



W.P.No.12853 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 12..07..2024

Orders Pronounced on : 23..07..2024

Coram

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Writ Petition No.12853 of 2021

and

W.M.P.No.13655 of 2021

1.G.S.Senthilkumar

2.G.S.Mallika

..... Petitioners

-Versus-

1.The Director,
Director of Town and Country Planning,
Building Division,
No.807, Annasalai,
Chennai 600 002.

2.The Deputy Director,
Director of Town and Country Planning,
Corporation Shopping Complex,
Dr.Nanjappa Road,
Coimbatore 641 018.

3.The Commissioner,
Coimbatore Municipal Corporation,
Coimbatore 641 001.

4.The Tahsildar,
Coimbatore North Taluk Office,
Dr.Balasundaram Road, Coimbatore-18.

..... Respondents

Petition filed under Article 226of the Constitution of India, praying to



W.P.No.12853 of 2021

issue a Writ of Mandamus directing the 4th respondent to remove the 3rd respondent's name in the Extract from the Town Survey Land Register dated 28.08.2018 in respect of the petitioner's property measuring an extent of 3682 square meter – Community Hall site comprised in S.F.Nos.380, 381 and 373(Part) of Vilankurichi Village situate at Gurusamy Nagar, Vilankurichi Village, Coimbatore District, on the basis of the representation dated 07.10.2020 made by the petitioner to the 4th respondent.

For Petitioner (s) *Mr.S.Mukunth, Senior Counsel
for Mr.P.Tamilvel*

For Respondent (s) : *Mr.P.Sathish, AGP
for RR1, 2 & 4*

*Mr.K.Magesh,
Standing Counsel for R3*

ORDER

This writ petition has been filed seeking a writ in the nature of mandamus, directing the 4th respondent to remove the 3rd respondent's name in the Extract from the Town Survey Land Register dated 28.08.2018 in respect of the petitioner's property measuring an extent of 3682 square meter – Community Hall site comprised in S.F.Nos.380, 381 and 373(Part) of Vilankurichi Village situate at Gurusamy Nagar, Vilankurichi Village,



W.P.No.12853 of 2021

Coimbatore District.

WEB COPY

2. The brief facts leading to the filing of the present writ petition are as follows:-

(i) A larger extent of land measuring Acres 18.16 Cents comprised in S.No.373 (part), 380 and 381 situate at Vilankurichi Village of Coimbatore Corporation was promoted as house sites and the layout was named as Gurusamy Nagar. Approval was granted by local planning authority, Coimbatore in L.P/R (CPN) No.69/87. As part of the layout a reserved site for constructing community hall was promoted.

(ii) The petitioners acquired the above said site comprised in S.F.Nos.380 & 381 of Vilankurichi village within the limit of Coimbatore Corporation under two different sale deeds dated 16.07.1990 registered as Doc.Nos.4226 of 1990 and 4227 of 1990 and two settlement deeds dated 19.10.2009 registered as Doc.Nos.4384 of 2009 and 4385 of 2009 respectively. The petitioner acquired the said land after the layout approval accorded by the office of the 2nd respondent and 4th respondent vide order dated 21.07.1988 in Na.Ka.No.126630/1987/H.13 in S.F.Nos.380, 381 and 373 (part). The total extent of layout is 7.3475 Hectares (Acres 18.16 Cents). The extent allotted for public purposes are, 3929 square meters for park, 3682 square meters, 468



W.P.No.12853 of 2021

square meters for Shop-1, and 207 square meters for Shop-2.

