



W.P.No.10987of2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.10987 of 2022

&

W.M.P.No.10572 of 2022

Madras Social Service Society
rep by its Executive Director cum
Secretary
Fr.M.V.Jacob
Kolping Tower – II Floor
329 (Old No.128), T.T.K.Road
Alwarpet, Chennai-18

...Petitioner

Vs.

1.Greater Chennai Corporation
Rep by its Commissioner
Ribbon Building,
Chennai-600 003

2.The Zonal Officer
Zone-3, Greater Chennai Corporation
No.1, Thattankulam Street
Bazar road,Madhavaram
Chennai-600 060

3.The Assistant Engineer
Div No.27, Zone-3
Greater Chennai Corporation
No.1, Thattankulam Street
Bazar road,Madhavaram
Chennai-600 060



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4.Ms.Arockia Mary A

5.Shanthi Narayan

6.Maria Anandhi A

7.A.Joseph

8.Lily J

9.P.Dominic Francis

10. Assisi Nagar Welfare Association

rep by its Secretary

M.Sankar

Add No.330, 10th street, Assisi Nagar

Madhavaram, Chennai-600 060

R.10 impleaded vide order dated

14.09.2022 made in WMP.No.16756/2022

in W.P.No.10987 of 2022 by

SSSRJ

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus forbearing the 1st to 3rd respondents to forming any constructing park in the private land i.e Plot Nos.303 to 308, 9th street, Assisi Nagar, Madhavaram Div.27, Zone 3 comprised in Survey No.424/1B, Madhavaram Village, Madhavaram Taluk, Chennai District within the limit of Greater Chennai Corporation.

For Petitioners : Mr.T.Mohan
for
Mr.S.Bruno Cruz

For Respondents : Mr.A.S.Ragul Adithya
for
Mrs.P.T.Ramadevi for R1 to 3
Mr.P.Mohanraj for R4



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No Appearance for R5

Ms.S.Ramadevi
for
Tri Law Office for R6 to 8

MR.G.Mohammed Aseef for R10

ORDER

Writ Petition is filed seeking to forbear the 1st to 3rd respondents to forming any constructing park in the private land i.e Plot Nos.303 to 308, 9th street, Assisi Nagar, Madhavaram Div.27, Zone 3 comprised in Survey No.424/1B, Madhavaram Village, Madhavaram Taluk, Chennai District within the limit of Greater Chennai Corporation.

2. It is the case of the petitioner that the petitioner's society decided to purchase the land with the financial support of the Caritas India (Madras) and form a lay out for the repatriates from and Srilanka and people belonging to weaker section of society. To fulfill the objects of the petitioner society and the Caritas Indian (Madras), land measuring about 22 acres of land comprised in Survey Nos.424/1A,1B,2A,2B, 2C in Madhavaram Village were purchased in the name of the Caritas India (Madras) formed a



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layout and named it as “Assisi Nagar”. Thereafter, the plots were allotted to more than 300 families and executed and registered the sale deed in their favour after collecting minimum amount of establishment charges. In the aforesaid project, Plot Nos. 303 to 308 of Assisi Nagar were allotted and transferred to the 4th to 9th respondents by way of sale deed, duly registered at Sub Registrar Office, Sembiam.

3. It appears that respondents 4 to 9 have purchased the property and they were unable to construct. They approached the petitioner society and received consideration and also agreed to execute the necessary documents Petitioner's society whenever required. When the matter stood thus the petitioner society has initiated to construct a community hall in the above said plots, since the above plots were vacant, many anti social elements tried to encroach the property and the same was thwarted by the petitioner society. In the month of March 2022, the 2nd and 3rd respondents visited the above said plots and informed the nearby people that they are going to construct a park in the aforesaid plots. The petitioner made a request stating to drop the proposal. In spite of the same on 24.03.2022, they started to dig the borewell and kept the constructing materials in the property.



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Therefore, a representation was sent on 01.04.2022, with all relevant documents to the respondents 1 to 3 and requested them to drop the proposal of establishing the park. Hence, the present Writ Petition is filed.

4. It is the contention of the 1st respondent that according to them the suit property in denoted plot numbers between 303 to 308 consisting of 10,280 sq.ft belongs to Chennai Corporation and it notified as park/playfield as per the Town Survey Land Register. They also addressed a letter to the Tahsildar, Madhavaram Taluk on 02.03.2022 to earmark the scheduled suit property. The Tahsildar, Madhavaram Taluk by correspondence NA.KA.No.104/2022 dated 27.06.2022 informed that land has been denoted as park playing area. The registered layout of Assisi Nagar, Madhavaram Village, Saidapet Taluk that classified the scheduled property as park. The same has been attached in every sale deed that has been executed by the petitioner society in favour of the purchasers. Hence, opposed the Writ Petition.

5. 4th respondent filed counter to the effect that they purchased the said plots, however she could construct the house. In the meantime she



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requested the petitioner society to settle the issue and pay the compensation and agreed to execute the sale deed and the necessary documents in favour of the petitioner society.

6. It is the case of the respondents 6 to 8 that they did not express any willingness to return their plots to the petitioner society nor did they willingly accept any compensation. According to them they are the owners of the property.

