

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.A.No. 2761 of 2018 and
C.M.P.No. 22786 & 22783 of 2018

John Ilango ...Appellant/6th Respondent

Vs.

1. M/s.Padi Kumaran Nagar Educational
and Charitable Trust,
Rep by its Founder/Managing Trustee,
Mr.E.Chakravathy. ... 1st Respondent/Petitioner
2. The Commissioner,
Directorate of Town and Country Planning,
No.807, Anna Salai, Chennai - 02.
3. The Zonal Officer,
Greater Chennai Corporation,
Zone - 7, Ambattur,
Chennai - 600 053.
4. The Liquidator (Collector Assignor),
Padi Co-Operative House Building Society,
Assistant Registrar Office,
No.18, Ramanathan Street,
Mambalam, Chennai - 600 017.
5. The Tahsildar,
Office of the Tashildar of Ambattur,
Thiruvallur District,
Ambattur, Chennai - 600 053.
6. The Inspector of Police,
Korattur Police Station,
Korattur, Chennai. ...Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 14.09.2018 passed in W.P.No.11593 of 2017. This Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ in the nature of writ of mandamus forbearing the 4th respondent from carrying out any survey of the land which is said to be have been purchased by the 6th respondent at Padi Village Kumaran Nagar forming part of Old Survey field numbers 266/1 Part 300 Part 301 Part New Ward No.1 Block No.27 Town Survey field number 97/2 measuring an extent of about 3000 Square feet out of a larger extent of 8160 square feet, through document bearing number 4271 of 2016 registered at the office of the Sub Registrar of Villivakkam as the same forms part and parcel of the lands earmarked for school and children play ground according to the original plan approved by the Joint Director of Town Planning Government of Madras in reference number L.P.H./DTP.No.105/64 pass such further or other orders.

For Appellant : Mr. A.Thiyagarajan

For Respondents : Mr. C.P. Hem Kumar
for Ganesh & Ganesh (for R.1)

Mr.R.P.Pratap Singh
Government Advocate for R2, 5 & 6

JUDGMENT

Judgment of the Court was delivered by T.S.SIVAGNANAM, J.

This Writ Appeal is directed against the order passed in W.P.No.11593 of 2017 dated 14.09.2018.

2. The said writ petition was filed by the first respondent herein which is a Trust. The first respondent sought for issuance of writ of mandamus to forbear the Tahsildar, Ambattur Taluk from carrying out any survey of the land which is said to have been purchased by the appellant herein who was impleaded as the sixth respondent in the writ petition.

3. On the ground that the lands have been earmarked for school and children's playground, according to the Joint Director of Town and Country Planning in reference number LPH/DTP No.105/1964, the first respondent/writ petitioner's specific contentions is that the land which was earmarked for the school and playground has been handed over to the Corporation of Chennai for the purpose of construction of school

and by creating fraudulent documents, the appellant purchased an extent of 3,000 Sq.ft. out of larger extent of 8,160 sq.ft. in the land reserved for playground.

4. The learned counsel for the appellant submitted that earlier another Association called Kumaran Nagar Makkal Nala Mandram Civic Exnora filed W.P.No.5572 of 2017 praying for a direction to quash the proceedings of the Tahsildar, dated 02.08.2016 and consequently to direct the Corporation of Chennai to construct compound wall around the lands earmarked for public use in approved layout bearing LPH/DTP No.105/1964. It is submitted that the said writ petition was disposed of by order dated 06.03.2017 on the ground that if really the said petitioner Association is aggrieved over the transfer of revenue records, they can very well approach the concerned authorities and get clarification.

5. It is submitted by the learned counsel for the appellant that the said Association have failed in their attempt to prevent the appellant from enjoying the property purchased by him. Now another Association has filed the present writ petition praying for the same relief.

6. The learned counsel for the first respondent/writ petitioner submitted that the layout was approved in the year 1964 and the area said to have been purchased by the appellant is an area which is reserved for school/playground and fraudulent documents have been created with a view to grab the property reserved for public purpose.

7. We have elaborately heard the learned counsel for the parties and perused the orders passed in the writ petition. We are fully convinced that the order passed in the writ petition does not call for any interference, since, the learned writ Court had directed the Tahsildar, Ambattur Taluk, to measure the land in terms of the original plan which was approved by the Directorate of Town and Country Planning. Once such an exercise is completed, it will be clear as to whether there is any encroachment into the reserved site.

8. The appellant has placed heavy reliance on the averments made in the counter affidavit filed by the Tahsildar in the writ petition more particularly to paragraph 17. He has pointed out that in the counter affidavit, the Tahsildar has admitted that the area allotted to school and playground still remain unsold. In our considered view, this statement made by the Tahsildar in the counter affidavit will in no manner assist the case of the appellant. The statement that the area is unsold cannot lead to the conclusion that the site is not a reserved site. In

paragraph 19 of the very same counter affidavit filed by the Tahsildar, it is stated that none of the plots formed by the said Swaminathan was sold and also common area earmarked for playground and school were also not gifted to the local body for utilization of the purpose for which it was meant for and hence the property under the un-registered power document has been restored in the names of old pattadars and was registered in the names of Thiru Ramadoss and Thiru Sammandan.

