

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 04.11.2019

JUDGMENT PRONOUNCED ON : 29.11.2019

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1073 of 2019
and
C.M.P.No.23252 of 2019

The Commissioner,
Tiruppur Corporation,
Tiruppur.

..Appellant/Appellant/Defendant

Vs.

Vasanthakumari

..Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the lower appellate court dated 26.07.2012 in A.S.No.42 of 2008 on the file of the Principal Subordinate Judge, Tiruppur, confirming the judgment and decree dated 29.03.2007 in O.S.No.106 of 2004 on the file of the District Munsif, Tiruppur.

For Appellant : Mr.S.Silambanan, Senior Counsel
for Mrs.P.Shanthi

For Respondent : Mr.T.M.Hariharan

J U D G M E N T
सत्यमेव जयते

The appellant who is a successor in interest of the defendant in O.S.No.106 of 2004 having suffered a decree for permanent injunction restraining it from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and for costs at the hands of the courts below has come up with this Second Appeal.

2. The suit was laid by the 1st respondent claiming that the suit schedule properties situate at Nallur Village belong to one Sundaram Ponnusamy and others, they having purchased the same under a registered sale deed dated 03.12.1981. They were in enjoyment of 50 cents of land in S.No.181 of Nallur Village.

The plaintiff purchased the said property under a registered sale deed dated 12.02.1982 for a valid consideration of Rs.10,850/-. She was also put in possession of the said property. Her name was also included as joint pattadhar by order of the Tahsildar, Tiruppur dated 18.02.1994. The said Vasanthakumari viz., the purchaser being a permanent resident of Chennai had executed a power of attorney in favour of one P.K.Ameetha on 20.10.2003 empowering her to deal with the property including the power of sale.

3. Pursuant to the said registered power of attorney, the said Ameetha, the Agent, sold an extent of 4800 sq.ft. in S.No.181 of Nallur Village to one Krishnamoorthy under two sale deeds dated 04.12.2003. The purchaser was also put in possession of the property. The present suit is laid by Vasanthakumari for the remaining extent of property.

4. According to the plaintiff, the land purchased by her along with other lands was laid out into house sites. The 1st defendant in the suit attempted to interfere with the possession of the plaintiff claiming that the suit site is a reserved site and it is meant for public purpose. It is also claimed that the 1st defendant had put up a board in the property stating that the same belongs to the Panchayat. On a complaint being made by the plaintiff to the Authorities, the Secretary to Government had requested the District Collector to inspect the property on 05.01.2004. The 1st defendant however was claiming that he would not allow the plaintiff to enjoy the property peacefully.

5. On 07.03.2004, the 2nd defendant attempted to trespass into the suit property. Since the 2nd defendant claimed that the attempted interference was at the instance of the 1st defendant, the plaintiff enquired with the 1st defendant as to the actions of the 2nd defendant. The 1st defendant however gave evasive reply. Hence, the plaintiff was forced to seek a decree for permanent injunction against the defendants.

6. The 1st defendant filed a written statement contending that the layout relating to S.Nos.181 part, 182 part and 183 part of Nallur Village was approved in LP/R(CN) No.3.82 and only 136 sites were approved as part of the layout by order dated 13.01.1982. Therefore, according to the 1st defendant, there was no site No.142 in the layout formed in S.No.181 of Nallur Village. It was also claimed that the averments in paragraph Nos.3 to 6 are self-serving and the plaintiff was put to strict proof of the said averments.

7. It is also contended that as per the plan approved by the Senior Deputy Director of Town and Country Planning, Coimbatore dated 13.01.1982 a total extent of 12.27 acres was formed into a

layout containing of 136 sites and common area of 3152.76 sq.m, provision for shops 261.97 sq.m, place for School and play ground measuring about 2195.76 sq.m, open area of 39.02 sq.m, and place for overhead tank and Well of 462.64 sq.m. Therefore, according to the defendant, the part of S.No.181 purchased by the plaintiff was land that was reserved for school and play ground under the approved plan.