7. Learned counsel appearing for the 10th respondent would submit that the property was sold by CARITAS India. In the layout it clearly mentioned that the plots nos.303 to 308 as a park and further the layout copy was enclosed in all the sale deeds. Therefore, opposed the Writ Petition.

8. Learned counsel appearing for the petitioner would submit that other than these plots the play ground has been already ear marked in the space which has more than 25,000 sq.ft. Whereas absolutely there is no material whatsoever to show that the plots 303-308 vested with the 1st



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respondent. Merely because some sale deeds were shown as park, same cannot be a ground to take possession. Without the respondents establishing the right over the land they cannot make a claim as if the property was left as open space. It is his contention that even in 22 acres the construction was put up only 9,58,000 sq.ft and rest of the areas are left open for road and park. Therefore, merely because the plot Nos. 303-308 are vacant space the respondents cannot take advantage of the same. Absolutely, there is no materials to show that said area is vested with respondent. Hence, it is not open to the respondents to form park in the plot Nos.303-308.

9. Whereas the 1st respondent would submit that sale deed executed by the petitioner society clearly indicate that subject property shown as park and therefore it is his contention that the property is ear-marked for free space and it cannot be used for any other purpose.

10. Learned counsel appearing for the 10th respondent would submit that the sale deed executed by the petitioner society in plot Nos.303-308 shown as park. Therefore, the petitioner has no vested right over the



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property.

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11. Learned counsel appearing for the respondents 6 to 8 would confirm that they have purchased the property they have not handed over the plots to the petitioner.

12. I have perused the entire materials

13. The petitioner society decided to purchase the land with the financial support of the Cairtas India (Madras) and form a layout for the repatriates from Burma and Srilanka and people belonging to weaker section of the society. The fact remains that out of 22 acres of land purchased only 9,58,000 sq.ft has been utilized. The plots were allotted to more than 300 families and such deeds were registered. The remaining lands have been left for road and as well as for the playfield and park. Now the contention of the respondent is that the plot Nos.303-308 is also earmarked as vacant space. The respondents did not produce any documents title as gift in favour of the 1st respondent.



14. Learned counsel for the petitioner relied of the judgment of the

Hon'ble Supreme Court in the case of ***Pillayar P.K.V.K.N. Trust Vs. Karpaga N.N.U.S and others***, wherein paragraph 18 of the order reads as under:

“

18. In our opinion, the reference to Section 250 (2) was completely uncalled for in this controversy. This was a Writ Petition for challenging the G.O.Ms. 244 dated 23.9.1994. In fact, in the three questions which the High Court had posed, Section 250 did not find place. Section 250 speaks about the obligation on the part of owner to make a street while disposing of the lands as building sites. Sub-Section (2) on which a heavy reliance was placed by the High Court, speaks about the owner's liability to reserve 10% of the lay-out for the common purpose in addition to the area provided for laying out streets. It is nobody's case that the area of these 40 plots, in all, comes to 10% of the total area besides the area which was reserved for



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the streets. The High Court completely ignored the fact that the appellant trust had already parted with more than 21 acres of its land while getting the approval from the Tallakulam Town Panchayat for this layout. There is clear correspondence on the record to the effect that the appellant Trust had not only parted with 21 acres, but had also effected a gift deed in respect of that land. It is nobody's case and indeed the High Court has also not found that these 40 plots would be the aforementioned 10% of the total lay out area. There is absolutely no basis for the High Court to invite the applicability of the Section 250(2) by making reference to 10% of the area. Therefore, the factual background, on which the provision is tried to be made applicable, itself, is not established and the finding to that effect is incorrect.”

Learned counsel also relied on the judgment of the Madurai Bench of Madras High Court in W.P.(MD)No.20773 of 2013, M.S.Mohamed Hadi vs. The Secretary to Government and others, wherein paragraph 17 of the



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order reads as under:

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17. In view of the above said discussion and the judgment of the Hon' ble Supreme Court, this Court comes to a conclusion that the lands in question were never converted into a layout or sold out as plots in a layout. The lands in dispute were sold as 40 cents in favour of the writ petitioner. Hence, the lands in dispute being private property, not being reserved for any public purpose in an approved layout, the respondent authorities cannot disturb the petitioner's possession without resorting to acquisition proceedings as contemplated under Sections 36 and 37 of Tamil Nadu Town and Country Planning Act, 1971. Since acquisition proceedings have not been initiated within a period of 5 years from the date of notification under Section 27 of the Act, the land in dispute is deemed to have been released from the Melapalayam Detailed Development Plan No.5.



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15. Therefore, even assuming that the during the formation of unapproved layout any land is left as vacant place under the same is vested with the respondent by transfer of title, respondents cannot claim or right over the same. Further, to show that this property is also a subject matter of any gift in favour of the 1st respondent or erstwhile Municipality toward public purpose, there is no documents or materials whatsoever available. Even assuming that area has been already proposed to use as a park unless same is vested with the respondent the 1st respondent cannot claim any absolute right over the property.

16. In such view of the matter, this Court is of the view that the petitioner is entitled to the relief as prayed for. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Writ Miscellaneous petition is closed.

13.12.2022

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Internet:Yes

Speaking/non-speaking order



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N. SATHISH KUMAR, J.

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