



W.A.No.2449 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 20.03.2024

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA,
CHIEF JUSTICE**

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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The Corporation Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore - 641 001.

.. Appellant

Versus

1. Uma Mohanraj
2. The State of Tamil Nadu
Rep. by the Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
3. The Director,
Directorate of Town and Country Planning,
2nd Floor C & E Market Road,
Koyambedu,
Chennai - 600 107.



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4. The Deputy Director,
Town and Country Planning (Coimbatore Region),
Dr.Nanjappa Road,
Corporation Shopping Complex,
Coimbatore - 641 018.

5. The District Collector,
Collectorate Building,
Coimbatore - 641 018.

.. Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent to allow this Writ Appeal and set aside the order, dated 01.03.2023 made in W.P.No.24278 of 2022 and consequently, dismiss the W.P.No.24278 of 2022.

For Appellant : Mr.K.Magesh

For Respondents : Mrs.Lita Srinivasan, for R1

: Mr.K.Karthik Jegannath,
State Government Pleader
for RR-2 to 5

JUDGMENT

(Judgment made by the Hon'ble Mr Justice D.Bharatha Chakravarthy)

This Writ Appeal is directed against the order of the learned Single



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Judge, dated 01.03.2023 in W.P.No.24278 of 2022. By the said order, the learned Single Judge had allowed the Writ Petition. For the sake of convenience, the parties are referred to as per their array in the Writ Petition.

2. The writ petitioner had prayed for a Writ of Certiorari calling for the records in respect of the impugned order, dated 06.07.2022 passed by the Deputy Director of Town and Country Planning (Coimbatore Region) and to quash the same and consequently, to direct the respondents to grant building approval for the petitioner's property in S.No.24/1, New Thillai Nagar, Coimbatore.

3. The case of the writ petitioner is that she purchased a residential site measuring 3627 Sq.ft., bearing Site No.3, New Thillai Nagar, Coimbatore, by the registered sale deed in Doct.No.2735 of 1992, dated 15.07.1992 from one *Rangammal*. The said *Rangammal* and five of her sisters were allotted 62 cents of land by a decree in a partition suit in



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O.S.No.1182 of 1980, on the file of the learned I Additional Subordinate Judge, Coimbatore. The final decree was passed in I.A.No.241 of 1982 on 30.04.1989. Thereafter, the writ petitioner's vendor *Rangammal* and her sisters further partitioned their share of 62 cents among themselves, by a partition deed, dated 11.09.1989 which was registered as Doc. No.2573 of 1989 at the office of the Sub-Registrar - II, Coimbatore. The above-mentioned Site No.3 was allotted to *Rangammal* in the said partition deed. Before selling the property to the writ petitioner on 15.07.1992, her vendor *Rangammal* had even obtained residential building plan permission on 29.06.1992.

4. After the purchase, when the petitioner approached the respondents for fresh planning permission to put up a superstructure, citing that the site was situated in a place originally earmarked as a public purpose site - school/playground in a layout approval in L.P.A.No.199/80, no permission was granted to the petitioner. Accordingly, the writ petitioner approached



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this Court in W.P.No.10677 of 2017 for a Writ of Mandamus, and by an order, dated 14.06.2017, this Court directed the respondents to consider the writ petitioner's representation, dated 09.02.2017 within eight weeks from the date of receipt of a copy of the order and pass appropriate orders. Thereafter, upon the filing of contempt proceedings, the order impugned in the present proceedings, dated 06.07.2022 was passed rejecting the request of the petitioner and hence the Writ Petition.

5. The writ petitioner contends that the alleged sanctioned layout i.e., L.P.A.No.199/80 is non-existent. The respondents do not have any official records in respect of the same. The layout was allegedly formed by one *Yakoob* being the Power of Attorney agent of the brother of the vendor of the writ petitioner. He attempted to form the layout claiming title to the property. Whereas, the writ petitioner's vendor filed the above suit for partition which was decreed in favour of the petitioner's vendor by the competent Civil Court. Therefore, the same would be binding on the



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promoter of the layout and consequently the respondents. As a matter of fact, in a similar plot which is claimed to be reserved for public purpose, already a residential building permission, dated 29.06.1991 was granted and a building has been put up.

