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W.A.No.854 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2024

PRONOUNCED ON : .06.2024

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

**W.A.No.854 of 2018
and
C.M.P.Nos.7490 of 2018 & 14300 of 2022**

G.Venugopal

... Appellant

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai-3.

2. Zonal Officer,
Corporation of Chennai,
Zone 11, Chennai 600 087.

3. T.N.Local Body Ombudsman,
100, Anna Salai,
Guindy, Chennai-32.

4. P.V.Kishore,
Rayala Nagar, Ramapuram,
Chennai-89.



5. The Deputy Director,
Town And Country Planning,
Chengalpet.

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[R5 is impleaded, vide order of court dated 10/08/2023 made in CMP.No.18185/2023 in WA.No.854 of 2018 (DKKJ and PBBJ)]

6. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

[R6 is impleaded, vide order of court dated 16/11/2023 made in WA.No.854 of 2018 (RSKJ and GAMJ)]

7. The Rayala Nagar Welfare Association,
Rep. By Its Secretary At Plot No.64,
Rayala Nagar, Ramapuram,
Chennai-600 089.

[R7 is suo motu impleaded, vide order of court dated 22/02/2024 made in WA.No.854 of 2018 and CMP.NOo.7490/2018 and CMP.No.14300 of 2022 (RSKJ and KBJ)]

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to setaside the order dated 20.11.2017 made in W.P.No.17598 of 2017 and hereby allow the Writ Appeal.

For Appellant : Mr.S.R.Rajagopal,
Senior Counsel for
Mr.Irfan Sherif

For Respondents : Mr.G.T.Subramanian
Standing Counsel for GCC (for R1 & R2);



: Mr.B.Nedunchezhiyan (for R3);

: Mr.D.Gopal,
Government Advocate (For R5);

: Mrs.P.Veena Suresh,
Standing Counsel for CMDA (for R6);

: No Appearance (for R4 & R7).

J U D G E M E N T

by S.M.SUBRAMANIAM, J.

The writ appeal has been instituted against the order dated 20.11.2017 in W.P.No.17519 of 2017. The writ petitioner is the appellant before this Court.

2. The appellant states that his father late Mr.Gangaiah and Mrs.Thilagavathy jointly owned property to an extent of 19.99 Acres in Survey Nos. 51/2, 52, 53, 56/1, 56/2, 59 and 61 in Ramapuram Village, Chennai. 208 sale deeds were executed towards the workers of M/s.Rayala Corporation. After the demise of Mr.Gangaiah and Mrs.Thilagavathy, the subject property has been developed. The lay out was laid for 206 housing



sites and provisions were made for laying roads, community centres, schools and for other public proposes. It is not in dispute that the lay out was approved by the Deputy Director of Town Planning under the provisions of the Tamil Nadu Town and Country Planning Act, 1971, vide LPDM/DDTP No.235 and 241 of 1974.

3. The appellant states that the Rayala Welfare Association was not in a position to settle the sale consideration to the owners and passed a resolution to reconvey the land earmarked and allotted for public purposes.

4. Mr.Kishore/ 4th respondent instituted a suit in O.S.No.206 of 1999, for declaration of the subject property for the enjoyment and use of Rayala Nagar Residents. The suit was dismissed for default. O.S.No.207 of 1999 was filed by the 4th respondent seeking direction to the Commissioner, Chennai Corporation, to take over the subject property and put to common use for the residents.

5. The Corporation of Chennai initiated action to utilise the public purpose area as park and the appellant raised an objection. The 4th



respondent raised a Complaint Petition No.169 of 2015 before the Tamil Nadu Local Body Ombudsman/ 3rd respondent and the 3rd respondent passed an Order No.170 of 2016, dated 22.11.2016, declaring the subject lands as public land and directed the Corporation of Chennai to take over the land and utilise the same for public purposes, as per the lay out approved under the Town and Country Planning Act, 1971, in the year 1974.

6. In view of the above developments, the appellant filed W.P.No.1582 of 2017, challenging the order passed by the Tamil Nadu Local Body Ombudsman / 3rd respondent dated 22.11.2016, and to forbear the respondents from interfering with the possession and enjoyment of the subject property from the petitioner. An interim order of status quo was granted. The writ petition was disposed of on 22.03.2017 granting liberty to the respondents therein to initiate appropriate action against the public purpose area by issuing show cause notice to the appellant and by affording opportunity. Consequently, the Zonal Officer, Chennai Corporation/ second respondent issued show cause notice to the appellant on 18.04.2017. The appellant submitted reply statement on 07.05.2017. The second respondent passed an order stating that the public purpose area belongs to the Greater



Chennai Corporation and to be utilised for public purposes. The public purpose area was taken possession by the Corporation of Chennai. A compound wall has been constructed and admittedly at present, the public purpose area is being used as children park in that locality. People of that locality and children are utilising the children's park.

7. The appellant filed writ petition in W.P.No.17598 of 2017 to quash the order dated 13.06.2017, passed by the second respondent. An interim order of status quo was granted. Since the possession was already taken by the Chennai Corporation and children park was developed, the Corporation maintained the status quo. The appellant filed a contempt petition in Cont.P.No.1919 of 2017, which was closed. W.P.No.17598 of 2017 was dismissed by the learned Single Judge on 20.11.2017. Challenging the writ order, the present writ appeal has been filed.

