

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.10.2019

PRONOUNCED ON : 30.10.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.19876 of 2019 and
W.M.P.No.19411 of 2019

Mr.Liyakath

...Petitioner

Vs

1.The Principal Secretary to
the State Government,
Housing and Urban Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 2.

3.The Deputy Director,
Town and Country Planning
Ex. Army Soldier Central Complex,
2nd Floor, Port Compound Circle Road,
Opposite to Periyar Park,
Vellore - 632 001.

4.The District Collector,
Chitrarasu Maligai,
Sathuvachari,
Vellore District.

5.The Commissioner,
Mel Visharam Municipality,
Mel Visharam,
Vellore District.

6.The District Registrar,
District Registrar Office,
Arakkonam,
Vellore District.

7.The Sub Registrar,
Arcot,
Vellore District.

8.Mr.Inayadhulla
9.Mrs.Abida
10.Abdhul Rahman
11.Mohammed Shakkirudhin
12.Irfan Ahamed

.. Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the respondents 1 to 5 to take appropriate action to reject the proposal regularization vide No.1206CR dated 24.08.2018 issued by the third respondent and consequently direct the respondents 1 to 5 to restore the subject matter of the property as per original plan in the year 1981 allotted by the deceased Mahin Sahib by considering the representation dated 28.11.2018 and to pass orders thereon on merits and in accordance with law within a time to be stipulated by this Court.

For Petitioner	: Mr.A.Srinivasan
For Respondents 1 to 4	: Mr.N.Inbanathan, Additional Government Pleader
For 5 th Respondent	: Mr.L.P.Maurya
For Respondents 6 & 7	: Mr.T.M.Pappiah, Special Government Pleader
For Respondents 8 to 12	: Mr.P.V.Sudakar

ORDER

The petitioner's wife is the owner of Plot Nos.144, 145, 146 in the unapproved lay out promoted by one Mohammed Mahin Sahib in the name of Jamilabadh, Melvisharam Village, Walajah Taluk, Vellore the petitioner, he has given a representation to the official respondents 1 to 4 and the 7th respondent on 28.11.2018 to reject the plan proposal of regularizing the lay out submitted by the respondents 10 and 11. Alleging that the promoters of the lay out, have presented application for regularization of the lay out plan encroaching upon water body and without providing space for play ground, religious centre, community hall.

2.The specific case of the petitioner is that, the land in S.No.312 in Melvisharam Village to an extent of 26.74 acres was plotted out by Mohammed Mahin Sahib, father of the respondents 8 and 9. Totally, 368 plots in three blocks were plotted out in the year 1981 and sold to various persons after earmarking

common areas for amenities such as park, play ground and other public purposes for the intending purchasers. Later, the respondents 8 and 9 have sold out all the unsold plots in favour of the respondents 11 and 12 in the year 2014. The 11th respondent thereafter, pursuant to G.O.Ms.No.78 Housing and Urban (Na.Va.4(3)) Department dated 04.05.2017 has submitted a regularization plan, in which, the entire area earmarked for park, play ground and public amenities in the original lay out were converted into plots including water body (Malaikannar) and were plotted into residential plots.

3.It is alleged in the affidavit that, for the entire three blocks, only two parks were shown in the plan. The park No.1 in "A" block which can't be utilized as park at all. The said park which is in deep slope towards west of the plot and such a waste land has been shown as park and which is away from the plots and across the Malaikannar (water body). The adjacent vacant sites on each of the blocks which were meant for the common purposes has been shown as area owned by the respondents 8 and 9, which is contrary to the original allotment. Further, in park no.2 as on date, there is no park area as per the plan. But, a public toilet is in existence from 2014. As per the plan from and out of 26.74 acre, the number of plots available are 402. There is no playground, religious center, community hall or center, sufficient rest room facilities, water tank and library. The common well which was in existence as per the plan was filled with earth soil that was also plotted out and there is no common well and water facilities. With these specific allegations, the petitioner has given representation to the first respondent to reject the revised plan proposal of the 11th respondent for regularizing unsold plots.

4.The third respondent has filed a counter affidavit wherein, it is stated that the lay out was promoted in the year 1981 in S.No.312, Walajah Taluk, Vellore District, without any planning permission from the Government. The unauthorized lay out lies in agricultural non planning area of Vellore region as per land use zone. The promoter failed to follow the procedure of getting approval from the authorities for change of land use. The petitioner has purchased few plots in the said unauthorized lay out and has established a shoe factory trespassing the adjacent plot. When the authorities visited the property and scrutinized the relevant papers, they found that the petitioner has put up illegal construction of a company in the name and style of M.F.Shoe Company functioning in the unapproved lay out plot Nos.144,145, 146 without obtaining proper planning permission. Hence, notice was issued to the petitioner for lock and seal.

5. When fact being so, the petitioner has falsely alleged that the authorities are bent upon to regularize the lay out without providing space for public purposes and ratifying the encroachment of a water body. According to the third respondent, the allegations made by the petitioner are false and without any basis.