6. The Writ Petition was resisted by the Deputy Director, Town and Country Planning (Coimbatore Region) by filing a counter-affidavit. In the counter-affidavit, the earlier Writ Petition is mentioned and the impugned order is quoted as such. After extracting the impugned order, it is submitted that the Member Secretary, Coimbatore Local Planning Authority vide L.P.A.No.199/1980, dated 10.06.1980 had granted approval and the public purposes and Open Space Reservation (OSR) plots are to be left as vacant. Since the site of the petitioner comes within the public purpose space, the permission has rightly been refused.

7. The learned Single Judge, by the order under the appeal, considered



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the case of the parties. The learned Single Judge found that the Civil Court had expressly held that the agreement between the brother of the petitioner's vendor and a third party for the development of the layout was not binding on the vendor of the writ petitioner namely, *Rangammal*. Therefore, a person without title cannot apply for planning permission and even if the permission is granted, when subsequently, through Court appointed Advocate Commissioner, the possession of the property has been taken and handed over to the petitioner's vendor, the erroneous layout formed by the person without title cannot bind on the true owners as declared by the competent Civil Court. The approval of the layout cannot confer title on the promoter. Therefore, the learned Single Judge quashed the order and directed the petitioner to make a fresh application within two weeks from the date of receipt of a copy of the order and upon such application being filed, the same was directed to be considered and planning permission be granted within one month thereafter. Aggrieved by the same, the Coimbatore City Municipal Corporation is on appeal before this Court.



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8. Heard *Mr.K.Magesh*, learned Counsel for the appellant; *Mrs.Lita Srinivasan*, learned Counsel for the first respondent and *Mr.K.Karthik Jegannath*, learned Government Advocate for the respondent Nos.2 to 5.

9. By producing an additional typed set of papers including a photocopy of the approved layout in L.P(CN). No.199/80 and photocopies of the register maintained by the Coimbatore Municipality in respect of applications received by it, *Mr.K.Magesh*, the learned Counsel would submit that when the site of the petitioner is located in an approved layout and the extent falls within the area reserved for public purpose namely, school/playground, the learned Single Judge ought not to have allowed the Writ Petition. In the collusive partition suit within the family members, the Corporation is not a party and as such, the same will not bind the fifth respondent. Though the records in respect of the alleged layout, and approval in L.P.No.199/80 are not available in the office of the Corporation



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or with the District Town and Country Planning Authority, still, the photocopy of the plan is available in the applications submitted by the other plot owners for approval in the adjacent sites as that of the petitioner. Even in a similar sale deed, the layout approval is mentioned in the schedule. There exists no ground to suspect about the approval of the layout. Once there is an approved layout and the land comes within 10% of the area reserved for public purpose, then the petitioner cannot seek to develop the same as a residential house. It has to be maintained as a school/playground.

10. *Mrs.Lita Srinivasan*, learned Counsel for the first respondent/writ petitioner would submit that the final decree in O.S.No.1182 of 1980 and the partition deed, dated 11.09.1989 would confirm that the site in question was allotted to the writ petitioner's vendor and her sisters in the suit as their share and subsequently, the present site was allotted to the share of the writ petitioner's vendor. Thereafter, the writ petitioner had purchased the property by way of the registered sale deed. The respondent Corporation



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does not even dispute the said document of title. No settlement deed is executed in favour of the Corporation by any person claiming title to the property. Therefore, the site does not vest in the Corporation.

11. The learned Counsel would submit that, to contend further that the land is for a public purpose, it can be seen that the plan which is produced by them as an approved layout does not exist with the Corporation or the District Town and Country Planning or the State level authority. Some third parties fictitiously created the document for their benefit. Even though a number is mentioned in a copy produced by the respondent Corporation, the same does not contain the seal of the planning approval authority mentioning the approval, number, signature etc. Further, the layout plan mentions Assistant Drafts Man, Supervisor, Assistant Director and Senior Deputy Director and no signature of all four persons is found. Thus, some draft or incomplete plan or some concocted plan that has found its way to the files being erroneously produced by some other plot owner is now



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sought to be put against the writ petitioner. The writ petitioner having purchased the property for a valuable consideration and being a senior citizen, is not in a position to enjoy her plot.

