

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2019

PRONOUNCED ON : 20.11.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.28729 of 2018 and
W.M.P.No.33560 of 2018

S.P.Shanmugasundaram

... Petitioner

Vs

1.The Commissioner,
Town and Country Planning,
No.807, Annasalai,
Chennai - 2.

2.The Member Secretary,
Coimbatore Local Planning Authority,
Corporation Commercial Building,
Sivananacolony,
Coimbatore - 641 012.

3.The Chairman cum District Collector,
Coimbatore Local Planning Authority,
Coimbatore.

4.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent by proceedings made in Roc.Lr.No.7972/2013/GR dated 07.09.2018, to quash the same and to consequently direct the respondents to realign the Scheme Road by accepting the land to be gifted by the petitioner.

For Petitioner

:Mr.A.L.Somayajee, Senior Counsel
for Ms.P.T.Ramadevi.

For Respondents 1 to 3 :Mr.K.Ravikumar

Additional Government Pleader

For 4th Respondent :Mr.K.Magesh, Standing Counsel

ORDER

The petitioner is the owner of the land in survey number 304/1, Saravanampatti Village in Coimbatore. As per the Detailed Development Plan approved by the first respondent under section 29 of the Town and Country Planning Act, 1971 a 60 feet road was proposed in the middle of the petitioner land. Therefore, the petitioner gave a representation to align the road along with the existing 15 feet road running on the Western side of his land in S.No. 304/1 by merging it with the 10 feet road in SF No. 303/2 running adjacent to the 15 feet road. He was willing to gift 35 feet on the Western side of his land making it a 60 feet road, so that, his remaining extent of land on the Eastern side will be saved and he will be losing only 65.43 cents instead of 1.17 acres of land. This request was considered by the Saravanampatti Town Panchayat in its meeting held on 16/3/2007 and a resolution was passed accepting the proposal given by the petitioner in his representation.

2.The request of the petitioner along with the Saravanampatti Town Panchayat resolution dated 16/03/2007 was considered by the Local Planning Authority, Coimbatore in its meeting held on 07/02/2008. They resolved to recommend the realignment of 60 feet DD scheme Road, subject to the condition of handing over the realigned portion to local body. When the recommendation of the local planning authority was forwarded to the Commissioner, Town and Country Planning, clarifications were sought from the Commissioner, Town and Country Planning. In response, the Member Secretary, the Local Planning Authority in his letter dated 06/08/2009 informed the Commissioner, Town and Country Planning that if the modified road alignment is accepted, it will not affect the approved layout plan but will cut the land in S.No.323/3 and may cause the very same damage which the land owner of S.No 304/1 (the writ petitioner herein) sought to avoid through realignment.

3.The Commissioner of Town and Country Planning, after considering the town panchayat resolution, local planning authority recommendation and the clarification letter of the Member Secretary - Local Planning Authority, proceeded further by publishing the notification in the Tamil Nadu Gazette on 16.11.2009, the scheme road deviation proposal plan showing variation in DDP/(V) DTCP No.24/2009. The notification as per Form 14 with schedule III and Schedule V intimating the public

about the proposed deviation of the scheme road and inviting objections from person interested was re-published on 31/05/2010 in local dailies.

4. According to the petitioner, no one objected the variation plan after publication of the notification. So, the deviation ought to have been approved under section 29 of the Town & Country Planning Act and notified under section 31 of the said Act as it is mandatory requirement under the Act. Contrarily, without doing so, the 2nd respondent again placed the variation plan before the Local Planning Authority and the 2nd and 3rd respondents recommended to reject the variation plan, retracting their earlier recommendation. Two years after publication of variation plan under section 33 (1) of the said Act, the first respondent vide his proceedings Na.Ka.25353/08/DP 2 dated 05/09/2012 mechanically accepted the recommendation of the respondents 2 and 3 and rejected the variation plan stating that the variation plan would cause traffic hindrance. When the proceedings of the first respondent dated 05/09/2012 was challenged by the petitioner in W.P.No.11165 of 2013, it was set aside by this Court by order dated 30/01/2015 and remanded to the first respondent for appropriate consideration in terms of section 27 of the said Act and also by affording opportunity with fresh representation and personal hearing.

