



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11-03-2024

PRONOUNCED ON: 28-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

S.A. No.1395 of 2001

and

W.P. Nos. 13862 of 2017 and 14501 of 2021

and

W.M.P. Nos.15048 of 2017 and 15394 of 2021

S.A. No.1395 of 2001

S. Ponnusamy

... Plaintiff / Appellant / Appellant

-VS-

1. V. Chandrasekar
2. K. Sankaranarayanan
3. K. Karthikeyan
4. C.V. Venugopal
5. V. Raghunath
6. C.V. Thirugnanam
7. T. Vijayaraghavan

8. Coimbatore Corporation,
Rep. By its Commissioner,
Big Bazar Street, Coimbatore – 1

9. Vijayalakshmi Ranganathan,



10. S. Balasubramaniam ... Defendants 2, 4 to 12 / Respondents /
Respondents

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Prayer: Second Appeal is filed against the Judgment and Decree made in A.S. No.256 of 1997, dated 25.10.2000 on the file of the Principal District Judge of Coimbatore by confirming the judgment and decree made in O.S. No.25 of 1988, dated 29.07.1997 on the file of II Additional District Munsif, Coimbatore.

For Appellant	:	Mr. G.A. Thiyagarajan (for M/s. Rugan & Arya)
For Respondents-1 to 7	:	No Appearance
For Respondent 8	:	Mr. K. Magesh (Learned Senior Counsel)
For Respondent 9	:	Given up vide Court Order dated 10.12.2011
For Respondent 10	:	Mr. AR.L. Sundaresan (Learned Senior Counsel) (for Mr. AR. Karthik Lakshman)

W.P. No.13862 of 2017

S.P. Thiyagarajan ... Petitioner

-VS-

1. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore – 641 001.



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2. The District Collector,
Coimbatore District,
Coimbatore – 641 018.
3. The Member Secretary,
Local Planning Authority,
Sivananda Colony,
Coimbatore – 641 012.
4. M/s. Siva Steel,
179, Krishnasamy Road,
Coimbatore – 2.
5. S. Balasubramanian
(Impleaded as per Order dated 31.08.2017
in W.M.P. No.19119/2017) ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus or any other Writ or Direction or Order directing the first respondent, the Commissioner, Coimbatore City Municipal Corporation to evict the encroacher, who has encroached upon the public road in the approved VVC Layout, situated in Coimbatore City Municipal Corporation, Ward No.25, measuring 220 feet length and 40 feet wide, which is mentioned as Corporation Road in the Corporation Town Planning records.

For Appellant : Mr. N. Manoharan

For Respondent 1 : Mr. K. Magesh
(Learned Senior Counsel)

For Respondents 2 and 3 : Mr. A. Selvendran



(Special Government Pleader)

For Respondent 4 : No Appearance

For Respondent 5 : Mr. AR.L. Sundaresan
(Learned Senior Counsel)
(for Mr. AR. Karthik Lakshman)

W.P. No.14501 of 2021

S. Balasubramanian

... Petitioner

-VS-

1. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore – 641 001.
2. The District Collector,
Coimbatore District,
Coimbatore – 641 018.
3. The Member Secretary,
Local Planning Authority,
Sivananda Colony,
Coimbatore.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari or any other appropriate Writ, Order or Direction calling for the records relating to the proceedings pursuant to the notice dated 05.07.2021 under Section 258(1) and 441 of the Coimbatore City Municipal Corporation Act of the first respondent herein and quash the same.



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For Appellant : Mr. AR.L. Sundaresan
(Learned Senior Counsel)
(for Mr. AR. Karthik Lakshman)

For Respondent 1 : Mr. K. Magesh
(Learned Senior Counsel)

For Respondents 2 and 3 : Mr. A. Selvendran
(Special Government Pleader)

ORDER

[ORDER MADE BY K. RAJASEKAR, J.]

The plaintiff/ Appellant herein has filed this second appeal to set aside the decree and judgment passed in O.S.No.25/88, dated 29.07.1997, on the file of II Additional District Munsif Judge, Coimbatore, and to set aside the decree and judgment passed in A.S. No.256/1997, dated 25.10.2000 by the Principal District Judge, Coimbatore.

