

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.09.2019

Pronounced on: 12.09.2019

Coram::

The Honourable Dr. Justice G. Jayachandran

Writ Petition No. 21101 of 2019
& W.M.P. No. 23619 of 2019

C. Moorthy,
S/o. N. Chandra,
President, Kesari Nagar Welfare Association,
No. 1, Kesari Nagar, 4th Street,
Adambakkam, Chennai - 600 088.

... Petitioner

/versus/

1. The District Collector,
Chennai District,
Singaravelan Building, Chennai - 1.

2. The Commissioner,
Corporation of Chennai,
Chennai - 3.

3. The Assistant Commissioner,
Zone 12, Alandur,
Corporation of Chennai,
Alandur, Chennai - 16.

4. The Special Tahsildar,
Alandur Municipality,
Alandur, Chennai - 16.

5. Tvl. R. Jayachandran,
S/o. Late A. S. L. Rajan,
No. 397, Muthukumarasamy Naichen Road,
Alandur, Chennai - 16.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondents 1 to 4 to pass orders on the representation dated 28.10.2018 and the reminder representation thereto dated 27.06.2019, seeking cancellation of patta on merits and within a time to be stipulated by this Hon'ble Court, after affording an opportunity to the 5th respondent and pass orders.

For Petitioner : Mr.L.Chandrakumar

For R5 : Mr.Kabir, Senior Counsel,
for Mr.G.Krishna Kumar

For R1 & R4 : Mr.K.Ravi Kumar,
Additional Government Pleader

For R2 & R3 : Mrs.Karthika Ashok,
Standing Counsel

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner herein is the President of Kesari Nagar Welfare Association, Adambakkam, Chennai. This petition is filed by him seeking Writ of Mandamus, to cancel the patta which stands in the name of the 5th respondent. It is alleged in the affidavit of the petitioner that the 5th respondent has clandestinely converted area allotted for Open Space Reservation (OSR) in the planning permission of the lay out developed by the 5th respondent father late A.S.L.Rajan.

3. The petitioner claims that, the lay out was approved by the Alandur Municipality vide proceedings No.273/73. Towards sanction of the planning permission places were earmarked for housing sites, park, etc. Specifically 10% of the open space was meant for public purpose. In the lay out of 7.75 acres of land, 7.2 grounds in S.No.255/4 Part, Pymass No.504/12, 508/1, 509/1 and 516/2 in the Planning Permission No.273/1973 came to be classified and categorized for public purpose. Consequent to the death of said A.S.L.Rajan, his son the 5th respondent has obtained patta for the OSR land by furnishing the death certificate of his father A.S.L.Rajan. Taking advantage of the patta, the 5th respondent initiating steps to sell the land earmarked as open space. The petitioner has come to know that the 5th respondent is going to create third party interest in the area of 7.2 grounds which has been earmarked as OSR in the Planning Permission in PPA No.273/1973 but wrongly issued patta to in 5th respondent. Hence, the petitioner gave a representation on 27.06.2019 reiterating the earlier representation dated 28.10.2018 for cancellation of patta wrongly given to the 5th respondent. The said representation is yet to see the light of the day, hence the present writ petition.

4. The 5th respondent has filed counter affidavit stating that, the Writ Petition is not maintainable. The averments made in the affidavit are not correct. The said land was not earmarked as OSR in the Planning Permission. The land is not used other than the purpose for which it was earmarked under the planning permission. His father A.S.L.Rajan purchased a large extent of property in S.No.255/4 in Adambakkam Village, during the year 1975 through various sale deeds. He promoted the land into a layout. Under the sanction layout plan 7.2 grounds of land was earmarked for Kalyana mandapam (marriage hall) and same was retained by his father Rajan. On 16.07.2005, the said Rajan died. The 5th respondent being one of the legal heirs of Rajan got absolute right over his property after other legal heirs of A.S.L.Rajan executed release deeds in favour of the 5th respondent. Thus, 5th respondent got the patta transferred in his name based on the records.