8. It is also claimed that the plaintiff has suppressed the factum of approval and the reservation of the land. It is the further contention of the 1st defendant that regarding a reserved site one Rathinasamy had filed a suit for permanent injunction in O.S.No.168 of 1998 on the file of the Sub-Court, Tiruppur. In I.A.No.327 of 1998, the Subordinate Judge, Tiruppur had held that there were only 136 sites and the remaining lands were reserved for school, park and play ground. The other allegations contained in the plaint were also denied.

9. Therefore, according to the 1st defendant, the land being reserved for school and play ground vests in the 1st defendant, hence, the 1st defendant is the owner of the property. It was therefore contended that the plaintiff cannot seek a decree for permanent injunction against the 1st defendant who is the real owner. The 2nd defendant adopted the contentions of the 1st defendant.

10. At trial, the power of attorney of the plaintiff was examined as PW1 and two other witnesses were examined as PW2 and PW3. Ex.A1 to Ex.A13 were marked on the side of the plaintiff. One Manickam was examined as DW1 and one Mayilsamy was examined as DW2. Ex.B1 to Ex.B12 were marked.

11. The trial court upon consideration of the evidence on record found that the suit property along with other properties have been laid out into plots with the approval of the Town and Country Planning Authorities in the year 1982. The approved plan was produced as Ex.B5. The trial court also concluded that as per the approved plan Ex.B1, the suit properties have been shown as area reserved for school and play ground. It also found that the developer who obtained the planning permission had executed a gift deed under Ex.A13 in respect of roads in favour of the 1st defendant.

12. The trial court also found that though the portion earmarked as road in the layout plan had been gifted to the 1st defendant, the other public places have not been so gifted by the developer. Since there was no gift in favour of the 1st defendant, the trial court concluded that the 1st defendant cannot be considered as the owner of the property.

13. After referring to the judgment of the Hon'ble Supreme Court in Pt. Chet Ram Vashist (dead) by Lrs. Vs. Municipal Corporation of Delhi, reported in AIR 1995 SC 430, the trial concluded that though the 1st defendant is not the owner of the property, the 1st defendant is entitled to ensure that the property is used as per the conditions set out in the layout plan. The trial court further found that the plaintiff is entitled to use the suit property for the purposes found mentioned in the approved plan viz., Ex.B1. The trial court also found that the defendant cannot object to the usage of the land by the plaintiff for the purposes mentioned in the planning permission.

14. On the aforesaid findings, the learned trial Judge decreed the suit concluding that the plaintiff shall not use the property for any other purpose other than the purpose mentioned in the sanctioned layout plan, Ex.B1. Aggrieved, the defendant preferred an appeal in A.S.No.42 of 2008. During the pendency of the appeal, the defendant, Panchayat was formed as a Municipality and thereafter, it was annexed to Tiruppur Corporation by G.O.Ms.No.140 dated 15.09.2011. Therefore, pending appeal, amendment was carried out to the grounds of appeal describing the appellant as the Commissioner, Tiruppur City Municipal Corporation.

15. The lower appellate court on a consideration of the evidence on record agreed with the conclusions of the trial court. Pending appeal, a Commissioner was appointed in I.A.No.3161 of 2009 to inspect the suit property and submit his report on the physical features. The Commissioner inspected the suit property and found that there is a nursery school in the name of Ameetha Nursery and Primary School functioning in the suit property, where the students were studying in standards I to V. The lower appellate court concluded that the plaintiff is in possession of the property and is running a school in the said property.

16. The lower appellate court therefore concluded that the plaintiff being the owner of the property is entitled to use the property for the purposes mentioned in the sanctioned plan. So long as the property is being used for the purposes mentioned in the sanctioned plan, the 1st defendant who is only a Regulating Authority has no right to claim title or interfere with the possession of the plaintiff. On the aforesaid findings, the lower appellate court dismissed the appeal. Aggrieved, the 1st defendant has come up with this Second Appeal.

17. I have heard Mr.S.Silambannan, learned Senior Counsel appearing for Mrs.P.Shanthi, learned counsel for the appellant Corporation and Mr.T.M.Hariharan, learned counsel appearing for the respondent.