2. The relief sought for in the writ petition in W.P. No.13862 of 2017 is to direct the first respondent, the Commissioner, Coimbatore City Municipal Corporation to evict the encroacher, who has encroached upon the



public road in the approved VVC Layout, situated in Coimbatore City Municipal Corporation, Ward No.25, measuring 220 feet length and 40 feet wide, which is mentioned as Corporation Road in the Corporation Town Planning records. Similarly, the relief sought in the writ petition in W.P. No.14501 of 2021 is to call for the records relating to the proceedings pursuant to the notice dated 05.07.2021 under Section 258(1) and 441 of the Coimbatore City Municipal Corporation Act of the first respondent herein and quash the same.

3. The subject matter of this second appeal and writ petitions relating to claiming right over the lands situated on the eastern side of plot nos.9 and 10 of the Verivadu Chettiar Layout, Ward 25, Coimbatore City. Hence all the matters heard together and common Order is hereby passed.

4. The plaintiff / appellant in the second appeal is the purchaser of one of the housing plot numbered as '9' in an approved layout called Verivadu Chettiar layout (VVC layout) as per sale deed dated 14.12.1998. On the eastern side of his plot, there is 40 feet north-south scheme road was running, this road is part of the layout. The roads formed in the housing



layout were gifted in favour of the Municipality of Coimbatore. The defendants 1 to 7 are the promoters of the layout and they have sold various plots to various persons. The plaintiff stated that, on the eastern side of his plot, road was earmarked in the layout and the defendants were attempting to sell the road portion. There was a temporary watchman shed, which was not removed by the promoters from the road portion. They have put up a barbed wire, fencing the portion of the road on the eastern side of the plaintiff's plot. The Commissioner of the Corporation was also added as a party, since the Corporation has not taken any steps to remove the encroachment inspite of request made by the plaintiff. Since, the public road has been encroached, the petitioner has come forward to file suit against the promoters and the Commissioner of Corporation, seeking permanent injunction from altering the physical features of the road and mandatory injunction to remove the encroachments.

5. The Defendant No.6 filed written statement and Defendants 3 and 7 to 9 have adopted the same. The 1st and 2nd defendants were died during the pendency of the suit. In the written statement, it is contented by the promoters that there is no scheme road lying on the eastern side of the



plaintiff property and no such road was formed or ever in existence. They have leased out the vast area about one acre lying on the eastern side of the site number 9 and 10 to the Small Industries Development Corporation (SIDCO). A separate building was also constructed in the disputed property and they have denied that they have forcibly taken possession of the road portion. The plaintiff was also having separate access to his property, hence there is no need for providing access on the eastern side of the plaintiff property, hence the suit is not maintainable.

6. The Corporation has taken stand, that they are unnecessary party and at the time of approval of layout, the road portion was not gifted to the Municipality. The Defendant no.11, impleaded since during the pendency of suit, the 1st defendant died. The Defendant no.12, during pendency, purchased the subject property and also contested the suit along with the defendants 3 and 7 to 9. The 12th defendant S. Balasubramaniam filed separate written statement stating that he has purchased the suit property along with other items on 05.10.1995 by way of registered sale deed and he is in possession of the suit property.



7. Based on the pleadings and written statements, the Trial Court has framed the following issues and additional issues:

Issues:

- (i). Whether the plaintiff is entitled for relief for permanent and mandatory injunction as prayed for?
- (ii). Whether the suit is barred for mis-joinder of parties?
- (iii). To what are the relief the plaintiff is entitled for?

Additional issues:

- (i). Whether the road was approved and laid in the disputed property?
- (ii). Whether the Corporation has taken the possession of the suit road for the purpose of maintenance?
- (iii). Whether the suit is maintainable or not?
- (iv). Whether the relief claimed is barred under the limitation Act?

8. After framing of issues on the side of the plaintiff, two witnesses were examined and 12 exhibits were marked. On the side of the defendants, four witnesses were examined and 12 documents were marked. Court Exhibits C.1 and C.2 were also marked.

9. After considering the evidence placed on record, the Trial Court has held that the Corporation is the necessary party to the suit, that there was



no road approved in the lay out and the property was not converted into a road as per the gift deed executed. Further, by relying on the letter of the Local Town Planning Authority marked as Ex.B.9, the Trial Court has held that there was no road formed by the Town Planning Authority and Authorities have dropped the proposal of formation of scheme road on the eastern side of the plaintiff's property.

10. Aggrieved over the above finding and dismissal of the suit, the plaintiff has filed the first appeal in A.S. No.256/1997 dated 25.10.2000, and after considering the arguments, the Lower Appellate Court has confirmed the judgment and decree passed by the Trial Court. In the first appeal, the Lower Appellate Court has framed the following issues:

- (i). Whether the suit property is scheme road as contended by the plaintiff?
- (ii). Whether the scheme road is in existence if so, whether the plaintiff is entitled to permanent injunction, as alleged in the plaint?
- (iii). Whether the suit is barred by limitation?

