BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2019

CORAM

THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MR. JUSTICE **C.SARAVANAN**

A.S.(MD)No.184 of 2015

The Madurai Corporation
through its Commissioner,
having its office at
Anna Maligai,
Tallakulam,
Madurai. : Appellant / 1st Defendant

Vs.

1.A.Syed Abdul Rahim : 1st Respondent/Plaintiff

2.The District Collector,
Collectorate Office,
Madurai District.

3.Banu Bee
4.Malika
5.Roshini
6.Ameena Bee
7.Fathima Bee
8.Shajitha
9.Mumtaz
10.Zabeen
11.Faizal
12.Jahan
13.Afsal
14.Shareen
15.Johara : Respondents 2 to 15/
Defendants 2 to 15

(Respondents 3 to 15 were set *ex parte* before the lower Court hence notice is dispensed with)

Prayer: This Appeal Suit has been filed under Order 41 Rule 1 r/w. Section 96 of C.P.C against the judgment and decree, dated 30.08.2012 in O.S.No.136 of 2007 on the file of the VI Additional District Judge, Madurai.

For Appellant : Mr.R.Murali

For R1 : Mr.R.Suriyanarayanan

For R2 : Mr.A.Thiagarajan
Government Advocate

For R4 to 8 & 10 to 15 : Mr.P.Venkatesan

JUDGMENT

(Judgment of this Court was delivered by **S.S.SUNDAR, J.**)

The first defendant in the suit in O.S.No.136 of 2007 on the file of the VI Additional District Judge, Madurai, is the appellant in this appeal suit.

2.The first respondent in this appeal, as plaintiff, filed the suit in O.S.No.136 of 2007 for declaration that the notices dated 26.02.1998, 28.05.1998 and the subsequent gazette notification dated 24.08.1998 thereby declaring the suit property as public road is null and void and will not bind the plaintiff in any way as it is arbitrary and unconstitutional and to direct the first defendant / appellant to pay a compensation of Rs.1.97 Crores for the unlawful acquisition of the suit property. It is also important to note that the suit was filed without paying the Court fee and the plaintiff also sought for a declaration that the plaintiff is an indigent person.

3.The case of the first respondent herein in the plaint are as follows:

3.1.The suit property described in the schedule is a land measuring an extent of 95 cents in Survey No.77 in Sathamangalam Village, Madurai Town, comprising of three scheme roads known as C2C2 scheme road (17½ cents - Periyar Street), C4C4 Scheme Road (54½ cents - Moulana Sahib street) and D6D6 Scheme Road (22½ cents - Kamarajar Street) in Madichiyam Town Planning Scheme situated in R.S.No.77/1A/A2B.

3.2.The suit property which is part and parcel of an extent of 10 acres of land in Old Survey No.38/2 and New Survey No.77 in Sathamangalam Village originally belonged to the parents of the plaintiff namely S.Abbas and Sunna Beevi. The plaintiff's father expired on 08.04.1988. After the death of the plaintiff's father, plaintiff's mother along with the plaintiff and other legal heirs succeeded to the suit property and enjoyed the same as joint owners.

3.3.In the year 1948, under Town Planning Act, 1920, a scheme called Madichiyam Part II Town Planning Scheme was framed for the improvement of the areas abutting Madurai Town. The land belonging to the plaintiff's father was also included in Madichiyam Part II

Town Planning Scheme. The scheme was notified under Section 12 of the Town Planning Act, 1920 in the year 1950. From 1950, any encroachment made in the area marked as scheme roads would attract penal provisions under Section 44B of the Town Planning Act, 1920. Hence, the plaintiff's father carefully plotted the land by leaving the lands demarcated for the purpose of forming scheme roads in accordance with the scheme Rules, 11, 24 and Section 44B of the Town Planning Act, 1920.

