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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.7806 of 2009 &
M.P.No.1 & 2 of 2006

S.Raghunathan

...
Petitioner

Vs.

1.The Commissioner,
Coimbatore Corporation,
Coimbatore.

2.The Assistant Commissioner,
(West Region),
Coimbatore Corporation,
Coimbatore.

...
Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent in relation to the proceedings in Na.Ka.No.12148/07 H1 dated 09.04.2008 and in Na.Ka.No.12148/07 H1 (Me) dated 12.06.2008 and in Na.Ka.No.12148/08 H1 (Me) dated 30.01.2009 quash the same and issue a consequential direction to the first respondent to consider the application of building permission dated 14.12.2007 and additional application dated 01.07.2007 and to grant permission to construct the building for hospital to provide medical assistance for public on charitable basis, in a space earmarked for public purpose in Survey No.315 part and 316 part, Ward No.62, Chinnammal Street Extension, Kuppakonpudur, Coimbatore.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.J.Sathya Narayananprasad



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O R D E R

The petitioner has filed this writ petition, seeking the following relief:-

"To issue a to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent in relation to the proceedings in Na.Ka.No.12148/07 H1 dated 09.04.2008 and in Na.Ka.No.12148/07 H1 (Me) dated 12.0.2008 and in Na.Ka.No.12148/08 H1 (Me) dated 30.01.2009 quash the same and issue a consequential direction to the first respondent to consider the application of building permission dated 14.12.2007 and additional application dated 01.07.2007 and to grant permission to construct the building for hospital to provide medical assistance for public on charitable basis, in a space earmarked for public purpose in Survey No.315 part and 316 part, Ward No.62, Chinnammal Street Extension, Kuppakonpudur, Coimbatore."

2.The case of the petitioner is that the petitioner's grand mother viz., Mayakkal, by a registered partition deed, dated 04.10.1945 was given an extent of 2 acres in Survey No.315 part and 316 part of Sanganur Village, Coimbatore District. After her death, the above said property has devolved upon her daughters, viz, Subbathal, Chinnammal and Subbulakshmi. The petitioner is the second son of Chinnammal. The first two daughters viz., Subbathal and Chinnammal died and that the petitioner is only a surviving legal heir of the said Mayakkal.

3.The petitioner's grand mother, mother of the petitioner and her sisters laid out plots in the above said Survey Numbers and obtained approval by order dated 04.02.1976 from the Regional Deputy Director of Town Planning, Coimbatore. As per the order of approval dated 04.02.1976, 17 house sites were approved , 6,600 sq.ft. was earmarked for public purpose and 2,622 sq.ft. is earmarked for commercial shops. As per the lay out plan, house sits were sold out to third parties, however, 6,600 sq.ft. has been earmarked for public purpose. The petitioner did not execute any gift deed in favour of local panchayat or Corporation.

4.In the year 2007, the officials of the Respondent Corporation has inspected the said extent earmarked for public purpose and informed that the said extent should be



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handed over to the Corporation of Coimbatore and thereafter, one of the owner Subbulakshmi, made a representation dated 06.09.2008, stating that the extent of 6,600 sq.ft. is earmarked for public purpose and the same should be used for public purpose and that the said extent vests with the owners of the lay out and that the Corporation of Coimbatore has no ownership over the said said extent, that the owners of the lay out has right to utilize the above said extent for public purpose. Accordingly, the petitioner decided to construct a hospital on charitable basis and utilize the hospital for public purpose. Immediately, the petitioner made a representation to the respondent Corporation. However, the respondent Corporation did not consider the representation. As against the non-consideration of the representation, the petitioner filed a writ petition before this Court in W.P.No.6139 of 2008 and the Hon'ble Division Bench of this Court disposed of the writ petition dated 11.03.2008, with a direction to the petitioner to approach the respondent-Commissioner of Coimbatore Corporation to consider the representation dated 14.12.2007/17.12.2007 and pass appropriate orders. As per the direction of the Hon'ble Division Bench of this Court, the Assistant Commissioner, West Zone, Coimbatore Corporation, passed the impugned order, against which, the present writ petition has been filed.

5.The learned counsel for the respondent Corporation has filed a counter affidavit wherein para-4 of the counter stated that the respondent Corporation maintaining the said disputed area for public purpose.

6.Mr.R.Saseedharan, learned counsel for the petitioner would submit that though this Court in the said writ petition, issued a direction to the Commissioner of Corporation, Coimbatore, to dispose of the representation and without considering the request made by the petitioner and without permitting him to establish the hospital for public purpose, the impugned order is unsustainable and the Assistant Commissioner of Corporation, has no jurisdiction to decide the petitioner's representation.

