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C.R.P.(PD)No.1491 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.1491 of 2024
and C.M.P.No.8024 of 2024

M/s. V.N.R. Homes Private Limited,
Represented by its Whole-time Director,
Mr.Raghupathy, No.11/32,
Lakshmi Talkies Road,
Shenoy Nagar, Chennai-30.

.. Petitioner

Vs

1. Sky City Owners Association,
Represented by its General Secretary,
Mr.G.M.David Raj,
Sky City Apartments, Vanagaram-Ambattur Road,
Adayalampattu, Chennai-600 005.

2. The Secretary,
Rural Development and Local Administration,
Secretariat, Fort St. George,
Chennai-600 009.

3. The Commissioner,
Villivakkam Panchayat Union,
Camp at Ambattur Panchayat Union Complex,
CTH Road, Ambattur, Chennai-600 053.



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4. Tulive Developers Limited,
Represented by its Whole-time Director
Mr.Vaidyanathan Suresh,
21/22, Loha Bhavan, P.D.Mello Road,
Mumbai City, Mumbai,
Maharashtra – 400 009.

5. The Member-Secretary,
CMDA, Thalamuthu Natarajan Maligai,
Egmore, Chennai-600 008.

6. The Secretary, Revenue Department,
Secretariat, Fort St. George,
Chennai-600 009.

7. The District Collector,
Collectorate,
Thiruvallur – 602 001.

8. The Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai-600 009.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.35 of 2024 on the file of the Principal District Munsif Court at Poonamallee as barred under the provisions of Town and Country Planning Act, 1971 and an abuse of process of Court.

For Petitioner : Mr.K.V.Babu
for Ms. N.Asmitha



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For R1 : Mr.S.Silambanan, Senior Counsel
for Mr.D.Muthukumar
For R2, R3,
R6 to R8 : Dr.S.Suriya, AGP (CS)
For R5 : Mrs.Veena Suresh

ORDER

This civil revision petition seeks to strike off O.S.No.35 of 2024 on the file of the Principal District Munsif Court at Poonamallee.

2. The civil revision petitioner is the 8th defendant in the suit. O.S.No.35 of 2024 is a suit filed by the 1st respondent herein for the following reliefs:

“(a) To adjudge the Gift Deed dated 20.03.2007 registered as Document No.617 of 2007 in Book 1 of SRO, Chennai South Joint II as null and void and inoperative and order it to be delivered up and cancelled.

(b) To declare that the suit property is not a public road and to pass a consequential mandatory injunction directing the 6th defendant to make an entry in the relevant records accordingly and

(c) For permanent injunction restraining the defendants, its



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officials, agents and men from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff and the residents of the apartment project.

(d) for cost of the suit.”

3. The undisputed facts are the 3rd defendant namely, one Tuliv Developers Limited had approached the 4th defendant/CMDA for the purpose of developing the properties situated at S.Nos.92/1, 92/2, 92/3, 93/1, 93/2, 93/3, 94/1, 94/2B1, 94/2B2, 94/3A2, 94/3B3, 94/4, 94/5, 94/6, 95/1B, 95/2A, 95/2B, 97/6 & 101/2A2 at Adayalambattu Village, Ambattur Taluk, as a group development. The 4th defendant imposed a condition for the purpose of approval of the group development, the 3rd defendant would have to execute a gift deed of the properties situated to an extent of 1873.33 sq.mtrs. in S.Nos.92/2 part, 93/2 part, 94/3B3 part and 94/5 part of the aforesaid village with specified boundaries in favour of the Commissioner, Villivakkam Panchayat Union. Being a group development, the CMDA felt that there must be an access for the properties situated on the southern and northern side of the properties through an access road. Hence, the condition for execution of the gift deed is the road so created was to join the Ambattur - Vanagaram road.



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Accepting the condition, the 3rd defendant executed a gift deed on 20.03.2007. It was presented for registration on the file of the Joint Sub-Registrar – II, Saidapet. The said document has also been given the registration number of 617/2007. On the basis of the gift deed and other compliances, the 3rd defendant laid out a public road and thereafter, developed the property and had put up apartments under the group development. The plaintiff/1st respondent herein is the owner's association.

4. The cause of action for the suit is that, the 8th defendant whose property is situated on the eastern side of the 33 feet road, which had been gifted under the aforesaid document, proposed to develop his property for another group development. It is the plea of the plaintiff that the 8th defendant cannot utilise the road gifted to Villivakkam Panchayat Union. Hence, it presented the suit for the aforesaid reliefs.

5. Aggrieved by the presentation of the plaint, the 8th defendant has preferred this revision.

6. According to Mr.K.V.Babu, the suit is an abuse of process of law as it seeks to set aside a gift deed on the basis of which permission



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was granted by CMDA and on the basis of the said permission, flats were constructed and sold to the members of the plaintiff association. He further urges that the suit is barred by virtue of Section 101 of the Tamil Nadu Town and Country Planning Act, 1971.

