

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. Nos.5994, 7315 & 7316 of 2013  
and  
M.P. Nos.2 and 2 of 2013

J.John Thangaraj .. Petitioner in W.P. No.5994 of 2013  
R.Ganesan .. Petitioner in W.P. No.7315 of 2013  
J.Chithirai Selvin .. Petitioner in W.P. No.7316 of 2013

-vs-

The Executive Officer,  
Kannampalayam Town Panchayat,  
Coimbatore-641 402. .. Respondent in all cases

Prayer in all cases: Petitions filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the respondent ending with impugned order dated 23.11.2012 in Rc.6/12 and quash the same.

For Petitioners : Mr.N.A.Nissar Ahmed  
For respondent : Mr.ERA.Premnath

COMMON ORDER

The petitioners have come to this Court challenging the correctness of the impugned order dated 23.11.2012 made in Rc.6/12.

2.Learned counsel appearing for the petitioners would submit that the petitioners are the owners of the property bearing Door Nos.12/11-1A, 12/11-1 & 12/11-4, Mahalakshmi Nagar, Kannampalayam, Palladam Taluk, Coimbatore District, by virtue of the registered sale deeds dated 27.02.2006, 14.11.1997 & 27.02.2006 bearing Doc. Nos.1553/06, 4015/97 & 1554/06 and since then they are in possession and enjoyment of the same by putting up a superstructure. Learned counsel appearing for the petitioners would further submit that the above properties purchased by the petitioners does not form part of the area earmarked for public purpose and that the predecessors of the property, have executed a registered gift deed dated 25.08.1989 for public purpose and obtained approval from the Town and Country Planning Authorities. While so, the respondent, without even giving any notice, without following the principles of natural justice and without conducting any enquiry, wrongly cancelled the planning permission.

3.In support of his contention, referring to an unreported judgment dated 16.09.2013 passed by the Madurai Bench

of this Court in W.P. (MD) No.2495 of 2013 in the case of Future General India Insurance Co. Ltd. vs. The Deputy Superintendent of Police, District Crime Record Bureau, Karur District, learned counsel appearing for the petitioners would submit that it is well settled right from Maneka Gandhi v. Union of India, AIR 1978 SC 597 that though the statute does not contain a provision for issuing notice to afford opportunity to an individual, if the order that may be passed is likely to cause prejudice or result in civil consequence against the individual concerned, then it is absolutely necessary for the authority to issue notice and to afford sufficient opportunity for him to make his submissions and the Hon'ble Apex Court has recognised the principles of natural justice as one of the facets of fundamental rights, more particularly, Article 14 of the Constitution of India. Since the impugned order has been passed without following the settled principles of natural justice, the same is liable to be set aside.

4.A counter affidavit has been filed by the respondent stating that the Survey Nos.310, 320, 321 (3A part) and 322 part measuring to an extent of 12.30 acres in Kannampalayam Village, Coimbatore District, originally belonged to one Govindagounder, who has formed a layout in the said land with the technical approval from the Regional Deputy Director of Town and Country Planning, Coimbatore vide LPR (C&N) No.119/82 dated 26.04.1982. As per the said proceedings, the said lands were allocated for public purpose, Creche, Park and shop to the extent of 3059.70, 1356.38, 1170.58 and 572.28 sq.mtrs. As the same should be handed over to the Executive Officer, Kannampalayam Town Panchayat as per Proceedings dated 14.03.1983, the said Govindagounder has executed an undertaking agreement with the respondent Panchayat on 31.05.1982 for complying the layout conditions imposed by the Regional Deputy Director of Town and Country Planning, Coimbatore. Out of the four items mentioned above, items 2 and 3 namely Creche and Park land allocated were handed over by the legal heirs of the layout owners in favour of the respondent Town Panchayat by way of Gift Deed.

5.Learned counsel appearing for the respondent would further submit that item No.4 relates to shop site that was sold by the layout owner as per provisions of law. The remaining item No.1, which was allocated for public purpose, has not been handed over by the layout promoters or legal heirs. As the law mandates that the land reserved for public purpose is a layout place, the same cannot be used for any other purpose than the one specified therein by the layout owner or layout promoters and therefore, the petitioners have no prima facie case. Moreover, on 14.11.2012, on receipt of receiving a representation from the public, the respondent herein conducted an inspection at the site and found that the said land earmarked as public purpose in the approved layout. This was suppressed by the writ petitioners at the time of obtaining planning permission and therefore, the same was cancelled.

