



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.06.2021

PRONOUNCED ON : 05.07.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P(MD)No.1280 of 2013

and

M.P(MD) .No.1 of 2013 and W.M.P. (MD) .No.21867 of 2019

(Through Video Conferencing)

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M/s.A.V.Thomas Nagar Welfare Association,
a Registered Association,
Registered as No.80/2012
Represented by its President
Mr.P.Anthony Benzic

.. Petitioner

Vs.

1.The District Collector,
Collectorate Building,
Nagercoil-629 001,
Kanyakumari District.

2.The Deputy Director of Town and Country Planning,
Tirunelveli.

3.The Commissioner,
Nagercoil Municipality,
Nagercoil, Kanyakumari District.

4. The Registrar(Housing),
Co-operative Societies,
No.493, Anna Salai,
Tamil Nadu Housing Board Complex,
2nd Floor Annex, Nandanam,
Chennai-600 035.

5.The Special Officer,
Nagercoil Co-operative Housing Society Ltd.,
No.Y-242, Christopher Street,
Nesamony Nagar,
Nagercoil-629 001.
Kanyakumari District.

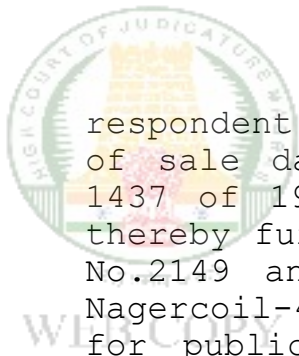
6.Lawrence P.Manuel

7.Rajamma Lawrence

8.M.R.Jonsley

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents 4 & 5 to cancel the sale deeds executed by the 5th



respondent society in favour of the respondents 6 and 7 by a deed of sale dated 25.06.1986 and registered as Document Nos.1436 and 1437 of 1986 in the office of the District Registrar, Nagercoil, thereby further to direct the respondents to use the land in Survey No.2149 and Re-survey No.J-5/20-2, A.V.Thomas Nagar, Konam Post, Nagercoil-4, Kanyakumari District to an extent of 40.49 cents only for public purpose which is earmarked and demarcated as public purpose in the lay out approved by the 2nd respondent in LPR(T.K) 8/80 dated 26.11.1980, by forming a public park and not to use the same for any other purpose.

For Petitioner	: Mr.R.Rajaraman
For Respondents 1, 2 & 4	: Mr.M.Lingadurai Government Advocate
For Respondent No.3	: Mrs.S.Srimathy
For Respondent No.5	: Ms.J.Anandhavalli
For Respondent Nos.6 & 7	: Mr.V.Sasikumar
For Respondent No.8	: Mr.T.Lajapathy Roy

ORDER

The petitioner Association has questioned the sale deeds executed by the 5th respondent Society in favour of the 6th and 7th respondents and the subsequent transactions on the ground that the lands which were earmarked for a public purpose as per lay out approval granted by the second respondent through proceedings dated 26.11.1980, has been dealt with illegally.

2. The case of the petitioner is that the 5th respondent Society was the owner of lands measuring an extent of 4 acres and 25 cents. The Society formed a lay out and the same was approved by the second respondent through proceedings dated 26.11.1980. Thereafter the 5th respondent Society sold 39 plots to the members belonging to the petitioner Association. The further case of the petitioner is that out of 4 acres and 25 cents, an extent of 40.49 cents was earmarked and demarcated for public purpose in the approved lay out.

3. The grievance of the petitioner Association is that all of a sudden in the year 2012, some persons entered into the land demarcated for public purpose and started cleaning the bushes. On enquiry, the petitioner Association came to know that the 5th respondent Society had conveyed an extent of 36.24 cents out of 40.49 cents in favour of the 6th and 7th respondents through registered sale deeds dated 25.06.1986. Aggrieved by the same, the present writ petition has been filed before this Court seeking for cancellation of the sale deeds and the subsequent transactions on the ground that it is illegal and void.

4. The 5th respondent Society has filed a counter affidavit in this case. The relevant portions in the counter affidavit are extracted hereunder:

<https://hcservices.ecourts.gov.in/hcservices/>



"2. I deny the averments filed in support of the above writ petition and the petitioner is put to strict proof of the averments. The petitioner has no *locus standi* to question the sale done by the 5th respondent's society in the year 1981 as he is not a member of the 5th respondent society. The writ petition as such is not maintainable.

3. I submit that the 5th respondent did not have any power of cancellation and the property had already been conveyed to the 6th and 7th respondents and he is the owner of the same. Though the sale deed mentioned about the purpose for which it was given, till date the property has not put to any other purpose. The society was also informed that all steps are being taken by the 6th and 7th respondents to fulfill the purpose of sale.