7. Per contra, Mr.S.Silambanan, learned senior counsel for Mr.D.Muthukumar for the 1st respondent, pleads that the revision under Article 227 of the Constitution of India is not maintainable and even if there is no cause of action, the appropriate remedy for the 8th defendant is to move an application under Order VII Rule 11 of the Code of Civil Procedure (C.P.C.) and not to approach this Court directly invoking Article 227 of the Constitution of India.

8. I have carefully considered the submissions of Mr.K.V.Babu and Mr.S.Silambanan.

9. The undisputed facts are that the properties which have been mentioned above belong to one J.Rajkumar Balsingh and T.T.Varadarajan. They had appointed one Kerry Jost Engineering Limited situated in Mumbai as their power agent. The said Kerry Jost



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Engineering Company was re-named as Tulive Developers Limited, the 3rd defendant. The purpose of executing the power was to develop the aforementioned properties into a group development that is for construction of multistorey apartments. It is not in dispute that about 452 apartments were also constructed. The 3rd defendant had approached the planning authorities under the Town and Country Planning Act for the purpose of obtaining lay out approval as well as permission to put up the multistorey constructions. As a condition for the said approvals, the 4th defendant/CMDA called upon the power agent to execute a gift deed in favour of the Commissioner, Villivakkam Panchayat Union. The purpose of the gift deed was to transfer the title from the original owners Rajkumar Balsingh and T.T.Varadarajan, with respect to the area, set apart as a road. The power of attorney also executed the document and the road was also formed.

10. A very perusal of the gift deed shows that it had been conveyed for the purpose of enjoyment by the public at large. After complying with the requirements of the Town and Country Planning Act and regulations made thereunder, constructions were made and individual apartments were sold to the owners. The owners have formed an association called



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Sky City Owners Association, the plaintiff. The road has been in existence and in enjoyment of the public from 2007 till date. The 8th defendant is the owner of the properties situated to the eastern side of the road desirous to develop his property into multistorey apartments and he had made out an application for approval.

11. A similar condition was imposed on the 8th defendant. He has also executed a gift deed in favour of Villivakkam Panchayat Union. This was on 16.10.2023. This document too is registered in Document No.2864 of 2023 on the file of the very same Sub-Registrar at Saidapet. In the gift deed that has been executed by the 8th defendant in favour of Villivakkam Panchayat Union, he has shown the access for his property as the 33 feet road, which had been gifted by the 3rd defendant in favour of the 2nd defendant. This is because, on and from the time of the execution of the gift deed, the road which had been laid out vests with the local body for the purpose of maintaining the same for the beneficial enjoyment of the public.

12. Feeling aggrieved by the fact that the 8th defendant has shown the public road that had been dedicated by their vendor in favour of the



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2nd defendant/Panchayat Union, the present plaint has come forth before the learned Principal District Munsif at Poonamallee.

13. Before I see whether there is any cause of action for the suit as if it is barred, I have to see whether a revision under Article 227 of the Constitution of India is maintainable. This is because Mr.S.Silambanan, as pointed out above, has taken a plea that since there is an alternate remedy for the 8th defendant, that remedy has to be opted before filing this revision.

14. Perhaps his inspiration seems to be a judgment of the Supreme Court in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & others v. Tuticorin Educational Society & others*, AIR ONLINE 2019 SC 2691.

15. It is beyond cavil that this Court has the power under Article 227 of the Constitution of India to keep the Courts subordinate to it within their bounds. In case a Court exceeds its jurisdiction or if it finds that the proceedings are in the nature of an abuse of process of law or are totally bereft of cause of action, this Court always retains jurisdiction to



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strike off the plaint, if it suffers from the aforesaid vices. The principle of pushing a party to an alternate remedy is a self imposed restriction and it need not be applied across the board. It is neither a strait jacket formula nor is the power under Article 227 a procrustean bed to knock off the legs or the head, if they do not fit the bed.

16. If I were to come to a conclusion that the suit is an abuse or is totally bereft of the cause of action, I certainly retain the jurisdiction to strike off the plaint. In fact in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai***, the Supreme Court had taken a view that “a mere total bar”, it did not hold that there exist a total bar for maintaining a revision under Article 227 of the Constitution of India. I also have to see the facts of the aforesaid case, which lead to laid down the dictum.

17. The matter went up before the Supreme Court, on account of the fact, a learned single Judge of this Court interfered with an order of the Trial Court when a civil miscellaneous appeal under Order XLIII Rule 1 of the Code of Civil Procedure was pending before the appellate Court. It was under those circumstances, the Supreme Court took a view that when one party has already availed the remedy available under the Code



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of Civil Procedure, this Court should not normally interfere with the said order and ought to have delegated the civil revision petitioner to pursue the remedy of the appeal that he had preferred. In any event, as pointed out above, the Court did not say there is absolute prohibition of the Court to entertain the revision under Article 227. I should add here that my brother Justice Mr.D.Bharatha Chakravarthy, after a detailed analysis of all the previous case laws, has held that if compelling reason exists considering the urgency or if relegating the parties to the Trial Court, the Trial Court would result in injustice, this Court can exercise the power to strike off the plaint. See, *N.Periyasamy v. Mohamed Bilaldeen and others*, C.R.P.(MD)No.671 of 2022, dated 23.08.2024.