3.4.The land demarcated as scheme roads under the Town Planning Act, 1920 is the suit property. The entire 95 cents of lands which are left for the formation of the three scheme roads are known as C2C2 Scheme road (Periyar street), C4C4 Scheme Road (Moulana Sahib Street) and D6D6 Scheme Road (Kamarajar street). The plaintiff's father after leaving 95 cents of his lands for the formation of the scheme roads as stated above, carefully plotted his land by providing internal roads to the layout. As a law abiding citizen, the plaintiff's father left the area earmarked for the scheme roads without raising any objection since the portion reserved for scheme roads were proposed to be acquired for the scheme framed by Town Planning Authority. The plaintiff's father was very confident that the lands which was reserved for scheme roads will be acquired by the Madurai Corporation within his life time because of the assurance in scheme Rule 7 (II) as the area finds a place in schedule V of the Madichiyam Part II Scheme. As per Section 36 of the Tamil Nadu Town and Country Planning Act, 1971, any land required, reserved and designated in an original plan, master plan, detailed development plan or a new Town Development Plan shall be deemed to be land required for public purpose within the meaning of Land Acquisition Act and may be acquired under the Act.

3.5.The portion left by plaintiff's parents for scheme roads was not shown to the persons to whom plots were sold by plaintiff's parents. At the time of selling the land as house plots, plaintiff's parents specifically mentioned in the sale deed that the plaintiff's parents are entitled to receive the compensation payable to them at the time of acquisition of land by Government on behalf of the Madurai Corporation.

3.6.The other portion shown as scheme roads in the same scheme in respect of some other property belonging to other owners have been acquired by the defendants under the Acquisition Act and the owners of the lands were paid compensation. Whereas, in respect of the suit property the defendants have not initiated acquisition proceedings nor have paid compensation. Therefore, the plaintiff's parents filed a Writ Petition in W.P.No.3911 of 1981 for issuing a Writ of Mandamus to enforce the provision of the Town Planning Act, by directing the defendants not to form any road without acquiring the property and paying compensation. The said Writ Petition was disposed of by directing the defendants to consider the representation of the plaintiff's father.

3.7.The first defendant corporation by a resolution dated 28.12.1987 decided to acquire the land reserved for scheme roads and addressed the Revenue Divisional Officer of the Madurai to start acquisition proceedings. A notification dated 03.04.1991 under Section 4(1) of the Land Acquisition Act for acquisition of the land was issued but later there was no further action. Hence, the plaintiff and his mother filed a Writ Petition in W.P.No.9077 of 1991 for a direction to approve the scheme and to continue acquisition proceedings and also to pay compensation to the plaintiff and his mother. The said Writ Petition was dismissed on the ground that the corporation could not be compelled to acquire lands. However, the Hon'ble High Court made an observation that the suit property will continue to remain as the private property of the plaintiff and they can restrain the entry of public from using the roads because of the private nature of the property. An appeal preferred in W.A.No.72 of 1992 was also dismissed by observing that the non-implementation of the resolution passed by the corporation would not cause any legal injury to the plaintiff.

3.8.Thereafter, the plaintiff filed a suit in O.S.No.54 of 1993 on the file of the Additional District Munsif, Madurai Town, against the defendants for mandatory injunction and for compensation.

3.9.However, the Madurai Corporation even before invoking Section 254 and 255 of the Madurai City Municipal Corporation Act and in utter disregard to the Madichiyam Part II scheme, trespassed into the suit property as early as in 1980 and laid metal roads, constructed open drainages, embedded water pipes disregarding the innumerable objections raised by the plaintiff's father in the form of petitions, legal notices, personal representations, etc., The defendant not only collected fees for dumbing building materials on the private area but dug deep trenches during 1997-98 to lay mega underground drainage pipes and completed the underground drainage work in that area contrary to their promise before the Hon'ble High Court in W.P.No.9077 of 1991.

3.10.A contempt petition was filed before this Court by the plaintiff and though the contempt application was dismissed, the defendants were directed to pay a cost of Rs.2,000/- by observing that it was a gross violation on the part of the defendant who wantonly and purposely sent a notice under Section 254 of the Madurai Municipal Corporation Act, 1971 on 26.12.1998 as if the suit property is a private street being used by the public of that area. The suit property is an absolute property of the plaintiff and except plaintiff, no other purchaser of plot have any legal right over the suit property. Though the plaintiff gave an objection to the notice dated 07.04.1998, the same was not considered by the first defendant. The first defendant purposely sent notice without naming any specific person and bluntly addressed to all the owners of the houses situated in the entire area who are not entitled to have any right over the suit property.

3.11.The plaintiff filed a contempt application in Cont.P.No.454 of 1996 against the defendant for his willful disobedience of the order of the Hon'ble High Court by entrusting a contractor to lay the road and underground sewage in the suit property. The said application was disposed on 29.08.1997 with an observation that the defendant can not encroach upon the suit property or utilise the same either without acquisition of the property in accordance with law or taking such other steps that are available under Corporation Act for treating it as a public street.