(iii) Subsequently, the 1st respondent by circular dated 24.05.1985 issued under Roc.No.18150/85-GL, clarified that as the word "Reserved Lands" stipulated in the layout condition mentioned above requires explicit definition as the lands reserved in the layout would include Park, Play Field, Community Halls, Kalyana Mandapams, etc., it was felt that it would be sufficient if the area reserved as open space, like Park, Play Field, Children Play Space alone need to be handed over to the executive authority of the local body concerned as they essentially belong to the category of non-commercial public purposes. As the other reservations like Kalyana Mandapams, Community Halls, etc., belong to commercial category, it was felt that the layout owner should not be deprived of income which he may likely to get by disposal of these plots as he has to make surrender to Executive Authority of the local body a sizeable amount of land by way of non-commercial open spaces, instructions have already been issued by office circular in Roc.No.9798/1983-BCC dated 29.06.1984 that in layouts which are of less than 10 Acres in extent, 10% of such area should be reserved only for open spaces such as, parks, play fields, etc., and in cases of layout more than 10 Acres in extent, 50% of the total reservation may be provided for public purposes like Kalyana Mandapams, Community Hall,



W.P.No.12853 of 2021

Reading Room, Libraries, etc., and the balance 50% may be reserved as open space. Therefore, it was decided by the 1st respondent that only areas reserved as open spaces like parks, play fields, etc., need to be handed over to the executive authority of the local body concerned.

(iv) By issuing the said circular, it was made clear that in layout of more than 10 Acres in extent, only reserved lands for open spaces like parks, play fields, children play spaces have to be handed over to the executive authority of the local body concerned and the area reserved for community hall being saleable commercial category, it can be put into use by the owner of the land.

(v) The petitioners acquired community hall site, as already stated above, by way of purchase as well by virtue of settlement and they have been in possession and enjoyment of the same till date. They could not construct community hall on the site for their own personal reasons. They are the absolute owners of the site and none others including the respondents have any right over the said community hall site. While so, the 3rd respondent trespassed into the property and erected a board/hoarding showing as if the subject property belongs to the corporation and cautioning that the trespassers will be prosecuted without giving any prior notice to the petitioners. In the Extract from the Town Survey Land Register (TSLR), the 3rd respondent has removed the



W.P.No.12853 of 2021

name of the petitioners and included the name of the corporation without any basis and the action of the 3rd respondent in this regard is illegal, arbitrary and in violation of natural justice. Therefore, the petitioners sent a representation dated 07.10.2020 to the 4th respondent seeking to remove the name of the 3rd respondent corporation from the TSLR. The 4th respondent however, conducted no enquiry to remove the name of the 3rd respondent.

(vi) As per section 38 of the Tamil Nadu Town and Country Planning Act, 1971, subject land shall be deemed to be released from such reservation and the subject property continues to remain with the owner who had dealt with the same by way of sale. As there was no response evoked from the 4th respondent to the representation dated 17.10.2020, the petitioners have no other alternative except to approach this court. Hence, the writ petition.

3.0. The 3rd respondent – Commissioner, City Municipal Corporation, Coimbatore filed a counter affidavit opposing the writ petition and *inter alia* contending as under:

3.1. The approved layout called 'Gurusamy Nagar-2" was formed in S.F.Nos.380, 381/1 and, 373 (part) of Vilankurichi Village which is within the limits of Coimbatore City Municipal Corporation. The total extent of layout is Acres 18.16 cents and the same was plotted into 199 Nos. of house sites with



W.P.No.12853 of 2021

96 cents earmarked for park site and 80 cents reserved for community hall. In the TSLR records, the above reserve site area meant for park and community hall stands in the name of the Coimbatore Corporation and as on date, the land is in the possession and control of the Corporation of Coimbatore. The site reserved for community hall was found to be sold to the petitioner in violation of the layout approval conditions. The promoter had no right to sell the reserve site meant for public purpose. The Coimbatore Corporation is the custodian of the sites reserved for public purposes and has got every right to take possession and obtain patta in their favour to safeguard the properties and to avoid further alienation. A name board of the corporation was also erected on the reserve site.

3.2. The circular dated 24.05.1985 issued by the 1st respondent had been subsequently withdrawn and therefore, the reserve sites earmarked for public purposes have to be handed over to the respective local bodies and the promoter has no right to alienate the same. Even if the layout formed is more than 10 Acres in extent, 10% of the reserve site has to be handed over to the local body concerned. Under these circumstances, the claim made by petitioner based on the above said notification is unsustainable and the alienation of reserve site by the promoter is invalid and subject land is vested in the corporation.