5. I further submit in so far as the averments in Para 4 of the affidavit is concerned, the same is not fully correct. The 5th respondent Society sold 39 plots to its members and not to the members of the petitioner's Association as alleged.

6. The averments in Para 5 of the affidavit are hereby denied. In the extent of 40.49 cents, which was kept for public purpose, an extent of 36.24 cents was sold to 6th and 7th respondents by virtue of two sale deeds dated 25.06.1986. On and from the said date, the 6th and 7th respondents were in possession of the property and they have put up a compound wall. It is not in the possession and enjoyment either of this respondent or of the petitioner's Association.

7. The further averment in Para 5 of the affidavit that some strangers entered upon the land are all invented for the purpose of the writ petition and the 6th and 7th respondents are the owners of the plot even from 1986 and therefore the averments contra to the above facts are hereby denied.

8. The averments in Para 6 of the affidavit, it is respectfully submitted as per by-law 36A of the Society, resolution was passed by the Board of Directors on 3.7.1985 and 1.8.85 to sell the property to the 6th and 7th respondents. The property is also sold to the 6th respondent for the purpose of putting up hospital and if they fail to do so there is no power of cancellation vested with the Society.

9. It is not correct to state that the public purpose land cannot be sold out. The land was sold



only for putting up hospital and it is not left out for park or play ground and the same was sold for the purpose of hospital, there is no violation of the layout and this property and the object should not be left out while executing the sale deed."

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5. The second and third respondents have also filed a counter affidavit and they have taken a stand that they do not have any authority to proceed further in this matter and they are only formal parties in this writ petition.

6. The 8th respondent has filed a counter affidavit and an undertaking affidavit. In the counter affidavit, the 8th respondent has questioned the maintainability of this writ petition and the conduct of the petitioner Association who have challenged the sale deeds of the year 1986 after nearly 27 years. The 8th respondent has also taken a stand that the petitioner should have worked out the remedy only under the Co-operative Societies Act and a writ petition cannot be filed by placing reliance upon a by-law which does not have any statutory force. The 8th respondent has also filed an undertaking affidavit to the effect that the entire extent of property that was conveyed is now under the control of the 8th respondent and that it will be used only for the purpose of running the Kindergarten school and that the character of the property will not be changed under any circumstances.

7. In order to appreciate the nature of undertaking given by the 8th respondent, it will be relevant to extract the undertaking given by the 8th respondent hereunder:

" 2. I state that the 6th and 7th respondent are Husband and Wife. The 6th respondent was having an extent of about 26 cents in S.No.2149 and re-survey No.J5/20-2 in ward 31 at AV Thomas Nagar, Nagercoil and another 10 cents of land in very same survey number belongs to his wife 7th respondent herein which were purchased by them by two sale deeds dated 25.06.1986 thus the entire extent of 36 cents of AV Thomas Nagar were in the possession of enjoyment of Rs.6 and 7.

3.The Respondent Nos.6 and 7 had transferred the ownership of entire 36 cents of land by way of different sale deeds, an extent of 20 cents to me and 16 cents in my wife's name, out of which 6 cents were transferred to one person Namely Mr.S.Prabhu who is none other than my borther-in-law who has in turn executed a power of attorney to me. Thus the entire extent of 36 cents of land is in my possession and enjoyment together with my wife and S.Prabhu from whom I have been authorized through a Deed of power of Attorney. I am also authorized to depose on behalf of my wife as well.

4. I undertake that I shall always use the building as

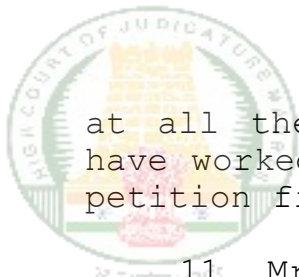


per Kinder Garten School for young children with Access to the Public and the entire extent of 36 cents of land will be used only for the purpose of Pre-KG School."

8. The learned counsel for the petitioner submitted that the lands which were earmarked for public purpose cannot be dealt with without prior approval and it is in violation of the by-laws of the 5th respondent Society. The learned counsel further submitted that even as per the information received under the Right to Information Act, the 5th respondent Society did not get the prior approval of the Registrar, which is mandatory under Clause 7 of the Society by-laws. The learned counsel further submitted that the 5th respondent Society is bound to maintain the common lands and if there is any requirement to convert the lands for a different purpose, necessary approval must be taken from the department of Town and Country Planning and also the Registrar. According to the learned counsel for the petitioner, this requirement is found under Clause 53 (3) of the by-laws of the Society and this has also not been followed.

