



W.P.No.8386 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.8386 of 2024
and W.M.P.No.9348 of 2024

Kumari Amala

... Petitioner

-Vs-

1. The Member Secretary/Joint Director (Incharge),
Coimbatore District Town and Country
Planning Office,
Coimbatore – 641004.

2. The Commissioner,
Coimbatore Corporation,
Coimbatore – 641001.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records of the second respondent issued in his proceedings in vide Na.Ka. No.7368/ 2023/ M.H.1/ ME dated 14.02.2024 and quash the same and consequently direct the second respondent to grant permission for construction of Nursery School considering the petitioner application dated 01.12.2012 and 19.12.2023, as per planning permission application No.SWP/BPA/010540/ 2023 dated 07.09.2023 and Building Planning Permission No.511/2023 dated 07.09.2023 of the first respondent in S.No.316/2, 318 and 319/1 in Vadavalli Village, presently Perur Taluk, Coimbatore District.



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For Petitioner : Mr.M.Selvaraju
For R1 : Mr.V.Manoharan
Additional Government Pleader
For R2 : Mr.N.Velmurugan
Standing Counsel

ORDER

This writ petition has been filed challenging the proceedings of the second respondent dated 14.02.2024, thereby denied the planning permission to construct Nursery School.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner owned a property comprised in S.Nos.316/2, 318 and 319/1 to an extent of 7.15 acres situated at Vadavalli Village, then Coimbatore Taluk and District, by virtue of the sale deed dated 25.01.2005, registered vide Document No.195 of 2005. The predecessor in title over the property had obtained planning permission from the Director of Town and Country Planning vide approval no.LPR.(CN):79/82 dated 11.03.1982 for converting agricultural land into residential layout. However, the said approved layout was not acted upon till the purchase of the subject land by the petitioner. After purchase, the petitioner had executed a gift deed dated 23.05.2005 vide Document No.2229



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of 2005 in favour of the then Executive Officer of Vadavalli, for the purpose of public utility i.e., road, park etc., as per the layout approval in LPR.(CN):79/82 dated 11.03.1982. As per the layout, a portion of the land ad-measuring 2931.37 sq.m comprised in S.No.316/2 and 318/1 was allotted for the purpose of construction of Nursery School. It was allotted in compliance of the circular dated 17.08.1987 in Na.Ka.No.18159/87 issued by the Director of Town and Country Planning, Chennai clarified that in the approved residential layout only the area earmarked for road, open space earmarked for public utility park, play ground and children play area alone has to be gifted to the local authority and other areas allotted for public utility are salable by the layout promoter. Thereafter, the petitioner applied for planning permission for construction of Nursery School in the area which was earmarked for Nursery School by the application dated 24.06.2023 before the first respondent. The first respondent considered the application and granted approval in Approval L.P/CLPA No.442/2023 and building planning permission No.511/2023 dated 07.09.2023 for construction of school building to the total built up area to an extent of 1019.95 sq.m. Pursuant to the said approval, the petitioner had applied for their building approval by applications before the second respondent dated 01.12.2023 and 19.12.2023. However, the planning approval was rejected by an order dated 14.02.2024 by the second respondent on the ground that the



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space allotted for construction of Nursery School belongs to Corporation as per the planning approval and as per 10% of the area earmarked in the plan for construction of Nursery School belongs to the local authority.

4. The learned counsel for the petitioner would submit that as per the gift deed dated 23.05.2005 registered vide Document No.2229 of 2005, more than 10% of the total extent of the land was gifted in favour of the Executive Officer of Vadavalli, Special Municipality. Accordingly, now the road has been laid and the house plots were also sold out to third parties. The area which was originally earmarked for construction of Nursery School is in possession and enjoyment of the petitioner after the purchase of the total extent of land. This area was never gifted in favour of the second respondent so far. That apart, 10% of the total area was not in a condition which was in vogue and either at the time of layout approval or at the time of executing the Gift deed. Therefore, treating the area which was earmarked for the Nursery School does not belongs to local body.

5. The learned standing counsel for the second respondent filed counter and would submit that the land ad-measuring 7.50 acres comprised in



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S.F.No.316/2, 318 and 319/1A situated at Vadavalli Village was developed as a residential layout consisting of 77 residential plots and 378.48 sq.mtrs and 2931.375 sq.mtrs earmarked for public purpose and under the category of Nursery School which comes 10% of the OSR land in the entire layout. The same was approved by the Deputy Director, Town and Country Planning, Coimbatore dated 11.03.1982. Thereafter, Vadavalli Town Panchayat was merged with the second respondent in the month of October, 2011. However, the original owner of the land did not sell the plots as per the approved plan. They had sold out the entire land in favour of the petitioner by the registered sale deed dated 25.01.2005 vide Document No.195 of 2005. Thereafter, the petitioner had also executed a gift deed in favour of the Executive Officer, Vadavalli Panchayat, in respect of road portions and retaining the remaining land which was earmarked for Nursery School. Now, it is in their possession for the purpose of constructing Corporation School. Suppressing the said fact, the petitioner approached the first respondent and obtained planning permission. Therefore, the application submitted by the petitioner seeking planning permission to construct Nursery School was rightly rejected by the second respondent.