3.12.Once again the Corporation issued a notice under Section 254 on 28.05.1998 stating that the suit property is a private road being used by the public who are residing in the adjacent area as a road for a long time. After receiving a notice on 28.05.1998, the plaintiff sent a reply stating that the suit property is a private property. Since the suit property is left out as road as per Madichiyam Part II Scheme, there is no question of applying Section 254 of the Corporation Act. However, without considering the objection of the plaintiff, the first defendant corporation declared the suit property as a public street under Section 255 of the Corporation Act and published the same in the Madurai Gazette on 24.08.1998.

3.13.Though the plaintiff challenged the notice and gazette notification in W.P.No.15897 of 1998 before the Hon'ble High Court, the said writ petition was finally dismissed with an observation that the plaintiff has to approach the Civil Court as the dispute involves several factual aspects. The Writ Appeal filed by the plaintiff in W.A.No.1900 of 2002 was also dismissed giving liberty to the plaintiff either to raise the issue in the pending suit in O.S.No.54 of 1993 or to file a fresh suit to challenge the gazette notification. Though the earlier suit in O.S.No.54 of 1993 was dismissed for default, it will not operate as *res judicata* as the present suit is for a relief of declaration declaring the notices and the gazette notification under Sections 254 and 255 of the Madurai City Municipal Corporation Act as null and void. Since the Hon'ble High Court has given liberty to file a separate suit, the time taken for filing the earlier Writ Petition should be excluded under Section 14 of the Limitation Act for the purpose of calculating the period of limitation for filing the suit. The other legal heirs of the plaintiff's parents have given authorisation to the plaintiffs to file and to conduct the suit on their behalf by executing a power of attorney deed dated 19.04.2007 and the plaintiff is entitled to file the present suit without adding them as parties to the suit.

3.14.Though the suit is valued for Rs.1,97,00,000/- stating that the plaintiff is not having sufficient means or property to pay the prescribed Court fee and that he is not a rich man, who could pay necessary Court fee for filing the suit, the plaintiff also prayed for declaration that he is an indigent person and to proceed the suit as a pauper suit without paying the Court fee. In the plaint, he has also stated that he has not made any agreement either to sell or purchase any properties within six months prior to the suit.

4.The suit was contested by the first defendant on the following grounds:

(a)The suit without impleading the legal heirs of the plaintiff's parents is unsustainable.

(b)The plaintiff's father never gave the suit property for the purpose of scheme roads either to the Government or to the Corporation at any point of time and the suit property was not reserved separately as part of Madichiyam Development Scheme Part II.

(c)The plaintiff while framing the lay out and selling the land to plot owners voluntarily gave the road portion for the purpose of forming public street for the benefit of plots owners. The portion left by the plaintiff's father as road has been enjoyed by the public as public road for more than 40 years. The plaintiff cannot claim ownership over the public street after 40 years. All the three scheme roads are being used by the public as public roads and therefore, the first defendant corporation need not acquire the land for the said purpose. The corporation never acquired any land for the purpose of forming road. If a road portion is handed over to the Corporation, it can only maintain the road. Hence, the contention that the plaintiff was expecting the first defendant to acquire the land is not true. In all the documents executed by the plaintiff between 1962 to 1973, there is no reference to compensation in respect of the lands demarcated as roads.

(d)Suppressing the fact that the suit property was left by the plaintiff's father as public road and is being used as public road by the public for a long time, the suit property cannot be claimed by the plaintiff as his individual property. The Writ Petition filed by the plaintiff in W.P.No.9077 of 1991 was dismissed by holding that the first defendant cannot be compelled to acquire the land. Hence, the plaintiff cannot claim compensation from the first defendant. The appeal filed by the plaintiff as against the order in W.P.No.9077 of 1991 was also dismissed. The suit filed by the plaintiff in O.S.No.54 of 1993 was also dismissed. After filing the earlier suit, the present suit is not maintainable in view of the dismissal of the earlier suit.