18. Mr.S.Silambannan, learned Senior Counsel appearing for the appellant Corporation would contend that once the property is shown as a reserved site meant for a public utility in the approved plan, the property would vest with the local Authority be it a Panchayat or Municipality or Corporation. Once the property vests in the local Authority, the developer/ owner has no right to alienate the property in favour of third persons. Therefore, according to Mr.S.Silambannan, learned Senior Counsel, once it is found that the property subject matter of the suit has been shown as a reserved site meant for school and play ground in the approved plan sanctioned in the year 1982 (Ex.B1), the property vests in the Nallur Panchayat. On its upgradation as Municipality and subsequent inclusion in the Tiruppur Corporation area, the Tiruppur Corporation/ appellant herein will become the absolute owner of the said property. Any alienation made by the owner/ developer of such properties which were shown as reserved sites will not confer title on the purchasers. Therefore, according to him, the courts below were wrong in decreeing the suit subject to the condition that the suit property must be used only as a school.

19. Contending contra, Mr.T.M.Hariharan, learned counsel appearing for the respondent would contend that primarily there are two kinds of reserved sites. The first one being land reserved for roads and other public utilities like park etc. The second category of reserved sites would be the sites reserved for shopping complex, school, post office, police station and other public utility services.

20. According to Mr.T.M.Hariharan, learned counsel the requirement of execution of the gift deed is only for those areas which are reserved as roads and parks viz., properties that are meant for enjoyment by the purchasers of the layout. The other sites which are reserved for either commercial complex or police station or school or bus stand will not automatically vest in the local authorities. As per the Town and Country Planning Act those sites will have to be acquired by the concerned local authorities within a period of 3 years and if they are not so acquired, those sites will revert back to the developer/ owner and they are at liberty to alienate the same.

21. On the basis of the arguments of the counsel appearing on either side, the following question of law is framed:-

Whether the courts below were right in concluding that a site reserved for the purposes of school will not vest in the local authority upon grant of the planning permission?

22. I have considered the rival submissions. From the facts narrated above, it is clear that the suit property was shown as reserved site for the purpose of school and play ground in the planning approval granted by the Directorate of Town and Country Planning in the year 1982 under Ex.B1. Insofar as the other lands viz., lands shown as roads and parks it is admitted that the developer/ owner had executed a gift deed in favour of the Panchayat. It is also admitted that no such gift deed was executed in respect of the suit properties.

23. Mr.S.Silambannan, learned Senior Counsel appearing for the appellant would contend that once it is shown as a reserved site, de hors the execution of the gift deed, the same will vest in the local authority and the developer/ owner of the layout loses the right to deal with it. Therefore, according to Mr.S.Silambannan, learned Senior Counsel, the sale made by the developer/ owner on 12.02.1982 cannot confer any right on the plaintiff over the suit property. Hence, according to him, the plaintiff cannot seek an injunction as prayed for in the suit.

24. Contending contra Mr.T.M.Hariharan, learned counsel appearing for the respondent would submit that insofar as the sites classified as road or park which come within the first category viz., public utilities there is a mandatory provision that the owner/ developer must execute a gift deed in respect of the same in favour of the local Authority. According to him, the same is not the position in case of sites reserved for other utility services viz., shopping complex, school, police station, post office etc. In such case, according to Mr.T.M.Hariharan, unless the said property or said lands are acquired by the Government or the local authority within a period of 3 years, the properties would revert back to the owners and the owners are free to deal with the same in the manner they like.

25. He would also submit that the local authority cannot question the enjoyment of the property by the owner or developer so long as it is used for the purposes for which it was reserved by the owner or developer or a subsequent purchaser.

26. Mr.T.M.Hariharan, would also draw my attention to the judgment of the Hon'ble Supreme Court in Pt. Chet Ram Vashist (dead) by Lrs. Vs. Municipal Corporation of Delhi, reported in

AIR 1995 Supreme Court 430, wherein, the Hon'ble Supreme Court had an occasion to consider the right of the owners of the layouts to such reserved sites. The Hon'ble Supreme Court after considering the provisions of the Delhi Municipal Corporation Act concluded that as per the provisions of the Act, the Corporation cannot claim a right or interest in the property of the owner. While doing so the Hon'ble Supreme Court has observed as follows:-

Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. 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. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.