5. On remand, the first respondent has passed order on 07/09/2018 holding that, any re-alignment of the scheme road will affect the free mobility of traffic in future when there are more developments. Further, in the said order it is observed that the petitioner owns 9.78 acres of land out of which, a small triangular portion measuring 38 cents falls Western side of the existing detailed development plan road. This land can be used by the petitioner for commercial purpose. Hence, the land value will not be affected.

6. Alleging that the first respondent without recourse to fact had arbitrarily passed the above order on the basis of inappropriate consideration, the present writ petition is filed.

7. The learned Senior Counsel appearing for the petitioner would state that, the proposal for variation in the scheme road was accepted by the local body and resolution was duly passed. The Local Town Planning Authority after considering the field reality had recommended for variation. Pursuant to the recommendation, the Commissioner Town & Country Planning Authority approved the variation and notification was issued

inviting objections. There was no objection received till the lapse of 60 days time. While so, for no reason, the variation plan was reviewed and for no valid reason, the variation plan rejected. Under section 27(2) of the said Act, the authority has power to reconsider and modify the Development plan. The first respondent in spite of direction issued by this Court in W.P.No.11165 of 2013 did not exercise the said power, but rejected the proposal of variation of plan stating that it would amount to 'Z' shape deviation, when it is only a mini curvature and not as focused and mentioned in the impugned order.

8.The learned Senior Counsel appearing for the petitioner would emphasis that after notification of plan variation under section 33 (1) of the Act, in the absence of objection from any person, there is no authority under the act for the respondents to recommend cancellation of variation plan. Referring sections 27,29,31 and 33 (1) and (2) of the said Act, the learned Senior Counsel submit that, the order rejecting the deviation of road alignment by the first respondent is without any basis and authority.

9.From the impugned proceedings of the first respondent, draft variation plan and the counter affidavit filed by the 2nd respondent, this Court finds that, Saravanampati Detailed Development Plan No.5 was approved under Section 29 of Town and Country Planning Act,1971 vide proc.ROC.No.No. 28422/94/DP 3 dated 04/08/1994 and published in the Government Gazatte dated 05/07/2006. In the approved plan, a deviation in the 60 feet scheme road running through the petitioner land bearing survey No.304/1 was sought by the petitioner, so that, a portion of his land will be saved.

10.Any variation in the approved detailed development plan can be done as per the procedure stated in section 33 of the Act. Initially, the Local Planning Authority resolved the proposal of deviation of the 60 feet scheme road and forwarded the proposal to the Commissioner, Town and Country Planning, who is the final authority to approve the deviation. Being prima facie satisfied with the variation plan, public notice under section 33(1) of the Act inviting object was gazetted and also republished in the local dailies on 31/05/2010. On further inputs, the first respondent vide his proceedings dated 05/09/2012 rejected the deviation in the scheme road which intend to save a portion of the petitioner, at the same time acquisition of part of the land in S.Nos.303/2AF, 303/2 x 2 , 305/1 and 305/3 owned by others was necessary. The reason for rejection was stated in this order was, if the deviation is

allowed, the proposed 60 feet road will be in 'z' shape restraining the traffic mobility.

11. When this order was challenged, in W.P.No.11165 of 2013, this Court ordered fresh enquiry. As per the direction of the High Court, the first respondent conducted enquiry on 31/08/2018. After giving sufficient opportunity to the petitioner order was passed on 07/09/2018 rejecting variation in the scheme road. In the said order, the first respondent has observed that for one person's convenience, larger public interest cannot be sacrificed. The realignment of the road suggested by the petitioner would greatly affect the viability in terms of seamless transportation. Hence, the Detailed Development Plan Scheme was retained in the present shape.

12. The contention of the petitioner, when no one objected after the gazette notification dated 06/11/2009 regarding variation inviting object, the variation is deemed to be approved and thereafter, the first respondent has no authority to interfere. Having reached the stage of 33 (1) of the Act, the first respondent cannot revert back and reject the variation plan has to be tested with the provisions of the Town & Country Planning Act, 1971.

