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W.P.No. 7258 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	07.03.2024
PRONOUNCED ON	14.08.2024

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.P.NO.7258 OF 2019 &
WMP.NO.7984 OF 2019

R. Krishnamoorthy

...

Petitioner

Vs.

1. The District Revenue Officer-cum-Additional District Executive Magistrate, Coimbatore Collectorate Campus, Coimbatore District.
2. The Revenue Divisional Officer, Coimbatore, Coimbatore District.
3. The Assistant Commissioner, Coimbatore Corporation East Zone, Coimbatore.
4. The Director of Town & Country Planning, No.807, Anna Salai, Chennai.
5. The President, Ramanathapuram Cooperative Building Society Ltd., No.K-2102, Ramanathapuram, Coimbatore.
6. Mr. Elango Rama Ranganathan (R-6 impleaded vide order dated 15.09.2023 made in WMP.No.



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17274 of 2022 in WP.7258/2019)

... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue Certiorarified Mandamus to call for the impugned proceedings of the 1st respondent in Ni.Mu.No.3052/2018/C1, dated 15.10.2018 and quash the same and consequently forbear the revenue authorities from changing the entries with respect to petitioner's land in S.F.No.179, 208/1C, 209 part Uppilipalayam, measuring about 1 acre and 5 cents.

For Petitioner : Mr. V. Raghavachari, Sr.counsel
for Mr.A.Manoj Kumar

For Respondents : Mr.S.J. Mohamed Sathik, GA
for R1, 2 and 4
Mr. Mahesh for R3
Mr.P.Saravana Sowmiyan for R5
Mr. Harikrishnan for R6

ORDER

This Writ Petition is filed challenging the proceedings of the 1st respondent/District Revenue Officer, dated 15.10.2018 confirming the order passed by the 2nd respondent/ Revenue Divisional Officer, Coimbatore directing the Tahsildar, Coimbatore South to delete the name of petitioner in Patta No.434, Uppilipalayam Village, Coimbatore South and for consequential relief praying to forbear the revenue authorities from changing



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the entries with respect to petitioner's land in S.F.No.179, 208/1C, 209 part Uppilipalayam, measuring about 1 acre and 5 cents.

2. It is averred in the writ petition as follows;

(I) the petitioner purchased the property measuring about 1 acre 5 cents and 179 sq.ft. in SF.No.179, 208/1C, 209 part Uppilipalayam Village by a registered Sale Deed dated 16.07.2003 from one Elango Rama Ranganathan. After purchase of said land, the Revenue records were mutated in petitioner's name and till date, the petitioner has been paying taxes.

(II) Originally, the 5th respondent/ Society (hereinafter referred to as Society) by forming Layout in SurveyNo.155, 170, 171, 178 and 179 (petitioner's survey number) in Uppilipalayam Village, Ramanathapuram, Coimbatore District and developed the property for the purpose of converting the same into house sites. It has also obtained planning permission vide LPA (CP) No.227/1987 for development of house plots, road, park, playground. By a Gift Deed dated 9.10.1987 it gifted the property measuring 6 acres 26 cents earmarked for playground, park and



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children play area in favour of 3rd respondent/Assistant Commissioner, Coimbatore Corporation. The society had retained the land measuring about 1 acre 5 cents allotted for community hall and the same was in possession of Society.

(III) For the benefit of public and society members, the society, in order to lay approach road access from their layout to Trichy Main Road approached the adjacent land owners of their property viz., Mr.Parthiban @ Kondasamy and Elanga Rama Ranganathan (6th respondent) proposing for exchange of their land with the Society's community land measuring 1 acre and 5 cents. Accepting the said proposal, an Exchange Deed dated 30.11.1989 was executed between the Society and the abovesaid individuals. The draft Gift Deed was also sent by the 3rd respondent and the same was also accepted by the 5th respondent by order dated 2.4.1996 in Na.Ka.No.34311/1996/H4. The 3rd respondent, after perusing the Exchange Deed granted permission to 5th respondent for forming the Road. Thereafter the Society by a Gift Deed dated 16.04.1997 gifted 1.28 acres of lands for the formation of 40 feet width and 1381 feet length road. The District Collector, Coimbatore, by his order vide Pa.Mu.No.A1/99230/91, dated