5. Earlier, when he made representation to the C.M.D.A seeking permission to convert the area marked for kalyanamandapam into 8 residential plots, the request was rejected by CMDA. Against which he preferred appeal before the Housing and Urban Department, Government of Tamil Nadu. The appeal was also rejected by the Government vide G.O.Ms.No.195, dated 19.12.2016. However, the Government permitted the 5th respondent to resubmit the proposal for construction of Kalyanamandapam. On receipt of the proposal, the C.M.D.A has issued planning permission for the kalyanamandapam on 21.10.2018. The 2nd respondent, Commissioner of Corporation, Chennai has issued building permission on 30.01.2019. On the strength of the planning permission, he has commenced construction of Kalyanamandapam.

6. As per G.O.Ms.No.743, Housing and Urban Development Department dated 10.05.1979 all layouts/sub-divisions approved or effected before 05.08.1975 are exempted from providing OSR. Hence, the contention of the petitioner that land earmarked for OSR clandestinely converted into kalayanamandapam, space is factually incorrect and misleading. In the layout plan approved by the authorities, the area is specifically marked for kalyanamandam and it is not OSR land as alleged by the petitioner.

7. Earlier the petitioner claiming to be the Member Association of Federation of Adambakkam Welfare Associations

filed W.P.No.998 of 2018 through Federation of Adambakkam Welfare Association seeking relief of Mandamus directing the District Collector and the Commissioner of Chennai Corporation to take possession of the said property and permit the members of the petitioner association and public to use the said property as park and community hall and not to permit the 5th respondent to construct thereat. This writ petition is pending and suppressing pendency of this writ petition, the present writ petition is filed in the name of the Association after failing in their attempt to stale the construction by filing writ in the name of federation.

8. In the earlier writ petition, the petitioner has averred that the subject land is earmarked for community hall. Contrary to the said averment, in the present writ petition, it is averred that the subject land is earmarked as OSR. The attempts of the petitioner to convert the private land into public park was rejected by the authorities through their letters dated 21.03.2012, 15.12.2014 and 01.08.2016. Despite intimation about the ownership of the land and the nature of the land, the petitioner wants the cancellation of patta granted to the lawful owner and had revived his representation again suppressing the previous reply given by the authorities on his representation.

9. The petitioner has not produced any piece of record to indicate the subject land was earmarked as OSR at the time of granting planning permission in the year 1973. Contrarily, the 5th respondent has produced the approved Planning Permission which indicates that the subject area in the planning permission is earmarked as "Kalyanamandapam." The Government Order G.O. (Ms).No.195, dated 19.12.2016 issued by the Department of Housing and Urban Development (UD1) Department, also clearly show that the subject land is earmarked as Kalyanamandapam site in the Director of Town and Country planning approved layout No.273/1973 in S.No.255/4 of Adambakkam Village. This Government order came to be passed in the appeal preferred by the 5th respondent seeking permission for conversion of the said land into residential plots. While declining the request, the Government Order says that, except the kalyanamandam site, under reference, no other site has been earmarked for public purpose. As per Rule 6(5) of Development Regulations of Second Master Plan, the site may be considered for construction of kalyanamandapam.

10. Further the documents produced by the 5th respondent proves that, this is not the first representation or writ petition filed by or on behalf of the petitioner Association in respect of this land. Earlier on 18.07.2010, the Office bearers of Kesari Nagar Welfare Association has given representation to the Chairman, Alandur Municipality to establish park in the vacant land (subject land) since there is no other space for them to have a park. After merge of Alandur with Chennai Corporation, the Association has given representation to the Mayor on 17.02.2012 requesting to convert the subject land earmarked as Kalyanamandapam into open space. This request has been rejected stating that the land earmarked for Kalyanamandapam cannot be converted into open space reservation (OSR). In spite of the said rejection, again, on 09.05.2016, the petitioner Association has made a representation to the Chief Minister Cell, falsely representing that the subject land is OSR land and it should be taken over by the Corporation for developing it as park. To this representation, the DRO/Regional Officer of the Chennai Corporation vide his communication to E.P.Arutperum Jothi, Secretary of the Kesari Nagar Welfare Association has informed that the subject land is not OSR but land owned by the 5th respondent and earmarked for Kalayanamandapam, as per the approved layout plan.