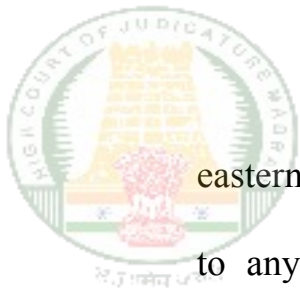


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(iv). Whether the plaintiff is entitled to mandatory injunction, for the removal of the shed and the obstruction?

(v). Whether the plaintiff is entitled to mandatory injunction against the 10th defendant, for maintaining the scheme?

11. After framing issues, the Lower Appellate Court has held that there was no road formed at the time of layout and there was no gifting of the road portion to the municipality, since there was no vesting of the road to the Corporation, the plaintiff, who have not claimed the right over the land from the formation of layout, are not entitled to contend that there was road, since claim is time barred. Further the Appellate Court has held that, only a scheme road is proved on papers and not on the ground. The road is not a public road as defined under the act. The road portion was also under the occupation of the contesting defendants for a very long time. Even though, the road portion has been shown as boundaries in the sale deeds relating to sale of plot nos. 9 and 10, the plaintiff is having a separate entry or road to his property, and the road access on the eastern side is not necessary. Therefore, the suit for injunction is not maintainable. By relying on the letters sent by the Town Planning Authority that they have dropped the plan to form scheme road, it has been held that the road was not formed in the



eastern side of the plot nos. 9 and 10, accordingly, the plaintiff is not entitled to any relief at all and consequently, the appeal was dismissed by the Appellate Court.

12. Aggrieved over the judgment of the Trial as well as the Appellate Court, the second appeal has been filed by the plaintiff herein.

13. The learned counsel for the appellant submitted that the suit road portion has been described as a public road in the approved layout. The promoters of the layout housing sites are the contesting respondents and before selling several housing sites in the layout, they have also gifted the roads in favour of the Coimbatore Municipality. It is admitted fact that the the Corporation has not laid the roads. Subsequently, these roads has been proposed to be expanded as per 'Master plan' and the said proposal was dropped by the Town and Country Planning Authority. The drop of proposal to implement the scheme has been taken advantage by the promoters and they have sold the road portion to the 12th defendant herein, which is void since the promoters are not having any valid title over the property. Once the property has been declared as a public road, under the Town and Country



Planning Act, no individual is having right to encroach and block the roads.

These facts have not been properly appreciated by the Courts below, hence prays to decree the suit.

14. The learned counsel for the contesting respondents have submitted that, there is ample evidence more particularly, the statement made by the Town and Country Planning Authority that they have dropped the proposal to lay road adjacent to the housing plot numbers 9 and 10 and thus it is sufficient to hold that there was no road in the disputed property. Even prior to forming the layout, the land was under the possession of SIDCO by way of lease for a long time and only after completion of lease period, the original owners / promoters have sold the property to the 12th defendant herein. Both the Courts below held that there was no road in existence and this was one of the issue framed, held in favour of the original owners. The plaintiff is not entitled to contend that there was a road in existence on the eastern side of his property and it has to be formed by the Corporation.

15. The learned counsel appearing on the side of the Corporation, submitted that at the time of formation of layout, the eastern side of the plot



numbers 9 and 10 has been earmarked as a public road to the extent of 40 feet. Those lands were also gifted in favour of the municipality and without properly looking into the said documents, the Corporation has mistakenly taken a stand that there was no road in existence and the same has been now properly verified. Since the respondents herein are in possession of the property for a very long period, they were not able to take possession and lay the road. He further submitted that the plaintiff is having another way to reach his property, hence the road in the eastern side of his property is not necessary.

16. After considering the pleadings and arguments submitted, the following substantial question of law arises for consideration.

- (i). Whether the public road earmarked in the layout could be taken back, and sold by the Promoters / Developers of the layout on the ground that the Municipality has not come forward to lay the road?
- (ii) Whether the promoters are entitled to claim possessory right over the public road on the ground that the purchasers of the housing sites and the Corporation have not come forward to claim any right over long period?



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- (iii) Whether the Courts below is right in holding that the road was not formed in pursuant to the layout plan, hence there is no road in existence?