(e)After following the procedure contemplated under Sections 254 and 255 of the Madurai City Municipal Corporation Act, the suit property which is being used by the public as public roads have been declared as public road under Section 255 of the Act. The resolution of the Corporation and the publication of the declaration in the District gazette are valid as they were done in accordance with law. The first defendant after the road was being enjoyed by the public for more than several decades as public roads spent for the formation of tar road and to bring all other facilities to the residential owners within the lay out formed by the plaintiff's father. As a matter of fact, drinking water lines, underground drainage facilities, and other facilities were provided by the local body without any objection from any quarters at the request of the owners of individual plots in the lay out developed by the plaintiff's father. The plaintiff has no *locus standi* to file the present suit and the plaintiff has not suffered any legal injury. The suit is barred by limitation and the suit is also bad for non-joinder of necessary parties. Based on the pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled to file this suit as indigent person?
2. Whether plaintiff is entitled to the relief of declaration as prayed for?
3. Whether the plaintiff is entitled to get compensation as prayed for?
4. To what relief the plaintiffs entitled for?

5.The trial Court without considering the requirement of Order 33 of C.P.C. held that the plaintiff is entitled to file suit as an indigent person only on the ground that the plaintiff has no means to raise the amount towards Court fee. The trial Court held that the suit property continued to be the property of the plaintiff and that the notice and declaration under Sections 254 and 255 of Madurai City Municipal Corporation Act are null and void after holding that the notices were not in accordance with Sections 254 and 255 of the Madurai City Municipal Corporation Act. The trial Court thereafter held that the plaintiff is entitled to compensation as the lands were not acquired by following the procedure by initiating any valid acquisition proceedings. The trial Court also came to the conclusion that the suit property had been illegally taken over by the Corporation without initiating any acquisition proceedings and that the Civil Court has got ample jurisdiction to try the suit. After finding that the suit property was originally earmarked for Madichiyam Part II scheme, it is held that the suit property ought to have been acquired under the Land Acquisition Act for the purpose of formation of the scheme roads. The trial Court further held that the plaintiff's father *bona fidely* believed and set apart the suit property on the basis of the promise and assurances and that the defendants 1 and 2 are estopped from denying any relief to the plaintiff. Further, the trial Court held that the plaintiff is entitled to get compensation by fixing the land value as per the guide line value of the year 1981 and by adding 2% per annum till the date of filing the suit. Hence, a preliminary decree was passed by the trial Court by directing the payment of compensation to the plaintiff at market value of the land during 1981 along with interest at 2% per annum as solatium to be calculated upto the date of filing the suit. The plaintiff was also given a decree for future interest at 9% per annum from the date of plaint till the date of decree and thereafter, at 6% per annum till the realisation of the decree amount, as per the decree. Aggrieved by the judgment and decree of the trial Court, the above appeal has been preferred by the first defendant in the suit.

6.The learned Counsel appearing for the Madurai Corporation has submitted that the scheme roads proposed as per the scheme framed under 1920 Act was never implemented either under the 1920 Act or under the present Town and Country Planning Act, 1972. Since the plaintiff has admitted that his father carefully brought his lands in the suit survey number and had left 95 cents of land for the formation of scheme roads, it is submitted by the Counsel for the appellant that the road portion had been left by him only for promoting his own lay out. It was only because of the manner, in which the lay out was formed by the plaintiff's father, the learned Counsel for the appellant stated that the disputed property came to be used as a road by the persons, who have purchased plots from the plaintiff's father and the general public. It was only after the road formed by the plaintiff's father as a public road, the Corporation was requested to form the metal road and to provide other facilities, without any promise to acquire the land by paying compensation to the plaintiff or his father. It is submitted that the judgment and decree of the trial Court is wholly unsustainable. Since it is admitted that the Corporation had laid metal road, underground drainage and embedded water pipes as early in 1980, it is submitted that the suit filed by the plaintiff in April-2007, seeking compensation is barred by limitation.

7. It is further submitted by the learned Counsel for the appellant that the dismissal of earlier suit will operate as *res judicata* and that successive litigations on the same cause of action are barred. The learned Counsel for the appellant also submitted that the plaintiff's father, who was promoting an unauthorised lay out and leaving a space for the purpose of formation of road for the benefit of purchasers of plots, cannot claim ownership over the portions, in which the road was formed. In other words, it is the specific case of the appellant that the portions left by the plaintiff's father are intended to be used by the purchasers of the plots, to have free access and that the plot owners are entitled to use the land and exercise their right of easement, as such right is attached to the plots sold to them by the plaintiff's father.