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20.10.1992 granted permission for forming the said road and for forming a small bridge in the said road. In respect of community hall, the land owner has the liberty to deal with the same. The community hall as per the circulars is not the one to be compulsorily gifted to the local authorities. After passing of so much time, it is not open to the authorities to cancel the patta.

(IV) Whiles, the 3rd respondent/Assistant Commissioner, Coimbatore corporation East Zone, Coimbatore, in order to create hindrance to petitioner's possession, filed a complaint before the 2nd respondent stating that the 5th respondent Society has no right to sell the property to the private parties and sought to cancel the patta existing in petitioner's name. The 2nd respondent/Revenue Divisional Officer, vide his proceedings dated 13.01.2016 in Ni.Mu.No.9089/14/B2 without considering the contention of the petitioner, allowed the claim of the 3rd respondent and removed his name in the patta.

(V) Against such removal, an appeal was filed by the petitioner before the 1st respondent under section 12 of Patta Passbook Act, 1983 impleading the Society as necessary party. In the appeal, the petitioner's contention that



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the property was only exchanged between the parties was not accepted on the ground that “once a land is gifted in favour of the 3rd respondent, the same cannot be conveyed to 3rd parties' and thereafter the 1st respondent based on the recommendations of the 2nd respondent dated 13.01.2016, has passed the impugned order confirming the order passed by the 2nd respondent/Revenue Divisional Officer, Coimbatore directing the Tahsildar, Coimbatore South to delete the name of petitioner in Patta No.434, Uppilipalayam Village, Coimbatore South.

(VI) It is the grievance of the petitioner that the 1st respondent failed to consider the history as well as the objections put forth by the petitioner. In the impugned order, it was mentioned that patta is not a document of title and the same is contrary to section 6 of Tamil Nadu Patta Passbook Act, 1983 . The entries in the patta passbook issued by the Tahsildar under section 3 of the Act is the prima facie evidence of title of the person in whose name patta passbook has been issued.

(VII) The 3rd respondent has no locus standi to make a complaint as he is neither a rival claimant nor objection to the formation of roads, that too after 15 years from the date of mutation of revenue records in the name of



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the petitioner. In the impugned order, it was mentioned that 'once a land is gifted in favour of 3rd respondent, the same cannot be conveyed to third parties.' The petitioner's land was never gifted to the 3rd respondent. In the original plan, the land termed as community hall was retained by the 5th respondent and at the request of members of the Society with the consent of 3rd respondent, the approach road was exchanged with the land allotted for community hall and the same was approved by the 3rd respondent. But the circulars were changed subsequent to the transactions and therefore the withdrawal of the permission granted is only prospective and hence the same will not affect the transactions made by the land owners.

(VIII) The petitioner, after verifying the title deeds of previous land owners and revenue records, purchased the property measuring 1 acre 5 cents in SF.No.179, 208/1C, 209 part Uppilipalayam by a registered sale deed. Thereafter, revenue records were mutated in his name and he has been paying all taxes till date. After a long period of original transaction, the 3rd respondent with an intention to cause hindrance to petitioner's possession, filed a complaint before the 2nd respondent stating that the lands are in petitioner's possession and the 5th respondent has no right to sell it to the



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private parties. Therefore, being left with no other alternative, the petitioner has come forward with the present writ petition seeking to set aside the impugned order.

