



S.A(MD)No.407 of 2005

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.407 of 2005

S.Sridevi

...Appellant

-Vs-

1.Mariappan

2.Thanagamuthu Nachiar

3.The Director of Town and Country Planning,
807, Anna Salai,
Chennai-2.

4.Kovilpatti Municipality,
Through it's Commissioner,
Kovilpatti.

5.State of Tamil Nadu represented by
The District Collector,
Tuticorin District.

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.62 of 2003 on the file of the Sub Court at Kovilpatti in reversing the judgment and decree made



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in O.S.No.157 of 1996 on the file of the District Munsif Court at Kovilpatti, dated 30.07.2003.

For Appellant : Mr.J.Gunaseelan Muthiah

For R3 & R5 : Mr.C.Baskaran
Government Advocate

For R1, R2 & R4 : No appearance

JUDGMENT

The legal representative of plaintiff in the suit is the appellant as the plaintiff died subsequent to disposal of the first appeal. The suit is for bare injunction restraining the respondents/defendants from interfering with the alleged possession of the plaintiff. The suit was decreed by the trial Court and the said judgment and decree was reversed by the First Appellate Court. Hence, appellant is before this Court.

2. According to the appellant, the suit property originally belongs to one Chinnamuthammal and she purchased the same from her under Ex.A.5, dated 06.10.1974. Thereafter, the plaintiff plotted out the suit property and formed a layout. She obtained permission for layout from the third respondent in the year



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1980, as per the plan marked as Ex.B.3. The plaintiff further averred in the plaint that as per the original layout plan approved in the year 1980, the land lying in south of Kammavar Kalyana Mandapam was reserved for public purpose. She made an application to the third respondent for conversion of the land reserved for public purpose into residential plots and obtained an order for conversion under Ex.A.2. Subsequently, in pursuance of the order passed by the third respondent, the fourth respondent herein also passed orders for conversion of the land reserved for public purpose. Thereafter, when the plaintiff tried to put up a compound wall surrounding the suit property, which was converted into residential plots, the respondents 1 and 2 tried to interfere with the possession of the plaintiff and consequently, the plaintiff was constrained to file a suit for bare injunction.

3. The first and second respondents/defendants 1 and 2 filed a written statement and resisted the suit on the ground that the suit property was shown as land reserved for public purpose in the original layout plan approved by the appropriate Authority. It was further stated that as per the layout plan, on the western side of the suit property, there is a north-south road and on further west



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there are approved plots, which have been sold to number of persons. It was stated that the second respondent herein purchased Plot No.11 on the western side of the road. It was specifically pleaded by the respondents 1 and 2 that the suit property, which was reserved for public purpose, is for the benefit of the plot owners, who purchased the property in the said layout. The plaintiff herein cannot try to disturb the users of the land reserved for public purpose by putting up compound wall. It was further pleaded that the Kammavar Kalyana Mandapam situated on the north of the suit property belongs to Kamamavar Community and it cannot be stated that the same was used by the general public.

4. The fourth respondent filed a separate written statement and resisted the suit on the ground that the plaintiff sold the other plots in the layout by mentioning the suit property as a land reserved for public purpose and hence, the plaintiff is not entitled to claim right over the same.

5. Before the trial Court, the subordinate of the plaintiff (*Kariyasthar*) was examined as P.W.1 and the first respondent/ first defendant was examined as D.W.1 and two other witnesses were examined as D.W.2 and D.W.3, on the side



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of the other respondents. On behalf of the appellant, six documents were marked as Ex.A.1 to Ex.A.6 and on behalf of the respondents also, six documents were marked as Ex.B.1 to Ex.B.6. Apart from that, the order passed by the High Court in W.A.No. 1430 of 1998 was marked as Ex.C.1.

6. The Trial Court, on consideration of oral and documentary evidence available on record, came to the conclusion that the plaintiff is entitled to convert the land, which was originally reserved for public purpose, in the layout for residential use and consequently, decreed the suit granting injunction as prayed for. Aggrieved by the same, the respondents 1 and 2 filed an appeal in A.S.No.62 of 2003 on the file of Sub Court, Kovilpatti. The First Appellate Court reversed the findings of the Trial Court and allowed the appeal. Aggrieved by the same, the legal representative of the plaintiff has come up with this second appeal, as the plaintiff-Kamachiammal died subsequent to passing of the judgment by the First Appellant Court.

7. This Court, at the time of admitting the second appeal, had formulated the following substantial questions of law:-



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“a) Whether the judgment and decree of the Lower appellate Court is vitiated by misapplication of law in failing to consider the case in terms of Section 32 of Tamil Nadu Town and Country Planning Act, 1971, while recording a finding that the 9.6 cents land allotted for public purpose i.e. the schedule property cannot be changed for residential purpose by way of re-approval by the statutory authority?

b) Whether the Lower Appellate Court misapplied the ratio decedente of the cases reported in 2002(5) CTC 729 and 1995(I) SCC 47 to the facts of the case on hand or not?”

8. Heard the arguments of the learned counsel for the appellant and that of the learned counsel for the respondents 3 and 5. Though the counsel entered appearance for the respondents 1, 2 and 4, there is no representation for them. Perused the records and typed set of papers.