3.3. The site reserved for public purpose should be maintained by the



W.P.No.12853 of 2021

corporation alone irrespective of the classification like community hall, kalyana mandapam, hospital, etc. As soon as the respondent corporation came to know that patta for the subject property stood in the name of the petitioners, the respondent corporation approached the 4th respondent for removing the name of the petitioners as the site was a reserve site, meant for park and community hall and the name of the respondent corporation was entered in the revenue records (TSLR). Thereafter, the respondent corporation erected the name board in the reserve site to safeguard the subject property and to stop further alienation to any third parties.

3.4. Section 38 of the Town and Country Planning Act is not applicable to the case of the petitioners as it is a private layout formed as per Section 49 of the Town and Country Planning Act and it is one of the conditions of the layout approval that the reserve site has to be gifted to the local body concerned at free of cost failing which the local body concerned being the custodian of the reserve site for public purposes has got every right to take possession of the reserve site for public purposes. Hence, the respondent corporation prayed for dismissal of the writ petition.

4. The 4th respondent-Tahsildar, Coimbatore North Taluk, filed a counter affidavit opposing the writ petition and inter alia contending that as per the



W.P.No.12853 of 2021

TSLR the subject property belongs to respondent corporation and it is a vacant land covered with bushes. When the alleged transactions of sale and settlement in respect of the subject property are questionable the respondent corporation has got every right to take action to safeguard the reserve site meant for public purposes. On application from the 3rd respondent corporation, mutation in revenue records were made.

5. Heard Mr.S.Mukunth, learned senior counsel on behalf of Mr.P.Tamilvel, learned counsel on record for the petitioner, Mr.K.Magesh, learned standing counsel appearing for the 3rd respondent corporation and Mr.P.Sathish, learned Additional Government Pleader appearing for the respondents 1, 2 and 4.

6. The learned senior counsel appearing for the petitioner would vehemently submit that as per the circular dated 29.06.1984 in Roc.No.9738/1983-BCC, as far as layouts which are less than 10 Acres in extent is concerned, 10% of such area should be reserved only for open spaces like parks, play fields etc. and in cases of layout which are more than 10 Acres in extent, 50% of the total reservation may be provided for public purposes like kalyana mandapams, community hall, reading room, libraries, etc., and the balance 50% may be reserved as open space. Subsequently, another circular



W.P.No.12853 of 2021

dated 24.05.1985 in Roc.No.18150/85-GL was issued wherein it was decided by the authorities that area reserved for open spaces like park, play field, children play area, alone required to be handed over and the other reserve area for public purpose like kalyana mandapams, community halls, relate to commercial category and as the land owner should not be deprived of income which he may likely to get by disposal of these plots as he has to make surrender to the executive authority of the local body concerned a sizeable amount of land by way of non-commercial open spaces, the owner of the land need not surrender or hand over the same to the executive authority of the local body concerned. Thereafter another circular was issued directing that open space reserved for public purposes like, park, play field, children play field, alone need to be handed over to the executive authority by way of gift deed. The proceedings of the Commissioner dated 21.07.1988 would make it clear that for open spaces only 3929 square meters alone have been gifted to the corporations and the other area measuring an extent of 3682 square meters reserved for public purposes like kalyana mandapam and community hall was not gifted to the corporation.

7. According to the learned senior counsel for the petitioner, the area reserved for public purposes like kalyana mandapam or community hall, other



W.P.No.12853 of 2021

than open spaces reserved for public purposes like park, play field, children play field etc., comes under commercial category and the owner of the land has got saleable right of the subject land and the only restriction should be that such land should not be used for any other purpose than the one for which it was reserved. Earlier while disposing of the writ petition in W.P.No.16259 of 2023 filed by the 1st petitioner herein challenging the notice dated 27.04.2023 in Na.ka.No.33278/2022/H1/W, issued by the Assistant Commissioner, West Zone, Coimbatore Corporation, a Division Bench of this Court by order dated 28.03.2024 gave liberty to the corporation to acquire the subject land however, without resorting to any legal procedure to acquire the land, the 3rd respondent has got its name changed in the revenue records in the place of the petitioners' name and erected hoardings. Therefore, the site reserved for public purposes like kalyana mandapam, community hall etc., can be used only for such purposes for which they were earmarked and they can be sold from one person to another and the restrictive covenant will continue.