2. Mr.S.J. Mohamed Sathik, learned Govt. Advocate appearing for the 1st, 2nd and 4th respondents submitted that the 3rd respondent/Assistant Commissioner, Coimbatore Corporation has wrongly given approval and collected development charges of Rs.2,81,500/- from the Society without scrutinizing the Exchange deed executed between the Society and one Parthiban @ Kondasamy and one Elango Ramaranganathan, who are the previous land owners/vendors of the disputed property. The society has not obtained any prior approval from the Director of Town and Country Planning/4th respondent. The Society, throwing the conditions imposed in 4th respondent's approval No.LP/R (CPN) No.227/87 in ref.No.2204/87, dated 20.06.1987 that no alteration or modification should be carried out in the layout plan without his prior approval, deliberately exchanged the suit property with the aforesaid individuals without obtaining prior approval. Hence, the exchange of suit property specifically allocated for community hall without prior approval of 4th respondent is not acceptable one, hence the



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exchange of reserve site by the Society is highly arbitrary and liable to be cancelled.

3. He would further contend that the common circular of the 4th respondent bearing Ref.No.24279/88 restrains the layout promoters and land owners to sell or alienate the lands allocated for public purpose and strongly emphasizes that the 10% of total lands classified as Reserve Sites are not saleable one to others and must be handed over to local body, as such, the Society has no legal rights to retain or sell or to exchange the reserve sites allocated for specific purpose. Therefore, the exchange deed effected between the Society and the individuals are arbitrary and illegal. The petitioner has obtained patta from the then Zonal Deputy Tahsildar, Coimbatore South by concealing the facts that the property is a reserve site allocated for community hall. The order passed by the Zonal Deputy Tahsildar, Coimbatore South has been issued without perusing the conditions framed in various circulars and orders of the 4th respondent. Hence the order passed by the Zonal Deputy Tahsildar, Coimbatore South was set aside by the 2nd respondent/Revenue Divisional Officer by his order dated 15.02.2016 and the same was rightly confirmed by the 1st respondent



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vide his proceedings dated 15.10.2018 holding that the subject property is a reserve site after perusing the circulars of the 4th respondent. Further, the petitioner has no rights to claim adverse possession, since the suit property is a Reserve Site which is a site specifically allocated for community hall and the rule of adverse possession will not be applicable to Reserve Sites. Hence, for all the reasons stated above, the Society has, at any point of time, has no absolute title over the disputed property/reserve site allocated for community hall. Thus he seeks for dismissal of this writ petition.

4. Mr.K. Magesh, learned counsel appearing for the 3rd respondent/Corporation submitted that the lands comprising of SF.Nos.155, 170P, 171, 178 and 179 of Uppilipalayam Village formed into a layout and the same was approved by Regional Deputy Director of Town and Country Planning Authority during 1987 in LPR (CN) 227/87, as per which community hall consisting of 41,796 sq.ft. totaling 10% of the total layout area and roads were allocated separately. At the time of approval of layout, one of the conditions laid down was that 10% of the land should be reserved for public utility and has to be gifted to Corporation. In the present layout only 5% of reserved areas were gifted to Corporation and the area allotted



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for community hall was not gifted to Corporation. From the inception of said

layout, the corporation was maintaining the reserve sites earmarked in the

layout. Though the promoter has no right to alienate 10% of the reserve

sites for any other purpose, in the year 1989, the Society by a registered

Exchange Deed dated 30.11.1989, vide document No.2997 of 1989

exchanged a portion of the area allocated for community hall to one

Parthiban @ Kondasamy and remaining extent of land allocated for

community hall was exchanged with one Elango Ranganathan, vide

document No.2998 of 1989 without the approval of Director of Town and

Country Planning. The said Parthiban sold his property to Elango

Ranganathan and later Elango Ranganathan executed another exchange

deed in favour of Rama Ranganathan Trust and later, Elango Ranganathan

executed a registered sale deed in favour of petitioner to an extent of 1

acre 5 cents . All the above alleged transactions are created without any

basis and any legal right. Thus he prayed for dismissal of this writ petition.