27. Mr.T.M.Hariharan would also invite my attention to the judgment of the Hon'ble Supreme Court in Pillayar P.K.V.K.N. Trust through Ramanathan Vs. Karpaga N.N.U.S. Represented by

Secretary and others reported in (2010) 9 SCC 344, wherein, the Hon'ble Supreme Court considered the provisions of Tamil Nadu Town and Country Planning Act with reference to reservation for other public utility services. That was a case where the Government by an order de-reserved certain plots in the layout approved by the Tallakulam Town Panchayat on 19.05.1972. Those plots were reserved for public utility services like school, shopping complex etc.,

28. The power of the Government to de-reserve such plots was challenged by the residents of the layout who formed a Welfare Association. The order de-reserving the plots was quashed by a Division Bench of this Court. On appeal by the owner/ developer, the Hon'ble Supreme Court after exhaustively referring to various provisions of the Tamil Nadu Town and Country Planning Act came to the conclusion that the plots that were reserved for other purposes and that were not for public utility service as stated above and that were not acquired by the Government within a period of 3 years will revert back to the owner by virtue of Section 38 of Town and Country Planning Act. Therefore, the de-reservation by the Government cannot be questioned by the owners of the plots in the layout. In concluding so, the Hon'ble Supreme Court had held as follows:-

25. The High Court then referred to the argument made that admittedly 40 plots were private land and, therefore, even if it is presumed that it was included under the plan of 1992, yet since the land was not acquired either by agreement or by acquisition, they would be deemed to have been released from reservation. The High Court has undoubtedly posed this question up to paragraph 16 but has chosen not to answer it till last. We, therefore, put the same question to the Counsel for the respondent as also to the Counsel for the Government and both the Counsel fairly conceded that the land is still not acquired.

26. Section 38 of The Tamil Nadu Town & Country Planning Act, 1971 runs as under:-

"38. Release of land:- If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27-

(a) no declaration as provided in sub-section (2) of section 37 is published in respect of any land reserved, allotted or designated for

any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation."

27. In view of the admitted position that the land is not acquired by agreement till the date of the judgment of the High Court, the deeming clause would certainly come into force and, therefore, the concerned land would certainly be deemed to have been released.

28. The High Court has also referred to the reported decision in Raju S. Jethmalani & Ors. Vs. State of Maharashtra & Ors. [2005 (11) SCC 222], where this Court has clearly held that the owner of the special land cannot be prohibited from using it since it is the private property and Government cannot deprive the persons from using their private property and, therefore, the acquisition of the property is a must before any such person is restrained from using the land.

29. Mr.S.Silambannan, learned counsel appearing for the appellant would however draw my attention to the judgment of the Hon'ble Supreme Court in Bangalore Medical Trust Vs. B.S. Muddappa And Others reported in 1991 AIR SCW 2082, wherein the Hon'ble Supreme Court had held that the Government has no power to convert a site which was reserved for public park.

30. I do not think that the said decision could be safely applied to the facts of the present case, inasmuch as the site in question was reserved for public park and not for a school and play ground. Therefore, it fell under the category of sites, which are not compulsorily transferable to the local authority on approval of the plan.

31. The land in question was part of a panchayat at the time when the permission was granted. The planning permission was granted subject to the condition that the lands classified as roads and parks should be handed over to the local authority by way of a gift deed. It is not in dispute that such handing over

has been done. Even at the time when the lands were handed over, the Authorities did not insist for handing over of the suit land. It continued to remain with the owner who had dealt with it by way of a sale.