17. The plaintiff has adduced his side evidence and stated that he has come forward to purchase the housing sites based on the approved plan / layout produced by the promoters. The name of the layout itself carries the name of the predecessors in the title of the land namely Verivadu Chettiar Layout (VVC Layout). Ex.A.2 is the layout approval plan. As per the layout, there is road earmarked on the eastern side of the plaintiff's property. The original title owners have also executed gift deed marked as Ex.A.4, gifting all the road portions described in the layout, which is earmarked to the extent of 40 feet in favour of the Municipality. This layout shows that the land situated in T.S. No.1363-1A and 1364-1A part was converted into housing sites. As per the gift deed dated 13.01.1965, the contesting private respondents have come forward to gift all the road portions earmarked to the extent of 40 feet, by gift deed to the Coimbatore Municipality. The measurement of each plot and road portions incorporated in the development plan and the approval for the layout was issued by the Joint Director of Town and Planning with reference to TP.No.TDP/65/61.



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18. On the side of the defendants, Mr. Thirugnanam, who is the 8th defendant was examined as P.W.1. He has stated before the Trial Court that his family members have promoted a Housing site layout in T.S.NO.1353/1A and 1364/1A as Ex.A.2. The Development layout plan was submitted to the Corporation and approval was also obtained. In the layout plan, the road portions were specifically shown, the measurement of the road has been fixed as 40 feet. He has admitted that on the eastern side of the housing site numbers 9 and 10, 40 feet road running north to south was earmarked . However, they have not laid the road and it was in their possession. The evidence of P.W.1 has been accepted by the defendants to the extent that the contesting respondents have formed layout after earmarking road portions to various housing sites including the eastern side of the plaintiff's plot as well as site no.10. According to the defendants that, the Corporation has not come forward to lay the roads and the promoters themselves retained the road portions. Subsequently, they have leased out the lands in favour of the SIDCO and it was used as a godown for storing coal.

19. In this case, the Corporation has not properly submitted the true



facts before the Court below and they have suppressed the fact that a gift deed of road portions in the suit property was executed in their favour.

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20. The contesting private defendants also examined the Officials from the Corporation as D.W.3 and he has stated that there was a road earmarked in the layout on the eastern side of the housing site number 9 and 10. As per Ex.B.9, the local Planning Authority has decided to drop the Resolution No.4 of the Master plan [Expansion and Development Plan], wherein proposal to form scheme road "63-63" was dropped. This resolution shows that originally the Town Development Authority has proposed to expand the Arunthanthiyar Colony Area scheme road into "63-63" and the same has been decided to be dropped. This resolution is no way connected to the layout plan already approved in the year 1965 and this resolution is only related to the Master plan prepared for the development of Coimbatore town. By relying on this evidence, and the resolution of the Town Planning Authority, the Courts below have held that the proposal to form the road has been withdrawn by the Authorities, more particularly by the Corporation herein.



21. The Master plan for the development of a city have been prepared by the Metropolitan Development Authority under Section 17. This plan has to be accepted by the Government for implementation and for development of a particular area. If the Government agreed to implement the Master plan or regional plan prepared by the Local Planning Authorities, it has to be notified to the public. Section 17 and 19 of the Town and Country Planning Act deals about the Master plan and Development plan prepared by the Local Authorities. The relevant provisions deals with the development of lands, preparation of various plans, power of Government, Private land owner's intent and related provisions are given under:-

17. Master plans. –

(1) As soon as may be, after the declaration of a local planning area under section 10 and after the constitution of the appropriate planning authority under section 11, the local planning authority shall, within such time as may be prescribed and after consulting the regional planning authority and the local authorities concerned, prepare and submit to the Government, a plan hereinafter called the “master plan”, for the local planning area or any part of it and such other area or areas contiguous or adjacent to the local planning area, as the Government may direct to be included in the master plan.

(2) The master plan may purpose or provide for all or any of the following matters, namely:-

(a) the manner in which the land in the planning area shall be used;



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(b) the allotment or reservation of land for residential, commercial, industrial and agricultural purposes and for parks, play-fields and open spaces;

(c) the allotment and reservation of land for public buildings, institutions and for civic amenities;

(d) the making of provision for national highways, arterial roads, ring roads, major streets, lines of communication including railways, airports and canals;

(e) the traffic and transportation pattern and traffic circulation pattern;

(f) the major road and street improvements;

(g) the areas reserved for future development, expansion and for new housing;

(h) the provision for the improvement of areas of bad layout or obsolete development and slum areas and for relocation of population;

(i) the amenities, services and utilities;

(j) the provision for detailed development of specific areas for housing, shopping, industries and civic amenities and educational and cultural facilities;

(k) the control of architectural features, elevation and frontage of buildings and structures;

(l) the provision for regulating the zone, the location, height, number of storeys and size of buildings and other structures, the size of the yards and other open spaces and the use of buildings, structures and land;

(m) the stages by which the master plan shall be carried out; and

(n) such other matters as may be prescribed.

