

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM :

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.15393 of 2016

Orders reserved on 06.12.2019	Orders pronounced on 13.12.2019
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A.Subramanian

.. Petitioner

-vs-

1.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai-3.

2.The Regional Deputy Commissioner,
Central Region, Chennai Corporation,
No.36-B, Pullah Avenue,
Shenoy Nagar, Chennai-30.

.. Respondents

Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to order of the 2nd respondent in Ma.Va.Aa.Na.Ka.No.13809/2015(P) dated 23.03.2016, to quash the same and to consequently direct the respondents to allot an equivalent area of land in any other place or in the alternate to pay compensation to an extent of about 1645 sq.ft. as provided under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-settlement Act 2013 forthwith thereto.

For Petitioner : Mr.S.P.Sudalaiyandi

For Respondents : Mr.T.C.Gopalakrishnan,
Standing Counsel

ORDER

This writ petition has been filed by an erstwhile employee of the Corporation of Chennai to quash the proceedings of the 2nd respondent dated 23.03.2016, and direct the respondent-Corporation to allot an equivalent area of land in any other place or in the alternate, pay compensation under the provisions

of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-Settlement Act, 2013 (hereinafter referred to as "Act 30 of 2013"), for an extent of about 1645 sq. ft., which according to the petitioner has been purchased by his mother and wrongfully used by the respondent-Corporation to form a road.

2. The petitioner's case is that a Co-operative Society promoted a layout in the year 1968 and sold the lands as housing plots and one such plot was purchased by his mother on 28.02.1983, bearing Plot No.160. It is further submitted that the petitioner's mother applied for grant of planning permission for construction of a house on the said property. At that juncture, one Somasundaram raised an objection which necessitated the petitioner's mother to file a suit in the City Civil Court in O.S.No.12201 of 1989 praying for a decree of permanent injunction. The suit was decreed by judgment dated 25.11.1993, aggrieved over the same, the defendant preferred appeal in A.S.No.83 of 1995, which was dismissed by judgment dated 03.07.1996. Relying upon the said judgment and decree, the petitioner would contend that his mother is the absolute owner of the property and patta has also been issued in the name of his mother and the land has been used by the Corporation of Chennai to form a road and therefore, the petitioner should either be allotted an alternate site or be paid compensation under Act 30 of 2013.

3. Mr.S.P.Sudalaiyandi, learned counsel for the petitioner has drawn the attention of this Court to the judgment and decree passed in O.S.No.12201 of 1989 and A.S.No.83 of 1995 and the copy of the legal heirship certificate and the encumbrance certificate to show that the petitioner is entitled to the property in question. The learned counsel also referred to the Sale Deed dated 28.02.1983, executed in favour of the petitioner's mother and by referring to Schedule-B therein, it is submitted that the petitioner's mother purchased Plot No.160 and the four boundaries and the extent have been clearly mentioned in the sale deed. Further, it is submitted that the petitioner's mother was granted patta during March, 1989 and the sketch clearly shows the extent of property.

4. Relying upon the decision of the Hon'ble Supreme Court in the case of Raju S. Jethmalani and Others vs. State of Maharashtra and Others reported in (2005) 11 SCC 222, it is submitted that the land owner cannot be deprived of his private property and if the same has been utilised for any other public purpose, then the land owner is entitled for compensation.

5. Mr.T.C.Gopalakrishnan, learned Standing Counsel appearing for the respondent-Corporation submitted that the

petitioner has come out with a false case and the records clearly show that there was no Plot No.160 in the approved layout and there were only 157 plots and the petitioner, being an erstwhile employee of the respondent-Corporation, appears to have managed to obtain planning permit from the Corporation. The area, where the road has been formed, has been clearly earmarked in the approved layout plan and no part of the petitioner's property has been taken over or utilised by the Corporation for the Corporation to pay compensation or to give an alternative site to the petitioner. Further, the layout produced by the petitioner had no signature or seal and there was no approval number and the approved layout consists of only 157 plots approved by the Joint Director of Town and Country Planning vide LPH/DTP/38/64 which was revised as LPH/DTP/98/68.

