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WP.No.6417/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.6417/2023 & WMP.No.6445/2023

N.Devaki

... Petitioner

Vs.

The Commissioner/Property Officer
Tiruthani Municipality,
Thiruthani, Tiruvallur District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the entire records relating to the impugned order passed by the respondent in his proceedings Na.Ka.No.1155-4/2022/F1 dated 16.02.2023, consequential order passed by the respondent in his proceedings Na.Ka.No.1155-4/2022/F1 dated 16.02.2023 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.G.Nanmaran, Spl.GP



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ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

- (1) The present writ petition has been filed by the petitioner challenging the order of the respondent dated 16.02.2023 with a prayer to quash the same.
- (2) The petitioner purchased the house site through a registered Sale Deed dated 31.03.1989 from one Jayavelu who is the Power of Attorney Agent of one E.Duraikannu and Kamalammal. The petitioner states that he obtained the building plan approval from the respondent and the same was granted on 24.04.2002. After putting up the construction in accordance with the building plan approval, the petitioner states that he has paid the property tax as assessed by the respondent. However, the respondent who acknowledged the lawful possession of the petitioner and the construction which is in accordance with the building plan approval, called upon the petitioner to explain why the petitioner has put the construction by encroaching the plot which was reserved as park and road as per the layout which was approved even in the year 1938. By the same notice, the petitioner was asked to show cause, why the building should



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not be removed.

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(3)The petitioner states that a detailed explanation along with the building plan approval and the property tax receipts were given to the respondent in person. The petitioner earlier filed WP.No.34405/2022 for issuance of a writ of mandamus forbearing the respondent from evicting and demolishing petitioner's house bearing Door No.92, Kandhan Nagar, Chennai Bye Pass Road, Thiruthani, Tiruvallur District. This Court, disposed of the said writ petition along with other writ petitions stated to have been filed by similarly placed persons by a common order on 22.12.2022 with a direction to the respondent to consider the explanation offered by the petitioners therein and to pass orders after giving an opportunity of personal hearing to the petitioner herein and others.

(4)It is admitted that after holding an enquiry on 12.12.2022 and considering the further explanation, the respondent has passed the order dated 16.02.2023, which is impugned in this writ petition and a further order on the same date, directing the petitioner to vacate the building. By the impugned order, the petitioner's possession was declared unlawful and the construction that was put up in the plot which was reserved for a



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public purpose, namely, park, as unauthorised.

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(5) Since the petitioner's building is in encroachment of the public land, the respondent warned the petitioner that further proceedings will be initiated to remove the encroachment by demolishing the construction. By the subsequent communication, fourteen days time was given to the petitioner for removal of construction on their own, the respondent warned the petitioner that the encroachment will be removed by the respondent. Challenging the same, the above writ petition is filed by the petitioner.

(6) Though the petitioner has raised several grounds claiming ownership over the property, the petitioner has not disputed the core fact that the petitioner's building was put up in a plot which was reserved for public as per the approved layout.

(7) The law is well settled by the Hon'ble Supreme Court in several judgments, particularly, in the judgment of ***Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi*** reported in ***AIR 1995 SC 430***, wherein the Hon'ble Supreme Court has held as follows:-

6. Reserving any site for any street, open space,



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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."

- (8) Therefore, a land reserved in a layout for a public purpose does not belonged to the owner and the petitioner cannot get a valid conveyance from the owner or promoter of layout in respect of any portion of plot



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reserved for public purpose. Though the petitioner had purchased the property long back and he had put up construction, the petitioner's unlawful possession was not noticed for a long period. The property which is reserved for public purpose, vests with the Local Body only for maintenance and it remains as a property for public even though the promoter or the Local Body hold the property for the benefit of public. The fact that the petitioner purchased the property from another person in the year 1989, does not confer title in favour of petitioner as the vendor had no title.

(9)The learned counsel for the petitioner submitted that the petitioner has filed an application under Section 113C of the Tamil Nadu Town and Country Planning Act, 1971, seeking exemption of building and therefore, the proposed action is not warranted.

(10)The petitioner is now in encroachment of a public property. Therefore, the Government has no authority or power to regularise such construction which is in encroachment of a public property. The petitioner's contention on the basis of his title relying upon the void Sale Deed which was obtained by him in the year 1989 will not save the construction put up by



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him when it is admitted that the construction is now by encroaching the public property.

(11) In such circumstances, this Court finds no merit in the writ petition.

However, it is open to the petitioner to seek appropriate remedy as against the vendor of the petitioner who had sold the property and his right, as against the promoter or anyone claiming under him, is protected subject to any other lawful remedy that may be available to him under law.

(12) With the above observations, the writ petition stands **dismissed**. The respondent is directed to demolish the building and keep the land for the purpose indicated in the layout within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [N.S., J.]
02.04.2024

AP
Internet : Yes



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S.S. SUNDAR, J.,
and
N.SENTHILKUMAR, J.,

AP

To

The Commissioner/Property Officer
Tiruthani Municipality,
Thiruthani, Tiruvallur District.

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