8. The learned senior counsel in support of his submissions placed reliance heavily upon the judgements of this court in the case of **P.Kaliappan v. Tahsildar, Taluk Office, Coimbatore and others** [2021 SCC OnLine Mad 12504] and **Commissioner, Tiruppur Corporation, Tiruppur v.**



W.P.No.12853 of 2021

Vasanthakumari, [2020 (1) CTC 636].

WEB COPY

9. Per contra, Mr.K.Magesh, learned standing counsel appearing for the respondent corporation would contend that as per Section 250 of the Coimbatore City Municipal Corporation Act, 1981, if the owner of any land utilises, sells, leases or otherwise disposes of such land or any portion or portions of the same as sites for the construction of buildings by making a layout he shall also reserve not exceeding 10 per cent of the layout for the common purposes in addition to the area provided for laying out streets. If any owner contravenes any of the conditions specified above, he shall be liable for prosecution.

10. The learned standing counsel would further contend that an area reserved for public purposes cannot be used for private use by anyone including that of the local body. A sale in respect of an area reserved for public purposes could not convey title to the property to the purchaser and as such the purchase by the petitioners themselves are invalid and no title passed to the petitioners as the vendor of the petitioners had no transferable right when the property was set apart for public purpose.

11. The learned standing counsel would further contend, any land reserved for park, play field, children play field cannot be reclassified into



W.P.No.12853 of 2021

residential zone. A sale in respect of an area already reserved for public purposes could not convey title to the property to the purchaser and as such the purchase by the petitioners themselves are invalid and not title passed to the petitioners as the vendor of the petitioners had no transferable right when the property was set apart for public purpose.

12. In support of his contention, the learned standing counsel would place much reliance on the judgement of a Division Bench of this court in the case of **T.Gnanamani Ammal v. The Avaniappuram Town Panchayat rep. By its Executive Officer, Avaniapuram, Madurai**, 2007 (4) CTC 67.

13. Mr.P.Sathish, learned Additional Government Pleader would, on his part placing much reliance upon the judgement of a Division Bench of this Court in **Sri devi Nagar Residences Welfare Association v. Subbathal and others [(2007) 3 MLJ 990]**, submit that no portion of a land reserved for public purpose in a layout or in a development plan or master plan approved by the local body can be used for any other purpose than the one specified therein.

14. This court has considered the rival submissions and perused the available records carefully.

15. It is relevant to note here that at the time of layout approval, in regard to laying out under Section 250 of The Coimbatore City Municipal Corporation



W.P.No.12853 of 2021

Act, 1981 there is a mandate on the owner to reserve not exceeding 10 per cent of the layout for the common purposes in addition to the area provided for laying out streets and if any owner contravenes any of the conditions specified above, he shall be liable for prosecution.

16. Section 250 of the Coimbatore City Municipal Corporation Act, 1981 reads as under: -

“250. Owners’ obligation to make a street when disposing of lands as building sites. — (1) If the owner of any land utilises, sells, leases or otherwise disposes of such land or any portion or portions of the same as sites for the construction of buildings he shall, save in such cases as the site or sites may abut on an existing public or private street, layout and make a street or streets giving across to the site or sites and connecting with an existing public or private street.

(2) In regard to the laying out or making of any such street or streets the provisions of section 251 shall apply, subject to the conditions that the owner shall remit a sum not exceeding 50 per cent of the estimated cost of layout improvements in the land and that the owner shall also reserve not exceeding 10 per cent of the layout for the common purposes in addition to the area provided for laying out streets. If any owner contravenes



WEB COPY



W.P.No.12853 of 2021

any of the conditions specified above, he shall be liable for prosecution.

(3) If, in any case, the provisions of sub-sections (1) and (2) have not been complied with, the Commissioner may, by notice, require the defaulting owner to layout and make a street or streets, on such land and, in such manner and within such time as may be specified in the notice.

