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W.P.Nos.30746 of 2015 & 3884 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 11.06.2024**

CORAM :

**THE HONOURABLE MR. JUSTICE S.S. SUNDAR**

**AND**

**THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR**

**W.P.Nos.30746 of 2015 & 3884 of 2017**

**and**

**W.M.P.No.3951 of 2017**

G.Johny

... Petitioner  
in both writ petitions

Vs.

1.The Inspector General of Registration,  
Chennai.

2.The District Registrar (Administration)  
Kanchipuram.

3.The Sub-Registrar,  
Tiruthani.

.. Respondents  
in W.P.No.30746 of 2015

1.The Revenue Divisional Officer,  
Thiruthani Town,  
Tiruvallur District.



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2.The Estate Officer and Commissioner,  
Tiruthani Municipality,  
Tiruthani, Thiruvallur District.

3.The Chairman,  
Tamil Nadu Housing Board,  
CMDA Complex, E and C Market Road,  
Koyambedu, Chennai – 107.

... Respondents  
in W.P.No.3884 of 2017

*[R3 impleaded as per order dated 18.04.2024  
in W.M.P.No.6245 of 2024 in W.P.No.3884 of 2017]*

**Prayer in W.P.No.30746 of 2015** : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 2<sup>nd</sup> respondent to dispose of the appeal presented on 24.05.2012 challenging the order in Na.Ka.No.5589/Aa1/2011, dated 25.01.2012 on the file of the 2<sup>nd</sup> respondent.

**Prayer in W.P.No.3884 of 2017** : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records in Na.Ka.No.1863/2016/F1, dated 27.01.2017, on the file of the 2<sup>nd</sup> respondent and quash the same as illegal, incompetent and without jurisdiction.



W.P.Nos.30746 of 2015 & 3884 of 2017

For Petitioner : Ms.Abirame  
for M/s.V.Srimathi  
in both writ petitions

For R1 to R3 : Mr.R.Vigneswaran  
Government Advocate  
in W.P.No.30746 of 2015

For R1 : Mr.M.R.Gokul Krishnan  
Additional Government Pleader  
in W.P.No.3884 of 2017

For R2 : Mr.P.Srinivas  
Standing Counsel  
in W.P.No.3884 of 2017

For R3 : Mr.D.Veerasekaran  
Standing Counsel  
in W.P.No.3884 of 2017

### **COMMON ORDER**

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

The petitioner in both the writ petitions is one and the same.

2.The first writ petition in W.P.No.30746 of 2015 is filed for issuance of a Writ of Mandamus directing the 2<sup>nd</sup> respondent, the District Registrar, to dispose of the representation/appeal presented on 24.05.2012 questioning



the order of the 2<sup>nd</sup> respondent, dated 25.01.2012.

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3.The second writ petition in W.P.No.3884 of 2017 is for issuance of Writ of Certiorari to quash the impugned order, dated 27.01.2017, of the 2<sup>nd</sup> respondent, namely, the Estate Officer and Commissioner, Tiruthani Municipality.

4.One of the Housing Societies, namely, Sri Subramaniyapuram Housing Society formed a layout in the year 1976 with a total extent of about 3.82 Acres. The petitioner has admitted that the property lies in S.No.270/5, 10, 12, 13 and 271/13, 14, 16 and 17, measuring a total extent of 2.40 Acres in Tiruthani Village. It is the case of the petitioner that a plot on the southern side of the layout, i.e., Plot No.14 was reserved for Park. It is the case of petitioner that Plot Nos.41 and 42 were reserved for Children's Park. It is the further case of petitioner that a Resolution was passed by the Society to shift the Children's Park to Plot No.15, and that therefore, Plot No.15, measuring an extent of 2400 sq.ft., was allotted for School on account of the fact that the playground for students cannot be located near



the area allotted to the School.

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5. According to the petitioner, he purchased Plot No.41 comprised in S.No.271/17 under registered sale deed dated 09.07.2008. It is the specific case of the petitioner that Plot No.41, which was originally reserved for Children's Park, was sold by the promoter only after the re-designation of the two plots. It is admitted by the writ petitioner that one Seshadri as Secretary of the Plot Owners Association filed a suit in O.S.No.3 of 2009. Though the said suit was decreed on 26.06.2014, the petitioner has stated that an appeal is filed by the petitioner and the same is pending.

6. The Plot Owners Association also filed a writ petition earlier in W.P.No.1758 of 2009 to remove all constructions from the land earmarked for the Children's Park. It is also admitted by the petitioner that another writ petition in W.P.No.22728 of 2013 was filed by Sri Subramaniyapuram Kudi Iruppor Nalasangam against several official respondents and the writ petitioner for issuance of Writ of Mandamus to direct the official respondents to evict the petitioner, who is the 5<sup>th</sup> respondent in the said writ



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petition, from Plot No.41, on the ground that the writ petitioner has no right to be in possession in Plot No.41 which is reserved and to be used only as Children's Park as per the layout approval obtained in 1976. Both the writ petitions were disposed of with certain directions.

7.Earlier, the Subramaniyapuram Residents Welfare Association submitted a representation raising serious objections for the sale of Plot No.41 which was originally allotted for Children's Park. Considering the objections of the Resident's Association, dated 19.11.2011, the District Registrar passed an order dated 25.01.2012 to take action for cancellation of fraudulent sale deed obtained by the writ petitioner. After the order of District Registrar dated 25.01.2012, the vendor of the petitioner submitted a representation to cancel the registered sale deed. W.P.No.30746 of 2015 is now filed by the petitioner directing the 2<sup>nd</sup> respondent to dispose of the representation/appeal dated 24.05.2012. It is to be noted that the representation is not an appeal but only a request to review the previous order dated 25.01.2012, directing the District Registrar to hold an enquiry and to make necessary entries in the Books regarding cancellation of the



document.