9. The learned counsel for the petitioner further submitted that an extent of 36.24 cents out of 40.49 cents has been dealt with by the 5th respondent in favour of the 6th and 7th respondents. Subsequently, the 6th and 7th respondents have sold the property to the 8th respondent in the year 2012 through four sale deeds and conveyed 20.27 cents and had also executed a Power-of-Attorney in favour of the 8th respondent for an extent of 15.97 cents. The learned counsel further submitted that the 8th respondent has in turn dealt with the property in favour of one Prabu and Kannan. Therefore, according to the learned counsel for the petitioner, all these documents are non-est in the eye of law since the original sale deeds executed by the 5th respondent Society itself was in violation of the lay out approval conditions and the by-laws of the Society. The learned counsel for the petitioner, in order to substantiate his submissions, relied upon the judgments of this Court in **K.Rajamani and others vs. Alamunagar Residents Welfare Association and others**, reported in **2011 (3) MLJ 69**.

10. Per contra, Ms.J.Anandhavalli, learned counsel appearing on behalf of the 5th respondent Society submitted that the plots were allotted only in favour of the members of the Society and not in favour of the members belonging to the petitioner Association. It was further submitted that none of the member had any grievance and it is the petitioner Association which was formed in the year 2012 which has proceeded to question the sale deeds executed in the year 1986. It was further submitted that the property was conveyed only to be utilised for a public purpose and its character has not been changed and that apart by virtue of the undertaking affidavit filed by the 8th respondent, the petitioner Association can have no grievance since only a school is going to be run in the property. The learned counsel concluded her arguments by submitting that if



at all the petitioner Association has any grievance, they should have worked out the remedy only before the Civil Court and the writ petition filed by the Association is not maintainable.

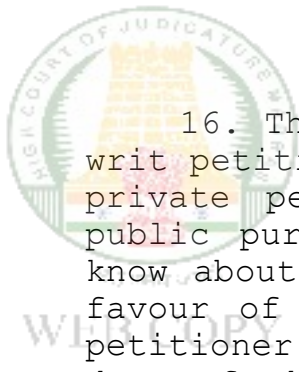
11. Mr.T.Lajapathi Roy, learned counsel appearing on behalf of the 8th respondent submitted that the by-laws relied upon by the petitioner Association does not have any statutory force and hence the sale deed cannot be declared to be void for violation of by-laws. The learned counsel in order to substantiate his submissions, relied upon the judgment of this Court in **K.Marappan vs. The Deputy Registrar of Co-operative Societies**, reported in 2006 (4) CTC 689 and the judgment of the Hon'ble Supreme Court in **Babaji Kondaji Garad vs. Nasik Merchants Co-operative Bank Ltd., and others**, reported in 1984 (2) SCC 50.

12. The learned counsel further submitted that this writ petition is hit by laches since the sale deed has been questioned after nearly 27 years and even if the petitioner Association had approached the Civil Court, their claim would have been barred by limitation. The learned counsel further submitted that the proviso to Sub Rule 3 of Rule 78 of the Co-operative Society Rules specifically confers a power to the Society to deal with the property even without the approval of the Registrar. The learned counsel concluded his arguments by submitting that the lands which were earmarked for public purpose will not lose its character since the property is going to be used only to run a school. For this purpose, the learned counsel relied upon the undertaking affidavit filed by the 8th respondent.

13. The learned counsel appearing on behalf of the 6th and 7th respondents adopted the arguments of Ms.Anandhavalli, learned counsel appearing on behalf of the 5th respondent and Mr.T.Lajapathi Roy, learned counsel appearing on behalf of the 8th respondent.

14. This Court has carefully considered the submissions made on either side and the materials available on record.

15. In the present case, the 5th respondent Society was originally the owner of the property measuring an extent of 4 acres and 25 cents. The Society decided to allot plots to its members and hence sought for approval from the second respondent and the second respondent through proceedings dated 26.11.1980 granted the approval. While granting approval, an extent of 40.49 cents out of 4 acres and 25 cents was ear-marked and demarcated for public purpose. Subsequently 39 plots were allotted in favour of the members of the 5th respondent Society. These members seem to have dealt with the property and sold it in favour of third parties and these third parties have come together and formed an Association in the year 2012.



