



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.15058 of 2013 and M.P.No.1 of 2013

M.Santhi

... Petitioner

-Vs-

1. The Member Secretary (General)
Local Planning Commission
Namakkal.

2. The Commissioner
Thiruchengode Corporation
Thiruchengode.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in the impugned notice Kaa.Ve.No.238/2012/F1 dated 19.12.2012 and quash the same as illegal, incompetent and unconstitutional and further direct the respondent No.2 to dispose of the application No.258/2012/F1 and dated 04.12.2012 on merits.

For Petitioner : Mr.Avinash Wadhwani
for Mr.V.Raghavachari

For Respondents : Mr.V.Manoharan,
Additional Government Pleader-for R1
Mr.S.Saravanan - for R2

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records in the impugned notice Kaa.Ve.No.238/2012/F1 dated 19.12.2012 and quash the same as illegal, incompetent and unconstitutional and further direct the respondent No.2 to dispose of the application No.258/2012/F1 and dated 04.12.2012 on merits.

2. The petitioner claims that, she is the title holder of the property in Survey Field No.113/2 and Town Survey No.16/2A Part situated at Gounder Colony (CHB Colony) Paramathivelur Main Road, Tiruchengode Village, Namakkal District. The property was purchased by the petitioner by a duly executed sale deed dated



16.04.1986 for valuable consideration. After purchasing the property, the petitioner had made an application seeking permission from the respondent Municipality to construct a house / building. The said application dated 04.12.2012, after having been processed by the respondent municipality, was rejected by an order dated 19.12.2012. Challenging the same, the present writ petition has been filed.

3. In the rejection order, the prime reason stated by the respondent municipality is that, the petitioner's land ie., the plot she claimed to have purchased and seeking permission for construction of building, is a part of the layout and as per the approval of the layout, the particular plot comes within the area earmarked and is approved as public purpose. Therefore, for the reason since it has been reserved for public purpose, no private development can be permitted and accordingly the said application of the petitioner seeking for permission to construct the building was rejected by the respondent municipality.

4. In this regard, Mr.Avinash Wadhvani, learned counsel appearing for the petitioner would submit that, insofar as the plot of the petitioner is concerned, it is in the corner of the layout and that place was not exactly allotted to be a public purpose place. Therefore, on a wrong premise by referring the neighbouring plan approval given by the planning authorities, the respondent municipality has come to a conclusion that, the plot belongs to the petitioner forms part of the public purpose place and therefore on that wrong premise, the present reason stated in the impugned order that, as if that it is reserved for public purpose, is unsustainable and therefore, the impugned order is liable to be interfered with and the petitioner is entitled to seek for a mandamus against the municipality to process the application of the petitioner for getting building permission, he contended.

5. Per contra, Mr.S.Saravana Kumar, learned Standing Counsel appearing for the second respondent municipality has produced the certified copy / true copy of the layout approval.

6. In the layout approval, the petitioner's plot has been now marked distinctively for public purpose by shading in orange colour. However, the original plan as approved by the planning authority is having a larger extent of public purpose place, wherein a corner has now been shown in orange colour, as if that is the petitioner's property, wherein she had proposed to have construction of the building. Therefore, the learned Standing Counsel would contend that, knowing well that the said area is also covered under the reserved area for public purpose, she had purchased the same and sought for building permission from the



respondent municipality. Since that plot forms part of the public purpose reserved area, permission for construction of building cannot be given and therefore, it was rightly rejected by the respondent municipality and hence the impugned order does not require any interference from this Court, he contended.

7. I have considered the submissions made by the learned counsel on either side and have perused the documents filed before this Court.

8. The simple controversy involved in this writ petition is as to whether the plot in question purchased by the petitioner is an independent approved plot as per the layout approval or it is part and parcel of the land earmarked for public purpose as per the layout plan.

9. I have compared the layout plan submitted by the learned counsel for the petitioner as well as the layout plan ie., true copy of the layout plan submitted by the second respondent municipality. In both the plans, a larger extent has been earmarked with the heading 'public purpose', wherein there is no separate plot available, as claimed by the petitioner and if at all subsequently the public purpose reserved area has been plotted out by the promoter and sold to the petitioner and similar persons like the petitioner, it would not confer any right on the petitioner or similarly placed persons to seek permission to have construction of the building from the local authority.

10. If any layout is developed, such kind of layouts are being developed only on the basis of the Development Control Rules, where the park area, area reserved for public purpose and common area for laying of roads etc., all should have been clearly demarcated and in fact the public purpose area as well as the road area should have been handed over to the local authority ie., municipality for continuous maintenance of the same in the layout.

11. When that being so, the very same scenario seems to have taken place in this layout also. The promoter might have plotted out further the land earmarked for public purpose as approved in the layout plan and sold the same to various individuals like the petitioner and innocent persons like the petitioner if at all purchased the same knowingly or unknowingly such public purpose area, that would not ipso facto confer any right to seek for building permission.

12. This is one such case where unknowingly the petitioner might have purchased the plot, which is earmarked for public purpose. Therefore, the reason stated in the impugned order by



the respondent municipality is fully justifiable and sustainable and the impugned order does not warrant any interference.

13. In the result, this writ petition is dismissed. However, it is open to the petitioner to make an application to the planning authorities to give exemption for the petitioner's plot for development as an individual plot as approved in the said layout if any such provision is available in the Tamil Nadu Town and Country Planning Act as well as the Development Control Rules in this regard.

14. With these observations, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Member Secretary (General)
Local Planning & Commission
Namakkal.

2. The Commissioner
Thiruchengode Corporation
Thiruchengode.

+lcc to Mr.S.Saravanan, Advocate, S.R.No.63079
+lcc to Mr.V.Raghavachari, Advocate, S.R.No.63424
+lcc to the Government Pleader, S.R.No.63501

W.P.No.15058 of 2013

SSD(CO)
CT 09/02/2022