8. Since the metal road was laid by the Corporation in 1980 only in the existing road, which was enjoyed by the plot owners and the plaintiff's father had no objection at that time when the Corporation laid the road, the plaintiff is estopped from claiming ownership or compensation for the land. The learned Counsel for the appellant further submitted as the promoter of a lay out after leaving specific portion in the lay out for the purpose of using the same as road for the convenience and enjoyment of the persons, to whom the plots are sold, the plaintiff's father ceased to be the

owner and that the suit claiming compensation from the Corporation does not arise. The learned Counsel for the appellant further submitted that the suit property was declared as a public road following the procedure contemplated under Sections 254 and 255 of the Madurai City Municipal Corporation Act and that the declarative relief prayed for in the suit cannot be granted. The learned Counsel for the appellant further submitted that the Corporation cannot be compelled to pay compensation as the lands were never acquired from the appellant and that the Corporation cannot be compelled to pay compensation for the land, which is used and enjoyed mainly by the persons, who have purchased independent plots from the plaintiff's father and as a right of easement attached to their plots purchased by them.

9.The learned Counsel for the appellant also challenged the permission granted to the plaintiff to file the suit as indigent person. The trial Court has erroneously permitted the plaintiff / first respondent to file the suit as indigent person ignoring the fact that the plaintiff has not disclosed his assests and that the plaintiff and his father, who have sold hundreds of plots after the formation of unapproved lay out, cannot be presumed to be indigenet person incapable of paying Court fee. The learned Counsel for the appellant further submitted that the Corporation has never acquired the land either under the Town and Country planning Act, 1920, or under the Town and Country Planning Act, 1972, and hence the appellant is not entitled to pay compensation for the land at market value. Referring to the provisions of the Town and Country Planning Act, 1972, it is stated further that there is no obligation on the part of the Corporation to acquire the land and that the scheme earmarking any land for a specific purpose is freed from such reservation, in case the land is not acquired by invoking the provisions of Land Acquisition Act. The learned Counsel for the appellant also submitted that the direction of the trial Court to fix compensation by taking into account the guideline value of the year 1981 and then to add 2% per year, till the date of filing of the suit for calculating the amount of compensation cannot be sustained.

10. However, the learned Counsel for the first respondent submitted that the plaintiff's father did not sell or convey the road portion to the plot owners and that he had specific arrangements with the purchasers to the effect that the plaintiff is entitled to get compensation either from the Town and Country Planning Authority or from the Madurai Corporation. When the portions of the lands, which were reserved as scheme roads, were not sold along with individual plots, the ownership over the property continues to be with the plaintiff's father and that the Corporation, to whom the land got never vested, cannot resist the claim for compensation to the plaintiff, the owner of the land. The learned Counsel for the first respondent further submitted that a scheme was framed for the improvement of the area abutting the Madurai town in the year 1948 covering the property of the

plaintiff's father (more than 10 acres) and that the said scheme was also covered under Section 12 of the Town and Country Planning Act, 1920, in the year 1950. After the reservation of the land for the public purpose as per the scheme, the plaintiff's father deprived of his right to the property and that therefore, the property of the plaintiff's father covered by the scheme road was required to be acquired. Since the Corporation laid the road in the land belonged to the plaintiff knowing fully that the land belonged to the plaintiff's father, the Corporation is liable to pay compensation. The learned Counsel for the first respondent further submitted that the defendant Corporation during 1997 decided to acquire the road portion admitting the title of the plaintiff and that this fact would clearly prove the case of the plaintiff.

11. The learned Counsel for the first respondent referring to the provisions of Sections 254 and 255 of Madurai City Municipal Corporation Act, submitted that the appellant cannot take advantage of his own wrong by forming the metal road to declare the suit property as a public road. The order invoking the power under Sections 254 and 255 of the Madurai City Municipal Corporation Act is unsustainable. Since the plaintiff has an indefeasible right to protect his property by virtue of Article 300-A of Constitution of India, the plaintiff cannot be deprived of his ownership, and compensation being paid at market value. The learned Counsel for the first respondent further submitted that the lower Court has permitted the plaintiff to file suit as indigent person, as the prayer was not seriously opposed by the appellant and that the appellant has not proved that the plaintiff had means to pay Court fee at the time when the suit was filed. The learned Counsel for the first respondent further submitted that the suit was laid in April, 2007, only after the proceedings initiated under Sections 254 and 255 of the Madurai City Municipal Corporation Act and that excluding the time taken by the plaintiff by instituting the writ petition earlier, the suit filed by the plaintiff is well within the time.

