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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. No.16992 of 2010

1.Lalitha Devi
2.RathnaDevi
3.Jothi
4.Asha

Petitioners

-Vs-

The Commissioner Corporation of Coimbatore,
Coimbatore.

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to restore the petitioners property in S.F.No.321 measuring 6120 Sq.ft, Singanur Village, Coimbatore in the condition that existed at the time of encroachment by the respondent and handover the same to the petitioners as vacant land.

[Prayer Amended as per order dated 07.11.2013 in M.P.No.1 of 13 in W.P.No.16992 of 2010]

For Petitioners : Mr.A.Muthukumar

For Respondent : Mr.S.Saravanan
Standing Counsel

O R D E R

This writ petition has been filed for issue of writ of mandamus directing the respondent to restore the petitioners' property to its original position and to hand over the same to the petitioners.

2.Originally the writ petition was filed to forbear the respondent Corporation from establishing the Corporation Park in the property belonging to the petitioners measuring an extent of



6120 Sq.Ft. comprised in S.F.No.321 situated at Sangapur Village, Coimbatore. During the pendency of the writ petition the respondent proceeded to establish the park and hence the relief was amended by an order dated 07.11.2013.

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3. When the matter came up for final hearing on 27.08.2021, this Court passed the following order:

This writ petition has been filed for a direction to the respondent to restore the petitioners property to its original condition.

2. The grievance of the petitioners is that the subject property belongs to them absolutely by virtue of the registered Sale Deed dated 24.10.2005 and the Rectification Deed dated 07.10.2006 and the further case of the petitioners is that a joint patta was also given in their name for the subject property. While so, the respondent Corporation had constructed a wall around the property and this was questioned by the petitioners. Initially, the writ petition was filed seeking for a direction to the respondent Corporation not to interfere with the property belonging to the petitioners. During the pendency of the writ petition, the wall seems to have been constructed around the property and therefore, the relief was amended by the petitioners.

3. The learned counsel for the petitioners submitted that the work was carried out by the respondent Corporation in spite of interim orders passed by this Court and contempt petition was also filed. However, since the writ petition pertained to the year 2010, this Court thought it fit to close the contempt petition and take up the writ petition itself for final hearing.

4. The respondent Corporation has filed a counter affidavit. The Corporation has taken a defence to the effect that a layout approval was granted by the Deputy Director of Town and Country Planning, Coimbatore and Nilgris through proceedings in L.P.DM.No/D.D.T.P.(CNR) No.34/71. While approving the layout, certain portions were reserved for developing a Park for the benefit of the general public. This portion is said to have been purchased by the petitioners and therefore, the respondent Corporation is questioning the very claim of the ownership made by the petitioners.



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5. In reply to the said counter, the learned counsel for the petitioners submitted that the layout was not granted approval by the local authority and that apart, no gift deed was executed in favour of the respondent Corporation and therefore, there is no question of reserving any portion as OSR for the purpose of putting up a park or a playground. Therefore, the learned counsel for the petitioners submitted that the stand taken by the respondent Corporation is unsustainable.

6. The learned Standing Counsel appearing on behalf of the respondent Corporation shall furnish the following documents to this Court:

(a) The layout approval granted by the Town and Country Planning authority in proceedings in L.P.DM.No/D.D.T.P.(CNR) No.34/71.

(b) The layout approval granted by the local authority and

(c) The gift deed executed at the time of giving the layout approval.

7. The above documents, if available, will enable this Court to pass final orders in this writ petition.

8. Post this case under the caption 'For Passing Final Orders' on 09.09.2021. It is made clear that on the date of hearing, the above documents must be furnished before this Court.

4. Pursuant to the above order, the matter was once again taken up for hearing on 23.09.2021 and this Court passed the following order:

For the query that was posed by this Court on 26.08.2021, the learned standing counsel appearing on behalf of the Corporation was able to show this Court only a lay out approval that was given in the year 1971. This Court is not fully convinced with the stand taken by the respondent Corporation, since the respondent Corporation has granted planning permission and building approval for the very same property in the year 2001. That apart, the revenue department has also recognized the ownership and has issued a joint patta. All of a sudden, a stand was taken in the year 2010 as if the property was earmarked for a park and for a common purpose. Unfortunately, the petitioners





8. It is clear from the written instructions that insofar as the place earmarked for public purpose is concerned, there is a four storeyed apartment and an independent house with one floor. The same is clear from the photographs that have been annexed along with the written instructions. The portion of the property that is now claimed by the petitioners is also situated in this portion of the property measuring an extent of 6120 Sq.Ft. It is not known as to how the sanction was given for the construction of houses in a place earmarked for public purpose, if really it is within the control of the Coimbatore Corporation as per the sanction granted for the layout. The fact that such substantial constructions have been made only shows that the property was never under the control of the Coimbatore Corporation. All of a sudden, they have proceeded to put up a park in the property belonging to the petitioner and in order justify the same, they have now come up with the so-called sanction plan that was given in the year 1971. Except the plan there is nothing to show that the property that was earmarked for public purpose was even gifted to the respondent Corporation. The respondent Corporation is expected to take a consistent stand with regard to the property that is said to have been earmarked for public purpose. On the one hand they cannot keep allowing substantial constructions being put up by private parties in the property and on the other hand choose a particular portion in the property and put up a park. This is nothing but arbitrary exercise of power and it is quite unfortunate that the respondent Corporation was not consistent in the manner in which it dealt with the property which is said to have been earmarked for public purpose. Initially this Court was inclined to proceed against the concerned officials who gave patently wrong information to the learned Standing Counsel appearing on behalf of the Corporation. However, the learned Standing Counsel submitted that the concerned officer had joined very recently and therefore, sought for pardon. This Court did not proceed further against the concerned official only based on the request made by the learned Standing Counsel appearing on behalf of the respondent Corporation.

9. It is clear from the above that the respondent Corporation has miserably failed to establish their right over the subject property. The respondent Corporation is not in control of the property and there is no record to show that the property was gifted to the respondent Corporation. That apart the property was purchased by the petitioners through a registered Sale Deed dated 24.10.2005 and joint patta has also been granted in favour of the petitioners for the property. Therefore, if really this place was earmarked for public purpose, even the revenue department would not have issued a joint patta in favour of the petitioners.



10.The up short of the above discussion, leads to the only conclusion that the petitioners are entitled for the relief sought for in this writ petition.

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11.As a result, this writ petition stands allowed. No Costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

ssr

To

The Commissioner Corporation of Coimbatore,
Coimbatore.

+1cc to M/s.A.Muthukumar, Advocate, S.R.No.56017

+1cc to M/s.S.Saravanan, Advocate, S.R.No.58484

W.P. No.16992 of 2010

KSM(CO)
SU(24/11/2021)