12. She would further contend that when the vendor of the petitioner had applied for building plan approval, the same was granted. The Civil Court has given an express finding that the agreement between the promoter of the layout namely, *Yakoob* and the writ petitioner's vendor's brother will not be binding on them. A suit for specific performance was also filed by the said *Yakoob*, the promoter against the petitioner's vendor's brother in O.S.No.739 of 1980 on the file of the learned Subordinate Judge, Coimbatore which was dismissed and an appeal preferred by the said *Yakoob* in A.S.No.45 of 1983 was also dismissed by this Court by the judgment reported in ***AIR 1992 Mad 80***. She would also place before this Court the Google Map of the site, survey numbers and the nature of developments in the area extracted from the master plan to contend that



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every other plot has been developed into a residential site. The street on which the petitioner's site exists did not exist as of the year 1980 and she would submit that the claim of the respondent Corporation is without any proof.

13. We have considered the rival submissions made on either side and perused the material records of the case.

14. Firstly, it is not the case of the respondent Corporation that the property vests in it by any settlement/gift deed being executed by the promoters of the layout in favour of the Corporation. The impugned order as well as the counter-affidavit denies the writ petitioner's building approval on the ground that the site in question is for public purpose as per the approved layout. Despite repeated opportunities being granted by this Court, except the plan which is produced in the additional typed set of papers, the Corporation is not in a position to produce any document to



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prove that the site in question is approved by the layout approval bearing L.P.(CN). No.199/80. Neither the order of grant of layout approval nor an authenticated approved plan with the seal of the District Town Planning Authority is produced. It is admitted that none of the relevant records is available with the Corporation or the other official respondents including the District Planning Authority. The copy of the approved layout including the order is to be preserved by the District Authority and a copy will also be very much available with the Directorate in Chennai. In the absence of the same, we hold that the respondent Corporation had failed to establish that the site in question is for public purpose. Further, it is to be noted that on an earlier occasion, when the vendor of the writ petitioner had applied for planning approval, the same was granted. The Patta in respect of the site has also been granted to the writ petitioner.

15. Even assuming that the land in question formed part of the layout as contended, on a perusal of the judgment in O.S.No.1182 of 1980 on the



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file of the learned Subordinate Judge, Coimbatore, it would be clear that one *Alamelu Ammal* and five others filed the suit against the sole defendant, *K.Rangaswami*. It is alleged that the property belonged to the father of the plaintiffs and the defendant namely, one *Krishnama Naicker* and the plaintiffs claimed a 6/7th share in the suit properties. The defendant claimed that the property was purchased out of the sale proceeds by selling ancestral property situated in Telungupalayam village and being the eldest member of the family, the sale deed was registered in the father's name. The defendant entered into an agreement in respect of the suit property 1 1/2 years before filing the suit with one *Yakoob* who formed a layout. The said agreement would bind the plaintiffs. Since the defendant was not in possession of the property and the property was being handed over to a third party, the plaintiffs cannot be granted relief.

16. Among other issues, the Trial Court also framed issue No.3 as to whether the agreement referred to in paragraph No.5 of the written statement



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is true, valid, and binding on the plaintiffs. The Trial Court held that the said agreement was not valid, and binding on the plaintiffs. The Trial Court decreed the suit. Ultimately, the final decree was also granted. It can be seen that the subject matter property was allotted to the six sisters as against their share and thereafter, by a registered partition deed, the Site No.3 came to *Rangammal*, the vendor of the writ petitioner from whom the writ petitioner purchased the property.

17. The Corporation does not dispute the above facts. When the said *Yakoob* was the Power of Attorney holder of the defendant in the suit and once the defendant lost the title by the pronouncement of the Civil Court, merely because it is declared as a public purpose land in the layout which is formed by a person without title, the same would not divest the title of the vendor of the writ petitioner. In that view of the matter also, the claim of the respondent Corporation is unsustainable. We find that the learned Single Judge had duly considered the relevant aspects and had allowed the Writ



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Petition and there is no ground to interfere with the order under appeal.

18. Accordingly, finding no merits, this Writ Appeal stands dismissed.

There shall be no order as to costs. Consequently, C.M.P.No.20445 of 2023 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

20.03.2024

Index : yes

Speaking order

Neutral Citation : yes

grs

To

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

2. The Director,
Directorate of Town and Country Planning,
2nd Floor C & E Market Road,
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**THE HON'BLE CHIEF JUSTICE
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