9. In paragraph 21 of the counter affidavit, the Tahsildar states that the claim of the first respondent/writ petitioner Association have no basis since there is no proof to establish the title either by the local authority or by the promoter of the layout, whether the same were gifted or not. Moreover, unless the perambulation is taken up, the title cannot be decided. While approving the layout, conditions are imposed on the promoter of the layout. One of the conditions is to provide amenities for the persons who purchase the property in the layout. The amenities which are required to be provided are roads, playground, area for school, area for Police Station, area for shopping complex, etc.. The requirements vary depending upon the size of the layout which is promoted.

10. It has been pointed out in several decisions that after having shown an area as reserved site for any public purpose, the land would stand vested with the concerned authority and the concerned authority will hold the land in the capacity of trustee and ensure that the purpose for which it was reserved is fulfilled.

11. Therefore, the moot question would be as to whether the land which is stated to have been purchased by the appellant forms part of the site which was shown to be reserved site for school/playground with the approved layout plan. Therefore in our considered view, not only Tahsildar should be directed to carryout exercise as ordered by the learned Writ Court but the Officials of the Town and Country Planning as well as the Officials of Greater Chennai Corporation should be involved in the matter.

12. In the result, the writ appeal stands disposed of with slight modification of the order passed in the writ petition and we direct as follows:

(a) The Tahsildar, Ambattur Taluk, Thiruvallur District, Chennai shall obtain the original layout plan from the competent authority of the Directorate of Town and Country Planning within a period of three weeks from the date of receipt of copy of this order. On obtaining the copy, the Tahsildar, Ambattur Taluk shall issue notice to the Zonal Officer of the Greater Chennai Corporation, Zone-7, Ambattur, to the concerned

Joint Director of Town and Country Planning, to the appellant, to the first respondent/writ petitioner and other persons interested, measure the property as per the original layout plan and if it is found that there is any encroachment, then the Tahsildar is directed to take appropriate action in accordance with law.

13. With the above directions, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mrm/mbi

To

1. The Commissioner,
Directorate of Town and Country Planning,
No.807, Anna Salai, Chennai - 02.
2. The Zonal Officer,
Greater Chennai Corporation,
Zone - 7, Ambattur,
Chennai - 600 053.
3. The Liquidator (Collector Assignor),
Padi Co-Operative House Building Society,
Assistant Registrar Office,
No.18, Ramanathan Street,
Mambalam, Chennai - 600 017.
4. The Tahsildar,
Office of the Tashildar of Ambattur,
Thiruvallur District,
Ambattur, Chennai - 600 053.

5. The Inspector of Police,
Korattur Police Station,
Korattur, Chennai.

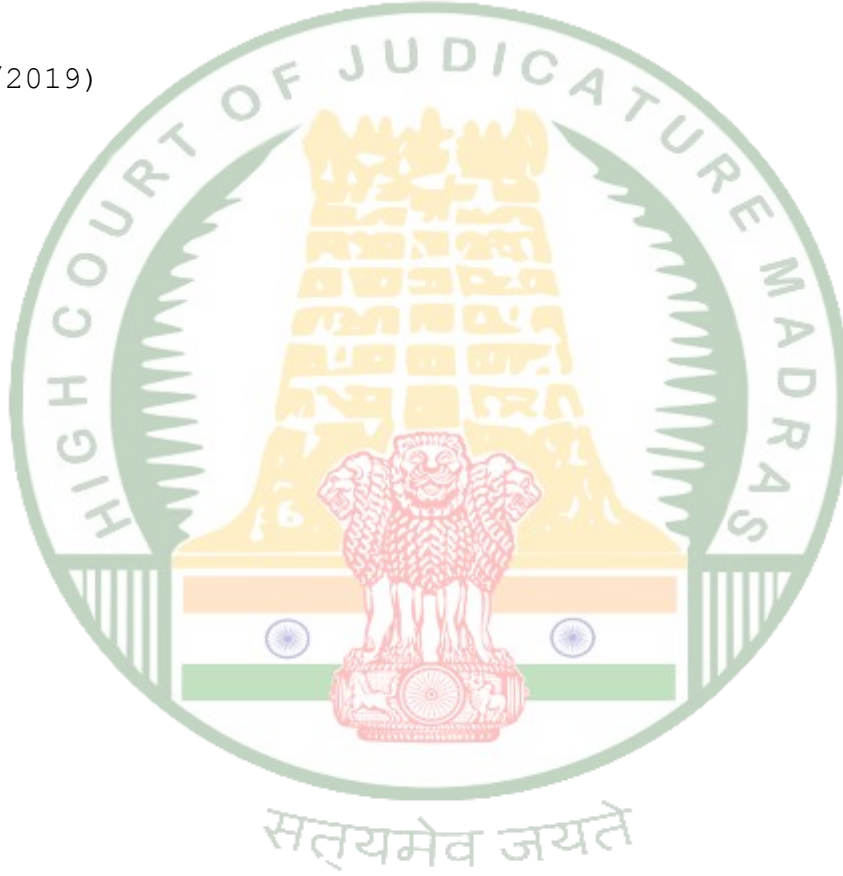
+1cc to M/s.Ganesh & Ganesh, Advocate SR.No.10158

+2ccs to Mr.A.Thiagarajan, Advocate SR.No.10154

+1cc to Government Pleader SR.No.11405

W.A.No. 2761 of 2018 and
C.M.P.No. 22786 & 22783 of 2018

SR(CO)
GMY(14/03/2019)



WEB COPY