9. The learned counsel for the appellant contended that though the suit property was originally reserved as a land for public purpose in the layout approval obtained in the year 1980, subsequently, the plaintiff moved the third respondent and obtained an order for conversion of the land reserved for public



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purpose in the layout for residential use. The said order was challenged by the respondents 1 and 2 by way of writ petition and the said writ petition was dismissed and aggrieved by the same, the respondents 1 and 2 filed an appeal in W.A.No.1430 of 1998, which came to be allowed by setting aside the order passed by the third respondent with a direction to the third respondent to consider the case of the appellant afresh, after issuing notice to the respondents 1 and 2. The learned counsel for the appellant forcefully contended that after the order passed in writ appeal, the plaintiff again moved the third respondent and obtained an order under Ex.B.7, dated 23.04.2002, for conversion of the land reserved for public purpose into the one for residential use. Therefore, it is open to the appellant to use the same as a land for residential purpose.

10. A perusal of pleadings of the parties and exhibits filed on either side would make it clear that the suit property was part of the land reserved for public purpose in the original layout, as per the original approved plan marked as Ex.B.3. The crux of the matter to be decided in this second appeal is whether the appellant is entitled to convert the land reserved for public purpose in the original layout plan into the one for residential use and convert it as a residential plots.



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The First Appellate Court while deciding this question, relied on the judgment of the Hon'ble Apex Court in ***PT.Chet Ram Vashist (dead) by Lrs Vs. Municipal Corporation of Delhi*** reported in ***1995(1) Supreme Court Cases 47***. The relevant observation of the Hon'ble Apex Court in the said case law is as follows:-

“6. 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 may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan.”

11. From the decision of the Hon'ble Apex Court cited above, it is clear that when a particular land is reserved for public purpose in an approved layout plan, the original owner of the land (namely the appellant herein) ceases to be a legal



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owner of the land. It was further emphasized by the Hon'ble Apex Court that the owner of the land holds the same for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. Therefore, the original owner of the land, on approval of the layout plan by reserving the said land for public purpose in the plan, becomes a trustee of the land to hold it for the benefit of other plot owners in the layout. In other words, he loses his status as the owner of the land instead his status is converted into that of the trustee. Therefore, he is divested of his right to exercise the special rights of owner including the rights of alienation over the said property. He is imposed with a duty to preserve the nature of the property as the one for the public use. Therefore, it is not open to him to seek conversion of the land reserved for public purpose into the one for residential purpose and try to alienate the land as a residential plot. Therefore, even assuming that the plaintiff moved the third respondent and got an order in her favour for conversion of land reserved for public purpose into the one for residential use, it is not open to the plaintiff to put up a compound wall surrounding the same so as to impair the right of user by the general public. Therefore, the order obtained by the plaintiff under Ex.B.7 will



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not allow her to treat it as a residential land and alienate the same to the third parties so as to affect the rights of other plot owners in the layout. The First Appellate Court rightly applied the law laid down by the Hon'ble Apex Court in the aforesaid case law to the facts of the case.

12. The first appellate Court has also given a factual findings that under Ex.B.3-original layout plan, 70 cents east of north-south road was reserved for public purpose. Contrary to the layout plan, the plaintiff allowed putting up Kammavar Kalyana Mandapam on the northern portion of the said land to the extent of 60 cents. Now, the remaining 9.6 cents on the southern side alone is available for public use and the same is the suit property. The plaintiff by trying to convert the classification of the suit property from the land reserved for public purpose to the land for residential use, tried to take away the rights of the remaining plot owners in the layout over the suit property. The first appellate Court also pointed out that as per the order obtained by the plaintiff under Ex.B.7, the entire extent of land reserved for public purpose is converted into residential plots and therefore, there is no land left out in the layout plan for public use. In these circumstances, the order obtained by the plaintiff under Ex.B.7, will not



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help her to treat the suit property as a land for residential use and alienate the same to third parties. In view of the law laid down in the case law referred above, the appellant is only the trustee of the suit property, which was reserved for public purpose and consequently, she is not entitled to move the authorities and seek conversion of the land to the detriment of respondents 1 and 2 and other plot owners in the layout.

13. As far as Section 32 of Tamil Nadu Town and Country planning Act, 1971 is concerned, the same is relating to power available to the appropriate authority for variation, revocation and modification of regional plan, master plan and new town development plan and the said Section is relating to the development plans prepared by the Local Planning Authority and it is not relating to the layout plan prepared by the individuals. Even assuming that the authorities constituted under the Act has got power to vary or modify the approved plan in individual layouts, in view of the law laid down by the Hon'ble Apex Court, the original owner of the layout land on reservation of portion of the layout land for public purpose ceased to be its owner and becomes the trustee of the said portion of the land reserved for public purpose and he is expected to hold it for the



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benefit of other plot owners in the layout. Therefore, the appellant as a trustee of the land reserved for public purpose is not expected to move the authorities seeking conversion of the classification to the detriment of other plot owners.

14. In view of the discussions made above, both the substantial questions of law are answered against the appellant and the second appeal is dismissed.

15. In nutshell, (i) the second appeal is dismissed by confirming the judgment and decree passed in A.S.No.62 of 2003 on the file of the Sub Court, Kovilpatti; and (ii) In the facts and circumstances of the case, there would be no order as to costs.

21.12.2022

NCC : Yes/ No
Index : Yes / No
Internet : Yes / No
cp

To

1.The Subordinate Judge,
Kovilpatti.

2.The District Munsif,

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3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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