7.Per contra, the learned counsel appearing for the respondent Corporation submitted that the issue involved in this writ petition is covered by the decision of this Court in KIRUBAKARAN AND OTHERS V. THE COMMERSSIONER (EAST), CORPORATION OF COIMBATORE reported in 2013 (6) CTC 441 and the Hon'ble Supreme Court in PT.CHET RAM VASHIST (DEAD BY LRS V. MUNICIPAL CORPORATION OF DELHI reported in (1995) 1 SCC 47, wherein it was clearly held that as per the



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approval plan, the place earmarked for public purpose cannot be used for private purpose by any one including local body restricted the usage of the public and the property has to be used only as per the approval plan issued by the Town Planning Authority.

8. In the present case, the undisputed facts of the case are that the petitioner's grandmother was the owner of the land in S. Nos. 315 part and 316 part and in the order of approval dated 04.02.1976, 17 house sites had been approved and subsequently they were sold out to third parties. The disputed earmarked 6,600 sq.ft. in the layout has been allotted for public purpose. It is also an admitted fact that the said extent vests with the owners of the lay out and the petitioner who is the only surviving legal heir of Mayakka, has maintained the said extent during the relevant point of time and he maintained the said extent from their own fund. Without executing any gift deed, the owner of the lay out has a right to utilize the said extent. Hence, he made a representation to the Corporation of Coimbatore, to permit him to construct a hospital to provide health care to the needy people at free of cost. As the respondents rejected the said representation of the petitioner, the present writ petition has been filed.

9. The issue put forth in the present case is as to whether the petitioner or promoter entitled to enjoy the land which was allotted for public purpose. The issue started in the year 1976 and immediately after the approval, the duty is cast upon the Authority to permit the petitioner to execute a gift deed in favour of the Corporation. Even the promoter has not executed the deed in favour of the Corporation. The place earmarked for public purpose cannot be alienated either by the promoter or by the Corporation. The very same issue came up for consideration before this Court and a Division Bench of this Court in KIRUBARAKAN V. THE COMMISSIONER (EAST) CORPORATION OF COIMBATORE, reported in 2013 (6) CTC 441, in paragraphs 9 to 14, held as follows:

"9. The Division Bench of this Court in (2007) 3 MLJ 990 (Sri Devi nagar Residents' Welfare Association, rep. by its President, G.P. Godhanavalli, Coimbatore and another v. Subbathal and others, 2007 (3) MLJ 990) considered the earlier decisions of the Supreme Court and held that "public purpose", though cannot be precisely defined, broadly means the



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general interest of the community as opposed to the interest of an individual. In the Judgment of the Supreme Court reported in AIR 1952 SC 252 (State of Bihar v. Kameshwar Singh) it is held that public purpose will be construed to promote the welfare of the people at large and if there is dispute regarding public purpose, the Courts have jurisdiction, and it is their duty to determine the matter whenever a requisition is made to acquire the land according to the spirit of the times in which particular legislation is enacted. The Supreme Court in the decision reported in AIR 1956 SC 294 (State of Bombay v. R.S.Nanji) also took a similar view. When the use of land earmarked for public purpose was unauthorisedly allotted to a School, the Supreme Court set aside the same and the said decision is reported in AIR 1996 SC 253 : (1995) 5 SCC 762 (G.N.Khajuria (Dr) v. Delhi Development Authority). The Division Bench in the above referred judgment held that, "a portion of land reserved for public purpose in a layout or in a development plan or master plan approved by the Local Body cannot be used for any other purpose, than the one specified therein."

10. In the decision reported in 2010 (4) CTC 737 (R.Chandran v. State of Tamil Nadu) the First Bench of this Court considered the proposal for conversion of public park and play ground into an underground car park by the Corporation of Chennai, under the Tamil Nadu Country Planning Act, 1971 and Section 2(34) of the Development Control Rules, etc., and held that if an area is specified as a open space, the Corporation may at best get a right as a "custodian of public interest" to manage it in the interest of society in general and in breach of this custodianship, any attempt to change the user of such land would be



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impermissible under law and would be against the public interest and thus restrained Corporation of Chennai from constructing underground car park in the playground in question situated at Venkatnarayana Road, T.Nagar, Chennai-17. The SLP filed against the said order was also dismissed by the Hon'ble Supreme Court.

11. In the decision reported in 2011 (1) CTC 257 (K.Rajamani v. Alamunagar Residents' Welfare Association) similar issue arose and the Division Bench set aside the Government Order granting permission to change the user of the land from public purpose to housing plot in respect of a land in Coimbatore and in paragraph 22 held thus, "22. The contention of Mr.K.M.Vijayan, learned Senior Counsel for the Appellants is that the law relating to open space would be available only in case of apartments, where the purchaser of an apartment would have right to seek for maintenance of public space as such, as he/she has an undivided share in the open land as well and that law is not applicable to a layout. In our opinion, the said contention is totally on a misconception. The purpose for leaving open space is not only to meet the future developmental activity, but also to meet the recreational activity of the inhabitants. The provision of open space in a development plan is to provide green space as well which is an essential feature in the development of an area. In a layout leaving of certain area of land as open space for use of park is in conformity with the Development Control Rules. Hence, there cannot be a different yardsticks to the de-reservation of land left for open space in the case of an apartment and layout. Only in this context, the provisions of Section 432(10)(b) of the Coimbatore City Municipal Corporation Act relating to the power of the Municipal Corporation to make bye-laws



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in respect of protection of avenues, trees, grass, other appurtenances of public streets and other places was referred to by the learned Judge which, in our considered view, requires no interference. Hence, the learned Judge has rightly quashed the order of the Government in de-reserving the land earmarked for public purpose in the layout into housing plots and we are not inclined to interfere with the same."

