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W.P.No.1956 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2023

PRONOUNCED ON : 09.11.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P.No.1956 of 2010

KSHATRIA RAJUS CHARITABLE TRUST

having its registered Office at

No.28, Arunachalapuram II Street,

Adayar, Chennai – 600 020.

Represented by its Trustee K. Sathyanarayanan

... Petitioner

[Cause title amended as per order dated 03.02.2016

in M.P.No.1/2014 in W.P.No.1656/2010]

Vs.

1. The Corporation of Chennai,
Rep. by its Commissioner,
Rippon Buildings,
Chennai – 600 003.

2. The Area Engineer,
Division No.153,
Corporation of Chennai,
Vellacherry, Chennai.

3. The Tahsildar,
Velacherry Taluk Office,
Chennai District.

... Respondents

[R3 impleaded as per order dated 07.04.2016 in
W.M.P. No.11230/2016 in W.P.No.1956/2010]



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Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus against the respondents calling for the records of the 1st respondent in Letter No.Z.X.C.No.5599/09 dated 07.12.2009 and quash the same and to direct the 1st respondent to grant renewal of building permission to the petitioner Trust property bearing Plot No.26 A in a total extent of 4.071 sq.ft in S. No.299/2A, Vellacherry Village, now included within the Chennai City Corporation.

For Petitioner : Mr. T. Raghupathy
For M/s. S. Devi

For R1 & R2 : Mr. G. T. Subramanian
Standing Counsel for Chennai Corporation

For R3 : Mr. P. Ganesan,
Government Advocate

ORDER

(Judgment of the Court was Delivered by K. Rajasekar, J.)

Writ Petition filed for issuance of Writ of Certiorarified Mandamus against the respondents calling for the records of the 1st respondent in Letter No.Z.X.C.No.5599/09 dated 07.12.2009 and quash the same and to direct the 1st respondent to grant renewal of building permission to the petitioner Trust property bearing Plot No.26 A in a total extent of 4.071 sq.ft in S. No.299/2A, Vellacherry Village, now included within the Chennai City Corporation.



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2. The facts of the case in brief as follows:

The petitioner is the Registered Charitable Trust had purchased the vacant site in Plot No.26A in Survey No.299/2A to the extent of 4071 sq.ft in Vellacherry Village, as per Sale deed dated 07.03.1990. They have applied for planning permission for construction of building and permission was granted in Permit No.398/2004. The Trust had not commenced any construction of building. In the year 2006, the Trust had commenced the construction and immediately, the Corporation had stopped the construction and objected for construction of any building in the land. The Petitioner Trust filed a Writ Petition in W.P.No.15823 of 2007, for Writ of Mandamus preventing the respondents from interfering with the construction work.

2.2 This Writ Petition was disposed of by this Court, holding that the stoppage of work by the Corporation is in order and the Petitioner Trust is directed to send a fresh representation seeking fresh building permission. Accordingly, the Trust had also sent a representation dated 15.05.2007 to the first respondent and since the representation was not considered, the Trust filed Contempt Petition in Cont.P. No.551 of 2008, wherein, it was reported that the authorities have passed an order



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dated 22.07.2008 itself, rejecting the application of the Trust. Thereafter, the petitioners have filed another Writ Petition in W.P.No.29158 of 2008, challenging the orders of the first respondent and the same was cancelled by this Court and further this Court has directed the Corporation to produce the ownership of the Corporation over the land purchased by the Petitioner Trust and further the respondents are directed to consider the petitioner's representation, dated 04.04.2008, after affording personal hearing to the Trust. Accordingly, the Writ Petition was allowed.

2.3 The respondents have not given any personal hearing but they have directed the Official of the Trust to appear before the Deputy Commissioner (Health) of Chennai Corporation and accordingly they have appeared. On appearance, the Deputy Commissioner (Health) of Chennai Corporation has received a clarification letter and other documents to prove the bonafide claim of the above Trust. Thereafter, on 07.12.2009, the impugned order has been passed, which has been challenged and it is also stated in the impugned order that the subject property is not a reserved site for public purpose.

3. Aggrieved over the impugned order, the Trust has come



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forward with this petition, challenging the order dated 07.12.2009, passed by the first respondent herein.

