



WEB COPY



W.P.No.33898 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.33898 of 2022
and W.M.P.No.33399 of 2022

M/s.Tindivanam United Association
A registered Society under the
Tamil Nadu Societies Registration Act, 1975
Represented by its Treasurer
C.Shanmugam
No.109, Marakkanam Road, Anna Nagar
Tindivanam, Villupuram District

.. Petitioner

Versus

Tindivanam Municipality
Represented by its Commissioner
Office of Municipality Commissioner
Tindivanam

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned communications of the Respondent in Na.Ka.No.4593/2022/A2 dated 22.09.2022 culminating into impugned communication in Na.Ka.No.4593/2022/A2 dated 03.10.2022, quash the same and consequently direct the respondent herein to continue its property Tax Assessment for the petitioner Club with respect to its property in Tindivanam Registration District, Tindivanam Joint Sub-Registration District No. II within Municipal Limits of Tindivanam RS No.161/2, Ward-B, Block-21, TS No.18, admeasuring Ac3.62 cents.



W.P.No.33898 of 2022

For Petitioner : Mr.P.Dinesh Kumar

For Respondent : Mr.P.Srinivas

ORDER

This Writ Petition has been filed challenging the Order passed by the Respondent mainly directing the petitioner to produce the document to show how they acquired their title over the subject property.

2. The Impugned Order has been proceeded, as if, in order to safeguard the subject property under The Tamil Nadu Parks, Play-fields and Open Spaces (Reservation and Regulation) Act, (26 of 1959) (hereinafter referred as “Act”) and preserve the above places for public use; the direction has been given to produce the document to verify the title.

3. The case of the petitioner is that the property in R.S.No. 161/2, Ward-B, Block-21, TS No.18, admeasuring Ac 3.62 cents in total was purchased by Mr.T.L.Venkatrama Ayyar, Muthusami Ayyar, Krishnappa Chettiar, Venkatarama Reddiar, Miyan Sahib on 03.11.1899 from one Mr.Desilva vide Doc.No.1833/1899. Further, a construction was put up.



W.P.No.33898 of 2022

Later, the building was renamed as Tindivanam Union Club. After that, additional building was constructed in the year 1997 with the approval of the respondent herein. Thereafter, the petitioner's club was reconstituted, renamed as Tindivanam United Association, a society registered under the Tamil Nadu Societies Registration Act, 1975. When the matter stood thus, the Impugned Order is proceeded as if the above places are required to be safeguarded under the Act.

4. A counter has been filed by the respondent. According to the respondent, the above notice is only a show cause notice calling upon the petitioner to produce the document so as to show that the Petitioner Association is the title holder. In-spite of issuing such notices, the Petitioner Association has not produced the document. According to the respondent, even title deed of the year 1899 indicate that land was purchased by a group of 6 individuals who have termed themselves as Park Committee. They seem to have purchased the lands for the maintenance as a Park. The above would indicate that the lands are intended for the public use as a park. The petitioner also constructed shops without any building permission from the statutory authority. Therefore, in order to make a proper enquiry, they



W.P.No.33898 of 2022

sought details as they are benefited to the public including children. Hence, therefore, opposed this writ petition.

5. The learned counsel for the petitioner submitted that the impugned order proceeded as if the area is notified under the Act. According to him, this property has been purchased by the individuals in 1899 and thereafter, the Society has been registered and the club has been functioning and following rules under Tamil Nadu Societies Registration Act. The respondent cannot direct the petitioner to produce the document or-else the planning permission of the association, whereas, the learned counsel for the respondent submitted that only in order to verify whether the petitioner has valid title or not, such notice is issued. According to him, the revenue records shows the area as a Park. Only, on these basis, the notice has been issued to the petitioner.

6. Heard the learned counsel for both sides and perused the entire materials. The impugned order has been proceeded on the premise that the area has been notified under the Act. It is the specific case of the petitioner that the predecessor purchased the property in the year 1899. Thereafter, the



W.P.No.33898 of 2022

petitioner's association has been registered as a Society under the Tamil Nadu Societies Registration Act, 1975. Section 3 of the Tamil Nadu Parks, Play-fields and Open Spaces (Reservation and Regulation) Act, (26 of 1959) reads as follows:

“ 3.Preparation and submission of list of parks, play-fields and open space by executive authorities :- (1) The executive authority of every local authority shall, not later than six months from the date on which this Act comes into force in the area within the jurisdiction of the local authority, prepare and submit for the approval of the Government a correct and complete list with plans and maps of all the parks, play-fields and open spaces-in the area aforesaid containing such particulars as may be prescribed.

(2) The Government shall, as soon as may be, after the receipt of the list and other documents referred to in sub-section (1), publish the list in the prescribed manner and such publication shall state at what place and time the maps, plans, and documents aforesaid will be available to the public for inspection.”

On perusal of the above, the local authority shall prepare and submit for approval of the Government a correct and complete list with plans and maps of all the parks, play-fields and open spaces in the area.

7. Section 4 of the Act deals with approval of lists by Government.

The local authority can only claim when the park being notified as per the Act and other restrictions can be placed on that area. Only on such



W.P.No.33898 of 2022

notification, the local authority can maintain the area in a clean and proper condition and also prohibit any further construction.

8. Section 9 of the Act deals with obligation of the owners of parks, play-fields, etc., In the case of parks and play-fields not vested in the local authority but included in the list published under section 4 or 5, then the executive authority may, by notice, require the owner or the person or authority in occupation to maintain in a clean and proper condition or to remove or alter any projection, encroachment or obstruction. In the event, the owners fails to maintain such park, the executive authority can maintain.

9. On the combined reading of the above Sections 3, 4 and 9, this Court is of the view that unless the park is notified, included in the list and approved by the Government, the local authority cannot assume that the park is listed park and approved by the Government. Though the power is also vested with the Government to notify any area, such exercise has not been made in this case.

10. Such view of the matter, without any notification issued and list



W.P.No.33898 of 2022

not published under the Act, the respondent cannot direct the petitioner to produce the document to prove negative, by wielding of threat, disconnection or cancellation of the assessment order.

11. With the above, the impugned order is hereby set aside and this writ petition stands allowed. It is well open to the authorities to follow the procedure as per The Tamil Nadu Parks, Play-fields and Open Spaces (Reservation and Regulation) Act, (26 of 1959) and take appropriate action. No costs. Consequently, connected miscellaneous petition is closed.

10.02.2023

dhk

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

To

Tindivanam Municipality
Represented by its Commissioner
Office of Municipality Commissioner
Tindivanam



WEB COPY



W.P.No.33898 of 2022

N.SATHISH KUMAR, J.

dhk

W.P.No. 33898 of 2022

10.02.2023