19. Declaration of intention to make or adopt a detailed development plan.-



(1) A local planning authority may, by resolution, decide.-

- (a) to prepare a development plan to be called the “detailed development plan” in respect of any land within its planning area; or*
- (b) to adopt with or without modifications a detailed development plan proposed by all or any of the owners of any such land.*

(2) The resolution under sub-section (1) shall be published by the local planning authority in the prescribed manner by notification in the District Gazette concerned and such notification shall contain such particulars as may be prescribed and specify the time and place where a plan of the area may be inspected.”

22. Section 24 empowers the Government to issue directions to the Regional Planning Authorities (or) Local Planning Authorities (or) new Town Development Authorities, to develop a regional plan or a Master Plan, which reads as follows:

“24. Consent of Government to the publication of notice of preparation of plans.- *(1) As soon as may be, after the master plan, the new town development plan or the detailed development plan has been submitted by the Metropolitan Development Authority to the Government, but not later than such time as may be prescribed, the Government may direct the Metropolitan Development Authority to make such modifications in master plan, the new town development plan or the detailed development plan, as they think fit and thereupon the Metropolitan Development Authority shall make such modifications and resubmit it to the Government.”*

23. Section 23 empower the Director of the Regional Planning



Authority to prepare Detailed development plans in any of the area. As per Section 26, the Master plan or development plan has to be published under the Tamil Nadu Government Gazette inviting objections and suggestions.

Section 28 and 29 deals with the approval of the plan by the Government and the Directors, which reads as follows:

***“28. Approval by Government.-** As soon as may be, after the submission of the regional plan, the master plan or the new town development plan but, not later than such time as may be prescribed, the Government may, after consulting the Director, either approve the said plan or may approve it with such modifications, as they may consider necessary, or may return the said plan to the appropriate planning authority to modify the plan or to prepared a fresh plan in accordance with such directions as the Government may issue in this behalf and resubmit it to the Government for approval.*

***29. Approval by the Director.-** As soon as may be, after the submission of the detailed development plan, but not later than such time as may be prescribed, the Director may, either approve the said plan or may approve it with such modifications, as he may consider necessary, or may return the said plan to the local planning authority to modify the plan or to prepare a fresh plan in accordance with such directions as the Director may issue in this behalf and resubmit it to him for approval.”*

24. Section 37 deals purchase, acquisition of land for implementation of plan and Section 38 deals with Release of land, if the Government has not come forward to acquire the lands as per the master plan



or detailed development plan or new Town development plan has declared
under Section 37(2) of the Act,

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37. Power to purchase or acquire lands specified in the development plan.-

(1) Where after the publication of the notice in the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, any land is required, reserved or designated in such plan, the appropriate planning authority may, either enter into agreement with any person for the acquisition from him by purchase of any land which may be acquired under section 36 or make an application to the Government for acquiring such land under the Land Acquisition Act, 1894 (Central Act I of 1984):

....

(2) On receipt of an application made under sub-section (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may make a declaration to that effect in the Tamil Nadu Government Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section 6 of the said Act:

38. Release of land.- *If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27- (a) no declaration as provided in sub-section (2) of section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed*



development plan or new town development plan covered by such notice; or

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation.

25. Section 49 permits development of land by the parties, who are not being any State Government or Central Government or any Authority. This provision deals about the layouts promoted by the private parties. The Government already issued separate Rules called “Rules regarding Application for Planning permission, in G.O. Ms. No.652, R.D. & L.A., dated 08.04.1975, by invoking powers U/s. 122(1) of the Town and Country Planning Act, 1971. This Rule prescribes submission of Form I, which predominantly deals about the proposed street, alignment and building lines for the existing and new streets to be formed. The developer of land has to adhere the conditions stipulated under this rules. Further, the conditions also stipulates that the Promoters / owners of the land to give undertaking that the Promoters / owners shall not do any work otherwise than in accordance with the plan which have been approved by the appropriate Planning Authority. This also mandates the Promoters / owners that, without getting



permit from the concerned Local Authority for laying out roads and other things, no land could be developed as per the planning permit.

