

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 14570 of 2011

and

M.P. No. 1 of 2011

Mehul Doshi,
S/o.Harshad Doshi

... Petitioner

Vs

1. The Member Secretary,
C.M.D.A.,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 038.

2. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.

3. The Assistant Revenue Officer,
Zone No.5,
Corporation of Chennai,
Chennai - 600 003.

.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents, their men, agents, servants, subordinates or any one acting under them from not to in any manner interfere with peaceful enjoyment and user of the property by the petitioner's apartment complex known "Doshi Llanstephen" including the erection of the sign Board by the Corporation of Chennai in the property situated in land bearing New Door No.95, Old Door No.72, Mc Nichols Road, Chetpet, Chennai - 600 031 measuring about 122.40 sq.mts which is used as a Park and a Play ground in R.S.No.381/6 (part) Block No.24, Egmore Village, Chennai.

For Petitioner : Mr.T.T.Ravichandran

For R1 : Ms.Veena Suresh

For R2 & R3 : Ms.Rama Devi
Standing Counsel

ORDER

The petitioner has filed the writ petition seeking for issuance of writ of Mandamus, to forbear the respondents not to interfere with the petitioner's apartment complex known

"Doshi Llanstephen" by erection of the sign Board by the Corporation of Chennai in the property situated in land bearing New Door No.95, Old Door No.72, Mc Nichols Road, Chetpet, Chennai - 600 031 measuring about 122.40 sq.mts which is used as a Park and a Play ground in R.S.No.381/6 (part) Block No.24, Egmore Village, Chennai.

2. The petitioner is one of the resident of the property developed by Doshi Housing. At the time of getting approval, an extent of 122.40 Sq.mts of land was gifted to Chennai Metropolitan Development Authority (CMDA), which was later transferred to the 2nd respondent/Corporation of Chennai for maintenance and was handed over to the Corporation being the local authority.

3. In the year 2011, prior to filing of the present writ petition, it appears that 2nd respondent/Corporation of Chennai wanted to put up a sign board claiming to exercise its rights over the open space reserved area, which was gifted to CMDA stating that they have a right to put up the sign board so as to allow the public to have access to the gifted area.

4. According to the petitioner, as per the CMDA Development Regulation in Annexure XX, the space reserved is to be transferred to the Authority or to the local body designated by CMDA, free of cost, through a registered gift deed. In case of residential developments, the Authority or the local body concerned may permit the Residents Association or Flat Owner's Association for maintaining such reserved space as park/play ground and in such cases where the Authority decides to permit the Residents Association or Flat Owner's Association for maintaining it, direct access from a public road for such reserved area may not be required and any right of access to the Authority or the local body concerned through set back space shall be transferred through a registered gift deed along with the reserved space.

5. The learned counsel for the respondents has submitted that the petitioner was put up construction in the area given to CMDA and it was handed over to the 2nd respondent/Corporation of Chennai in 2008 and therefore they decided to exercise their rights over the property, which is now a public property.

6. There are some disputed questions of fact and therefore I am inclined to dispose the writ petition by directing the petitioner to file appropriate representation before the 2nd & 3rd respondents within a period of 45 days from the date of receipt of a copy of this order. Mean while, the 3rd respondent/Assistant Revenue Officer herein, shall inspect the property in the presence of the President or General Secretary of the Association within a period of 15 days and place it before the 2nd respondent. A copy of such representation shall be furnished to the Association.

7. On such representation being filed, appropriate order may be passed by the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order. Such order will be binding not only on the petitioner but also on flat owners.

8. This Writ Petition is disposed of with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Member Secretary,
C.M.D.A.,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 038.
2. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.
3. The Assistant Revenue Officer,
Zone No.5,
Corporation of Chennai,
Chennai - 600 003.

+1cc to Mr.P.Veenasuresh, Advocate, S.R.No. 12271
+1cc to Mr.P.T.Ramadevi, Advocate, S.R.No.12489

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PL(CO)
GN(26/03/2021)

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