13. Section 33 of the Act has to be read in whole along with Sections 27, 29 and 31 of the Act for complete understanding of the issue in hand. Hence, these provisions are extracted below:-

"33. Variation and revocation of detailed development plan.- (1) A detailed development plan approved under section 29 may, at any time, be varied or revoked by a subsequent plan prepared and approved under this Act. (2) The provisions of sections 27, 29 and 31 with such modifications as may be necessary shall apply to such subsequent plan referred to under sub-section (1). (3) The Government may, at any time, by notification in the Tamil Nadu Government Gazette, vary or revoke the detailed development plan prepared and approved under this Act.

.....

27. Notice of the preparation of the detailed development plan.- (1) As soon as may be, after the local planning authority has received the consent of the Director under sub-section (2) of section 25 to the publication of the notice, the local planning authority shall publish the notice in the Tamil Nadu Government Gazette, and in leading daily newspapers of the region of the preparation of the detailed development plan and the place or places where copies of the same may be inspected, inviting objections and suggestions, in writing, from any person in respect of the said plan within such period as may be specified in the notice: Provided that such period shall not be less than two months from the date of publication of the notice in the Tamil Nadu Government Gazette.

(2) After the expiry of the period mentioned in sub-section (1), the appropriate planning authority shall allow a reasonable opportunity of being heard to any person including representatives of Government departments and authorities, who have made a request for being so heard and make such amendments to the detailed development plan, as it considers proper and shall submit the said plan with or without modifications to the Government.

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29. Approval by the Director.- As soon as may be, after the submission of the detailed development plan, but not later than such time as may be prescribed, the Director may, either approve the said plan or may approve it with such modifications, as he may consider necessary, or may return the said plan to the local planning authority to modify the plan or to prepare a fresh plan in accordance with such directions as the Director may issue in this behalf and resubmit it to him for approval.

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31. Coming into operation of the detailed development plan.- (1) Immediately after the detailed development plan has been approved by the Director, the local planning authority shall publish a notice in the Tamil Nadu Government Gazette and in the leading daily newspapers of the region of the approval of the detailed development plan and such notice shall state the place or places and time at which the said plan shall be open to the inspection of the public.

(2) A notice published under sub-section (1) shall be conclusive evidence that the detailed development plan has been duly made and approved. The said plan shall come into operation from the date of publication of such notice in the Tamil Nadu Government Gazette."

14.As per the records, the Development Plan No.5 regarding Saravanampatti approved under Section 29 of the Act on 4/8/1994 and gazetted on 05/07/2006. Thereafter, on 16/03/2007 the Saravanampatti Town Panchayat has passed resolution to recommend the variation in the 60 feet scheme road based on the representation of the petitioner. This was initially accepted by the 2nd respondent and forwarded the proposal to the first respondent. On receipt of the 2nd respondent resolution for variation, the first respondent has issued proceedings on 06/11/2009 for notification under section 33 (1) of the act inviting objection. It is pertinent to note that while resolving to accept the variation suggested by the petitioner, on 07.02.2008, the second respondent has not assessed the impact of the variation.

15.The office note and resolution of the 2nd respondent in ROC No 2798/2007 - LPA -3 dated 07/02/2008 reads as below:-

"The applicant has requested to realign the proposed DD 60' wide scheme road in SF

No.304/. The proposal is divided the land into two parts in Western side of the scheme road. In the Western side of the scheme road, the portion of land could not be utilized to any purpose. Hence the original may be shifted in the same land of the western side adjacent to the side of 10' wide existing road. SF No.303/2A. Hence the scheme road may be realigned and joined with the existing Tar road.

OFFICE NOTE:

The Applicant's request for realignment and adding of 10' existing road to form a 60' DD wide road may be considered.

The proposal is placed before the Local Planning Authority meeting for its decision."

