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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P. No. 19490 of 2018
and
W.M.P. No. 22930 of 2018

V.Jeevanandam

...Petitioner

Vs

1.The District Collector
Coimbatore District
Coimbatore.

2.The Commissioner
Coimbatore City Corporation
Coimbatore-1.

3.The Assistant Commissioner
North Zone
Coimbatore City Corporation
Coimbatore.

4.The Executive Engineer (Project)
Coimbatore Corporation
Coimbatore - 641 001.

5.The Member Secretary
Local Planning Authority
Coimbatore.

... Respondents

[R5 suo motu impleaded as per order dated 30.07.2018 by NKKJ
& KRJ in MP:19490/2018]

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the Fourth Respondent herein in G.No. 61911/2018M.H.6, dated 23.07.2018 and quash the same and consequently, direct the Respondents herein to hold that the Arulmighu Karpaga Vinayagar, Arulmighu Kasiviswanathar, Arulmighu Kasi Visalakshmi and Arulmighu Balamurugan Temples



situated in Kani Nilam Layout, Ward No. 28, Saravanampatty (formerly Ward No.15, Saravanampatty Town Panchayat), Coimbatore Corporation would also fall under public purpose, based on the petitioner representation dated 18.06.2018.

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For Petitioner : Mr. G.Karthikeyan

For Respondents : Mrs. R.Anithan
State Government Counsel (For R1 & R5)

Mr. J.Sathya Narayana Prasad
(For R2 & R4)

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)
The matter was heard through "Video Conference".

2. The Petitioner has come before this Court challenging the order dated 23.07.2018 passed by the Fourth Respondent Coimbatore Corporation, by which the allotment sought for by the Petitioner for Temples, which had already been constructed as early as 1982, has been rejected.

3. The Petitioner submits that he is one of the land owners in 'Kaani Nilam' layout, which is a duly approved layout formed in the year 1988. There are totally 38 housing plots and about 13,200 square feet have been retained for public purposes in the said layout. Out of the total area of 13200 square feet of land, 2236 square feet had been used for constructing four Temples viz., Arulmigu Karpaga Vinayagar Temple, Arulmigu Kasi Viswanathar Temple, Arulmigu Kasi Visalakshi Temple and Arulmigu Balamurugan Temple, at the time of formation of the said layout.

4. A Writ Petition has been filed in W.P. No. 29261 of 2014 seeking Writ of Mandamus directing the Commissioner, Coimbatore City Corporation, Coimbatore to remove the encroachment/ Temple structures found in the reserve site of DTCP approved layout in S.F. No. 355/1, Ward No.28, Saravanampatti, Coimbatore Municipal Corporation. The said Writ Petition was disposed on 10.04.2015 with a direction to take action within a period of four weeks. Subsequently, one Mr. C.Palanisamy filed a Writ Petition in W.P. No. 30373 of 2014 challenging the order dated 19.07.2014 passed by the Commissioner, Coimbatore City Corporation, Coimbatore - 641 001 to restrain the official Respondents to interfere with the said Writ Petitioner's peaceful possession, which was also disposed on 10.04.2015. Subsequently, the Petitioner filed a Writ Petition in W.P. No. 19535 of 2017 directing the Respondents therein to pass necessary orders on the Petitioner's representation dated 15.07.2017. The said Writ Petition was



dismissed with liberty to the Petitioner to work out his remedy by order dated 08.08.2017. Subsequently, the Petitioner approached the Respondents with a request to allot the said land in that layout for the purpose of Temple. That representation has been rejected. The said order is being challenged before this Court.

5. Heard Mr. G.Karthikeyan, Learned Counsel for the Petitioner, Mrs. R.Anitha, Learned State Government Counsel appearing for the First and Fifth Respondents and Mr. J.Sathya Narayana Prasad, Learned Counsel appearing for the Second to Fourth Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

6. It is evident from the records available, especially, status report filed by the Second Respondent that 13,200 square feet has been earmarked for the public purposes in that approved layout, namely, Kaani Nilam, vide LP/DTCP No.462/1988 which is situated in Ward No. 28, North Zone of Coimbatore City Municipal Corporation. The said layout was formed on 03.10.1988 and approval was given in the year 1991 vide K.Dis. 598/88 dated 11.01.1991. Out of the total area of 13,200 square feet, which is meant for public purposes, 2236 square feet of land has been utilized for constructing the aforesaid four temples, which were in existence even before the erstwhile Saravanampatti Town Panchayat got merged with Coimbatore City Municipal Corporation in the year 2011 in delimitation process.

