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W.P.No.4345 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM:

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.4345 of 2023

Mrs.Marimuthu
W/o P.T.Muthukathan

.. Petitioner

-VS-

1. The Government of Tamil Nadu
rep. by its Secretary
Housing and Urban Development
Secretariat, Fort St.George
Chennai 600 009
2. The Commissioner
Maraimalai Nagar Municipality
Chengalpattu 603 209
Tamil Nadu, India
3. The Director
Directorate of Town and Country Planning
3rd Floor, C & E Market Road
Koyambedu
Chennai 600 107
Tamil Nadu, India



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4. R.Amutha

5. S.Nithya Priya

6. R.Padmavathy

(R4 to R6 impleaded vide

order of Court dated 9.8.23

in WMP.22419/23 in WP.4345/23)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records comprised in Na.Ka.No.1986/2022/F1 dated 16.11.2022 on the file of the second respondent/Commissioner, Maraimalainagar Municipality and the consequential notice in Na.Ka.No.2003/2022/A1 dated 23.12.2022, on the file of the second respondent/Commissioner, Maraimalainagar Municipality, quash the same as illegal.

For Petitioner :: Mr.V.Kadhirvelu

For Respondents :: Mr.M.Muthusamy
Government Advocate for R1 & R3
Mr.P.Srinivas for R2
Mr.T.Hari Pon Dinesh Ram
R4 to R6

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

The petitioner seeks for issuance of a writ of certiorari to call for the records bearing Na.Ka.No.1986/2022/F1 dated 16.11.2022 and the consequential notice bearing Na.Ka.No.2003/2022/A1 dated 23.12.2022 issued by the second respondent and to quash the same.



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2. The brief facts that are necessary for the disposal of the writ

petition are as follows:

The petitioner states that she had purchased the subject property from one Mr.K.Rangasamy comprised in Survey No.210 and Survey No.209/4. The property, which was purchased by the petitioner, has been shown as the property in layout bearing plot nos.72 and 73 measuring an extent of 3922 sq.ft. The property was purchased by the petitioner on 03.08.1999 vide Document No.2484 of 1999 registered before the Sub Registrar Office, Chengalpattu Joint II. It is the case of the petitioner that the plots stood in an unapproved layout at the time of her purchase. The petitioner also obtained patta in 2004 in her name and had paid vacant land tax for the said property till 2013. Based on the sale deed, it appears that the petitioner had obtained building plan approval after constructing a residential house in the ground floor measuring an extent of 1107 sq.ft. The petitioner admitted that she had put up additional construction in the same floor measuring an extent of 876 sq.ft., for commercial purpose and in the first floor, she had completed another construction measuring an extent of 607 sq.ft., for residential purpose. Despite the petitioner was able to obtain approved plan on



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4.2.2020, the petitioner received the notice dated 2.9.2022 from the Commissioner, Maraimalainagar Municipality. By this notice, the petitioner was informed that the residential house put up by the petitioner lies within the area reserved for children's park as per the layout approval. It was pointed out that there were no plots bearing nos.72 & 73 in the layout as approved. Since the petitioner had put up construction in a land which is reserved for park, the second respondent has passed the impugned order dated 16.11.2022 cancelling the building plan permission obtained by the petitioner. By the consequential notice dated 23.12.2022, the second respondent has informed the petitioner to demolish the unauthorized construction on her own. Challenging the said orders, the petitioner has preferred the above writ petition.

3. The case of the petitioner, as seen from the affidavit filed in support of the petition, appears to be on the basis of self-serving documents. The second respondent has filed a counter affidavit pointing out the details of the layout plan which was duly approved in 1988. It appears that two adjacent layouts were developed by the original owner/promoter and obtained layout



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approval showing 70 plots for construction of residential houses. Probably with a fraudulent motive and intention, the promoter of the layout has sold the plot giving description that it bears No.72 and No.73. However, the land which was sold to the petitioner falls within the area reserved for park in the approved layout. It is also stated that a gift deed was also executed by the promoter in favour of the respondents. Even assuming that the local body had not obtained any gift deed from the promoter, once the land is reserved for public purpose, it should be kept for the benefit of all the plot owners in the layout. The legal position is clarified by the Hon'ble Supreme Court in the case of *Pt. Chet Ram Vashist (dead) by L.Rs v. Municipal Corporation of Delhi, (1995) 1 SCC 47*, wherein the Hon'ble Supreme Court, in a similar situation, has held 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



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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. ”

The above judgment of the Hon'ble Supreme Court has been followed consistently by this Court in several judgments and therefore this Court finds



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no justification for the petitioner to put up construction in a land within the approved layout which is reserved for public purpose (park). This Court and the Hon'ble Supreme Court in several cases have held that the owner of layout or the promoter of the layout ceases to be the owner once the property is reserved for public purpose as per the layout plan. Despite the legal heirs of the promoter having been impleaded as respondents 4 to 6 and represented by the counsel, no counter affidavit is filed to deny the basic facts that are set out in the counter affidavits filed by the second and third respondents. In such circumstances, on the admitted facts, this Court finds that the impugned orders are perfectly in order and the writ petition is liable to be dismissed. Accordingly, the writ petition stands dismissed.

4. As a necessary corollary, the respondents 2 & 3 shall now initiate appropriate action for removal of the unauthorized construction giving sufficient time i.e., not less than six months for the petitioner to vacate from the premises by following due process of law. It is also made clear that once the local body ensures the demolition of the structure, the local body is directed to maintain the park in accordance with law for the public.



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5. It is open to the petitioner to file a suit not only for recovery of the money which she had paid to the promoter, but also for damages. The respondents 4 to 6 are also entitled to defend the said suit on all the available grounds open to them. Consequently, W.M.P.No.4394 of 2023 is also dismissed. There shall be no order as to costs.

Index : yes/no

(S.S.S.R.,J.)

(N.S.,J.)

Neutral citation : yes/no

30.01.2024

SS

To

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2. The Commissioner
Maraimalai Nagar Municipality
Chengalpattu 603 209
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