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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.06.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1467 of 2017
and
C.M.P.No.19496 of 2017

K.Ganesan

... Appellant

-vs-

1.The Commissioner and Secretary
Rural Development and Land
Administration, Tamil Nadu

2.The Assistant Director of Panchayats
Office of the Collectorate,
Tiruvallur, Tiruvalur District.

3.The Commissioner,
Villivakkam Panchayat Union,
Ambattur, Chennai-600 053

4.The Chairman,
Villivakkam Panchayat Union,
Ambattur Taluk, Chennai-600 053

5.The President,
Ayyapakkam Panchayat,
Ayyapakkam, Ambattur Taluk,
Chennai-600077.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the dismissal order dated 10.07.2017 passed in W.P.No.16871 of 2004 and W.P.M.P.No.19985 of 2004 (common order) confirming the order of the third respondent in ref. No.Na.Ka.2091/04 A3 dated 24.05.2004 whereby the third respondent has rejected the planning application for building permit of the appellant for developing plot No.24 in survey No.77/10 of Ayyapakkam Village, Villivakkam panchayat Union, Ambattur Taluk.



For Appellant : Mr.S.A.Rajan

For R1 to R5 :Mr.V.Manoharan
Government Advocate

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JUDGMENT

V.SIVAGNANAM, J.

This Writ Appeal has been preferred against the order dated 10.07.2017 passed in W.P.No.16871 of 2004 and W.P.M.P.No.19985 of 2004 (common order) confirming the order of the third respondent in ref. No.Na.Ka.2091/04 A3 dated 24.05.2004 whereby the third respondent has rejected the planning application for building permit of the appellant for developing plot No.24 in survey No.77/10 of Ayapakkam Village, Villivakkam panchayat Union, Ambattur Taluk.

2.The short facts leading to the filing of the Writ appeal are states below:

The appellant is the owner of an approved plot bearing plot No.24, in Survey No.77/10 of Ayyapakkam village and Ayyapakkam Panchayat limits. The layout approval of the land was accorded in K.No.1769/74 by the Deputy Director of Town Planning, Chengalpattu and Chennai Zone. At the time, when the planning approval was granted, the plot was reserved for public purpose. The appellant did not know that it was reserved for public purpose and the appellant purchased by means of a sale deed dated 19.08.1974. The appellant has obtained patta, chitta and adangal extracts from the concerned revenue official. When the appellant intended to develop the property, he came to know that the plot was reserved for public purpose. The property was not required by any of the respondents herein, or by any other Government authority. He obtained a sanctioned plan and planning permit to put up the building on 24.02.1989 from the Block Development Officer, Villivakkam Panchayat Union, Ambattur, Chennai 600 053. When he attempted to commence the construction activity, the fourth and the fifth respondents herein obstructed the activity of construction stating that the property was reserved for public purpose.

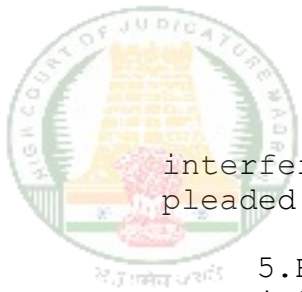
Thereafter, the appellant could not put up the construction, therefore, seeking a direction to the third respondent herein not to interfere with the construction activity, he filed a Writ Petition in W.P.No.17089 of 1991 in this court that was disposed of on 08.04.1999 and the Writ Petition was dismissed stating that he had not made out a case for issuing a writ of certiorari challenging the G.O.Rt.No.558 of 27.12.1990 issued by the first respondent herein. The Secretary, CMDA by his letter in Ref. No. G-1801/2003 dated 20.03.2003, directed the third respondent to



consider the appellant's request sympathetically and requested him to issue planning permission for approval under the delegated powers. On 24.04.2004, the appellant presented an application for obtaining a sanctioned plan to put up a residential construction. The third respondent herein by his letter in Ref.Na.Ka.No.2091/2004 (A3) dated 24.05.2004 rejected the appellant's application on the ground that the property has been reserved for 'Public Purpose' and has rejected the building plan application. Again filed Writ Petition in W.P.No.1467 of 2017. Hence the learned Single Judge dismissed the Writ petition. Aggrieved by the said dismissal order, the present Writ Appeal has been filed.

3.Mr.A.Rajan, learned counsel appearing for the appellant has submitted that the learned Single Judge failed to consider the fact that the Writ Petition related to the appellant's having applied for a building plan sanction in respect of plot No.24, in survey No.77/10 of Ayapakkam Village and Ayapakkam Panchayat limits, which was reserved for public purpose and was not acquired as per the provisions of the Tamil Nadu Town and Country Planning Act, 1971. Further, the learned Single Judge failed to consider the fact that any land required or reserved in a original plan shall be deemed to be the land for public purpose and that any Government authorities may purchase the land from the owner within three years from the publication or preparation of plan of the land and if the land was not required by the government the owner of the land, is entitled to sell the property or use for residential purpose. Further, the learned Single Judge failed to consider that in the Development Control Rules for Chennai Metropolitan Area, it is stated that the owner or developer or promoter has every right to sell the land or use for residential purpose, if no demand from any public department is received within one year. Further, the learned Single Judge did not consider the letter by the Member Secretary, Chennai Metropolitan Development Authority who requested the third respondent to issue planning permission for approval under the delegated powers of the Director, Town and Country Planning for the approved lay out No.61/74 for residential development of the property subject to satisfying the development control rules and stipulations and reiterated other grounds raised in the grounds of appeal and thus pleaded to allow the Writ Appeal.

