ullagaram Village, Tambaram Taluk, Kancheepuram District.

For Petitioner : Mr.M.Sriram

For Respondents : Mr.Thiruvengadam (CMDA)

ORDER

The petitioners have filed this writ petition, seeking the following relief:-

"To issue a writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned order of the 1st respondent dated 10.06.2010 in Letter No.C3/524/2009 and quash the same and

consequently, direct the respondents to sanction planning permission to the petitioners' property in S.No.89/3A4, 89/3A5, 89/3A6, Ullagaram Village, Tambaram Taluk, Kancheepuram District."

2.The case of the petitioners is that they have jointly purchased the property in S.No.89/3A6 Old S.No.89/3A admeasuring 18 cents=7848 sq.ft. at 106, Ullagaram Village, Tambaram Taluk, Kancheepuram District from one Mrs.Clara, wife of Vincent and Mr.Lawrence, Mr.Daniel and Mr.Suresh, all are sons of Vincent along with one Maria Ranjitham under a registered Sale deed dated 10.04.2006 vide document No.1190 of 2006 on the file of the Sub Registrar, Alandur, for a valid consideration. Similarly, an extent of 16 cents=6976 sq.ft. of land bearing Door No.46, Medvakkam Main Road in S.No.89/3A4 and Old No.S.No.89/3A part was purchased from the same vendors by the petitioners under a registered Sale Deed dated 13.04.2006 in document No.1256 of 2006 on the file of Sub Registrar, Alandur.

3.After the purchase, apart from checking up the title of the petitioners' vendors, the petitioners approached the respondents by letter dated 02.12.2005, seeking for clarification as to whether these lands are subject to any acquisition proceedings or otherwise. The first respondent vide CMDA-IC-001194/2005 dated 02.01.2006 informed the petitioners that the entire S.No.89 of Ullagaram Village falls within the primary residential use zone and at present, there is no land acquisition proceedings by the respondent office. Further, the first respondent by his letter dated 24.04.2009 has informed that S.No.89 falls in mixed residential and partly lies in road and the alignment is 18.0 m. and further mentioned that it is only by way of information and any sub-division or construction of building or development of land in question is not valid in law unless planning permission is applied for and construction of building and development. The petitioners submitted a planning permission dated 11.01.2010 with necessary payments and also submitted required documents to the respondent for the planning permission. Thereafter, the respondent wanted certain particulars which was also supplied to them. However, without application of mind, the first respondent by letter dated 10.06.2010, returned the planning permission application of the petitioners stating that the PPA received in the reference first cited has been examined in detail and the petitioners are required to revise the plan leaving the link road portion as per Master Plan and hence the entire PPA is returned unapproved. Challenging the return of Planning Permission Application, the present writ petition is filed.

4.Mr.Sriram, the learned counsel for the petitioners would submit that though the respondents have a right to reserve

lands for the purpose of utilizing the said lands for public purpose by Master Plan as per Sections 26 and 27 of the Tamil Nadu Town and Country Planning Act 1971. As per Section 27 of the Tamil Nadu Town and Country Planning Act 1971,

"provided that no such declaration in respect of any particular land covered by a notice under section 26 or section 27 shall be made after the expiry of three years from the date of such notice."

5. In view of the above proviso, they have to implement the master plan within three years from the date of notice and after the expiry of three years, the Master Plan will get lapsed. In the present case, the petitioner made an application on 10.06.2010 and the said application was returned on the ground that there was a proposal for acquiring the said lands in respect of formation of link road as per the Second Master Plan which was published on 02.09.2008. Though the second Master Plan published on 02.09.2008, the same has been expired in the year 2011 itself. In the present case, though the application was returned in the year 2010, after a lapse of nine years, implementing the second Master Plan is unsustainable. Therefore, he prays for allowing the writ petition.

6. Mr. Thiruvengadam, the learned Standing Counsel appearing for the respondents would submit that he did not dispute the facts in the case of the petitioner. The learned counsel for the respondents would submit that though the second Master Plan was published in the year 2008, however, the respondents have a power to implement the same upto 2026. On instructions, he would submit that there is no proposal for acquisition of the lands of the petitioners till date. For taking away the property for the purpose of Road alignment, TDR Certificate has been issued in favour of the petitioners, however, the petitioners refused to receive the same, which is unsustainable. Learned counsel for the respondents fairly conceded that the respondents have not insisted the petitioners to accept the TDR Certificate. Therefore, he prays for dismissal of the writ petition.

7. On perusal of the records, it is seen that the petitioners are the absolute owners of the land and that the Corporation did not deny the title of the petitioners' property. The present case on the hand is that the petitioners made a planning permission application before the first respondent and the said application was rejected on the ground that there is a proposal for acquiring the disputed lands for the purpose of providing link road as per the Second Master Plan published on 02.09.2008.

8. On the approval of the Government, the reservation of the lands has to be implemented within three years. Though the rejection of the planning permission passed in the year 2010, even after nine years, the respondent Corporation is not either acquiring the land or not taking steps to acquire the land for purpose of providing link road as per the second Master Plan. To that effect, the learned counsel for the petitioner relied upon the decision rendered by the Hon'ble Supreme Court in the case of STATE OF MAHARASHTRA V. BHAKTI VEDANTA BOOK TRUST reported in (2013) 4 SCC 676, wherein it is held as follows:

"4. Since the Special Land Acquisition Officer did not take steps in furtherance of the directions contained in the aforesaid order, Respondent 1 issued purchase notice dated 25.07.2007 under Section 127 of the 1966 Act, which was duly served upon the Corporation. After one year, Respondent 1 submitted a plan dated 28.7.2008 for construction of a library building on the land owned by it. The same was rejected the competent authority vide order dated 29.9.2008 on the ground that the land was reserved for the college and the acquisition proceedings had already been initiated.

... ..
15. Recently, another three-Judge Bench, of which both of us were members, considered the scope of Sections 126 and 127 of the 1966 Act in Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawher and others and connected matters and reiterated the view expressed by the majority in Girnar Traders v. State of Maharashtra. In the last mentioned judgment, the Court emphasised that if any private land is shown as reserved in the Development Plan, the same can be acquired within 10 years either by agreement or by following the procedure prescribed under the 1894 Act and if proceedings for the acquisition of the land are commenced within that period and a further period of six months from the date of service of notice under Section 127 of the 1966 Act, reservation will be deemed to have lapsed and the land will be available for development by the owner.

9.In view of the decision cited supra, this writ petition is allowed and the respondents are directed to entertain the application filed by the petitioner and pass appropriate orders as expeditiously as possible. No costs. Connected Mps are closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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To

1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

2.The Senior Planner
Enforcement Cell,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

+1cc to Mr.M.Sriram Advocate, S.R.No.67044

+1cc to Mr.Thiruvengadam Advocate, S.R.No. 67293

NRL(CO)
CB(12/09/2019)

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