



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.9312 of 2009

and

MP Nos.1 of 2009 & 1 of 2010

1.E.Muthuseeni

2.M/s.Amarjothi Jai nagar Residential Welfare Association
No.6/37-A, Amarjothi Sai Nagar
Ranganathapuram
Kannampalayam 641402
Salem Taluk.

... Petitioners

(P2 impleaded as per order dt.2.9.2013 by DHPJ in
MP.No.1/2013 in WP.No.9312/2009).

-Vs-

1. The Director of Town and Country Planning
Chennai 600 002.
2. The District Collector
Coimbatore District, Coimbatore.
3. The Executive Officer
Kannampalayam Town Panchayat
Coimbatore 641402.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the District Collector, Coimbatore, the 2nd respondent herein to assign the remaining 15 cents of land reserved for public purpose situated in Survey No.73/2 71/1,2 and 75/2 at Amar Jothi Jai Nagar, (Ward 4), Kannampalayam Town Panchayat, Sulur Taluk, Coimbatore District to the residents of Amar Jothi Jai Nagar.

For Petitioner : Mr.A.R.Suresh

For Respondents : Mr.U.Bharanidharan
Additional Government Pleader
for R1 and R 2

Mrs.K.Bhuvaneswari
for R 3



O R D E R

This Writ Petition has been filed for the issue of a Writ of Mandamus forbearing the 3rd respondent from interfering with the peaceful possession and enjoyment of the residents of the subject property by demolishing the Vinayagar Temple put up by the Petitioner Association.

2.The case of the Petitioner Association is that they formed a layout and there are about 457 plots. The further case of the petitioner is that as per the existing rules, 10% out of the total extent of the land should be earmarked for public purposes and accordingly, a gift deed was also executed in favour of the 3rd respondent. It is stated that only 24.7 cents of land was reserved for public purpose and the 3rd respondent has also constructed 2 Wells in about 10 cents of land and the remaining land was not utilised. The Petitioner Association used to conduct programs in this unutilised land. The Petitioner Association decided to construct a Vinayagar Temple in the remaining portion of the land that is unutilised and the consecration also took place on 15.03.2009.

3.The grievance of the petitioner is that the 3rd respondent was taking hasty steps to demolish the Temple and hence a representation was made to the 2nd respondent and to the concerned Ministers requesting for assigning the remaining 15 cents of land in favour of the Association. Even without considering this representation, steps were taken by the 3rd respondent to demolish the Vinayagar Temple. Left with no other option, the present writ petition has been filed before this Court.

4.This Court initially disposed off the writ petition by directing the 2nd respondent to consider the representation. This order was challenged by the 3rd respondent in WA.No.1843 of 2009 and the Division Bench by order dated 18.12.2009 set aside the order passed in the writ petition on 15.05.2009 and remanded the matter back to consider the same after hearing both the sides, on merits.

5.The 2nd and 3rd respondents have filed counter affidavits and they have taken a clear stand that the Petitioner Association has already executed a registered gift deed dated 28.5.2002 and by virtue of the same, Survey Nos.73/2, 71/1 and 71/2 were gifted and the same was earmarked for public purposes.



Steps were taken by the 3rd respondent to construct an overhead tank and a tender was also floated in this regard and a work order was also issued to construct the overhead tank for public purposes in the land situated in Survey No.73/2. According to the respondents, the Petitioner Association wanted to thwart this attempt and it is only for this purpose, hasty steps were taken to construct a Temple and thereby prevent the construction of the overhead tank. The respondents have also taken a stand that there is no scope for reassignment of the land earmarked for public purposes and the Petitioner Association did not have any right to put up a Temple in the land earmarked for public purposes. Accordingly, the respondents have sought for the dismissal of the writ petition.

6. Heard Mr.A.R.Suresh, learned counsel for the petitioner, Mr.U.Bharanidharan, learned Additional Government Pleader for R1 and R2 and Mrs.K.Bhuvaneswari, learned counsel for R3.

7. The Petitioner Association has sought for the issuance of a writ of mandamus. This Court exercising its jurisdiction under Article 226 of the Constitution of India can issue a writ of mandamus only where there is a legal right for the petitioner and a corresponding legal duty on the part of the respondents. Both these prerequisites are missing in the present writ petition. Admittedly, the land has been earmarked for public purposes and it has already been gifted in favour of the 3rd respondent. The Petitioner Association does not have any legal right to seek for the assignment of the land which has already been earmarked for public purposes. That apart, the Petitioner Association does not have any right to put up any construction in the land earmarked for public purposes. The construction of a Temple in the land will not in any way justify the act of the Petitioner Association. The 3rd respondent was taking steps to construct a overhead tank since according to the 3rd respondent, it was for the benefit of all the residents of the locality and it served a public purpose. Whether such an action taken by the 3rd respondent to put up a overhead tank in a land earmarked for public purposes, is an issue which goes beyond the purview of this writ petition. This writ petition confines itself only to the claim made by the Petitioner Association seeking for assignment of the land which was already gifted in favour of the 3rd respondent. This Court has already held that the petitioner does not have the legal right to seek for such a request from the 2nd respondent and the 2nd respondent does not have the right to decide upon the representation made by the petitioner. Hence, no useful purpose will be served in directing the 2nd respondent to consider the representation made by the Petitioner Association.



8. In view of the above discussion, this Court does not find any merits in this writ petition and accordingly the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Director of Town and Country Planning
Chennai 600 002.
2. The District Collector
Coimbatore District , Coimbatore.
3. The Executive Officer
Kannampalayam Town Panchayat
Coimbatore 641402.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.32754

+1cc to Mrs.K.Bhuvaneswari, Advocate, S.R.No.32138

+1cc to the Government Pleader, S.R.No.32559

W.P.No.9312 of 2009

AJS (CO)
UMA (15/06/2022)