6. A perusal of the gift deed dated 23.05.2005, thereby to an extent of



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43.15 cents of land for 40 ft width south-north road as per the layout, 30.30 cents of land for 30 ft width east -west road, 30.99 cents of land for 30 ft width east-west road, 7.35 cents of land for 40 ft width east-west layout road and land ad-measuring 51.42 cents for 40 ft east-west layout road was gifted in favour of the Executive Officer, Vadavalli, Special Municipality. The total extent of the land which was gifted by the petitioner is more than 10%. That apart, a perusal of the layout approval revealed that other than the roads, the place was earmarked and reserved for Nursery School.

7. Admittedly, the said land was not gifted to the Executive Officer, Vadavalli, Special Municipality. Therefore, the contention of the second respondent that the second respondent is in possession of the said property cannot be countenanced.

8. Considering the above facts and circumstances, the first respondent granted approval vide approval in L.P/CLPA No.442/2023 and building planning permission No.511/2023 dated 07.09.2023 for construction of school building to the total built up area to an extent 1019.95 sq.m. Thereafter, the petitioner ought to have get the building approval from the second respondent



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and made an application. It was rejected on the ground that the area was already earmarked for construction for Nursery School and gifted in favour of the second respondent.

9. It is relevant to extract the provisions under Rule 19(a)(iv) and 19(a)(v) of the Tamil Nadu Town and Country Planning Act, 1971 and Rules as follows:-

“(iv) The space set apart for open space and recreational purposes under (iii) above shall be deemed to be zoned for institutional, recreational space as the case may be. The authority reserves the right to enforce the maintenance of such lands by the layout owner, to the satisfaction of the authority or order the owner to transfer the lands to the authority or any local designated by its, through a deed.

(v) The buildings and use of land shall conform to the conditions that may be imposed while sanctioning the layout. The space set apart for commercial, Institutional, industrial or other uses shall be deemed to be zoned for commercial, institutional, industrial or corresponding uses under the Master Plan.”

10. Accordingly, for the place which was originally earmarked for Nursery School the petitioner had applied for planning permission to construct a School. It was rightly considered by the first respondent and granted approval and Building planning permission dated 07.09.2023.



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11. The learned counsel for the petitioner relied upon the Judgment of this Court in ***S.A.No.1073 of 2019*** in the case of ***The Commissioner Tiruppur Corporation, Tiruppur Vs Vasanthkumari***, in which this Court held that the subject land was not transferred to the appellant and as such the appellant cannot claim any title to the said property and it never vested in the appellant at any point of time. He further relied as follows:-

“ 38. In view of the same the ownership of the land never got transferred to the appellant or any of its predecessors. Hence, the appellant cannot claim any title to the said property and it never vested in the appellant at any point of time. At best as pointed out by the Hon'ble Supreme Court in Pt.Chet Ram Vashist (dead) by Lrs. Vs. Municipal Corporation of Delhi, reported in AIR 1995 SC 430, the appellant Corporation can only ensure that the land is used for the purposes for which it was shown to be reserved in the layout plan. The Commissioner appointed by the lower appellate court has infact found that the school is being run in the land in question which is in conformity with the conditions of the approved plan. In view of the same, the question of law framed is answered against the appellant.”

12. In the case on hand, the subject land was never gifted to the second respondent. That apart, it was originally earmarked for Nursery School and accordingly, the petitioner applied for building approval with the second respondent that too after obtaining planning permission and approval from the first respondent. Now, as per the layout approval, the petitioner intended to



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construct a School and applied for planning permission for construction of a School building.

13. In view of the above, this Court finds infirmity in the order passed by the second respondent and it is liable to be quashed. Accordingly, the order passed by the second respondent in Na.Ka. No.7368/ 2023/ M.H.1/ ME dated 14.02.2024, is hereby quashed. The second respondent is directed to grant permission for construction of Nursery School in the land comprised in S.No.316/2, 318 and 319/1 in Vadavalli Village, presently Perur Taluk, Coimbatore District as per the planning permission and building planning permission issued by the first respondent dated 07.09.2023, within a period of two weeks from the date of receipt of a copy of this order. The second respondent is at liberty to verify the land which was already gifted in favour of the second respondent is used for laying roads.

14. Accordingly, this writ petition stands allowed. Consequently, connected Miscellaneous petition is closed. No costs.

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Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No



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Speaking/Non Speaking order
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To

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G.K.ILANTHIRAIYAN. J,

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