Thus, it is evident that the land earmarked for public purpose cannot be used for private use by any one, including the Local Body restricting the usage of the public.

12. In this case, the contention of the appellants are that they are proposing to construct a hospital in the subject land, which will serve public purpose and an affidavit is also filed in writ appeal stage stating that 50% of the patients in the proposed hospital will be treated free of costs. Whether the establishment of a Private Nursing Home in an open space reserved for public park will serve public purpose was already considered by the Hon'ble Supreme Court in the decision reported in (1991) 4 SCC 54 (Bangalore Medical Trust v. B.S.Muddappa). The argument advanced on similar line that the Hospital with Research Centre and free service being more important from social angle, the inhabitants in the locality cannot be said to suffer any injury, much less substantial injury, was totally rejected by the Hon'ble Supreme Court.

13. The learned Senior Counsel for the petitioner relied on the Judgment of the Supreme Court reported in AIR 1955 SC 810 : (1955) 2 SCR 867 (The State of Bombay v. Ali Gulshan) to substantiate his contention that acquisition of sites for building hospital or educational institutions by private benefactors will be a public purpose.



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The said observation made by the Hon'ble Supreme Court cannot be taken advantage of by the petitioner as the issue involved in the said case was as to whether acquisition of land by the then Government of Bombay for housing a member of the staff of a foreign consulate was public purpose or not. The Hon'ble Supreme Court while answering the said issue in favour of the State made only an observation, without going into the types of hospitals or types of the Schools, which are intended to be established for public purpose.

14. "Public purpose", though cannot be given a precise definition, Section 3 (f) of the Land Acquisition Act, 1894 gives the meaning of the expression 'public purpose', which is an inclusive definition. Section 3(f)(vi) to (viii) reads as follows:

"3(f)(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (XXXI of 1860), or under any correspondent law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office."

The said provision was interpreted by the Hon'ble Supreme Court in the decision reported in (1996) 6 SCC 464



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(Ganapathi National Middle School v. M.Durai Kannan), wherein the question arose was as to whether an educational institution aided by the State Government is inclusive of "public purpose". The Hon'ble Supreme Court held that such school receiving aid is an instrumentality of the State, and therefore lands can be acquired for such aided school for "public purpose". In another decision reported in (2011) 6 SCC 125 (Humanity v. State of West Bengal) the Hon'ble Supreme Court while considering the setting up of private school, observed that it may have some element of public interest and may not be a totally business enterprise, but profit motive cannot be ruled out. In paragraph 26 the Hon'ble Supreme Court held thus, "26. The setting up of a private school may have some elements of public interest in it but a Constitution Bench of this Court has held in T.M.A.Pai Foundative v. State of Karnataka ((2002) 8 SCC 481) that the right of a citizen, which is not claiming minority rights to set up a private educational institution is part of its fundamental right to carry on an occupation under Article 19(1)(g). Such an enterprise may not be a totally business enterprise but profit motive cannot be ruled out."

(Emphasis Supplied)

10. On a perusal of the above decision of the Division Bench of this Court, it is seen that the Division Bench has held that if an area is specified as a open space for public purpose, the respondent Corporation therein may at the best get a right as a 'custodian of public interest' to manage it in the interest of society in general and in breach of this custodianship, any attempt to change the user of such land would be impermissible under law and would be against the public interest.

11. Further, the Hon'ble Supreme Court in the decision reported in 1995 (1) SCC 47 (cited supra) held that the Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage



it in the interest of the society in general.

12. In the present case, the promoter wants to construct a hospital in the land which was approved for public purpose, which is impermissible in view of the decision rendered supra which covers to this case. Accordingly, this writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(co)

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Sub Assistant Registrar

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To

1. The Commissioner,
Coimbatore Corporation,
Coimbatore.

2. The Assistant Commissioner,
(West Region),
Coimbatore Corporation,
Coimbatore.

+1cc to Mr.R.Saseetharan , Advocate SR.No. 65444
+1cc to Mr.J.Sathyanarayanan , Advocate SR.No. 65565

W.P.No.7806 of 2009 &
M.P.Nos.1 & 2 of 2009

ss (CO)
A.SK(27/08/2019)