18. Putting this aspect behind me, I now turn to see whether the suit is an abuse of process of law. The discussion of the facts as aforesaid would point out that the members of the plaintiff association obtained a right over the suit scheduled mentioned property only from the 3rd defendant. The 3rd defendant was the agent of the original owners. The original owners through the agent had executed a document in favour of the 3rd defendant conveying a portion of their land for creation of a



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public road. This was a condition precedent for development of their property. A purchaser from the 3rd defendant cannot have a better right than the 3rd defendant himself. When the 3rd defendant had decided along with the principals namely, the original owners, to dedicate a portion of the land for the purpose of enjoyment by the public, the subsequent purchasers cannot claim higher right and seek to set aside the very document on the basis of which the planning approval was granted for putting up their flats.

19. In fact, I pointed out to Mr.S.Silambanan that if the suit were to be decreed, then the entire edifice of planning approval and subsequent construction would come crashing to the ground. Curiously enough, the second prayer of the plaint seems to be that the road which had been dedicated to the public as early as 2007 should not be used by the public. This is clear from the prayer that he seeks for declaration that the suit property is not a public road.

20. Once the road is dedicated to the public, it is only the State Government under the erstwhile, Tamil Nadu District Municipalities Act which had the power to close the public road. That too required a



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resolution of the concerned local body and under exceptional circumstances. A Civil Court does not possess the power to declare a road dedicated as a public road ceases to be one. The power of declaration under Section 34 of the Specific Relief Act cannot be utilised contrary to a statutory declaration that has been made by the legislature. When a property has been dedicated as a public road in 2007, a Civil Court cannot declare it as a private one and that too, after 17 years have gone by.

21. The very prayer that has been sought for, indirectly contravenes Section 101 of the Town and Country Planning Act. Under Section 101 of the Town and Country Planning Act, there is a bar on the jurisdiction of the Civil Court with respect to any decision or order of the Tribunal, the Government, planning authority or any other authority created under the Town and Country Planning Act. It was the decision of the CMDA, an authority under the aforesaid Act, that if the 3rd defendant and their principals want to develop their property, they have to gift a portion of 1873.33 sq.mtrs as a public road. This decision was accepted by the predecessors in title of the members of the plaintiff association. This decision was not challenged by the owner or the 3rd defendant. In



fact, they implemented it and derived benefits from the same.

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22. I should add here that the association is not the owner even an inch of the land over which the construction stands today. Hence, it has no standing to maintain the suit. It represents the interest of the owners and as pointed out above, the owners of the apartments cannot have better right than the owners or the developer. Having agreed to the conditions laid down for the development of the land, the predecessor in interest of the plaintiff's members had executed the document. When the members of the plaintiff association purchased the property knowing pretty well that their predecessors had set apart an area for a public road, today they cannot turn around and plead that it should remain a road, but the public do not have the right of usage. Finding the plaintiff cannot directly challenge the proceedings of the CMDA, it has indirectly sought for setting aside the gift deed while seeking to retain the benefit of the planning permission. The plaintiff cannot be permitted to eat the cake and have it too. The aforesaid discussion shows that the plaint itself statutorily barred by virtue of Section 101 of the Town and Country Planning Act, 1971.

23. In fact the Supreme Court had an occasion to deal this very



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issue of whether a party having dedicated the property for the benefit of the public can turn around and seeks for its cancellation. After a detailed analysis of all the previous case laws, the Hon'ble Mr.Justice K.M.Joseph held that once the property is required to be maintained as per the planning permission, neither the owner nor the Town and Country Planning Authority are entitled to change its character. This view was taken in *Association of Vasanth Apartments' Owners v. V.Gopinath & others, 2023 SCC OnLine SC 137*. The admitted document namely, Document no.617/2007 dated 20.03.2007 has created a public road over which every member of the public has a right of access. It cannot be usurped by the plaintiff or its members under the garb of presenting the present suit.

24. I also have to recollect at this place the settled position of law that an owner of a property abetting a public road has a right over every point of that road which touches his property. Therefore, the 8th defendant is lawfully entitled to have an access since the public road created by the 3rd defendant by way of a gift to the 2nd defendant, ends with his property.

25. That being the position of law, I do not find the plaintiff has the locus and there is no cause of action for the present suit. In addition,



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the reliefs sought for are hit by Section 101 of the Town and Country

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26. In the light of the above discussions, the civil revision petition stands allowed. The learned Principal District Munsif at Poonamallee is requested to record this judgment and remove the suit from its file. No costs. Consequently, connected miscellaneous petition is closed.

05.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

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Rural Development and Local Administration,
Secretariat, Fort St. George,
Chennai-600 009.

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V. LAKSHMINARAYANAN,J.



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