6. Further, the learned Standing Counsel submitted that the patta which has been produced by the petitioner is an incorrect document, as the Adangal in respect of Survey Filed No.908 stands in the name of Devakiammal and not in the name of the petitioner's mother. The learned Standing Counsel has produced the copy of the approved layout plan along with the letter of the Regional Deputy Director of Town and Country Planning, Chengalpattu Division, and the report of the Tahsildar, Ayanavaran Taluk, dated 02.03.2016 to substantiate the same that the patta in respect of T.S.No.908 stands in the name of Devakiammal.

7. Heard the learned counsel for the parties and perused the materials placed on record.

8. The petitioner claims to have purchased Plot No.160 in a layout promoted by Sakthivel Co-operative House Site Society Limited, which was formerly known as Chellappa Naidu Co-operative House Site Society Limited. Copy of the approved layout plan has been produced by the learned Standing Counsel appearing for the respondents issued in the year 1968 revising the earlier approval granted in the year 1964. The photocopy of the approved layout plan clearly shows the approval numbers. The approved layout plan clearly states that the number of house sites is 157 and the total extent of the housing layout is 14.72 acres. The petitioner claims to have purchased Plot No.160 which has been shown in pencil mark in the sketch. The approved layout plan clearly shows that the so-called Plot No.160 is situated in the middle of a road measuring a width of 40 feet. When there is no Plot No.160 in the approved layout, the contention raised by the petitioner that his mother purchased Plot No.160, which has been illegally utilised by the Corporation to form the road is an argument which has to be outrightly rejected.

9. The petitioner has miserably failed to establish before this Court that the layout plan which was approved in the year 1964-1968 has more than 160 plots. The record shows that there were only 157 plots. If according to the petitioner, plot no.160 was sold to his mother, then the remedy of the petitioner is to approach the society, which sold the property to his mother. Further, at the time of purchase, the purchaser should be diligent enough to see as to whether proper title to the property which has been sold and whether the property forms part of any common area or area reserved for public purpose. Without doing any such due diligence, if a person ventures to purchase a property, then he is doing it at his own risk and cannot turn around and make a claim with the Corporation stating that he should be compensated for the land allegedly purchased by her mother and utilised for the purpose of forming the road.

10. The judgment and decree passed by the Trial Court can in no manner assist the case of the petitioner. In fact, the defendant therein specifically pleaded in the written statement that in the approved layout plan of the year 1968, the area is a road. Though such a specific plea was raised, unfortunately, the learned Trial Court did not frame any such issue. Further, the suit is also bad for non joinder of proper and necessary parties because the defendant was not contending that he is the owner of the property, rather his contention was on behalf of all the persons who have purchased plots in the approved layout and he specifically contended that the land is earmarked for road. If such contention was raised in the written statement, it was a duty cast upon the Trial Court to frame proper issue. The Trial Court ought to have either rejected the suit for non-impleadment of proper and necessary parties, or directed the plaintiff to implead the Corporation of Chennai or the Town Planning Authorities. Furthermore, in the judgment of the Trial Court, or in the judgment of the Lower Appellate Court, there is no discussion as regards the issue whether the land in question is a road or a housing plot in terms of the approved layout plan. Therefore, any such decree of permanent injunction obtained by the petitioner's mother against Somasundaram cannot be put against the respondent-Corporation.

11. Thus, considering the facts of the case, this Court is of the considered opinion that the decision in Raju S. Jethmalani (supra) can in no manner assist the case of the petitioner. The report of the Tahsildar dated 02.03.2016, clearly states that the property in T.S.No.908 stands in the name of Devakiammal. Therefore, it is not known as to how the petitioner's mother was able to obtain a patta in her name in respect of T.S.No.908. The contention of the respondent-Corporation is that the patta itself is likely to be invalid/incorrect document. This submission is made in the light of the

report issued by the Tahsildar, Ayanavaram Taluk, dated 02.03.2016. Photograph, which was produced before this Court shows that there has been a road in existence for several years and it is highly improbable for a person to purchase an extent of land in the middle of a road and the road continues beyond the plot. Thus, for all the above reasons, the petitioner has not made out any case for grant of the relief sought for.

12. In the result, the writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

abr

To

- 1.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai-3.
- 2.The Regional Deputy Commissioner,
Central Region, Chennai Corporation,
No.36-B, Pullah Avenue, Shenoy Nagar,
Chennai-30.

+1CC to S.P.Sudalaiyandi, Advocate, SR.No.104628.

orders made in

Writ Petition No.15393 of 2016

RSV(CO)

CSR: 10.02.2020

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