(4) If such street or streets are not laid out and made in the manner and within the time specified in the notice, the Commissioner may layout and make the street or streets, and the expenses incurred shall be recovered from the defaulting owner.

(5) The Commissioner may in his discretion issue the notice referred to in sub-section (3) or recover the expenses, referred to in sub-section (4) to or from the owners of any buildings or lands abutting on the street or streets concerned but any such owner shall be entitled to recover all reasonable expenses incurred by him or all expenses paid by him, as the case may be, from the defaulting owner referred to in sub-section (3).”



W.P.No.12853 of 2021

17. The above provision would make it clear that while laying out, in the event, the owner not reserved land not exceeding 10 per cent of the layout for common / public purposes in addition to the area provided for laying out streets, the Commissioner may layout and make the street or streets and the expenses incurred shall be recovered from the defaulting owner.

18. It is not in dispute that at the time of approval of plan by proceedings dated 21.07.1988 in Na.Ka.No.126630/1987/H.13, 10 per cent of layout was earmarked for public purposes of which 3929 square meters of land was reserved for park and 3682 square meters of land was reserved for community purposes besides certain extent for shop purposes. The condition No.15 of the layout approval proceedings would make it clear that the area reserved for community purposes like kalyana mandapam and community hall shall be used only for those purposes. At the time of layout approval itself it was made clear that the purposes for which 3682 square meters of land was reserved cannot be changed. Whereas the land reserved for purposes like park, play field measuring an extent of 3929 square meters alone was handed over to the respondent corporation by way of gift deed.

19. It would be appropriate to extract the relevant portion of the circular issued by the 1st respondent dated 29.06.1984 in Roc.NO.9798/1983-BCC



W.P.No.12853 of 2021

which reads as under:-

WEB COPY

“It has been decided in consultation with all the Regional Deputy Directors at the Officer's Meeting held at Coimbatore on 28.05.84 that in layouts which are of less than 10 acres in extent, 10% of such area should be reserved for open space only such as parks, play fields, etc., IN case of layout of more than 10 acres in extent, 50% of the total reservation made may be provided for public purposes like kalyana mandapam, community hall, reading room, library, etc. and the balance 50% may be reserved as open space.”

20. Thereafter, a clarification was issued under circular in Roc.Ho.18150/85-01 dated 24.05.1985 by the Office of the Director of Town and Country Planning, Building Division, Chennai, which reads as under:-

“During the meeting of the Regional Deputy Directors held at Madras from 18.04.1985 to 20.04.1985, it was felt that the word "Reserved Lands" stipulated in the layout condition mentioned above requires explicit definition as the lands reserved in the layout would include parks, play fields, community halls, Kalyana Mandapam, etc., It was felt that it would be sufficient if areas reserved as open space like parks, play fields, children play space alone need be handed over to the Executive authority of the local body as they



WEB COPY



W.P.No.12853 of 2021

essentially belong to the category of non commercial public purposes. The other reservations like Kalyana Mandapam, Community Halls, etc., belongs to commercial category and it was felt that the layout owner should not be deprived of income which, he may likely to get by disposal of these plots as he has to surrender to the Executive Authority of the local Body a sizeable amount of land by way of non-commercial open spaces, instructions have already been issued in this office circular that in layouts which are of less than 10 acres in extent, 10% of such area should be reserved only for open spaces such as parks, play fields, etc. In cases of layouts of more than 10 acres in extent, 50% of the total reservation made may be provided for public purpose like kalyana mandapam, Community Hall, reading room, library, etc., and the balance 50% may be reserved as open space."

21. The above circular would make it clear that in cases of layouts of more than 10 Acres in extent, 50% of the total reservation made may be provided for public purposes like kalyana mandapam, community hall, reading room, libraries, etc., and the balance 50% may be reserved as open space for public purposes.