6. The representation of the petitioner for regularization of unapproved plots in the said lay out was submitted on 04.01.2018 under the regularization scheme 2017. The application has been carefully scrutinized by the third respondent. The lay out contains 179 plots in Block "A" and 171 plots in Block "B" and 52 plots in Block "C". Totally, 402 residential plots. 12171.00 sq.ft land was earmarked for park besides Open Space Reservation (OSR) for public purpose. The regularization was approved on the basis that OSR aggregating to 11.56 % of unsold plot area covered under the regularization scheme.

7. It is contended by the third respondent in his counter that, only after scrutiny and enquiry, the regularization has been approved. As far as the allegation of encroaching the water body is concerned, it is stated by the third respondent that a small stream which carry rain water from the adjoining village is passing through the patta property. There is no Malaikannar (jungle stream) mentioned either in the FMB sketch or in the revenue records. The rain water drain is not a Government poramboke land but falls within the private body land as alleged by the petitioner.

8. The 11th respondent in his counter has stated that the present writ petition is filed with ulterior motive to vendetta with the 11th respondent since action has been taken against the petitioner for trespassing and encroaching upon the neighbouring plot No.147B. Admitting that a lay out was formed in 3 blocks in the year 1981, in the land extending 26.74 acres, most of the plots were sold and for the remaining unsold plots regularization has been sought under the Regularization scheme. With the unsold plots and the land which did not fall within the earlier lay out, nearly 40 new plots were construed and plan for regularization was submitted. In the said plan, area is reserved for public purpose in two blocks 'A' & 'B'. Space for creating park to an extent of 10191 sq.ft in block 'A' and in an extent of 1980 sq.ft in block 'B' has been earmarked and donated to the local authority. Hence, the authorities have approved the

regularization in the lay out on the basis that OSR aggregating to 11.56 % of the entire extent of the land covered under the regularization scheme has been provided.

9.Thus, in the counters, both the third respondent as well as the 11th respondents have categorically denied the allegations made in the writ petition that water body has been encroached and no OSR has been earmarked.

10.The petitioner herein in response to the counter affidavits has filed a rejoinder stating that the allegations made against him about the encroachment and trespass is false. The superstructure put up by him in Plot Nos.144, 145 and 146 are with necessary approval from the competent authority and has reiterated that the respondents 8 to 12 have made illegal lay out from and out of common areas. Because of the re-arrangement, in some parts of the property already allotted for roads have become plots and plots have become roads and electrical high tension wires are crossing the buildings and roads.

11.Regarding the response to his allegation of converting the water body, the petitioner reiterates that the Malaikannar (water body) is assigned with separate S.No.283 and classified as promboke as per the revenue record. The water body originates from Punganur forest and Hillocks region and passes through S.Nos.311, 312, 282 and 287 and reaches river Palar.

12.In respect of OSR, the petitioner states that by taking into consideration of entire Blocks A, B and C, in an extent of 26.74 acres the allocation of 12171 sq.ft for common area falls less than 10%.

13.The learned counsel for the petitioner would submit that the jungle stream being a water body ought not to have been converted into plots and the attempt of the authorities saying that there is no water body within the layout area is absolutely false.

14.From the rival submissions and the records produced by the respective parties, this Court finds that in the year 1981, plots in unapproved lay outs have been sold to various persons and they have even put up construction. After the introduction of regularization scheme in the year 2017, vide G.O.Ms.No.78 Housing and Urban (Na.Va.4(3)) Department dated 04.05.2017, the

Promotor had sought for regularization of the unsold plots. While considering the proposal, the third respondent has taken into consideration of the entire extent of the lay out which is 11,64,794 sq.ft (26.74 acres) in three blocks. Out of 402 plots in the said lay out, now the regularization is sought only for 40 unsold plots and taking that into consideration, the third respondent has considered reserving 12,171 sq.ft for common purpose is sufficient. However, one particular allegation made by the petitioner that by re-drawing the lay out for the sake of regularization, the original allotment of road has become plots and plots have become road depriving the other plot owners right and high tension electricity wires passing through the buildings are not denied in the counter. If it is so, the alleged regularization of the unapproved lay out requires re-look.

15.Hence, the first respondent is directed to depute a competent officer to make a field visit and to submit report regarding the lay out in S.No.312, Melvisharam Village and scrutinize the regularization proceeding of the third respondent vide Number 1206(R)/2018 dated 24.08.2018, in the light of the report and pass appropriate orders, within a period of one month from the date of receipt of a copy of this order. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

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the State Government,
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7.The Sub Registrar,
Arcot,
Vellore District.

+1 CC to Mr.P.V.Sudakar, Advocate sr 90223.
+1 CC to Mr. Laurdhu Paul, Advocate sr 90364.
+1 CC to Mr. Srinivasan, Advocate sr 90186.
+1 CC to Govt. Pleader sr 90714.

W.P.No.19876 of 2019

RSK(CO)
SP(13/11/2019)