5. Mr. P. Saravana Sowmiyan appearing for the Society submitted



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that the Society had got permission from the local planning authority for development of house sites , park, play ground an public road, but it had retained 1 acre and 5 cents for community hall and the same was in possession of Society. For developing a road measuring width of 40 feet, on mutual consent, the Society and Parthiban Kandasamy and Elango Rama Ranganathan, by a registered exchange deed exchanged the lands, as per exchange deed, Elango Rama Ranganathan acquired 1 acre 5 cents earmarked for community hall. Thereafter, the society by paying Rs.2,81,500/- as development charges to the 3rd respondent formed road .

6. It is his further submission that for the benefit of public and society land owners, the land earmarked for community hall was exchanged with abovesaid Parthiban Kandasamy and Elango Rama Ranganathan. For the purpose of forming an approach road connecting Trichy Road which was utilized by general public, exchange of lands were done, due to which endeavour, connecting roads were formed facilitating the general public and society members to access Trichy Road. Thus he prayed for dismissal of this writ petition.



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7. Heard Mr.V.Raghavachari, Senior counsel appearing for Mr.A. Manoj Kumar, Mr.S.J. Mohamed Sathik, learned Govt. Advocate for the respondents 1, 2 and 4, Mr. Mahesh, learned counsel appearing for 3rd respondent, Mr.P.Saravana Sowmiyan appearing for 5th respondent and Mr.Harikrishnan, learned counsel appearing for 6th respondent and perused the materials available on record.

8. Perusal of records would go to show that the Society, for the purpose of forming approach road, exchanged the land earmarked for community hall measuring 1 acre 5 cents in SF.No.179, 208/1C and 209 part, Uppilipalayam village with the 6th respondent on 30.11.1989. According to petitioner, the Society had retained the land measuring about 1 acre 5 cents allotted for community hall and the same was in possession of Society. Thus it is seen that the land measuring 1 acre 5 cents allotted for community hall was exchanged between the parties.

8. It is the contention of 3rd respondent/Coimbatore Corporation that only 5% of reserved areas were gifted to Corporation and the area allotted for community hall was not gifted to Corporation, as such the promoter has



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no right to alienate 10% of the reserve sites for any other purpose and in the year 1989, exchange deeds were executed without the approval of Director of Town and Country Planning. All the above alleged transactions are created without any basis and any legal right.

9. It is admitted by the 5th respondent that for the benefit of public and society's land owners, the land earmarked for community hall was exchanged with abovesaid Parthiban Kandasamy and Elango Rama Ranganathan for the purpose of forming an approach road and the same was now utilized by general public. In the impugned order, the first respondent has stated as follows;

'எதிர்மனுதாரரின் வாதுரையில் மாநகராட்சி பரிவர்த்தனை செய்த பத்திரத்தை ஆய்வு செய்து சமீபக் கூடத்திற்கு ஒதுக்கப்பட்ட இடத்தைதான் பரிவர்த்தனை செய்யப்பட்டுள்ளது என்பதை அறிந்து பொதுநலன் கருதி அணுகுபாதை அமைவதற்கு மாநகராட்சி நிர்வாகம் தகுந்த ஒப்புதல் அளித்துள்ளதாக தெரிவித்துள்ளார். அணுகுபாதை அமைக்க ஒப்புதல் வழங்கும்போது இப்பரிவர்த்தனை பத்திரங்களை மாநகராட்சி அலுவலர்கள் சரிவர ஆய்வு செய்யாமல் இருப்பது அது தொடர்புடைய அலுவலர்களின் பணியில் கவனக்குறைவையே சுட்டிக்காட்டுகிறது.'

From the above, it was observed by the 1st respondent that before granting



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permission for laying service roads, the authorities concerned have not properly scrutinized the sale deed transactions relating to the subject land which shows the lethargic attitude of the officials.