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26. Once the conversion of lands into housing plots approved, it would form part of the Master plan prepared under the Town and Country Planning Act. Once permission to convert the land into the housing plots based on the layout approved by the Local Planning Authority, any variations or change in the layout shall be permissible only if prior consent obtained from the Planning Authority. Section 49 of the act reads as follows:

49. Application for permission.- (1) *Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.*

(2) *The appropriate planning authority shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:-*

- (a) *the purpose for which the permission is required;*
- (b) *the suitability of the place for such purpose;*
- (c) *the future development and maintenance of the planning area*



(3) When the appropriate planning authority refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person, on demand, a brief statement of the same.

27. The terms 'Development Plan', 'Public street' and 'Re-constitution of plots' are defined under Section 2 of The Tamil Nadu Town and Country Planning Act, 1971 as follows:

2. Definitions. – In this Act, unless the context otherwise requires,-

(15) “development plan” means a plan for the development or re-development or improvement of the area within the jurisdiction of a planning authority and includes a regional plan, master plan, detailed development plan and a new town development plan prepared under the Act;

(37) “public street” means any street, road, square, court, alley, passage or riding path over which the public have a right of way, whether a thoroughfare or not, and includes,-

- (a) the roadway over any public bridge or causeway;*
- (b) the footway attached to any such street, public bridge or causeway; and*
- (c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, verandah or other structure, which lies on either side of the roadway upto the boundaries of the adjacent property*



whether that property is private property or property belonging to the Central or any State Government;

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(39) “reconstitution of plots” means the alteration of plots by the making of a development plan otherwise than by the severance of land used, allotted or reserved for any public purpose;

28. Prior to passing of Tamil Nadu Town and Country Planning Act, 1971, the Development plans were approved by the respective Municipalities, as per Madras Town Planning Act, 1920 (Act 1920, hereafter). In this case, the approved layout for the development of Varivadu Chettiar Layout, has been approved by the Municipal Corporation. Section 9 to 11 of the Act 1920, deals with the development scheme proposed by all or any of the owners of any such land, reads as follows:

“9. Declaration of intention to make or adopt scheme :-

(1) A municipal council may, by resolution, decide to prepare a scheme in respect of any land, within the municipal area, or in its vicinity outside such area, or to adopt with or without modifications a draft scheme proposed by all or any of the owners of any such land. The chairman shall then have a plan prepared showing the land proposed to be included in the scheme, the surrounding lands and any existing streets.

10. [Resolution to make or adopt scheme] :-



[The resolution under section 9 shall be published by notification in the prescribed manner by the chairman; and such notification shall state that a copy of the plan is kept for the inspection of the public at all reasonable hours at the municipal office].

1. Sub-section (1) of section 10 was renumbered as section 10 and subsections (2) and (3) of that section were omitted by section 9 of the Madras Town-Planning (Amendment) Act, 1930 (Madras Act II of 1930)."

11. Publication of draft scheme :-

(1) If the resolution is to make a scheme, the municipal council shall, within twelve months from the date of the notification under section 10, 6[.....], or within such further period, not exceeding twelve months, as the 4[State Government] may allow, and after consulting, in the prescribed manner, the owners of lands and buildings in the area affected, prepare, 7[.....] and publish a draft scheme.

(2) If the resolution is to adopt a draft scheme proposed by owners, the council shall, without delay 8[.....] publish such scheme.

12. Power of State Government to require council to make scheme :-

Notwithstanding anything contained in 1[sections 9 to 11], the 2[State Government] may, in respect of any municipality, after making such inquiry as they may deem necessary, by notification in the 3[Official Gazette], require the council, before a fixed date, 4[to prepare, publish and submit for their sanction a draft scheme] as respects any land in regard to which a town-planning scheme may be made.



29. Section 12 of Act 1920, deals with the power of Government to direct Municipalities to make Scheme. It is admitted by the parties in this case that, prior to 1971, the layout plan was approved by the Competent Authority and roads were also gifted in favour of Municipality. This shows that Municipality has adopted the Scheme. Section 11 of Act 1920, mandates that Municipality to publish the Scheme. Once the process of publication of Scheme is effected, it would be termed as declaration to the public. The plaintiff by relying on the above approval plan has come forward to purchase the housing plots from the Developers.