W.P.No.12853 of 2021

22. The above said circular would make it clear that 50% of area reserved for public purposes like kalyana mandapam, community hall, etc., the authorities while bringing the said land under commercial category, it was decided by the authorities that the layout owner should not be deprived of income which, he may likely to get by disposal of these plots as he has to surrender to the Executive Authority of the local body a sizeable amount of land by way of non-commercial open spaces. Therefore, the above circular would, in fact, make it clear that the area reserved for the public purposes like kalyana mandapam, community hall is saleable with a restriction that the purchaser should not change the public purpose for which the land was reserved. Further, by circular dated 17.08.1987, it was made clear that only places earmarked for park, children play field, alone should be gifted to the local body.

23. The layout approval proceedings vide Na.Ka.No.126630/87/H.13 dated 21.07.1988 would make it clear that in tune with the circular referred to above, only an extent of 3929 square meters of land which was reserved for public purposes as open space alone was gifted to the respondent corporation and the remaining area of 3682 square meters of land which was earmarked for public purposes like kalyana mandapam, community hall was simply reserved and the same was not handed over or transferred to the respondent corporation



W.P.No.12853 of 2021

by way of gift deed. The condition No.15 of the layout approval proceedings would make it clear that the area earmarked for public purposes like kalyana mandapam, community hall, etc., should be used only for the purposes for which it was reserved and there should not be any change of user. In other words, there was no restriction whatsoever in respect of the right of the owner to deal with the property, but the only restrictive covenant was that the land should be used only for the public purpose for which it was reserved, and there should not be a change of user.

24. A combined reading of the circulars referred to above and the conditions stipulated in the layout approval would make it clear that what was gifted to the respondent corporation was only an area reserved for open site for the establishment of park and the remaining area was directed to be maintained for the purpose for which it was reserved namely, community hall. No where in the layout approval and the conditions attached thereto, the saleable right of the land owner/promoter was restricted by the respondent corporation.

25. In the case of **P.Kaliappan v. Tahsildar, Taluk Office, Coimbatore and others [2021 SCC OnLine Mad 12504]**, this court has held as under:-

“23. In all the above cases, it has been held that any site reserved for street, open space, park and school etc., in a layout plan is normally for public purpose as it



WEB COPY



W.P.No.12853 of 2021

is inherent in such reservation that it shall be used by the public in general. Such a reservation has ceased the title of the owner to execute any sale deed. Whereas, in the case on hand, the subject properties were earmarked for community hall and as such, there is no bar under the Tamil Nadu Town and Country Planning Act to sell the same. However, the purpose for which the same was allotted shall not be used for other purposes. The petitioners applied for planning permission to construct community hall. Therefore, the above judgments are not helpful to the case on hand.”

26. In the case of **Commissioner, Tiruppur Corporation, Tiruppur v. Vasanthakumari [2020 (1) CTC 636]**, this court has held 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



WEB COPY



W.P.No.12853 of 2021

that the land is used for the purposes for which it was shown to be reserved in the layout plan.”

27. In the case of **Global Waste Recyclers Ltd. v. Government of Tamil Nadu**, [2024 (3) CTC 1], following the judgement of the Hon'ble Supreme Court in *Bhavnagar University Vs. Palitana Sugar Mills Pvt Ltd. and Others* reported in [(2003) 2 SCC 111], a Division Bench of this Court has held as follows:-

“31. The successful planning is to make people's lives more convenient by creating a physical environment which conduces to health, safe passage from place to place etc., to create a lung space within the city and to prohibit relentless building activities and to regulate activities by classifying lands based on user Zone which form part of such Town Planning scheme. Whenever a person's property right is injuriously affected by virtue of any provisions contained in any Regional Plan or Master Plan or Detailed Development Plan, the person's right to compensation is provided even under the Madras Town and Country Planning Act, 1920.

