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W.P.No.25431 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.25431 of 2022
and
W.M.P.No.24418 of 2022

R. Jayalakshmi

... Petitioner

Vs.

- 1.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai.
- 2.The Zonal Officer,
Corporation of Chennai – Zone 04,
Chennai Greater Corporation,
Tondiarpet, Chennai – 600 021.
- 3.The Regional Deputy Commissioner (North)
Corporation of Chennai, Basin Bridge Road,
Chennai – 600 021.
- 4.The Deputy Commissioner of Police,
Madhavaram Milk Depot,
Sengundram District,
Chennai – 600 051.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents from in any manner interfering with the petitioner's peaceful possession and enjoyment of the property



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measuring 8897 sq.ft situated in Plot No.1 and 2 of Thendral Nagal, 7th Street, Selavoyal, Chennai – 600 118, comprised in O.S.No.70/6, as per Patta C.A.No.1521/1999 and C.A.No.305/2001 comprised in T.S.No.104/2 and 104/3 regularised by the respondents 1 and 2 vide Regularisation Permit No.1400/2020 dated 22.07.2020 and 1417 of 2020 dated 24.07.2020 morefully described in the schedule hereunder.

For Petitioner : Mr.T.Sundar Rajan

For Respondents : Mrs. P.T. Ramadevi, for RR1 to 3
Senior Counsel
Mrs. R. Anitha, for R4
Special Government Pleader

ORDER

The Writ Petition has been filed restraining the respondents from interfering of the petitioner's peaceful possession and enjoyment of the property measuring 8897 sq.ft situated in Plot Nos.1 and 2 of Thendral Nagal, 7th Street, Selavoyal, Chennai.

2. It is the case of the writ petitioner that the property to an extent of 2.20 cents in O.S.70/6 originally belonged to Sambandamoorthy Gramani. He had settled the entire extent of 2.20 cents to his two sons namely Ganesa Gramani and Chockalinga Gramani by way of a registered settlement deed dated 11.06.1947. Both of them sold the said lands in favour of Angasakthi Vempata Subammal on 17.10.1960 registered as Document No.3318 of 1960. After the death of Angasakthi



Vempata Subammal, her husband A.M.Rao @ Mathusudhana Rao, her only surviving legal heir plotted the said lands as house sites and sold Plot No.1 to the petitioner's husband. The petitioner's husband and his son Balamurugan had purchased Plot No.1 consisting to an extent of 5292 sq.ft by way of sale deed dated 20.01.1997 registered as Document No.169 of 1997 on the file of S.R.O, Sembium. Later, Balamurugan S/o Ramar settled his half share in favour of Ramar by way of settlement deed dated 30.06.2009.

2.1. Plot No.2 measuring an extent of 3605 sq.ft was also sold to one Selvin on 07.10.1982, registered as Document No.4613 of 1982. The said Selvin, in turn sold the Plot No.2 to the petitioner / Jayalakshmi and her daughter by sale deed dated 12.11.1999 registered as Document No.7492 of 1999 on the file of the S.R.O. Sembium. As the respondents tried to enter into the property, claiming to be a part, a suit in O.S.No.5157 of 2005, on the file of XIII Assistant City Civil Court, Chennai has been filed and the said suit was decreed. As against which, A.S.No.344/2007 was filed before the V Additional City Civil Court, Chennai, which was also dismissed on merits on 15.04.2009 and thereafter, the second appeal was filed with a delay in S.A.SR.No.75417 of 2011 and the same was dismissed. In the meanwhile, as a planning permission was rejected by the authority, the husband of the petitioner filed a Writ Petition in W.P.No.29078 of 2011, this Court directed to consider the planning permission within four weeks. As against which, the Writ Appeal in



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W.A.No.412 of 2013 was filed and this Court by order dated 30.07.2013, directed the respondents to consider the application for planning permission, on merits, as per law after providing the personal hearing. Despite the same, the planning permission has been rejected. The same has been challenged in Writ Petition No.31039 of 2014. After the death of the petitioner's husband, as a legal representative not brought on record, the above writ petition was dismissed as abated. While dismissing, certain observation has been made. Taking advantage of the same, the respondents have been interfering with the possession. Hence, the writ petition.

3. Heard, the learned counsel for the petitioner and the learned counsel for the respondents. Despite several opportunity, the counter has not been filed by the respondents.

4. Learned counsel appearing for the respondents would submit that the writ petition in W.P.No.31039 of 2014 filed by the husband of the petitioner was dismissed. While dismissing, this Court has held that the petitioner appears to have purchased a land earmarked for public purpose and classified as a One Space Reserved (OSR) area and accordingly, dismissed, the writ petition. Therefore, his contention is that in the writ petition, it has already held that the petitioner appears to have purchased a land earmarked for public purpose.



5. This Court has perused the entire materials available on record.

6. The contention of the respondents that the positive direction has been passed in W.P.No.31039 of 2014 filed by one Ramar, the husband of the petitioner that he purchased the land earmarked for public purpose is without any basis. The writ petition has been disposed mainly on the ground that no steps have been taken to bring the legal representatives of the said Ramar. While dismissing the writ petition, considering the general direction passed in W.A.No.412 of 2013, in respect of the One Space Reserved (OSR) area, the observation came to be passed by the learned Single Judge. No documents or other title deeds have been produced before the learned Single Judge for consideration.

7. It is relevant to note that O.S.No.5157 of 2005 has filed against the respondents in respect of the same subject matter and the above suit was decreed. The main defence in the above suit is that the subject property was a open space reserved land. After considering the various documents filed on both sides, the Court has come to the conclusion that the subject property was not classified as 'park' at any point of time. As against which, the first appeal was filed in Appeal Suit No.344 of 2007. In paragraph 14 of the First Appellate Court judgment, has



recorded a categorical finding that the respondents failed to establish that the properties are earmarked for public use 'as park'. On the other hand, Exs.A1 to A4 documents of the year 1960 was well considered by the First Appellate Court, and held that the area was never classified as a public park.

8. Considering the documents produced on the side of the respondents, the first appellate Court has come to the definite conclusion that the property belongs to the petitioner and never classified as park. As against the finding of the first appellate Court, the second appeal was filed with a delay in S.A.SR.No.75417 of 2011, this Court has dismissed the delay application on 13.01.2013. Therefore, the issue relating to the question as to whether, the land is classified as park or private property has reached its finality between the parties and no further appeal whatsoever filed. When the right of the parties has completely determined and decided by the civil Court based on the documents, it will be binding on the parties.

9. Merely because the writ petition is filed challenging the rejection order of the planning permission was dismissed for not taking any steps and certain observation has been made by the learned Single Judge based on the general direction given in writ appeal and other matters that will not operate as binding precedent. When the specific issue and defence has been considered by the civil



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Court and concurrent findings were rendered, the respondents cannot ignore the judgment which has reached its finality. If the civil Court judgments were allowed to be ignored like this, there will be no end for the litigation. When the issue has already been settled by conclusive determination of right by the civil Court, the same cannot be permitted to be reopened in a parallel proceedings like this.

10. In such view of the matter, as the issue of title is already decided conclusively between the petitioner and respondents, the judgment of the civil Court is binding on the respondents. The respondents have no rights whatsoever to take a different stand now before this Court, when the plea was already negatived and decided finally. Accordingly, the Writ Petition is allowed, the respondents are restrained from interfering with the petitioner's peaceful possession and enjoyment of the property. Consequently connected miscellaneous petition is closed. However, there shall be no order as to costs.

25.01.2023

Index :Yes/No
Speaking Order / Non-Speaking Order

AT



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N.SATHISH KUMAR, J.

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