30. The Apex Court as well as Division Bench of this Court had occasion to consider the variation, change or modification in the Development plan / Layout plan and held as follows:

31. In ***Bangalore Medical Trust Vs. B.S. Muddappa and Ors. [AIR 1991 SC 1902]***, Apex Court while considering the validity of the conversion of public purpose land, held that it has to be made only on public interest and if any change, alteration is made, the residents of the locality are the persons,



who are aggrieved persons:

“24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens. See Kharak Singh v. The State of U.P. and Ors. MANU/SC/0085/1962 : 1963CriL J329 ; Municipal Council, Ratlam v. Shri Vardhichand and Ors. MANU/SC/0171/1980 : 1980CriL J1075 ; Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and Ors. MANU/SC/0517/1981 : 1981CriL J306 ; Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors. MANU/SC/0039/1985 : AIR1986SC180 ; State of Himachal Pradesh and Anr. v. Umed Ram Sharma and Ors. MANU/SC/0125/1986 : [1986]1SCR251 and Vikram Deo Singh Tomar v. State of Bihar, MANU/SC/0572/1988 : AIR1988SC1782.

25. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation. See for e.g: Karnataka Town and Country Planning Act, 1961; Maharashtra Regional and Town Planning Act, 1966; Bombay Town Planning Act, 1954; The Travancore Town and Country Planning Act, 1120; The Madras Town Planning Act, 1920; and the Rules framed under



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these Statutes; Town & Country Planning Act, 1971 (England & Wales); Encyclopaedia Americana, Volume 22, page 240; Encyclopaedia of the Social Sciences, Volume XII at page 161; Town Improvement Trusts in India, 1945 by Rai Sahib Om Prakash Aggarawala, p. 35; et. seq.; Halsbury's Statutes, Fourth Edition, p. 17 et. seq. And Journal of Planning & Environment Law, 1973, p. 130 et. seq. See also: Penn Central Transportation Co. v. City of New York, 57 L.Ed. 2d 631 438 US 104 (1978); Village of Belle Terre v. Bruce Boraas, 39 L.Ed. 2d 797 416 US 1 (1974); Village of Euclid v. Ambler Realty Co., 272 US 365 (1926) and Halsey v. Esso Petroleum Co. Ltd. [1961] 1 WLR 683.

.....

29. The residents of the locality are the persons intimately, vitally and adversely affected by any action of the BDA and the Government which is destructive of the environment and which deprives them of facilities reserved for the enjoyment and protection of the health of the public at large. The residents of the locality, such as the writ petitioners, are naturally aggrieved by the impugned orders and they have, therefore, the necessary locus standi.

.....

32. The impugned orders and the consequent action of the BDA in allotting to private persons areas reserved for public parks and play grounds and permitting construction of buildings for hospital thereon are, in the circumstances, declared to be null and void and of no effect."

32. Hon'ble Apex Court in ***Pt. Chetra Vashist vs Delhi Municipal*** ***[1995 (1) SCC 47]***, has considered the rights of the Delhi Municipal Corporation to impose condition that the open space for parks, schools to be



transferred to the favour of Corporation with free of cost and after considering various provisions of the Delhi Municipal Corporation Act, observed in paragraph no. 6 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. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.”

33. This Court in ***Thai Nagar Welfare Association vs. Special***



Commissioner and others [2008 (6) CTC 689] has held that any variations or conversion of the land earmarked as open space could not be converted into commercial purpose. Further, if any variations, conversions or modifications of the layout is prepared under Section 49(2) of the Town and Country Planning Act, it must be decided based on public interest and it is observed as follows:

“9. At the outset, it has to be noticed that when an application is made for conversion of part of the earmarked open space to the commercial purpose, as per Section 49(2) of the Act, the appropriate planning authority, shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:

- (a) the purpose for which permission is required;*
- (b) the suitability of the place for such purpose;*
- (c) the future development and maintenance of the planning area.*

....

11. The open space in a residential area or in busy townships is treated as a lung space of the area. Where open space is preserved and earmarked in the plan for development of a planned town, the authorities cannot ignore the public interest and allot the same for construction of godowns, thereby causing environmental hazards to the residents of the colony. In other words, when an area is earmarked for a particular purpose in the approved layout, the said area cannot be converted or used for a different purpose. Open space is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology. The interests of the residents of the area, who have purchased the plots as per the approved



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layout, have to be safeguarded and for the benefit of ecology, certain areas should be earmarked for garden and park, so as to provide fresh air to the residents of that locality, as ecological factors indisputably are very relevant considerations in construing a town planning statute.”

