

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.03.2020
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No. 32660 of 2015
and
M.P. Nos. 1 to 3 of 2015

N.K. Venkatesan

.. Petitioner

Vs.

1. The District Collector
Cuddalore district
Cuddalore.
2. The Superintendent of Police
Cuddalore district
Cuddalore.
3. The Revenue Divisional Officer
Vridhachalam Division
Vridhachalam
Cuddalore District.
4. The Thasildar
Vridhachalam Taluk
Vridhachalam
Cuddalore District.
5. The Commissioner
Vridhachalam Municipality
Vridhachalam
Cuddalore District.
6. The Deputy Superintendent of Police
Vridhachalam
Cuddalore District.
7. Kuppathal
8. Saraswathy
9. Rukmani
- 10.Devaki
11. Marimuthu
- 12.Assembly of Jesus
Dr.Loocause Street
Pudupet
Vridhachalam Kasp

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Vridhachalam Taluk
Cuddalore District.
13.T.Subramanian
14.Gandhi

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the fifth respondent not to grant building permission to the respondents 12 to 14 in respect of public land in survey numbers : 54/1, 54/2, 54/6A & 54/8 mentioned in approved lay out in L.P./56/84 by the proceedings of the Deputy Director of Town and Country Planning, Chengalpattu, in Se.The.Ma.Oo.I.M./86-150/Ma.Pi-124, and further direct to maintain the land as public utility land.

For Petitioner : Mr.B.Jawahar

For Respondents : Mrs.A.B.Reehana Begum
(For R1 to R4 & R6)
Government Advocate
Mr.R.P.Prathap Singh (For R5)
Mr.T.S.Sivaganasambandam (For R13)
No appearance - R11, R12 and R14

O R D E R

The Petitioner has filed this writ petition for a writ of mandamus to direct the fifth respondent, the Commissioner, Vridhachalam Municipality, Cuddalore District not to grant building permission to the respondents 12 to 14 in respect of the lands in Survey Nos. 54/1, 54/2, 54/6A & 54/8, which have been reserved for public purposes in an approved layout in L.P. / 56 / 84 and maintain the same as public utility land.

2. Before the Court goes into the aspect as to whether the petitioner has made out a case for grant of the prayer sought for, the legal position needs to be set forth.

3. If a person develops a property into a housing layout, depending upon the size of the layout, the Town Planning Authority would impose various conditions. One such condition is to reserve areas for public purposes. They would include areas to be reserved for road, park, children playground and other amenities, which are required to be provided in a newly formed housing layout. To ensure that the areas have been earmarked and reserved for public purposes, the promoter of the layout is called upon to execute gift deed in favour of the concerned local body. The local body who is entrusted with the land in the capacity of a Trustee and the local body is bound to preserve the land as it is and cannot alter the physical features of the land. This is a settled legal position.

4. In the instant case, the petitioner's grievance is that the private respondents have colluded with each other and have forged by way of selling the lands which have been earmarked for public purpose in the approved layout. There are lot of allegations made against the thirteenth respondent, who is stated to be a former councillor of the Municipality.

5. Be that as it may. If the legal position cannot be disputed then it has to be seen as to what has been done in the matter. Much earlier the sixth respondent municipality has filed a suit in O.S. No. 422 of 2007 on the file of the I Additional District Munsif Court, Vridhachalam praying for a declaration to declare that the Municipality is an absolute and exclusive owner of the suit properties and for decree of permanent injunction. The defendants in the suit are the respondents 7 to 14 herein. Unfortunately, the suit was dismissed by judgment and decree dated 15.04.2017, as against which the fifth respondent/municipality has preferred appeal in A.S. No. 19 of 2015, which is pending before the Principal Sub-Court, Vridhachalam. In the meantime, as there was an attempt made by the private respondents to put up construction in the property. The petitioner, who owns a plot adjoining the public land purpose has moved this Court by way of this writ petition.

6. Earlier this court had issued direction to call for the papers in A.S. No.19 of 2015 so that the same may be heard along with this writ petition. However, till date the papers have not reached this court. In the considered opinion of this Court it would be better if the appeal suit is heard and decided by the Principal Sub-Court, Vridhachalam. It is the first appellate court, which would be able to appreciate and re-appreciate the evidence placed before the trial court and also take note of the legal position.

7. Therefore, this court is of the view that it may not be necessary to call for the papers in A.S. No. 19/2015 from the Principal, Sub Court, Vridhachalam and the same should be heard by the said court at the earliest. At the time when the writ was entertained, an order of interim injunction was granted noting a very vital fact that a power of attorney was executed by the eleventh respondent, wherein power has been granted to sell the public purposes land as well as roads etc. This having been brought to the notice of this Court an order of injunction was granted on 13.10.2015. This court fails to understand as to how the power of attorney can be granted to a person to sell a public purpose land or a road in an approved layout. This factum should be noted by the lower appellate court while deciding A.S. No. 19 of 2015.

8. Mr.T.S.Sivagnanasambandan, learned counsel for the thirteenth respondent submits that all the allegations made by the Municipality as well as the writ petitioner are stoutly denied.

9. It is for the thirteenth respondent to suitably argue his case before the lower appellate court.

10. In the light of the above, the writ petition is disposed for by restraining the respondents 7 to 14 from putting up any construction in the properties in question and no encumbrance shall be created and the physical feature should not be altered and awaiting the decision in A.S. No. 19 of 2015.

11. Registry is directed to send the papers in respect of A.S. No. 19 of 2015 to the Principal Sub court, Vridhachalam, before whom the appeal is pending is requested to expedite the disposal of the appeal, preferably within a period of three months from the date of receipt of a copy of this order. If any step has been taken to consign original records and the appeal to this court, the same shall be recalled in the light of the observations made by this Court and the appeal shall be decided by the Principal, Sub-Court, Vridhachalam.

12. It is submitted that the fifth respondent-Municipality has filed O.S. No. 154 of 2015 on the file of the District Munsif Court, Vridhachalam and the same is pending, and the trial of the said suit shall also be expedited and the District Munsif Court is requested to proceed with the trial as expeditiously as possible and complete the entire proceedings within a period of four months from the date of receipt of a copy of this order.

13. Accordingly, the writ petition is allowed. No costs. Consequently connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector
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Vridhachalam
Cuddalore District.
6. The Deputy Superintendent of Police
Vridhachalam
Cuddalore District.

+1cc to Mr.T.Sivagnasambandam, Advocate, S.R.No.19655
+1cc to Mr.R.P.Prathap Singh, Advocate, S.R.No.19663
+1cc to the Government Pleader, S.R.No.20235

W.P. No. 32660 of 2015

GMR(CO)
nvi/29.05.2020

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