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4. The learned counsel for the petitioner has submitted that the Deputy Commissioner (Health) of Chennai Corporation is not a competent authority to decide the issue involved in this case and the hearing was held as a formality. The Corporation has not established the fact that the lands belongs to the Corporation and without giving any discussion regarding the ownership of Corporation, the impugned order has been passed. At the time of purchasing the property in the year 1990, the land purchased by the Trust was not a land earmarked as a public purpose. Subsequently, in the year 1992, the layout was approved and this approval of layout shall not have any impact on the land purchased by the Trust herein. Now the Corporation has occupied the petitioner's land eventhough there is no Gift Deed executed by any persons. Hence, prays to grant temporary injunction against the respondents from putting up further construction in the Schedule mentioned property.

5. The learned counsel for the Corporation has submitted



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that originally, the Director or Town and Country Planning has given an approval for the layout as per the Approval Order No.L.P.DM/DTP. No.23 of 1967 and also as per the Executive Officer, Velacherry Town Panchayat vide R.Dis.No.64/67A1 dated 17.05.1967, whereas, they were only 32 plots in the layout comprised in Survey No.299/2A of Velacherry Village. There is no plot bearing No.26-A at the time. Subsequently, the Velacherry Town Panchayat was included in the Chennai Corporation as per G.O.Ms.No.790 dated 29.05.1978. The portion of the land for public purpose is comprised in Survey No.299/2A.

6. The petitioner Trust has applied for Planning Permission to construct a building in the land in Survey No.299/2A and Planning Permission was also granted on 05.02.2002 which was valid only up to 04.02.2004. During the year 2005, a survey was done to identify all the public purpose lands situated in the Chennai Corporation limits and it was found that the Planning Permission obtained by the petitioner in the land identified as public purposes. It is also found that the layout submitted by the petitioner Trust is not a genuine one. As per Section 365(4) of Chennai City Municipal Corporation Act, the Corporation has empowered to cancel the permission obtained by misrepresentation or



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fraud, hence permission to construct a building in the public premises land has been objected and the same is valid. The impugned order has passed on the ground that the land in which, the Trust seeking permission to construct a building is land allotted for public purposes.

7. The learned counsel for the Corporation would further stated that the Promoter of layout namely M/s. Murugan Syndicate while selling the shop sites, it is categorically stated that the land bounded on the South of the shop sites is reserved for public purposes. In this regard, he has also executed a Deed of Confirmation in the year 1967. The paper opportunity was given to the petitioner Trust and documents have also received and the impugned order has been passed and the same is in order.

8. We have considered the submissions on both sides and perused the records.

9. Earlier, the Co-ordinate Bench of this Court on 06.03.2023, has passed an Order; appointing an Advocate Commissioner, based on submissions made by both sides. The Advocate Commissioner is directed to go into the truthfulness of the claims of both parties. Based



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on the order of this Court, the Advocate Commissioner has inspected the properties and in the presence of the parties, he surveyed the land and filed his report.

10. In paragraph No.12 of his report, he has stated that on physical verification in the spot, the portions earmarked as shops in the layout, no shops have been constructed. Those shops have been converted into four Residential Flats in Ground Floor plus Two Floors. This building has also encroached some extent of land in Plot No.26A. The property comprised in Survey No.299/2 (Plot Nos.26-A and 26-B) is now being used as Corporation Play Ground including children's play area, surrounded the compound wall and grill gate. The Plot Nos.26-A and 26-B are subsequently classified as T.S.No.33 and T.S.No.34. The Plot Numbers specified as layouts are subsequently classified as T.S.No.32 and the land is reserved for public purposes. He has also produced the layout of the property numbered as LPDM/DTP. No.23 of 1967, wherein, the lands reserved for public purposes has been described and the same has been sub-divided into two parts and one part of land has been sold in favour of the petitioner Trust. The another part of the land is in the name of Nadanasapabathi, Sureshkumar, W/o. Syamala, Nadanasapabathy



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Murugan Syndicate (Managing Partner). He has also stated that the Corporation has constructed children playground in Plot Nos.26-A and 26-B.