12. The learned Counsel for the first respondent relied upon a judgment of Honourable Supreme Court in the case of ***P.T.Chet Ram Vashist vs Municipal Corporation of Delhi***, reported in ***(1995) 1 SCC 47***, wherein, it has been held as follows:

> *"6. 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.

7. Even then the question is, should we set aside the order of the High Court and the appellate court and restore that of the trial court or we may alter the order passed by the courts below so as to do substantial justice. We have opted for the latter course for the reasons to be mentioned hereinafter. The appellant's plan was sanctioned subject to the conditions imposed by the Corporation. He did not raise any objection immediately and appears to have proceeded to sell and transfer the land. The suit was filed after nearly one year from the date of sanction. The Corporation has been exercising right over the land in dispute as transferor, since then, for nearly a quarter of a century. In these circumstances interfering with the order of the High Court would be setting at nought settled state of affairs. It was also stated by the learned counsel for respondent that the appellant has no land or house in the locality."

13.Relying upon the said judgment, the learned Counsel for the first respondent submitted that by declaring the suit property as a public road, the Corporation has now become the owner of the land without paying compensation and that the judgment and decree of the trial Court in the suit granting the relief for compensation for the land acquired by the respondent is lawful. However, the learned Counsel failed to see that the judgment is more in favour of the appellant Corporation. The Honourable Supreme Court has categorically held that the reservation of any site for any street in a lay out plan makes the land required for a public purpose for the benefit of purchasers of plots in the lay out. It has been categorically held by the Honourable Supreme Court that after the land is reserved for being used as road for free ingress and egress for the benefit of the public, the promoter ceased to be a legal owner of the land as he holds the land in trust for the benefit of public. It is further held that the interest left in the owner is only a residual interest, which is nothing more than a right to hold the land in intrust for the specific purpose specified by the colonizer in the lay out plan.

14. Having regard to the pleadings and findings of the trial Court and the rival submissions on both sides, this Court considered it proper to frame the following issues for determination:-

"1)Whether the plaintiff is the owner of the property, that was earmarked as scheme road under the 1920 Act?

2)Whether the plaintiff is entitled to get compensation from the Madurai Corporation after the land is being used by the purchasers of individual plots from the plaintiff's father, so as to have access to their plots?

3)Whether the proceedings initiated under Sections 254 and 255 of the Act, declaring the road as a public road is void for non-observance of procedure?

4)Whether the plaintiff is entitled to file the suit as indigent person and whether the order passed by the trial Court permitting the plaintiff to file the suit as an indigent person is valid in law?

5)Whether the suit is barred by limitation?

6)Whether the procedure directed by the trial Court to determine the compensation is in accordance with law?"

Issue No.1:-

15.In this case, the plaintiff himself has admitted in the plaint that the plaintiff's father formed the lay out carefully by leaving the land for the purpose of forming scheme roads. From the lay out plan produced before this Court, it is seen that except the internal road, the portion shown as scheme roads would clearly show that there is no connectivity without the scheme roads for the purchasers of the lay out to have a free access, namely, ingress and egress from the main road. This main feature in the lay out would certainly demolish the case of the plaintiff that he continues to be the owner of the land as his father did not sell the road portion to the purchasers of the plots laid out by his father. By leaving road portion part of the lay out, the plaintiff's father has practically conferred the right of easement of necessity to the purchasers of the plot. But for the scheme roads, the purchasers cannot enjoy their plots. This is a crucial aspect of this case.

16.It is also admitted that three scheme roads are formed now known as Moulana Shakib Street, Periyar Street and Kamarajar Street. The roads were in existence even at the time when the lay out was formed long back. It is not in dispute that the plaintiff's father had sold almost all the plots. When the purchasers of the plots cannot have access to the main road without using the scheme roads, the plaintiff's father knew even at the time of formation of lay out that the land can be used only as a street and there can be no obstruction even by the plaintiff's father as promoter to cause any inconvenience to the users of road, namely, purchasers of plots. Whatever be the agreement, the plaintiff's father had with the purchasers of plot, (even assuming that the plot owners agreed not to claim any compensation from the Corporation or from the Town and Country Planning Authorities), that will not enable the plaintiff's father or plaintiff to claim compensation from the Corporation.