8. Learned Senior Counsel, Mr.S.R.Rajagopal, appearing on behalf of the appellant would submit that the Tamil Nadu Town and Country Planning Act, 1971, has no application since the lay out approval was granted even prior to the notification of the Tamil Nadu Act 35 of 1972. The



public purpose land belongs to the owner. Rayala Welfare Association has not paid the sale consideration as per the sale deed and passed a resolution to reconvey the land that is a public purpose area. Accordingly, the appellant herein purchased the land from the owner of the property and there was no irregularity. The public purpose land vest with the owner. The owner of the land can utilise the public purpose area by constructing marriage hall, community hall or any other construction, which is also to be construed as public purpose.

9. The learned Senior Counsel for the appellant would submit that the public purpose land is not an O.S.R. land.

10. In the present case, as per the lay out, it is a public purpose area and not O.S.R. Land. Therefore, owners are not obligated to handover possession of the public purpose area to the local body. Relying on the definition of “Public Purpose” under the Town and Country Planning Act, 1971, the learned Senior Counsel would contend that the land owner also can use the land by constructing marriage hall, convention centres etc., which is also a public purpose. Thus, the learned Single Judge has



erroneously appreciated the scope of the provisions of the Town and Country Planning Act.

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11. It is contended that mere approval of the lay out, earmarking the public purpose area, cannot be a ground to take over the land by the Corporation. The public purpose area has not been gifted to the local body. Therefore, the local body has no authority to takeover the land. Under Section 36 of the Town and Country Planning Act, compulsory acquisition of land for development plan is to be made. Section 37 contemplates power to the competent Authority to purchase or acquire lands specified in development plan. Therefore, the Chennai Corporation ought to have acquired the land by paying compensation to the land owners for the purpose of developing children's park in the subject property. They have not acquired the land from the land owners. Therefore, the writ order is liable to be set aside.

12. The learned Standing Counsel appearing on behalf of the Chennai Corporation would oppose by stating that admittedly the lay out was approved by the competent authority under the Town and Country Planning



Act, 1971. Admittedly, the subject area has been earmarked for public purposes. Once it is earmarked for public purposes, the local body is empowered to utilise the land for public purposes and it is the statutory obligation on the part of the land owner to handover possession of the property / public purpose area to the local authority for development and for the benefit of the people residing at that locality.

13. Chennai Corporation has already taken over the possession of the subject property. They have constructed compound wall, developed children's park in the subject property and people and children, residing in that locality, are benefited from and out of the children's park developed in the public purpose area. Therefore, the learned Single Judge has rightly dismissed the writ petition.

14. Let us now consider the definition of “Public Purpose” under Section 2(36) of Tamil Nadu Town and Country Planning Act, 1971, which states that “ *“Public Purpose” means any purpose which is useful to the public or any class or section of the public*”. Once the lay out has been approved and as per the approved lay out, streets, public purpose area, has



been earmarked, then all such areas are to be handedover to the local authority for developing the same for the benefit of the people residing in the lay out. Even in case the owner has failed to execute gift deed, the competent authorities are empowered to take possession of the public purpose land for developing the same for the utilisation of the people residing in that locality. It is mandatory under the lay out that the public purpose area is to be handed over to the local authority for development.

15. In the present case, the contention of the appellant that the provisions of the Tamil Nadu Town and Country Planning Act, 1971, is not applicable is incorrect. The Tamil Nadu Act 35 of 1972 came into force in the year 1972. In the present case, the lay out was admittedly approved by the Deputy Director of Town Planning, vide LPDM/DDTP No.235 and 241 of 1974. Further it is not in dispute between the parties that the subject area has been earmarked for public purpose. The original land owners sold the land to Rayala Welfare Association, who in turn has not paid the sale consideration and subsequently, to pay the sale consideration, Rayala Welfare Association sold the subject public purpose area to the appellant herein. The purchase of public purpose area by the appellant, is null and void and non-est in law.



16. Sections 36 and 37 of the Town and Country Planning Act, 1971, have no application in the present case. Section 36 speaks about compulsory acquisition of land needed for development plans. Power has been conferred to the authorities to acquire land if they need the land for development purpose under the plan. Section 37 enumerates power conferred to the authorities to purchase or acquire lands specified in the development plans. Therefore, if the authorities have taken a decision to develop an area, then they are empowered to acquire the land and utilise the same for the development purpose under Sections 36 and 37 of the Town and Country Planning Act, 1971. But in the present case, question of acquisition would not arise at all. The approved lay out plan itself would be sufficient since the public purpose area has already been earmarked in the approved lay out plan. Once the public purpose area has been earmarked in the approved lay out plan, question of acquisition of land by the competent authorities would not arise at all. Therefore, the contention in this regard by the appellant deserves no merit consideration and is rejected.

17. The Corporation of Chennai has already taken possession of the public purpose area, constructed compound wall and developed the area as



To

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Pre-Delivery Order in
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