



W.A.(MD).No.478 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.12.2023

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD)No.478 of 2023

and

C.M.P.(MD)No.4919 of 2023

S.Kannathasan

.. Appellant

Vs.

- 1.The District Registrar,
Office of District Registrar,
Madurai District.
- 2.The Sub-Registrar,
Othakadai Sub Registration Office,
Y.Othakadai, Madurai.
- 3.The Sub-Registrar Joint 1,
Madurai North Taluk, Rajakambeeram,
Y.Othakadai, Madurai.
- 4.The President,
Othakadai Panchayat,
Y.Othakadai Madurai.



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5.The President,
Neelamegam Nagar House Owners Association,
Y.Othakadai, Madurai District.

6.Ganesan ... Respondents

(R6 is impleaded as per order of this Court dated 28.11.2023 made in C.M.P.
(MD)No.15017 of 2023 in W.A.(MD)No.478 of 2023)

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 14.03.2023 made in W.P.(MD).No.5036 of 2023 on the file of this Court.

For Appellant : Mrs.B.Bhuvaneshvariganesan

For R1 to R3 : Mr.S.Kameswaran,

Government Advocate

For R4 : Mr.M.Ponniah

For R5 : No Appearance

For R6 : M/s.B.Deepa

JUDGMENT

(Judgment of the Court was delivered by *V.LAKSHMINARAYANAN, J.*)

This Writ Appeal arises against the order dated 14.03.2023 passed in
W.P.(MD)No.5036 of 2023.



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2.The facts necessary for disposal of the appeal are as follows:-

(i)The petitioner claims to be the owner of the property situated at Neelamegam Nagar, Y.Othakadai, Madurai Old S.No.70/1, New S.No.70/5, 70/6 as Plot No.92A and 92B and total extent of 5012.5 sq.ft. The said layout originally developed by one Annamalai Servai, who had purchased the property from one Kannappan Chettiyar in the year 1957. As per the conditions of layout total number of 100 plots were laid with 10% reserved for OSR plan approved by the Local Planning Authority in approval No.63/1984. The subsequent purchaser Annamalai Servai sold the property to one Udaiyammal in the year 1986 and after the property was transferred to several persons, it was sold to the writ petitioner in the year 2011.

(ii)A Writ Petition was filed in W.P.(MD)No.218 of 2012 by Neelamegam Nagar House Owners Association seeking for a direction to the authorities to maintain the property for the purpose of common usage of lands as notified in the approved layout. The said Writ Petition was ordered by giving a direction to the Commissioner of Madurai East Panchayat Union and the President of Y.Othakadai Panchayat, which are as follows:-



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“14.Accordingly, the third and fourth respondents are directed to initiate appropriate proceedings to restore the plots reserved for library, community hall, pathway and park by issuing notice to the people, who are now in possession and enjoyment of the property. The second respondent is directed to issue notice to the pattadars and cancel the patta, in case it is made out that they have purchased the sites reserved for common purpose. The third and fourth respondents should ensure that sufficient opportunity is given to the people, who are now in possession and enjoyment of the community sites. The action regarding restoration of these amenities should be completed, within a period of seven months from the date of receipt or production of a copy of this order.”

(iii)Subsequently, other Writ Petition came to be filed in W.P.(MD)No.734 of 2007, seeking for a direction to the respondents therein to preserve common usage as notified and to comply with the requirements of the Tamil Nadu Town and Country Planning Act, 1971. The said Writ Petition was dismissed as withdrawn in the light of the submission made by the learned Senior Counsel appeared for 5th respondent therein.

3.The aforesaid narration shows that the subject property of this appeal had been vexed with one litigation after other.



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4.Insofar as the present Writ Petition is concerned, the property that had been reserved as community hall, was sought to be alienated by the writ petitioner. On the basis of the aforesaid orders, the Sub Registrar, Othakadai Sub Registration Office / 2nd respondent passed an order dated 19.12.2022, stating that the property cannot be alienated. This order was upheld by the learned Single Judge. Against which, this Writ Appeal is filed.

5.We heard Mrs.B.Bhuvaneshvariganesan, learned counsel appearing for the appellant, Mr.S.Kameswaran, learned Government Advocate appearing for the respondents 1 to 3, Mr.M.Ponniah, learned counsel appearing for the 4th respondent and Ms.B.Deepa, learned counsel appearing for the 6th respondent.

6.It is the argument of Mrs.B.Bhuvaneshvariganesan that there was no previous transfer of title from the writ appellant to any third party and the purchase was made in the year 2011 and he continuous to be the owner thereof. In exercise of the power of ownership, he sought for alienation of the same, which was rejected by the 2nd respondent. Her submission is supported by the learned counsel appearing for the 6th respondent.