16. The averments made in the affidavit filed in support of the writ petition shows that the members of the Association noticed some private persons getting into the lands that were earmarked for public purpose and clearing the bushes. On enquiry, they came to know about the sale deeds executed by the 5th respondent Society in favour of the 6th and 7th respondents. Therefore, according to the petitioner Association, the cause of action had arisen only from the date of their knowledge and immediately the present writ petition has been filed questioning the sale deeds executed by the 5th respondent in favour of the 6th and 7th respondents and the subsequent transactions.

17. The crucial issue that requires the focus of this Court is as to whether the lands earmarked for public purpose had lost its character and thereby there is violation of the lay out approval granted by the second respondent through proceedings dated 26.11.1980.

18. This Court is not inclined to go into issues of *locus standi*, laches, maintainability of the writ petition and as to whether the petitioner should have exhausted an alternative remedy. It is the duty of this Court to ensure that the lay out approval granted by the second respondent is not violated and the lands earmarked for public purpose is not misused. Therefore, the technical objections raised by the learned counsel appearing on behalf of the respondents does not really weigh in the mind of this Court since there is larger interest involved and a constitutional Court exercising its jurisdiction under Article 226 of the Constitution of India cannot be bogged down by mere technicalities. Hence, this Court wants to satisfy itself as to whether the lands in question are going to be put to use for a public purpose.

19. A careful pouring into the sale deeds executed by the 5th respondent Society in favour of the 6th and 7th respondents would reveal the fact that the property was conveyed only for the purpose of utilising the same for a public purpose like building a Hospital, School, etc. The 5th respondent Society was careful enough to impose such a condition since they were clearly aware that the lands earmarked for public purpose when the lay out approval was granted, cannot be put to use for any other purpose and its character cannot be changed. The 5th respondent Society also had the authority to deal with the property and this has not been questioned either by the members of the Society or by the authorities under the Cooperative Societies Act.

20. In order to understand the meaning of public purpose, it will be relevant to take note of the definition under Section 2(36) of the Tamilnadu Town and Country Planning Act, 1971. It is defined as follows:



" 2(36): **"public purpose"** means purpose which is useful to the public or any class or section of the public"

21. The main requirement when the approval was granted for the lay out was that the lands earmarked must be utilised only for public purpose. The 5th respondent Society wanted to augment its income and at the same time wanted to ensure that the lands in question are utilised for public purpose. Construction of a hospital or a school will naturally fall within the definition of the term public purpose. If the lands are ultimately going to be used only for public purpose, the petitioner Association cannot have any grievance.

22. The lands in question have ultimately come within the control of the 8th respondent. The 8th respondent has specifically undertaken that the lands will be utilised only for the purpose of running the school and its character will not be changed at any point of time. If this is ensured, there is no requirement for this Court to interfere with a sale that had taken place in the year 1986. In the present case, this Court has to balance the rights and interests of the parties. If the property is utilised only for a public purpose, that will not in any way affect the rights and interest of the petitioner Association and at the same time the interest of the 5th respondent Society and the subsequent purchasers of the property can also be safeguarded by not interfering with the sale transactions that had taken place in the year 1986.

23. In view of the specific undertaking given by the 8th respondent that only a school will be run in the lands in question and the character of the lands will not be changed, it is made clear that any violation of this undertaking will result in initiating contempt proceedings against the 8th respondent. It will always be open to the petitioner Association to bring to the notice of this Court if any breach of undertaking is committed by the 8th respondent.

24. This writ petition is disposed of accordingly. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

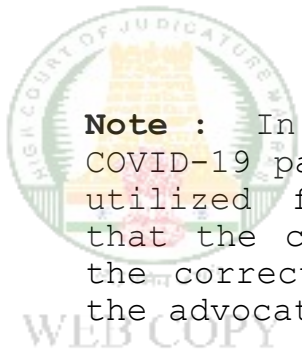
Assistant Registrar(Writs)

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/ /2021

Sub Assistant Registrar(CS)

PJL



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Collectorate Building,
Nagercoil-629 001,
Kanyakumari District.

2.The Deputy Director of Town and Country Planning,
Tirunelveli.

3. The Registrar(Housing),
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2nd Floor Annex, Nandanam,
Chennai-600 035.

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-21118[F] dated 05/07/2021

+1 CC to M/s.R.RAJARAMAN, Advocate (SR-21126[F] dated 05/07/2021)

+1 CC to M/s.S.SRIMATHY, Advocate (SR-21265[F] dated 05/07/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-21273[F] dated
06/07/2021)

+1 CC to M/s.SPL GP (SR-21505[F] dated 07/07/2021)

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-21472[F] dated 07/07/2021)

ORDER MADE IN
W.P(MD)No.1280 of 2013
05.07.2021

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TR(13.07.2021) 9P 10C