4. Mr. V.Manoharan learned Government Advocate appearing for the respondents has submitted that admittedly, the land in question, is reserved for open space for public purpose in the approved lay out. The fact is not disputed that the reserved open space is intended for public purpose as per the Rules and the plot reserved for public purpose cannot be used as the residential purpose. Hence, there is no reason warranting to



interfere with the order of the learned Single Judge and thus pleaded to dismiss the Writ Appeal.

5. Heard both sides and we have carefully perused the materials available on record.

6. Admittedly, it is the fact that the appellant is the owner of the approved plot of land bearing plot No.24, in survey No.77/10 of Ayapakkam Village and Ayapakkam panchayat limits. The layout approval of the land was accorded in K.No.1769/74 by the Deputy Director of Town Planning, Chengalpattu and Chennai Zone. At the time, when the planning approval was granted, the plot was reserved for public purpose. The appellant has purchased the property by a sale deed dated 19.08.1974. Thereafter, when he attempted to put up a construction, it came to his knowledge that the said land was reserved for public purposes so that the appellant initially filed a Writ Petition in W.P.No.17089 of 1991 which was dismissed on 08.04.1999 stating that the appellant has not made out a good case. After some period, the appellant obtained a letter issued by the Secretary CMDA in Ref. No.G-1801/2003 dated 20.03.2003. Based on this letter the appellant presented an application dated 24.04.2004 seeking sanctioned plan to put up the residential construction and the third respondent herein by his letter in Ref.Na.Ka.No.2091/2004 (A3) dated 24.05.2004 rejected the application on the ground that property has been reserved for public purpose.

7. Admittedly, when the layout was approved the property was reserved for public purpose. This appellant purchased in the year 1974. Though he pleaded his ignorance about the fact that the place was reserved for public purpose but it cannot be accepted. This was pleaded in the earlier W.P.No.17089 of 1991 which was not accepted by the learned Single Judge and rejected the case, therefore, again that plea cannot be entertained. The learned Single Judge after considering the appellant's case observed as follows:

(i) The reserve open space is intended for public purpose and the plot owners of the lay out have a right to use the open space commonly and the area reserved for open space may not be allowed to be sold by dividing the same for commercial plot. Hence, the respondents have refused to sanction the building permission sought for by the petitioner for construction of the building in the land in question. The petitioner has preferred statutory appeal before the CMDA, which refused permission on 01.12.1988. The planning permission has been refused for the reason that the approved lay out had been declared for public use and if the open space is converted to residential plot, it would put to inconvenience to others. When it is clear that the



petitioner has purchased the land reserved as open space in an approved layout, it is for the petitioner to seek remedy against the vendor who has sold the land reserved as open space to him without divulging the factum of open space. Even though the petitioner has relied on the communication, dated 20.03.2003 Development Control Rules, the plot reserved for public purpose can be used as residential purpose after the period of one year from the date of approval of the lay out, if there is no demand from the Government agencies. But the said contention will not be applicable to the facts and circumstances of the present case.

(ii) Admittedly, in the lay out, the land has been mentioned as reserved for open space for public purpose. The reliance placed upon by the learned counsel for the petitioner on the judgment of this Court reported in 2010 (2) CTC 510 (cited supra) may not be applicable to the facts of the present case. In that case, the land belongs to the owners and in the approved lay out, the land is mentioned as meant for public purpose. Moreover, the document in the case on hand had been manipulated, as the land which is meant for public purpose, has been illegally registered. The decision of this court cited above will not be applicable to the facts of the present case and that as per the approved lay out, the petitioner herein is not the owner. If any land is purchased legally, and that could not be taken up for public purpose, then the principles laid down in the said judgment reported in 2010 (2) CTC 510 (cited supra) will be applicable. It is seen that the petitioner has purchased the land based on the sale deed, dated 19.08.1974 and the approval for the lay out was sanctioned on 23.04.1974. The petitioner has purchased the property from the vendor, wherein the records are said to have been manipulated to include the land meant for public purpose.

(iii) Taking note of the fact that at the time of registration itself, the purchaser has manipulated the records and ensured that the land is registered for the public purpose, the contention that the land has not been developed within the period of three years from the date of execution of the gift deed for public purpose, cannot be accepted.

8. We find no good reason to accept the contention of the appellant that he purchased the property without knowing the fact that the plot was reserved for public purpose. Further, the appellant agitated the non sanctioning of permission for construction in W.P.No.17089 of 1991 which was ended in dismissal on 08.04.1991. He succumbed the order of the Writ Petition. Again in the year 2003 obtained the letter from the Secretary CMDA for considering the appellant's request sympathetically. Thereafter, the concerned authorities considered and rejected the appellant's claim. Hence, he filed



the W.P.No.16871 of 2004 as a second round of litigation. We find no good reasons to interfere with the order of the learned Single Judge. As such, we find no sufficient reason to allow the present appeal.

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In the result, this Writ Appeal Stands dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vsn

To

- 1.The Commissioner and Secretary
Rural Development and Land
Administration, Tamil Nadu
- 2.The Assistant Director of Panchayats
Office of the Collectorate,
Tiruvallur, Tiruvalur District.
- 3.The Commissioner,
Villivakkam Panchayat Union,
Ambattur, Chennai-600 053
- 4.The Chairman,
Villivakkam Panchayat Union,
Ambattur Taluk, Chennai-600 053
- 5.The President,
Ayyapakkam Panchayat,
Ayyapakkam, Ambattur Taluk,
Chennai-600077.

+lcc to Mr.S.A.Rajan, Advocate, S.R.No.28801

+lcc to the Government Pleader, S.R.No.28557

W.A.No.1467 of 2017
and C.M.P.No.19496 of 2017

KV(CO)
CB(22/07/2021)