32. In Raju S.Jethmalani and others Vs. State of Maharashtra and others reported in (2005) 11 SCC 222, the Hon'ble Supreme Court has considered the case of the town planning and land use. After referring to the Bangalore Medical Trust Vs. B.S. Muddappa And Others reported in 1991 AIR SCW 2082, the Hon'ble Supreme Court had held as follows:-

There is no prohibition for preparing the development plan comprising of private land but that plan cannot be implemented unless the said private land is acquired by the Government for development purpose. In the present case, the area comprising in the plot No.438 belonged to the appellants and that no steps were taken to acquire the said land by the State Government or by the Municipal Corporation of Pune and the Municipal Corporation had already expressed their inability to acquire that land and therefore, the said land has been de-reserved by the State Government. Therefore, the present case has no semblance with that of the Bangalore Medical Trust case (supra). The question is whether without acquiring the land can the Government deprive a person of his use of the land ? This in our opinion, cannot be done. It would have been possible for the Municipal Corporation and the Government of Maharashtra to acquire the land in order to provide civic amenities. But the land in question has not been acquired. We are quite conscious of the fact that the open park and garden are necessary for the residents of the area. But at the same time we cannot loose sight of the fact that a citizen is deprived of his rights without following proper procedure of law.

33. In Balakrishna H.Sawant and others Vs. Sangli, Miraj and Kupwad City Municipal Corporation and others reported in (2005) 3 SCC 61, the Hon'ble Supreme Court had considered the case of a reservation for high school and play ground in a development plan. Considering the same, the Hon'ble Supreme Court concluded that the land reserved for such purposes ought to be acquired by the local authority or the State within a period specified under law and if no such acquisition has been made the local authority

or the Government cannot claim right over the said property only on the basis of the declaration made in the development plan.

34. Mr.S.Silambannan, learned Senior Counsel appearing for the appellant Corporation would however try to make a distinction that these cases which arose before the Hon'ble Supreme Court were cases arising out of detailed development plans prepared by the Planning Authority under the provisions of Town and Country Planning Act. The principle therein cannot be therefore extended to cases where layouts prepared by individual owners of the lands are approved on the basis of the reservations made.

35. I am unable to accept the said argument of the learned Senior Counsel. In fact, in Pillayar P.K.V.K.N. Trust through Ramanathan Vs. Karpaga N.N.U.S. Represented by Secretary and others reported in (2010) 9 SCC 344, the Hon'ble Supreme Court had considered the layout plan sanctioned by the Panchayat in the year 1972 and held that the lands which were reserved for public utility services like school and play ground, commercial complex, police station and other public utility, services will have to be acquired under the relevant provisions of the Town and Country Planning Act. If no such acquisition is made, the land will revert back to the owner and the owner will be entitled to the same.

36. Section 49 of the Tamil Nadu Town and Country Planning Act provides for grant of permission for development. The Development Control Rules framed thereunder require certain reservation to be made for public purposes and for public utility services. There is no provision which provides for vesting a such reserved sites in the local authority or the Government as the case may be.

37. The Act envisages acquisition of land which are shown as areas reserved for a public utility services. Admittedly, though the plan was approved as early as in the year 1982 no steps have been taken by either the appellant or its predecessors viz., Nallur Municipality and Nallur Town Panchayat to acquire the land in question. It is also an admitted case that there was no gifting of the land in question by the developer/ owner to the local authority.

38. In view of the same the ownership of the land never got transferred to the appellant or any of its predecessors. Hence, the appellant cannot claim any title to the said property and it never vested in the appellant at any point of time. At best as pointed out by the Hon'ble Supreme Court in Pt. Chet Ram Vashist (dead) by Lrs. Vs. Municipal Corporation of Delhi, reported in AIR 1995 SC 430, the appellant Corporation can only ensure that

the land is used for the purposes for which it was shown to be reserved in the layout plan. The Commissioner appointed by the lower appellate court has infact found that the school is being run in the land in question which is in conformity with the conditions of the approved plan. In view of the same, the question of law framed is answered against the appellant.

39. The appeal therefore fails and it is accordingly dismissed. However, in the circumstances, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Subordinate Judge,
Tiruppur.
2. The District Munsif,
Tiruppur.
3. The Section Officer, V.R. Section,
High Court of Madras, Chennai 600 104.

+1 CC to M/s.P. Shanthi, Advocate sr 100351
+1 CC to Mr.T.M.Hariharan, Advocate sr 99709.

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SJ(CO)
SP(09/06/2020)

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