7. It is stated by the Second Respondent, at the time of merger in the Corporation during the year 2011 the park site did not even have fencing around it and there were four temples that had been already built on the park site. Sufficient space for park and play-ground with children play materials have been provided. The Temples are located only in 2236 square feet, out of total area of 13,200 square feet. From the above, it is clear that even before the merger of the Saravanampatti Town Panchayat with the Coimbatore City Municipal Corporation during the year 2011, the Temples, which is in existence for more than 3 decades, had been constructed when the said layout was formed. The Temples are being worshipped by the area people and it occupies only 17% of the total area, which is meant for public purposes.

8. In this regard, Mr. G.Karthikeyan, Learned Counsel for the Petitioner relied upon the judgment in Villupuram Municipality -vs- M.Subramanian reported in [(2002) 3 MLJ 375], in which it has been held that the basic principles is to provide the roads with minimum width and also the other amenities such as open space to have the park for the use of the residents of the area and also to have necessary open space to have the play ground



for both elders as well as youngsters and children for their healthy life and also to have the school, temple and other necessities in the area. Paragraph No. 12 of that judgment is extracted :-

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In order to appreciate the contention of the learned counsel for the respondent, one has to consider the purpose of the Act and necessity for the individual to get the sanction for the lay out. As the Supreme Court pointed out in the case of PRATIBA CO-OPERATIVE HOUSING SOCIETY LTD v. STATE OF MAHASHTRA the tendency of the public is to raise unlawful constructions and unauthorised encroachments which is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety of occupants and the residents of multi storied buildings. Any regulation is being brought in only to curb the illegal activities. Section 49 of the said Act contemplates the filing of application for such sanction of lay out. When the owner of the land, without considering the interest of the purchasers of the land, including the basic necessity, started to alienate the properties by laying out the plots and by providing small lanes as roads, it became necessary for the authorities to prescribe the norms to regulate the sanction of the lay out. It is unnecessary to deal with every provision under the Act. But the basic principle is to provide the roads with minimum width and also the other amenities such as open space to have the park for the use of the residents of the area and also to have necessary open space to have the play ground for both elders as well as youngsters and children to have a healthy life and also to have the school, temple and other necessities in the area. In order to make it compulsory the individual land owner had been directed to approach the authorities in accordance with Section 49 of the Tamil Nadu Act 35 of 1972. When such application is being filed by the individual, the authorities have to consider the viability of the lay out and sanction the same, imposing the conditions which are necessary in the public interest. When such permission is granted for the lay out then Section 50 makes it clear that every permission granted under Section 49 shall remain in force for a period of three years from the date of such permission. The learned counsel for the respondent mainly relied upon this provision in



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support of his contention that after the expiry of three years period the sanction would lapse and as such the authorities are not entitled to enforce the conditions imposed therein. As already submitted, there is total misconception on the part of the learned counsel for the appellant. When once the lay out is sanctioned, it has to be kept as it is for ever; especially in respect of the earmarked portions of the area for public purpose. The conditions imposed for the sanction of the lay out are the conditions coupled with the sanction of the lay out. In that case, the lay out is being sanctioned only on the expectation that the land owner will comply with the conditions imposed thereunder. When the conditions are imposed for sanction of the lay out the compliance of such condition is mandatory and is not for the time being to satisfy the requirement of the sanction. When that be so any condition imposed for the sanction of the lay out must strictly be complied with. If the contention of the learned counsel for the respondent is to be accepted then the conditions imposed for the sanction of the lay out can be patently violated after the lapse of the validity period of sanction. It that be so, then the conditions imposed for sanction of lay out would become mockery as the land owner can make a belief of such compliance for the time being alone without any relevance to the reality of the fact that such conditions are imposed for the public interest and the conditions have to be complied with some sincerity and the lay out must be maintained for ever in accordance with the sanction. If this is not the intention of the legislature, then there is no need for imposing any condition knowing fully well that the conditions are temporary one which can be enforced only during the subsistence of the validity of sanction. When the conditions are imposed, there is purpose behind this requirement and such conditions shall be complied with and the reservations made under the conditions should be kept intact for ever."