17.Even in the year 1980, metal roads had been formed by the Corporation using their fund at the request of the persons residing in the lay out and public. At the time of laying metal road, the plaintiff or his father had no objection and the plaintiff and his father allowed the Corporation to incur heavy expenditure for the formation of road and for providing other amenities. The roads were not declared as public roads then. However, the Corporation was never asked to pay compensation. Had there been a request from the plaintiff to pay compensation at the time of laying road, the Corporation would not have spend such a huge amount for the benefit of residents, as there was no obligation for the Corporation to acquire the land in respect of a road portion within a private lay out. When the public or residents of the lay out requested the Corporation to lay the road, the presumption is that the public wanted the local body to form metal road only because the three roads have become the public roads and used by the public as a matter of right. In such circumstances, the whole case framed by the respondent / plaintiff to claim compensation has no legal basis. The xerox copy of the scheme marked as Ex-A1 would show that the town planning scheme Madichiyam Part II was framed under the Town and Country Planning Act, 1920. Even the draft scheme provides that 2/3 of the entire cost of the acquisition of land and formation of drainage and lighting of the streets should be regularised from the owners or occupier of the land and building abutting the streets. Such proportion had to be decided by the authorities. Hence at no stretch of imagination, the Corporation can be held liable to pay compensation for the land after the formation of lay out including the road for the benefit of purchasers of the plots.

18.Even in the individual sale deeds, the plaintiff's father has stated as follows:

”ஷ கிரையஸ்தலத்திற்கு சேர்ந்த லேஅவுட் பிளாட்டில் கண்டதும் என்னால் விடப்பட்டிருக்கும் ரோடுகளில் தாங்கள் பொதுவாக நடந்துக் கொள்ள வேண்டியது. ஷ ரோட்டில் சன்ஷேடு, படிக்கட்டுகள் முதலியவகளை எவ்வித ஆக்கிரமிப்பும் செய்துக் கொள்ளக் கூடாது. என்னால் விடப்பட்டிருக்கும் ரோடு நிலங்களை பிற்காலத்தில் கார்ப்பரேஷன் மற்றும் சர்க்காரும் ஆர்ஜிதம் செய்தால் அதன் நஷ்டஈட்டின் தொகையை நானே பெற்றுக் கொள்ளவேண்டியதும்.

19.From the recital in the sale deeds, that was marked as Ex-A4, dated 14.09.1975, the father of the plaintiff has given the right of essement to the plot owners in unmistakable terms. Hence, this Court has no hesitation to hold that the plaintiff has lost his right of absolute ownership, after the road portions had been earmarked to the purchasers of plots for their convenient enjoyment of their land purchased from the plaintiff's father.

Issue No.2:-

20.As held by the Honourable Supreme Court in ***P.T.Chet Ram Vashist vs Municipal Corporation of Delhi***, reported in ***(1995) 1 SCC 47***, the plaintiff, who is the son of the promotor of the lay out, ceased to be owner of the property, which was earmarked to the purchasers of lay out for the convenient enjoyment of the purchasers. The Corporation never wanted any land transfer in their favour at any point of time and that the land was not required for the Corporation. Since the metal road was formed by the Corporation and other amenities were provided by the Corporation for the benefit of public, it does not mean that the Corporation wanted transfer of ownership over the land in their favour so as to pay compensation for the land at market price. The Corporation may seek transfer of ownership in respect of any portion of the lay out reserved as open space, park, recreation ground or any other portion, which is reserved for any public purpose. Only in a case where the Corporation seeks transfer of ownership over such portion of land (other than roads, which are meant for free ingress and egress to the resident and public), the Corporation is liable to pay compensation at market value so as to claim absolute ownership for all public purpose. In this case, the Corporation had already declared the suit property as a public road in terms of Section 255 of the Madurai Corporation Act. After the land became the public street, it vested with the Corporation for the purpose of maintenance and carrying out other amenities.

21.In this case, no procedural violation was pointed out by the trial Court while declaring the suit property as a public road by exercising power conferred under the Madurai City Municipal Corporation Act. As a matter of fact, such declaration ought to have come even before the formation of road. In this case, the Corporation had laid the road at the instance of residents even before the streets are declared as public road. That does not change the charector of the land, as it was being used always as a public road for the purpose of public and the residents of the lay out. Merely because, the declaration came later, the plaintiff cannot now claim compensation after allowing the suit property being enjoyed by the residents as a public road for several decades. In law, the plaintiff's father or the plaintiff is estopped from treating the suit property as their own or to claim compensation either from the Government or from the Corporation.