11. The petitioner, who now claiming himself as the President of the very same Kesari Nagar Welfare Association has filed this writ petition alleging that the subject land is OSR land and the 5th respondent has clandestinely converted into his personal property and obtained patta for it. The representation given by the Association to cancel the patta not considered.

12. The affidavit of the petitioner bristles with suggestion of falsehood and suppression of truth. In the representation as well as in the affidavit, the petitioner has stated that the subject land was earmarked as OSR in the approved planning permission, but the 5th respondent has clandestinely converted it into his patta land. This statement of the petitioner is contrary to the records made deliberately and knowingly by the petitioner to mislead the Court. The authorities have more than once had informed the petitioner Association that the said land is not OSR land and it is a kalyanamandapam site as per the approved planning permission and the ownership is with the 5th respondent. To avoid disclosure of the falsehood.

13. The petitioner has suppressed the earlier communications to the petitioner association and the writ petition W.P.No.998 of 2018 filed by the Federation of Adambakkam Welfare Associations, in which the petitioner association is one of the members among the 14 associations. In the said writ petition, the deponent one Mr.Saravanan, General Secretary has accepted that the subject land is earmarked as "Kalyanamandapam site" in the sanctioned layout plan vide approval No.273/1973 and recorded in the name of R.Jayachandran (5th respondent herein). Since it is vacant for long years, the members of the petitioner and the public must be permitted to use it as park and community hall.

14. The communications of the authorities and the records produced by the 5th respondent as well as the admission in the affidavit filed on behalf of the petitioner association in W.P.No.998 of 2018, the title to the subject land vest with the 5th respondent and at no point of time, it was earmarked as OSR. The request to convert the land into OSR land has already been rejected. While so, the petitioner Association or any other Association or Federation of Associations cannot seek for conversion of private land into public park as a matter of right. The planning permission for the layout has been approved in the year 1973, when there was no mandatory requirement to reserve open space (OSR). Just because, some land earmarked for some other public purpose is vacant, for quit some time, the public or the residence cannot compel the owner of the land to give it for establishing park, since the said owner incidentally happen to be the legal heir of the layout promoter.

15. The petitioner Association attempts to achieve this through writ petition by suppression of fact and suggestion of falsehood is deplorable. The said attempt cannot be given a seal of approval. Knowing well that, the land is site for kalyanamandapam, the petitioner in the affidavit has sworn that the land is OSR and has made false accusation against the 5th respondent that he clandestinely converted OSR land into personal patta land. Hence, while dismissing the Writ Petition as devoid of merit, this Court impose costs of Rs.10,000/- to Mr.C.Moorthy, who has sworn the false affidavit on behalf of the petitioner Association as the President of Kasari Nagar Welfare Association.

16. Accordingly, the Writ Petition No.21101 of 2019 is dismissed. With costs of Rs.10,000/- payable to the 5th respondent. Consequently, Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To,

1. The District Collector,
Chennai District,
Singaravelan Building, Chennai - 1.
2. The Commissioner,
Corporation of Chennai, Chennai - 3.
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4. The Special Tahsildar,
Alandur Municipality,
Alandur, Chennai - 16.

+1cc to Mr.L.Chandrakumar, Advocate sr.78593
+1cc to Mrs.Karthika Ashok, Advocate sr.78843
+1cc to Mr.G.Krishna Kumar, Advocate sr.78916

Writ Petition No.21101 of 2019

mr(co)
nr 01/11/2019