16.On receipt of the variation plan proposal dated 07.02.2008 from the second respondent, the first respondent has sought certain details from the second respondent. In response to this communication, the second respondent has conducted field visit and reported to the first respondent along with the recommendation of the Member Secretary, Local Planning Authority. In this letter of the 2nd respondent dated 06/08/2009 it is stated that if the petitioner request is accepted, the scheme road will run through S.No. 323/2 and that land will be cut into two portions. This will affect the owner of the land in S.No. 323/2. Further the scheme road will not fall on straight line and will have a curvature. After receiving the above details from the second respondent, notification inviting objections in exercise of power under section 33(1) of the Act has been gazetted on 16.11.2009 and republished in the local dailies on 31.05.2009.

17.What was published in the gazette is only the draft variation. Persons affected or interested in the draft variation were permitted to represent in person or in writing within 60 days from the date of publication. After the publication of this notification in the State Gazette, local dailies, notice board of the Collectorate, Town Panchayat, the Local Planning Authority office and the District Gazette between 18/11/2009 and 27/11/2011, the Local Planning Authority (LPA), Coimbatore

has taken up for consideration the variation plan proposal. Though no objection was received for the variation from the public the LPA had decided to reject the variation proposal in view of fact that the deviation in the scheme road will affect free flow of traffic and end up in 'z' shape road.

18.This Court in W.P.No.11165 of 2015 has directed the first respondent to conduct enquiry and afford opportunity to the petitioner and pass orders on merits and in accordance with law. Accordingly, the first respondent has conducted enquiry. The first respondent in his order dated 07.09.2018 has extracted the statements of the stake holders. In the enquiry, the son of the petitioner has participated and sought for re-alignment of the scheme road and given written submission which reads as below:-

"1.As per original master plan (D.D.Plan) the 60'0'' scheme road in SF No.304/1 is 74 cents. Already existing road of 15'0'' is 19 cents. Wastage of his land (in a lengthy triangle shape) in between these two roads is 23 cents. Total area is 1.16 acre.

2.As per deviation order the loss of land is 65 cents only.

3.However as per LPA's last prepared realignment diagram, I am prepared to give another 10 cents & 100 sqft. Total area is 75 cents and 100 sqft. I am prepared to give it as free figt to the Coimbatore Corporation."

19.Whereas, in the enquiry, the Assistant Engineer (Planning), Coimbatore Corporation has stated that:-

"in Saravanampatti Detailed Development Plan (DDP) No.5, a 60'0'' wide "DD" scheme road is proposed in the North south direction. This road links with the existing Thudiyalur - Saravanampatti road on the Northern side. On the Southern side, this road is proposed upto Saravanampatti DDP No.5 boundary and then continued as 'A2A2' 60'0'' wide scheme road towards sought in the Saravanampatti DDP No.6 'E1E1' 40'0''

wide East West road in Saravanampatti DDP No.5 was already formed and is in usage. Hence this road will become a good link road to Sathyamangalam road and Thudilayur - Saravanampatti road, if we form the above 60'0" wide 'DD' road from the junction of ElEl road (i.e., Meenakchi nagar and G.K.S., Nagar Road).

Part of this 'DD' scheme road from Thudiyalur - Saravanampatti road to south upto S.F.No.323/3 was formed at BT road was laid through the private trust and the land owner Thiru.M.Jose Charles s/o S.Martin has also gave NOC to lay the B.T road in the scheme road lying in their land in S.F.Nos.340/1, 341/3, 342/3, 322/3, 323/3 & 343/1 of Saravanampatti Village. Assistant Executive Engineer also stated that alignment of the road in a 'z' fashion will affect traffic mobility and create congestion.

20.The Member Secretary, Local Planning Authority, Coimbatore has stated that:-

"the petitioner Thiru.S.P.Shanmughasundaram is having total 9.78 acres land of which triangular portion of 38 cents in Survey No.304/1 lies in the proposed "DD" scheme road in the approved Saravanampatti DDP No.5 without any use. Hence, the applicant requested to accord individual variation at his land touching the adjacent 10' wide existing road which lies in Survey No.303/2AF.