Issue No.3:-

22.The trial Court has found that the scheme roads were left even at the time when the lay out was formed in 1964 and strangely the trial Court proceeded on the footing that the suit property was not a property covered under the lay out or site as if it was kept separately. We have already seen that the sale deeds executed by the plaintiff's father clearly indicated that the property, which was reserved as road portion in the lay out, was given for the purpose of purchasers of plots to have access. This Court has already seen that without the scheme roads, the purchasers of plots cannot have access to Main Roads and the scheme roads are registered by purchasers for the convenient enjoyment of their respective plots. The registration of scheme road in the Sub Registrar Office is a public notice, so that the public should know that they are not supposed to develop their land contrary to the scheme that was framed under the Town and Country Planning Act, 1920. From this, it cannot be inferred that the plaintiff's father cannot alienate the property or exercise any right of ownership. As a matter of fact, it is only after the scheme, the plaintiff's father developed the lay out in such way, so that the scheme roads will serve as the prime roads in the lay out formed by the plaintiff's father. It is not known how the scheme was detriment to the plaintiff's father. The recitals in the sale deeds only indicate the greedy scheme conceived by the plaintiff's father, who wanted double benefits for an unjust enrichment.

23.The Corporation had no occasion to acquire the land or require the land for their purpose. It was only at request of the residents, the metal roads were laid. Even at the time when the metal roads were laid and other amenities were provided, the roads became the public roads. However, the problem arose with the Corporation because of the observation made by this Court in some of the writ petitions and contempt petition filed by the plaintiff. Be that as it may, the fact that the proceedings initiated under Section 255 of the Madurai City Municipal Corporation Act, to declare the road as a public road was after following the procedure is not in dispute. The contention that the declaration was not at the instance of majority of residents in the locality has no substance. When the roads were meant only for the residents and public to have access which was recognised even in the sale deeds executed by the plaintiff's father, the contention that absolute ownership still continued with the plaintiff's father, cannot be accepted. There is also a presumption in favour of the appellant Corporation to presume that official acts are done in accordance with law after following the procedure. In the written statement filed by the appellant, it is stated that the resolution passed by the Council of Madurai Corporation was in respect of public road, which was being used by the public for more than 40 years. Hence, a decision was taken to declare the road as public road. Absolutely, there is no illegality in declaration and that the plaintiff, who has not objected the public from enjoying the property as a public road from 1964, is estopped from challenging the declaration by his conduct.

Issues Nos.4 to 6:-

24.In view of the findings on issues Nos.1 to 3 in this appeal, this Court has no hesitation to hold that the suit filed by the plaintiff / respondent is liable to be dismissed. In view of the position that the order permitting the plaintiff to sue as an indigent person is not opposed by the State, it is not necessary to decide the issue with regard to the right of plaintiff to file the suit as indigent person without complying with the provision of Order 33 of Code of Civil Procedure.

25.As regards limitation, it is to be seen that the suit is for a declaration and the cause of action arose only after the publication of the declaration of the suit property as a public road in the official gazette. Since the suit is filed within three years from the date of cause of action, after excluding the period during which the writ petition was prosecuted, it cannot be said that the suit is barred by limitation. However, as stated earlier, the plaintiff is estopped from questioning the declaration as a person interested. Hence more than limitation, by applying the principles of estoppal, the plaintiff / first respondent has no right as owner of property to claim compensation. The Corporation never intended to acquire the suit property for their purpose and hence it cannot be compelled to pay compensation as the suit property is not a property reserved for any other public purpose, which can also be independently used by the Corporation and make profit out of it. In such circumstances, there is no scope for directing the Corporation to pay compensation. As a result, this appeal is allowed and the judgment and decree of the trial Court in O.S.No.136 of 2007 passed by the VI Additional District Judge, Madurai, is set aside. The suit in O.S.No.136 of 2007 is dismissed. There is no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

SRM/cmr

To
1.The VI Additional District Judge, Madurai.

COPY TO
The Record Keeper,
V.R.Section,Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.R.SURIA NARAYANAN, Advocate Sr. No.41214
+1CC TO MR.R.MURALI, Advocate Sr. No. 41133

A.S.(MD) No.184 of 2015
09.01.2019

TR (23.04.2019) 16P 6C