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W.P.Nos.9982 & 9983 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2024

CORAM:

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

W.P.Nos.9982 & 9983 of 2024

S.Mohamed Ansari

...Petitioner in W.P.
No.9982 of 2024

S.Farook Moulana

...Petitioner in W.P.
No.9983 of 2024

-Vs-

1. The Director of Municipal Administration,
Urban Administrative Building,
75, Santhome High Road, MRC Nagar,
Raja Annamalaipuram,
Chennai – 600 028.

2. The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar, Coimbatore – 1.

3. The Town Planning Officer,
Coimbatore City Municipal Corporation,
Town Hall, Coimbatore – 1.

... Respondents in
both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus, directing the first respondent to call for the records pertaining to the impugned order Na.Ka.No.31650/2023/TP3 dated 29.11.2023, quash the same and consequently, direct the respondents to



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grant planning permission applied by the petitioner on 02.05.2023 vide planning application No.162/CP/22-23/0156274 & 0156235 respectively, dated 02.02.2023 in respect of Plot Nos.5A, & 6A respectively, Ashwath Nagar, Ganapathy Village, Coimbatore comprised in S.No.11/1278 part (after sub-division T.S.No.1278/68).

In both W.Ps.

For Petitioner : Mr.P.R.Raman, Senior Counsel
For Mr.A.Umasankar
For Respondents
For R1 : Mr.Haja Nazirudeen
Additional Advocate General – I,
Assisted by Dr.T.Seenivasan
Special Government Pleader
For R2 & R3 : Mr.N.Velmurugan
Standing Counsel

COMMON ORDER

Both the writ petitions have been filed challenging the rejection of planning permission of the petitioners' respective property.

2. The issues involved in both the writ petition are one and the same and therefore, this Court is inclined to pass a common order.

3. The petitioners owned their respective property comprised in survey No.11/1278 part, after sub-division T.S.No.1278/68, situated at



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No.5A & 6A, Ashwanth Nagar, Ganapathy Village, Coimbatore, to an extend of 2622 & 2587½ sq.ft., respectively. The petitioners had purchased their respective plots by the registered sale deeds dated 05.04.2022, registered vide document Nos.2750 & 2479 of 2022. The petitioners' vendor had already obtained planning permission and building approval for the existing building by the proceeding dated 10.04.2008. After purchase, the petitioners had mutated all the revenue records in their favour viz., property tax, electricity service connection, patta etc.

4. Subsequently, in order to develop the said property by demolition and re-construction, the petitioners had applied for planning permission. Their applications were closed for the reason that the subject property has already been handed over to the corporation. As against the rejection of planning permission, there is an appeal provision under Section 452 of Coimbatore City Municipal Corporation Act. Accordingly, they had preferred appeals. However, their respective appeals were rejected without even giving an opportunity of hearing to them. Hence, the present writ petitions.



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5. The learned Senior Counsel appearing for the petitioner in both petitions submitted that the petitioners were not given an opportunity of hearing while rejecting the appeals filed by them by the first respondent. It is clear violation of principles of natural justice. Though the original owner of the property had executed gift deed subsequently, it was cancelled and the lay out was not approved. Therefore, the entire property was treaded to be unapproved lay out at the point in time. As per the government order in G.O.Ms.No.56 Municipal Administration and Water Supply department dated 30.04.2007, a scheme was formulated for regularization of unauthorized layouts. Accordingly the petitioners' predecessors had applied for regularization and accordingly obtained regularization. In fact, subsequently another gift deed was executed on 24.12.2007 for formation of 30 feet road on the western side of the subject property and it has been put in use for the general public.

5.1. He further submitted that the gift deed was executed by the petitioners' predecessors in favour of the corporation for the purpose of



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getting layout approval. Since there was no lay out approval, the said gift deed was subsequently cancelled and as such it was not acted upon in favour of the corporation. When the petitioner applied for planning permission, it was rejected and subsequently, earlier planning permission granted to the petitioners' vendor was also cancelled. In fact, the petitioners had applied for demolition and reconstruction for planning and building permission.