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7.This appeal is stoutly opposed by the learned counsel appearing for the 4th respondent, who brought to our notice of the Tamil Nadu Panchayat Building Rules, 1997 and in particular Rule 3(4). According to him, when a layout is approved for extent of more than 2500 sq.mt., the owner of the land has to transfer the land that is required for street, lanes, passage, common construction, pathway and other open space reserved for public purposes like parks, play fields, children play ground area in favour of the Executive Authority by way of a gift deed. He would plead that since the property has been reserved for community hall it is to be necessarily transferred, as it vests with the local body.

8.We have point out the Amendment to Rule 3 came into force on 03.05.2005 and the Rules itself came into force on 18.08.1997. The layout had been approved in the year 1984 and therefore, the said rules cannot be given retrospective effect. Immediately on facing this difficulty, the learned counsel appearing for the 4th respondent would submit that the property is being a common area, it vests with the Local Body and he would rely upon the judgment of ***Pt.Chet Ram Vashist (dead) rep. by L.Rs., Vs. Municipal Corporation of Delhi*** reported in ***1995 (1) SCC 47***.



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9.A careful perusal of the judgment of the Supreme Court would show that, that was the case of playground and the property had not been transferred by way of gift deed in favour of the Delhi Municipal Corporation. The Delhi Municipal Corporation had insisted upon the execution of sale deed in favour of the Corporation for the purpose of approval of layout. The Supreme Court categorically held that there cannot be a forcible transfer of property and the owner continues to hold the right, title & interest over the property in terms of Article 300A of Constitution of India. Apart from that the Supreme Court was pleased to hold that even with respect to the park etc., the developer continuous to be the owner of the property, but he holds the property in trust for the public at large.

10.The challenge before the Supreme Court was specifically with respect to the direction that was given by the Municipal Corporation, Delhi seeking for transfer of the land as condition precedent for approval of the layout. Factually, the said judgment does not apply to the facts of the present case. Apart from that the Supreme Court had very clearly laid down that even with respect to common utility areas, which had been set apart for the use of the public at large, the layout



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developer continuous to be the owner and holds it in trust for the purpose of users at large. In the case on hand, already discussed above the subject property was transferred from the original owner in the year 1957 and the layout was developed in the year 1984 and thereafter, this very plot had been owned by several persons.

11.By the mere fact that the judgment of the Court had been rendered, directing the parties to maintain common areas, it does not amount that there is a transfer of title from the owner in favour of the 4th respondent. We hasten to add that where a property has been reserved for a particular use, it has to be used only for that purpose and it is the duty of the local body to ensure that the area reserved for community hall is not put for any other purpose, other than being used as a community hall.

12.That being the position of law, the order of the 2nd respondent, stating that the property is inalienable, as it vests with the local body and public at large, deserves to be interfered with. The approval of the said order by the learned Single Judge is to necessarily be set aside and accordingly, it is set aside.

13.Having set aside the order of the learned Single Judge, we cannot



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remain insensitive to the fact that since the property had been reserved for community hall, there cannot be any development to other purpose. The writ petitioner / appellant intends to sell the subject property to one Ganesan. Therefore, we impleaded the said Ganesan / proposed purchaser of the property as party to this Writ Appeal. The proposed purchaser, has on his own filed an undertaking affidavit, which is as follows:-

“As a intending purchaser now I am giving an undertaking that I will construct the community hall in Plot No.92 A and 92 B as it is reserved for my undertaking may be recorded by this Hon'ble Divisional bench and thus render justice.”

14.This undertaking will bind the petitioner, 6th respondent as well as any person claims through him. It is the duty of the local body to ensure that the undertaking given by the 6th respondent is strictly complied with.

15.The learned counsel for the 6th respondent would submit that pending Writ Petition, the local body had constructed a fair price shop and it is operating the same. This fact is disputed by the learned counsel appearing for the appellant. We are not inclined to go into the issue as matters relating to possession has to be dealt with by the Civil Courts. Therefore, it is left open to the parties to approach the civil Courts insofar as the issue of recovery of possession/injunction is



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16.A Court by its verdict merely declares the position of law and does not create any new right. It is always open to the local body to acquire the property after following due procedures as contemplated under the law. In the event of re-presentation of the document by the presentee, the Registering Authority shall comply with the process of registration within a period of four weeks from the date of registration.

17.With the above observation, this Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.,J.) & (V.L.N.,J.)

15.12.2023

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

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