11. On perusal of the report of the Advocate Commissioner it shows that the Plot No.26-A is a reserved for public purposes and the Corporation has taken possession and constructed the children play area. The Honourable Apex Court judgment in *Association of Vasanth Apartments' Owners vs. V. Gopinath and Others in Civil Appeal No. 1890-91 of 2010, dated 13.02.2023* has considered the vires of the Rule 19 of the Development Control Rules and considered the necessity of executing the Gift Deed in favour of the Local Body with regard to the lands reserved for open spaces and as observed in Paragraph No.42 as follows:

“42. It is profitable for us at this juncture to look at what a learned single judge had to say regarding the history of the 'DCR' and the regulation. Justice V. Ramasubramanian, while judge of the High court, has rendered judgment reported in M. Krishnasamy V. The Member Secretary, Chennai Metropolitan Development Authority and Another²⁹. It was rendered on 25.09.2012. The petitioner therein challenged a communication by the member secretary of the authority rejecting the request to waive open space reservation charges for the grant of



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planning permission. The amount of OSR charge demanded was Rs.58,50,000. It was the contention of the petitioner therein that the charges could be levied only if land of an extent equivalent to 10% of the total area was not reserved for open space and conveyed to the local body. It was his case that his predecessor in title had already earmarked 10% of the total area and handed it over to the Corporation of Chennai. A draft deed of conveyance was also submitted by his predecessor which could not be executed on account of the lethargy on the part of the corporation but possession was taken in 1976. The learned single judge went on to find as a matter of fact that though a gift deed as such was not executed, the land was in public 2013 1 CTC 80 domain for the past 36 years and no one except the local body would lay a claim on the said land. The Court held;

Para 12. Though in paragraph 10 of the counter affidavit, the first respondent has claimed that OSR land was neither gifted nor handed over to the Corporation, the same appears to be an incorrect statement. The Corporation has categorically confirmed that the land of the extent of 6 grounds 170 sq.ft., had been handed over by the original owner. This is also corroborated by (i) a letter of the Assistant Engineer of the Corporation of Chennai, dated 29.1.1976 and (ii) the handling over-taking over certificate dated 11.2.1976 signed by an Officer of the Deputy Collector's office and the Corporation of Chennai. The fact that the said land has been developed into a park and that it is now maintained by the Corporation of Chennai, is beyond any pale of doubt. But it is equally true that no deed of conveyance/gift was executed and registered by the original promoter in favour of the Corporation. Nevertheless, the land is in public domain for the past 36 years and no one except the local body, can today



lay a claim on the said land of the extent of 6 grounds and 170 sq.ft. Therefore, on the first question, it has to be held that OSR land has already been handed over to the local body.”

12. The judgment further concluded that in paragraph no.178 (III) as follows:

“The impugned Regulation is not ultra vires the Act; IV. Neither the impugned Rule nor the Regulation violates Article 14 of the Constitution of India; V. The impugned Rule/ Regulation does not violate Article 300A of the Constitution of India; VI. The areas covered by the OSR cannot be diverted for any other purpose. The respondents are duty-bound to ensure that the area set apart as OSR is stringently utilised only for the purpose in the Rule/ Regulation. We direct that no area meant for OSR shall be utilised as dumping yards or any other purpose other than as OSR;”

13. In this case, admittedly, at the time of applying for layout approval, the developer has given a letter of Deed of Confirmation in the year 1967, confirming that the marked lands are reserved for public purpose and the same has also been incorporated in the layout framework. It is also established at the time of execution of sale deed in the adjacent land of the subject land, which also shows as public purpose land. Hence, this shows that the land purchased by the Trust is the land



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earmarked for public purpose. As observed by the judgment of the Hon'ble Apex Court cited supra, that it is mandate on the part of the Corporation to maintain the land earmarked for public purpose and now it has been utilised as Children's park. Since the Trust has purchased the land allotted for public purposes, this Court is of the view that the claim of the Trust seeking permission to construct the building in the land allotted for public purposes, is not permissible and the impugned Order herein, is in order.

14. Eventhough, it is argued that the Deputy Commissioner (Health) of Chennai Corporation is not an appropriate officer to consider and pass order on the petitioner's representation, the order reads that it has been passed by the Commissioner, Corporation of Chennai, and hence, the contention that order has not been passed by the Commissioner of Corporation is liable to be rejected.

15. As discussed supra, the Corporation has also taken possession of the land and constructed the Park and Children Play Area, the Trust is not entitled to claim any relief in the Writ Petition more particularly, seeking the relief for getting planning permission. Hence,



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this Court is not inclined to pass any orders in favour of the petitioner and the Writ Petition is liable to be dismissed.

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16. Accordingly, the Writ Petition stands dismissed. No costs.

(S.V.N.J.) (K.R.S.J.)
.11.2023

ssi
Index: Yes/No
Speaking Order: Yes/No
Neutral Citation Case : Yes/No

To

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S. VAIDYANATHAN, J.
AND
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ssi

Pre-delivery Order made in
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