10. Admittedly, on mutual consent, for the benefit of Society's members Parthiban and Elango Rama Ranganathan and the Society have agreed for the proposal of exchanging properties. As per the terms of Exchange Deed, Elango Rama Ranganathan acquired 1 acre 5 cents of lands earmarked for community hall. Thereafter, the application given by the Society seeking approval for forming road in the exchanged land, was accepted by the 3rd respondent. Therefore, the Society herein under the

premise that after properly scrutinizing the exchange deeds, has granted permission to the Society for forming the road in the interest of public utility. Based upon the permission granted by the 3rd respondent, the Society proceeded with subsequent gift deed transactions, which ultimately leads to formation of approach road to Trichy Main Road for the utility of general public and now the same is being maintained by Corporation of Coimbatore.



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11. It is seen that approach road connecting Trichy Main Road is primarily possible due to the exchange of lands between the Society and the 6th respondent herein. After perusal of exchange deeds produced by the Society only, the District Collector, Coimbatore, vide order dated 20.10.1992 granted permission for forming approach road and the said road was handed over to the Coimbatore Corporation as per the gift deed and still the same has been maintained by Coimbatore Corporation and has been used by the general public.

12. Though it is the contention of the official respondents that the land earmarked for community hall should not be exchanged or altered as per the subsequent circular, dated 05.04.1988 and the subsequent transactions have been done without the knowledge of 3rd and 4th respondents, the abovesaid land was exchanged with the 6th respondent primarily for the purpose of laying approach road meant for public utility and land owners of society and the same has been used by the general public for more than 15 years. In fact, the said road was handed over to Corporation who is maintaining the same till date.



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13. The authorities concerned are all conscience of the fact of exchange deeds because all the records are submitted before getting approval for the approach road. If the officials are not satisfied with the documents of sale transactions submitted by the Society, they could have rejected the proposal of laying the road by pointing out the rules and regulations of the 3rd and 4th respondent and could have instructed the Society to get no objection certificates from the officials of the 3rd and 4th respondents. Having failed to do so, the District Collector, Coimbatore, by his order dated 20.10.1992 granted permission for forming the approach road and a small bridge in the said road. Thereafter, gift deeds came to be executed and the lands measuring 1.28 acres were gifted to Corporation for formation of 40 feet approach road in the year 1996.

14. Thus it is apparent that the Government Authorities/officials concerned being kept quiet all along, after granting permission to lay approach road in the year 1992, now cannot say that the Society ought not to have exchanged the land earmarked for community hall based on the circular dated 05.04.1988 and that the said transaction is not valid and



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does not bind the 3rd respondent, and based on the same, it ought not to have cancel patta in the name of subsequent purchaser of the Society by the impugned order dated 15.10.2018. Before granting permission it is the bounden duty of the authorities to properly verify each and every transactions presented before it for consideration.

15. For the foregoing reasons, this Court is of the view, the Writ Petition deserves to be allowed. Accordingly, the same is allowed and the impugned order passed by the 1st respondent dated 15.10.2018 is hereby set aside. No costs. Consequently, the connected W.M.P.No.7984 of 2019 is closed.

.08.2024

Index:Yes/No

Internet:Yes/No

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Note: Issue copy on 21.08.2024

To

1. The District Revenue Officer-
cum-Additional District Executive
Magistrate, Coimbatore Collectorate

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- Campus, Coimbatore District.
2. The Revenue Divisional Officer,
Coimbatore, Coimbatore District.
 3. The Assistant Commissioner,
Coimbatore Corporation East Zone,
Coimbatore.
 4. The Director of Town & Country
Planning, No.807, Anna Salai,
Chennai.
 5. The President,
Ramanathapuram Cooperative Building
Society Ltd., No.K-2102, Ramanathapuram,
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J. NISHA BANU, J.

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**W.P.NO.7258 OF 2019 &
WMP.NO.7984 OF 2019**

.08.2024

**PRE-DELIVERY ORDER IN WP.NO.7258 OF 2019
& WMP.NO.7984 OF 2019**



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To

The Honourable Mrs. Justice J.NISHA BANU

From

M.Sasirekha,
P.S.to the Hon'ble Judges.