The Learned Counsel also relied upon another judgment in Krishna Nagar Residents Welfare Association -vs- The Director Town and Country Planning reported in [2001(3) L.W. 828] in which his Lordship K.P.Sivasubramanian as he then was relying upon the judgment in Pt. Chet Ram Vashist (Dead) by Lrs. -vs- Municipal Corporation of Delhi reported in [(1995) 1 SCC 47] held that the lands, which are meant for public purposes, can be utilized for any public purposes . Paragraph No.8 of the Judgment is



extracted as follows:-

"8. It is not disputed that in the layout plan, the disputed property has been shown as a park. Therefore, there can be absolutely no justification on the part of the fourth respondent to claim the property as her own nor is it open to the authorities to concede such a demand. It may be open to the Town Planning authorities to convert the use of the land for any other public purpose other than purpose for which the land was earmarked. Normally, a park can be converted into a place for hospital, school or Kalyana Mandapam etc for common use. The purpose should continue to remain only as public and for the benefit of the entire colony. But in the present case, the attempt is to convert the property as belonging to the fourth respondent herself which is definitely not permissible. The very lay out is sanctioned and granted only on the understanding that all the places marked as common would continue to remain as common and no individual like the fourth respondent can claim ownership of the property, which is sought to be done in the present case and which has also found acceptance by the public authorities namely respondents 1 to 3. I am unable to sustain the said claim on the part of the fourth respondent that she is entitled to have property to be converted to her own use. Otherwise, there is no purpose in submitting a lay-out plan and the Government sanctioning the lay out plan subject to the requirements being satisfied. The learned counsel for the petitioner has rightly relied on the Judgment of Supreme Court in Pt. Chet Ram Vashist (Dead) by Lrs. v. Municipal Corporation of Delhi (1995) 1 S.C.C. 47). The Supreme Court has held that

"reserving any site for any street, open space, park, school, etc., in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It would create an obligation in nature of the trust and may preclude the owner from transferring or selling his interest in it".

Therefore, the attempt on the part of the fourth respondent to assert the title over the property and rights over the property to utilise the property in any manner she likes in order to get income from the



property cannot at all be accepted. Therefore, permission granted by the respondents 1 to 3 in this context is totally illegal and cannot be sustained."

From the above, it is held that the Temples, which also serves public purposes and which are there in existence for more than three decades, cannot be disturbed.

9. Considering the fact and also the judgments relied upon by the Learned Counsel for the Petitioner, the Temples which have been in existence for more than 3 decades, and are worshipped by the people residing in the locality and hence, it may not be appropriate to remove the said Temples, which may affect the sentiments of the worshippers and area people. A perusal of the photographs discloses the facts that sufficient place i.e. nearly 11,000 square feet is available and children play materials are also made available, that apart there are many trees available in the park site and the existence of the Temples do not cause any disturbance to any person.

10. In view of the existence of the vast extent of the land in the said layout and the existence of the Temples for more than 3 decades, the impugned order is quashed and the Respondents are directed not to interfere with the peaceful possession and enjoyment of the Temples or not to take any coercive action against the Temples.

11. With the above directions, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya

To

1.The District Collector
Coimbatore District
Coimbatore.



2.The Commissioner
Coimbatore City Corporation
Coimbatore-1.

3.The Assistant Commissioner
North Zone
Coimbatore City Corporation
Coimbatore.

4.The Executive Engineer (Project)
Coimbatore Corporation
Coimbatore - 641 001.

5.The Member Secretary,
Local Planning Authority,
Coimbatore.

+1CC to Mr.G.Karthikeyan, Advocate (SR No.29614)

W.P. No. 19490 of 2018

PL (CO)
PR (20/07/2021)