6.This Court finds that if it is the contention of the counsel for the respondent that the land in question purchased by the petitioners are forming part of the land earmarked for public purpose as approved in the approval layout, the respondent, before passing the final order, could have issued a notice and given an opportunity to the petitioners to explain their case. It is useful to refer the judgment dated 16.09.2013 passed by the Madurai Bench of this Court in W.P. (MD) No.2495 of 2013 as under:

'10.Of course, it is true that a plain reading of Section 14(4) of the Act would give an impression that notice is to be issued either to the owner of the vehicle or to the person from whom it was seized. But, the said provision does not prohibit the authority from issuing notice to any other interested person. It is too well settled right from Maneka Gandhi v. Union of India, AIR 1978 SC 597 that though the statute does not contain a provision for issuing notice to afford opportunity to an individual, if the order that may be passed is likely to cause prejudice or result in civil consequence against the individual concerned, then it is absolutely necessary for the authority to issue notice and to afford sufficient opportunity for him to make his submissions. This requirement is in tune with the principles of natural justice. Now, the Hon'ble Supreme Court has recognised the principles of natural justice as one of the facets of fundamental rights, more particularly, Article 14 of the Constitution of India.'

7.A perusal of the above order clearly shows that no notice was issued to the petitioners before passing the impugned order. It appears that the land in question appears to have formed part of the land ear marked for public purpose. Since the petitioners claim that the land is not earmarked for public purpose, notice is required to be issued to the petitioners. Accordingly, the impugned order is set aside and the respondent shall pass necessary orders, after giving personal hearing to the petitioners, within a period of eight weeks from the date of receipt of a copy of this order. With the above direction, the writ petition stands disposed of. Consequently, connected M.Ps are closed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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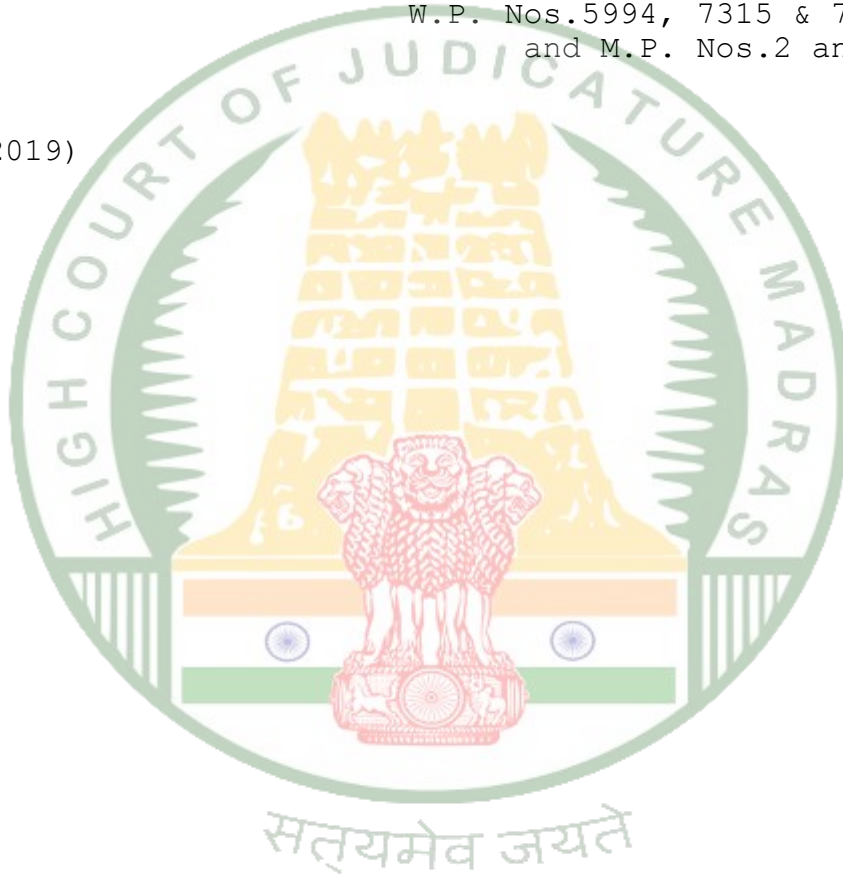
To

The Executive Officer,  
Kannampalayam Town Panchayat,  
Coimbatore-641 402.

+3cc to Mr.Nissar Ahamed, Advocate, S.R.No. 90995, 90993 &  
90992

W.P. Nos.5994, 7315 & 7316 of 2013  
and M.P. Nos.2 and 2 of 2013

NMI (CO)  
GN(20/12/2019)



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