

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.24582 of 2013

The Nilamangai Nagar Welfare Association,
(Rego.No.81/80) Rep. By its Secretary
K.Sankararama Sarma,
Nilamangai Nagar, Adambakkam,
Chennai - 8.

.. Petitioner

Vs

- 1.State of Tamil Nadu,
Rep. By its Secretary,
Housing and Urban Development (UDSRI) Dept.,
Fort St. George, Chennai - 9.
- 2.The Chennai Metropolitan Development Authority,
Rep. By its Member Secretary,
Thalamuthu Maligai, Chennai - 8.
- 3.Corporation of Chennai,
Rep. By its Commissioner,
Ribbon Buildings, Chennai - 3.
- 4.The Assistant Commissioner,
Zone 12, Corporation of Chennai,
Alandur, Chennai - 16.
- 5.M.S.Seshadri
- 6.M.S.Viswanathan

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of impugned G.O.Ms.No.24, dated 08.01.1991, on the file of the first respondent and quash the same and consequently direct the respondents 1 to 4 to maintain the site earmarked in the approved layout No.10/75 situated in for Nursery School purpose only.

For petitioner : Mr.N.Krishnakumar

For R1 : Mr.M.D.Ilayaraja,

Government Advocate

For R2 : Mr.P.S.Ganesh, Standing Counsel

For R3 & R4 : Ms.Karthikaa Ashok

For R5 & R6 : Mr.AR.L.Sundaresan, SC

for Mr.K.K.Muralitharan

ORDER

Heard Mr.N.S.Nandakumar, learned counsel for the petitioner, Mr.M.D.Ilayaraja, learned Government Advocate for the first respondent, Mr.P.S.Ganesh, learned Standing Counsel for the second respondent, Ms.Karthikaa Ashok, learned counsel for the respondents 3 and 4 and Mr.AR.L.Sundaresan, learned Senior counsel, for Mr.K.K.Muralitharan, learned counsel for the respondents 5 and 6.

2. The petitioner seeks for issuance of a writ of certiorari to quash the Government Order passed in G.O.Ms.No.24, Housing and Urban Development (U.D.SPL.) Department, dated 08.01.1991, and to maintain the site earmarked in the approved layout No.10/75, as a site exclusively meant for Nursery School.

3. The case of the petitioner association is that they are a residents welfare association registered under the Registrar of Societies Act. The petitioner states that the layout was prepared in Survey Nos.253/2, 3 & 4 at Adambakkam Village, Saidapet Taluk, Alandur Municipality, and it was approved by the second respondent vide order dated 19.11.1975 and the layout is consisted of 20 house sites and an extent of 5561 sq.ft. was earmarked for Nursery School in Survey No.253/4. The grievance of the petitioner is that the owner of the plot one Mr.S.Devarajulu appointed one Dr.M.S.Sabhapathi as Power Agent, who, in turn, had sold the property in favour of his sons, namely, respondents 5 and 6, by sale deed dated 18.03.1986 registered as Document No.79/1986 on the file of the Sub Registrar, Alandur.

4. It is further submitted that an application was made to the second respondent through the Commissioner of Alandur Municipality for conversion of the Nursery School site into residential plots. This request was forwarded by the Commissioner of Alandur Municipality to the second respondent by letter dated 26.10.1987. The second respondent, by proceedings dated 29.07.1988, rejected the request and returned the papers stating that the site under reference should be retained as institutional as per the approved layout No.10/75. Aggrieved by the same, the respondents 5 and 6 have preferred an appeal to the Government under Section 79 of the Town and Country Planning Act, 1971. The Government referred the matter to a Committee constituted for such purpose, who examined the same and found that the site has been lying vacant since 1975 and there was no demand for nursery school and also noted that there are many schools in the neighborhood and therefore, accepted the recommendation of the Appeal Committee and the Government, by

G.O.Ms.No.24, Housing and Urban Development (U.D.SPL.) Department, dated 08.01.1991, had granted permission to reclassify as primary residential use from institutional use and the planning permission was directed to be issued by the second respondent for construction of the house in the said site. After about 19 years, the petitioner had given a representation dated 30.08.2010 stating that such change of classification should not be made. Since the said representation was not considered, the petitioner filed a Writ Petition in W.P.No.2873 of 2012, which was dismissed by order dated 15.03.2012 by holding that the prayer for issuance of a writ of mandamus cannot be granted, since the conversion of the classification is done in the year 1991 and the same has not been challenged. Aggrieved by the same, the petitioner preferred an appeal before the Division Bench in W.A.No.1765 of 2012 and the Division Bench, by judgment dated 12.09.2012, dismissed the writ appeal and it is thereafter the present writ petition has been filed.

5. Firstly, it has to be seen as to whether the petitioner has locus-standi to challenge the impugned Government Order. Admittedly, none of the members of the petitioner association are stated to be owners of any one of the 20 plots developed in the said layout, which was approved on 19.11.1975. The petitioner is Nilamangai Nagar Welfare Association, which is not where 20 plots have been developed. Therefore, the petitioner cannot be stated to be an aggrieved person and have no locus-standi to challenge the impugned order. This is more so because the reclassification has been done from institutional use to primary residential use. Assuming the classification is held to be bad in law, all that can happen is the land will revert back to institutional use and the petitioner association nor any of its members can claim right to the said land nor have access to their land, because, it is not a public place. In fact, from the representation, it is seen that the petitioner association want the land to be declared as a public place, which cannot be done nor there was any prayer made to the authorities.

6. That apart, the petitioner association cannot maintain any such prayer as they have no locus standi as they are all members who purchased the plots in some other layout. Besides, the reclassification has been done in the year 1991 and there was no reasonable explanation given by the petitioner in approaching the authorities after a lapse of 19 years i.e. in the year 2010. Even before this Court, in the earlier writ petition filed by the petitioner, no relief was granted and the Division Bench confirmed the order passed in the writ petition. Considering all these facts, the present attempt of the

petitioner association is a futile attempt and cannot be entertained.

7. It is noteworthy to reiterate that had the site been a public place, the position would have been different. In the instant case, the land was for institutional use which have been converted as primary residential use. Therefore, the petitioner association can have no locus standi to question the reclassification. The petitioner cannot also raise any contention that on account of reclassification, the buildings would be put up, etc., because, even if it is to be retained as institutional use, buildings have to be constructed. Therefore, at no point of time, the petitioner can claim that the land has to be maintained as open space and public place, when the original classification itself was not a public place, but, an institutional use.

8. Thus, for all the reasons stated above, the petitioner has not made out any ground to interfere with the impugned order. Therefore, the writ petition stands dismissed. No Costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Secretary, Housing and Urban Development (UDSRI) Dept.,
Fort St. George, Chennai - 9.

2. The Member Secretary, Chennai Metropolitan Development
Authority, Thalamuthu Maligai, Chennai - 8.

3.The Commissioner,
Corporation of Chennai, Ribbon Buildings, Chennai - 3.

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

+1 cc to M/s.P.S.Ganesh, Advocate Sr.No. 6615
+1 cc to M/s.K.K.Muralitharan, Advocate Sr.No. 6135
+1 cc to M/s.Karthikaa Ashok, Advocate Sr.No. 6098
+1 cc to The Government Pleader, Sr.No.6693

AKM/28.02.2020/4P- 9C /

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