6. The respondents filed counter and the learned Additional Advocate General appearing for the respondents submitted that the land ad measuring to an extent of 1 acre 24 cents 347 sq.ft., was formed a residential layout consisting of 11 plots named Ashwath Nagar. While pending the approval, the gift deed was executed in favour of the second respondent thereby gifted 40 feet width road measuring an extent of 12,255 sq.ft., and a part earmarked for public purpose. Therefore, 10% of the layout area ie., 5,209.5 sq.ft., was gifted in favour of the second respondent by the gift deed dated 18.10.2002 vide registered document No.2794 of 2002.



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6.1. Thereafter, from the unapproved layout, the original promoters sold out plots to various persons. Once again, the promoters approached the second respondent for regularization of park site ad measuring 5,209.5 sq.ft., by dividing into two plots mentioned as 5A and 6A to an extent of 2622 sq.ft., and 2587.5 sq.ft., respectively. Both plots were regularized subsequently and also granted planning permission for construction, after showing the layout plan as house plots. Subsequently, the land which was shown as road was also regularized and sold out in favour of the petitioners. Therefore, the planning permission was rejected and the appeal was also dismissed.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. Both the petitioners had purchased the subject property by separate sale deeds for valid sale consideration. Their vendor is one and the same. She applied and obtained planning permission and building approval and accordingly constructed houses. After purchase of the same, the petitioners had mutated all the revenue records in their name



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and subsequently, they applied for planning permission with requisite fee for the purpose of demolition and re-construction of draft plan along with necessary documents. However, it was rejected on the ground that the subject property was already gifted in favour of the second respondent by the gift deed dated 18.10.2002, registered vide document No.2794 of 2002. However, the said gift deed was subsequently cancelled by the promoter by the cancellation deed dated 21.10.2002 registered vide document No.2837 of 2002 on the ground that the road width and extent were wrongly mentioned.

9. Once again, the promoted executed gift deed in favour of the second respondent by reduced road with as 30 feet for the very same extent of 5,209.5 sq.ft., registered vide document No.2838 of 2002 dated 22.10.2002. However, it was also subsequently cancelled by the cancellation deed dated 31.08.2005 registered vide document No.4908 of 2005, on the ground that layout is not approved by the competent authority.



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10. Subsequently, as per the government order in G.O.Ms.No.56 Municipal Administration and Water Supply Department dated 30.04.2007, the said area has been regularized on payment of regularization fee. Thereafter, it has been divided into two plots as 5A to an extent of 2622 sq.ft., and 6A to an extent of 2587.5 sq.ft., respectively. Both the plots were purchased by the petitioners by the registered sale deed and applied for building approval for the purpose of demolition and reconstruction. The said application submitted by the petitioners were rejected and also confirmed in the appeal. Thereafter, the original planning approval which was granted in favour of the petitioners' vendor was also cancelled, by referring the gift deed executed in favour of the second respondent.

11. Admittedly, the subsequent gift deed was also cancelled by the original developer by the cancellation deed dated 31.08.2005 registered vide document No.4908 of 2005. Therefore, the gift deed does not exist even at the time of grant of planning permission to the petitioners' vendor. That apart, 30 fee road has been laid and it is put in use for the general public. On verification of those facts, the subject



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property were regularized as per the government order in G.O.Ms.No.56
Municipal Administration and Water Supply department dated
30.04.2007.

12. In view of the above discussions, the order impugned in both the writ petitions cannot be sustained and liable to be quashed. Accordingly, the impugned orders both dated 29.11.2023, passed by the first respondent in Na.Ka.No.31650/2023/TP3, are hereby quashed. The second and third respondents are directed to grant planning permission on the application submitted by the petitioners in respective of their plots in Nos.162/CP/22-23/0156274 & 162/CP/22-23/0156235 respectively, dated 02.02.2023, within a period of four weeks from the date of receipt of a copy of this Order.

13. With the above directions, both the Writ Petitions stand allowed. There shall be no orders as to costs.

13.09.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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G.K.ILANTHIRAIYAN. J.

rts

To

1. The Director of Municipal Administration,
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75, Santhome High Road, MRC Nagar,
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