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8.Later, by proceedings dated 05.01.2017, the Special Officer and Commissioner, Tiruthani Municipality, issued a notice to the petitioner to show cause as to why the planning permission obtained by the petitioner shall not be cancelled. Thereafter, by order dated 27.01.2017, which is impugned in W.P.No.3884 of 2017, the Special Officer and Commissioner, Tiruthani Municipality, cancelled the building licence to put up new construction granted by the Special Officer, in favour of the applicant Johny, who is the petitioner herein. Challenging the same, the petitioner filed W.P.No.3884 of 2017.

9.In both the writ petitions, the short point arises for consideration is whether the sale deed in favour of the petitioner in respect of a plot/portion of the layout which was reserved for public purpose, is valid.



10.The following facts are not in dispute :

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Sri Subramaniyapuram Housing Society formed a Layout in 1976 in respect of an extent of 3.82 Acres in various subdivisions in S.Nos.270 and 271, Tiruthani Village. The Tamil Nadu State Housing Board obtained necessary approval from the Director of Town and Country Planning in LP.(CH)DTCP No.1 of 1976. In the layout, an extent of 4200 sq.ft. was reserved for public Park on the south of Plot No.14 and an extent of 3625 sq.ft. was reserved for children's play space, well and Overhead Tank.

11.Along with the counter affidavit, the 2<sup>nd</sup> respondent has annexed a Layout Plan as approved by the competent authorities. From the approved layout plan, reservation of land for Park on the south of Plot No.14 and reservation of land measuring an extent of 3625 sq.ft. between Plot Nos.38 and 39, are seen. Therefore, the contention of the petitioner that there were re-designation of lands or change of land use is totally false. In the counter affidavit filed by the 2<sup>nd</sup> respondent, it is categorically stated that the petitioner has encroached a portion of the land which is reserved for children's play space and Overhead Tank. It is the contention of the 2<sup>nd</sup>



respondent that, Plot No.15 was changed as children's play space, is a false statement, as demonstrated by the 2<sup>nd</sup> respondent in the counter affidavit.

The 2<sup>nd</sup> respondent has also categorically stated that there is no change of land use in the sanctioned layout plan. It is admitted that Plot No.15 is being used as Panchayat Union Elementary School. The property being used by a School cannot be equated to children's play space. The 2<sup>nd</sup> respondent categorically stated that the layout plan was never altered and there was no revised plan submitted by the promoter at any point of time. When there is no scope for exchange under any Statute, the petitioner has come forward with a case to suit his convenience.

12.It is contended by the 2<sup>nd</sup> respondent that the promoter of the layout, who has no semblance of right to deal with the property reserved for communal or public purpose in the layout for the benefit of all the plot owners, has executed sale deed in favour of the petitioner. After receiving complaints from the plot owners, the 2<sup>nd</sup> respondent, on inspection, found that the petitioner had applied for permission to put up construction in land which was originally reserved for children's play space and Overhead Tank.



Thereafter, proceedings were initiated for cancellation of the building plan permission, by issuing a Show Cause Notice on 05.01.2017. The petitioner, though received the Show Cause Notice, sent a letter seeking time to produce documents. Even after the expiry of the time required by the petitioner to file objections, the petitioner did not produce any document to the 2<sup>nd</sup> respondent. Therefore, the 2<sup>nd</sup> respondent passed final orders cancelling the building plan permission.

13.It is further stated in the counter affidavit that, meanwhile, the 2<sup>nd</sup> respondent initiated proceedings under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1971, by issuing a notice in Form-A on 14.11.2016. After getting reply from the petitioner, enquiry notice was given to the petitioner, who submitted a reply on 19.11.2016. The petitioner appeared on 28.11.2016 and produced materials to support his case. After considering the documents filed by the petitioner, final orders were passed to restore the land for public purpose.



14. In the counter affidavit, the 2<sup>nd</sup> respondent has narrated the character of land as per the developments and the subsequent events, which would only show that the petitioner has illegally purchased the property which is reserved for a public purpose in an approved layout. Immediately after knowing that the petitioner has obtained building permission, the 2<sup>nd</sup> respondent has cancelled the building permission, as the petitioner is not the owner of the land reserved as a Park or children's play space. Though the petitioner, in the representation, sought 10 days' time to submit his reply to the Show Cause Notice, there is no correspondence or representation by the petitioner making out any objection which is worthwhile to consider. Merely because Plot No.15 is also used for running a School, the same cannot be taken advantage of by the petitioner to lay any claim for other parcels of land. The law is settled by the Hon'ble Supreme Court in ***Pt. Chet Ram Vashist (dead) by LRs v. Municipal Corporation of Delhi*** reported in (1995) 1 SCC 47, wherein, the Hon'ble Supreme Court 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 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.”*

15. In view of the legal position, this Court is unable to grant any relief to the petitioner, as the writ petitions are devoid of any merit. Hence, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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**(S.S.S.R., J.) (N.S., J.)**  
**11.06.2024**

Internet : Yes

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Neutral Citation : Yes / No

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- 5.The Estate Officer and Commissioner,  
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**S.S. SUNDAR, J.**  
**and**  
**N. SENTHILKUMAR, J.**

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