34. In the present case, the promoters of the layout namely Varivadu Chettiar layout (VVC layout) have submitted the layout plan for developing their land and it was approved by the Local Planning Authority. Based on this approval, the promoters have come forward to execute gift deed, transferring their right of the land, which has been earmarked as a road to the extent of 40 feet, including the road earmarked on the eastern side of the plot numbers 9 and 10. After gifting the above lands, the promoters have leased out the said public road in favour of third parties and same is not permissible and the lease itself is *void abinitio*.

35. The contention of the promoters / Private Defendants is that the Corporation has not come forward to lay road in the earmarked area, so they have converted the land and used it for their own purpose. Subsequently, the land is also sold to 12th Defendant. Even, in the absence of any gift deed in favour of the Corporation, the promoters / private respondents are not



entitled to convert the public roads or land earmarked for public use into a private property. Admittedly, the land owners / promoters have not obtained any assent from the Local Planning Authority to convert the public road for their own use, hence on this ground also the claim of the private respondent that they are entitled to use the land as a private property is liable to be rejected.

36. The reliance placed by them on the resolution passed by the Local Authority dated 21.04.1984, which is marked as Ex.B.9, on careful consideration of the proceedings, shows that in Na.Ka.No.7151 of 1980, dated 21.04.1981, there was a Master plan for expansion and development of Coimbatore Corporation as per Section 17 of the Tamil Nadu Town and Country Planning Act, in which the development of scheme road referred as “63-63” have been decided to be dropped from the scheme and accordingly, the recommendations was made to cancel the “63-63” scheme road. This Master plan for forming a scheme road is different from the original public road earmarked at the time of approval of forming layout. A gift deed was also executed in favour of the Corporation, thereby the transfer right of the



Promoters / Developers in the places earmarked as public road to the Corporation is completed. This Ex.B.9 has been misinterpreted by the Courts below and the finding has been rendered as if the rights in the approved layout plan earmarked as public road at the time of approval of the layout has been withdrawn by the Local Planning Authority.

37. This Court is of the view that this finding is totally misconceived to the facts produced before the Trial Court as well as the lower Appellate Court. Facts produced supports the case of the plaintiff i.e., the layout plan, which was approved was not varied or modified at any point of time and also the gift deed executed by the promoters and the Corporation has not cancelled it. The Corporation has not properly placed the facts before the lower Courts and sided with the respondents to nullify the gift deed executed in their favour. This Court and the Hon'ble Apex Court has time and again held that the property, which is earmarked as public road or public property could not be altered into any other means except for the purpose for which it is earmarked.

38. Accordingly, the substantial question of law raised in this



appeal answered in favour of the appellant that the public road earmarked in the layout could not be taken back by the Promoters / Developers on the ground that the Municipality or Corporation has not come forward to lay roads. Further, the promoters are not entitled to claim any possessory right over the public road, since the public roads always continued to be a public road and the persons who are claiming possession over the public roads can only be treated as encroachers.

39. (i). In the result, this Second appeal is allowed and the Judgment and Decree made in A.S. No.256 of 1997, dated 25.10.2000 and in O.S. No.25 of 1988, dated 29.07.1997 is hereby set aside. The relief claimed by the plaintiff seeking permanent injunction restraining the defendants from altering the physical features in respect of the 40 feet road described as a road in the layout marked as ABCD is hereby decreed. Consequently, the official respondents are liable to remove the encroached portions of the public road and restore the same as per the approved layout plan.

(ii). The Writ petition in W.P. No.13862 of 2017 filed by one of the land owner of the VVC Layout to remove the encroachment in the



public road measuring 220 feet length and 40 feet wide, which has been shown as public road in the VVC layout is also hereby allowed.

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(iii). The Writ petition in W.P. No.14501 of 2021 filed by the 12th defendant S. Balasubramaniam challenging the show cause notice for removal of encroachment is not valid and maintainable, since this Court held that the nature of the road is public road. The Official respondents are directed to remove the encroachment as expeditiously as possible. Accordingly, this writ petition is hereby dismissed.

40. Consequently, connected miscellaneous petitions stands closed. However, there shall be no order as to costs.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

28-03-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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S.A. No.1395 of 2001 and W.P. Nos.13862 of 2017 and 14501 of 2021



S.M.SUBRAMANIAM, J.
AND
K.RAJASEKAR, J.

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1. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore – 641 001.
2. The District Collector,
Coimbatore District,
Coimbatore – 641 018.
3. The Member Secretary,
Local Planning Authority,
Sivananda Colony,
Coimbatore – 641 012.

Pre-delivery Judgment made in
S.A. No.1395 of 2001
and W.P. Nos.13862 of 2017 and
14501 of 2021

28-03-2024