The 60' wide "DD" scheme road is connecting existing Saravanampatti - Thudiyalur road on north and existing channel on south at a length of about 1415 m. If the petitioner's request is accepted, the 60' "DD" scheme road will be formed as "z" shape resulting in traffic confestion.

21.Thus, from the documents, it is seen that the proposal for variation did not culminated in final approval by the Government under Section 28 of the Act or by the Director under Section 29 of the Act, but got aborted after notification inviting objection under Section 27(2) of the Act. As per the Act, once a detailed development plan is approved under Section 29 of the Act, any variation or revocation has to under go the procedures contemplated under Sections 27, 29 and 31 with such modification. In W.P.No.11165 of 2013, this Court has directed the first respondent to consider the variation plan as per Section 27 of the Act.

22.Under Section 27(2) of the Act, reasonable opportunity of being heard to any person including representatives of Government Departments and authorities is mandated. In this case, though no public has objected the variation, the representatives of Government Department has expressed their objection. Those objections were considered by the first respondent and he has passed the impugned order, in view of the fact that balance of convenience is not in favour of the petitioner. Therefore, this Court find no error of law or malafide in the order of the first respondent which is impugned in this writ petition.

23.In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Commissioner,
Town and Country Planning,
No.807, Annasalai,
Chennai - 2.

2.The Member Secretary,
Coimbatore Local Planning Authority,
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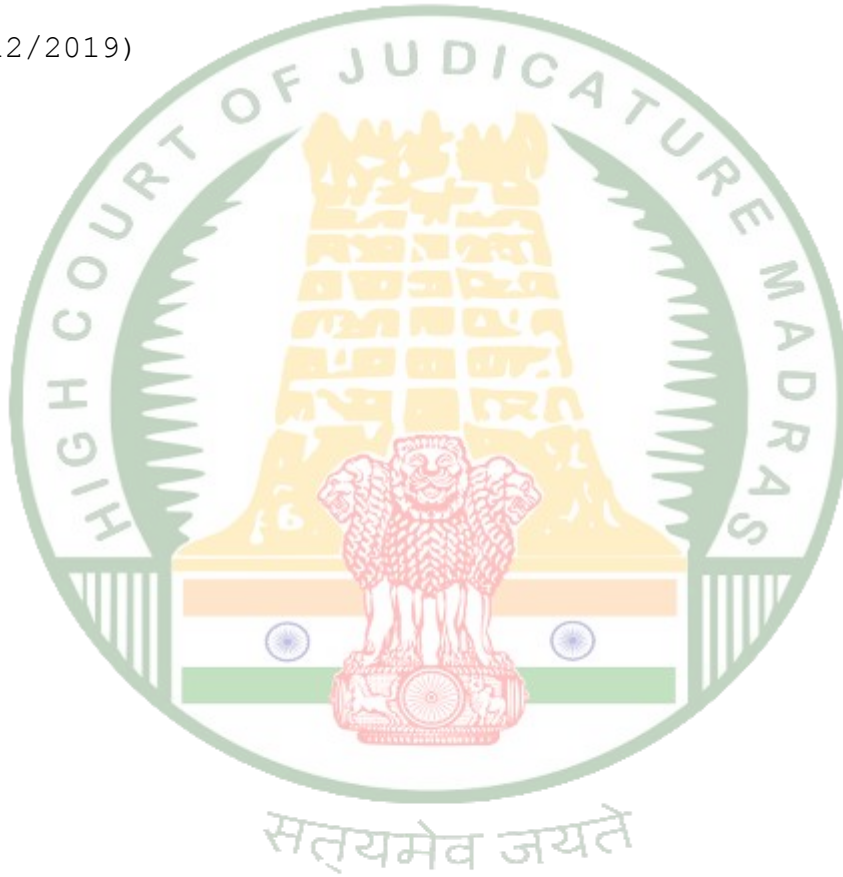
3.The Chairman cum District Collector,
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Coimbatore.

4.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

+1cc to Mr.K.Magesh , Advocate SR.No. 96392
+1 cc to Government Pleader Sr.No. 97550

W.P.No.28729 of 2018

In
A.SK(19/12/2019)



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