32. The Madras Town and Country Planning Act, 1920, was repealed by the Tamil Nadu Town and Country Planning Act, 1971. [Act 35 of 1972]. It is seen that there is no material change in the scheme of Act. The



WEB COPY



W.P.No.12853 of 2021

Act provides for appointment of Director of Town and Country Planning Act and other authorities apart from constitution of Town and Country Planning Board. The functions and powers of the Board as well as functions of other authorities are given in the Act. Under Section 9A of the Act, which was introduced by way of an amendment in the year 1974, Madras Metropolitan Development Authority [MMDA] consisting of 12 persons was established. Under the Town and Country Planning Act, 1971, after the declaration of Local Planning Area in terms of Section 10 and after the constitution of appropriate Planning Authority under Section 11, every Regional Planning Authority and Local Authorities are required to prepare and submit a Master Plan under Section 17 of the Act for the Local Planning Area providing for all or any of the following matters, namely,

(a) the manner in which the land in the planning area shall be used ;

(b) the allotment or reservation of land for residential, commercial, industrial and agricultural purposes and for parks, playfields and open spaces ;

(c) the allotment or reservation of land for public buildings, institutions and for civic amenities ;



WEB COPY



W.P.No.12853 of 2021

- (d) the making of provision for the national highways, arterial roads, ring roads, major streets, lines of communication including railways, airports and canals; (e) the traffic and transportation pattern and traffic circulation pattern;
- (f) the major road and street improvements;
- (g) the areas reserved for future development, expansion and for new housing;
- (h) the provision for the improvement of areas of bad layout or absolute development and slum areas and for relocation of population;
- (i) the amenities, services, and utilities;
- (j) the provision for detailed development of specific areas for housing, shopping, industries and civic amenities and educational and cultural facilities;
- (k) the control of architectural features, elevation and frontage of buildings and structures;
- (l) the provision for regulating the zone, the location, height, number of storeys and size of buildings and other structures, the size of the yards and other open spaces and the use of buildings, structures, and land;
- (m) the stages by which the master plan shall be carried out; and
- (n) such other matters as may be prescribed.”



W.P.No.12853 of 2021

28. Earlier the 1st petitioner herein moved a writ petition in W.P.No.16259 of 2023 challenging the notice issued by the Assistant Commissioner dated 27.04.2023 in Na.ka.No.33278/2022/H1/W and a Division Bench presided over by the Hon'ble Chief Justice by order dated 28.03.2024 disposed of the writ petition. The relevant portions of order read as under: -

“5. The open space and/or the spaces reserved for public purpose in a layout may not entirely vest with the Planning Authority unless a registered instrument is executed. However, at the same time, the site reserved for public purpose also cannot be used for any other purpose than for what it has been reserved.

6. Learned Senior Counsel for the petitioner, at this stage, submits that the petitioner would approach the Corporation for regularisation. The Corporation may be directed to consider the said application/representation of the petitioner.

7. No gift deed has been placed on record suggesting that the original owner has gifted the subject writ land in favour of the Corporation.



W.P.No.12853 of 2021

WEB COPY

8. Learned counsel for the Corporation submits that the Corporation be given liberty to acquire the subject writ land.

9. The power of eminent domain can be exercised for public purpose. It is for the Corporation or the Government to take steps in that regard, as may be permissible under law.”

29. When the corporation sought liberty to take steps to acquire the subject land, the Division Bench observed that power of eminent domain could be exercised for public purpose and it is for the corporation or the Government to take steps to acquire the land as may be permissible under law. It, however, seems that no steps have been taken to acquire the subject land.

30. Admittedly, the layout in question is more than 10 acres in extent and therefore, when the circular order itself indicate that only 50% of the total reservation may be reserved as open space and in respect of such reserved site alone gift deed shall be executed in favour of the executive authority of the local body concerned and the remaining 50% may be provided for public purposes shall be used commercially for public purpose like kalyana mandapam, community hall, reading room, library, etc., the owner of such reserved land has also got saleable right in the same. One of the conditions imposed in the layout



W.P.No.12853 of 2021

approval would also indicate that the said reserve land shall be used only for the purpose for which it was earmarked and not for any other purposes. Therefore, it cannot be said that the owner had not retained the power to sell such reserve site and the only restriction is that the such land should be used only for the purpose of community hall. As such, the respondent corporation cannot claim right or interest over the subject land based on mere reservation in the absence of any transfer of title in their favour. No doubt, in regard to laying out under Section 250 of The Coimbatore City Municipal Corporation Act, 1981 there is a mandate on the owner to reserve not exceeding 10 per cent of the layout for the common purposes in addition to the area provided for laying out streets and if any owner contravenes any of the conditions specified above, he shall be liable for prosecution.

31. Admittedly, the layout in question is of the year 1988 and is more than 10 acres in extent and 10% of the of the layout was reserved and out of such reservation made, 50% had already been gifted as per the circular and the remaining land is earmarked for public purpose namely, community hall. When the circular of the authorities dated 24.05.1985 itself indicate that the land reserved for public purpose other than the land reserved for open space is saleable provided the land should not be used for any other purpose than the



W.P.No.12853 of 2021

one for which it was reserved and when no gift was executed in respect of the subject land as already held by the Division Bench of this Court, if at all the respondent corporation wishes to acquire the subject land, it is for them to acquire the same as per law. But, without having any title over the subject land, merely based on reservation made in the layout, the respondent corporation cannot claim title or any right over the subject property and interfere with the title and right of the land owner to deal with the subject land. If only the land owner puts the subject land into different use other than the purpose for which it was reserved, the respondent corporation could certainly take action to prevent such change of user.

32. The judgement in the case of **T.Gnanamani Ammal v. The Avaniappuram Town Panchayat rep. By its Executive Officer, Avaniapuram, Madurai**, 2007 (4) CTC 67 upon which much reliance was placed by the learned standing counsel for the corporation is not applicable to the facts of the present case. As the circular in Roc.No.9798/1983-BCC dated 29.06.1984 itself would direct that only 50% of the total area reserved for open spaces like park, play field, children play area, alone was required to be handed over and the other reserve area for public purpose like kalyana mandapams, community halls, relate to commercial category, the land owner was permitted



W.P.No.12853 of 2021

to retain the same for community hall purpose, however, with a condition that there should not be any change of user and the land should be used only for the community hall purpose.

33. In such view of the matter, this court is of the considered view that action of the 4th respondent in mutating the revenue records in the name of the 3rd respondent corporation and entering the name of the respondent corporation in the TSLR cannot be said to be valid in the eye of law. As already stated above, the Division Bench of this court has held that the area reserved for public purpose in a layout may not entirely vest with the Planning Authority unless a registered instrument is executed and gave liberty to the respondent corporation to take steps to acquire the subject land.

In the result, the The 4th respondent - Tahsildar is directed to consider the representation of the petitioner dated 07.10.2020 for the removal of the name of the 3rd respondent Corporation in the TSLR and in all other revenue records in respect of the landed property measuring an extent of 3682 square meters comprised in S.F.Nos.380, 381 and 373(Part) of Vilankurichi Village situate at Gurusamy Nagar, Vilankurichi Village, Coimbatore District, which was reserved for public purposes – community hall and pass appropriate orders thereof in the light of the observations made hereinabove within a period of



W.P.No.12853 of 2021

eight weeks from the date of receipt of a copy of this order.

WEB COPY

It is, however, made clear that if there is any change of user of the subject land other than the community hall or kalyana mandapam purpose, the respondent corporation may take appropriate action against the land owner concerned. Further, it is also open to the respondent corporation or government to acquire the land by due process of law.

This writ petition is disposed of accordingly with the above directions. No costs. Consequently, connected WMP is closed.

Index : yes / no
Neutral Citation : yes / no
kmk

23..07..2024



W.P.No.12853 of 2021

To

- 1.The Director,
Director of Town and Country Planning,
Building Division,
No.807, Annasalai,
Chennai 600 002.
- 2.The Deputy Director,
Director of Town and Country Planning,
Corporation Shopping Complex,
Dr.Nanjappa Road,
Coimbatore 641 018.
- 3.The Commissioner,
Coimbatore Municipal Corporation,
Coimbatore 641 001.
- 4.The Tahsildar,
Coimbatore North Taluk Office,
Dr.Balasundaram Road,
Coimbatore-18.



WEB COPY



W.P.No.12853 of 2021

N.SATHISH KUMAR.J.,
kmk

Pre Delivery Order
in
W.P.No.12853 of 2021

23..07..2024
2/2