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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.484 & 485 of 2021

1.Sathiyam Bible Presbyterian Church

Repd.by its Pastor Rev.S.Baskaran

Office at 5-C/6, sidco Main Road,

Kaviarasu Kannadasan Nagar,

Chennai – 600 118.

... 1st Appellant in both Appeals

2.Smt.Poongodi

... 2nd Appellant in AS No.484/2021

2.N.Raja

... 2nd Appellant in AS No.485/2021

Vs.

1.The Commissioner,

Chennai Corporation

Park Town, Chennai – 600 003.

2.The Deputy Commissioner (North)

Chennai Corporation, Chennai – 600 003.

3.The Assistant Commissioner

Zonal Office, Zone-1, Chennai Corporation,

Having Office at Old No.266,

Thiruvettiyur High Road, Tondiarpet,

Chennai – 600 021.

4.The Executive Engineer, Zone-1,

Chennai Corporation,

Having Office at No.266,

Thiruvettiyur High Road, Tondiarpet,

Chennai – 600 021.

5.The Assistant Executive Engineer



Zone-1, Chennai Corporation,
Having Office at No.45,
Krishnamurthy Salai, Erukkencherry
Chennai – 600 051.

... Respondents in both Appeals

COMMON PRAYER: Second Appeals filed under Section 100 of Civil Procedure Code against the judgment and decree of the learned V Additional Civil Court, Chennai in A.S.Nos.120 & 121 of 2017 dated 02.02.2019 confirming the judgment and decree in O.S.Nos.560 & 2434 of 2008 dated 28.09.2016 on the file of the learned IV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.P.Gopalan

For Respondents : Mr.G.T.Subramanian

J U D G M E N T

The unsuccessful plaintiffs are the appellants herein. They filed the suit in O.S.No.560 of 2008 on the file of V Additional City Civil Court at Chennai to (a) declare the notice issued in No.56304 under Sections 220 and 222 of the Madras City Municipal Corporation Act dated 16.04.2007 as illegal and void ab initio and (b) for permanent injunction.

2. The suit in O.S.No.2434 of 2008 has been filed by the very same plaintiffs/appellants for declaration to (a) declare the notices issued in No.56303 under Sections 220 and 222 of the Madras City Municipal



Corporation Act dated 16.04.2007 as illegal and void ab initio and (b) for permanent injunction.

3. The plaint proceeds on the basis that the appellants have sought for permission for construction of the prayer hall as per the development control rules and the same was rejected by the first respondent and the Chennai Metropolitan Development Authority vide their letter dated 12.09.1997 and statutory appeal was also dismissed vide G.O.Ms.No.469 Housing and Urban Development Department dated 29.05.2001. W.P.No.16214 of 2001 was dismissed and W.A.No.2274 of 2005 filed before the Division Bench of this Court was also dismissed and hence the plaintiffs filed another application and Municipal Corporation has issued notices and thus the appellants challenged the said notices.

4. In the written statement, the Corporation has taken a stand that the layout is an approved layout in D.T.P.No.25/1974 and received into DTP No.168/74. After approval, the children play space automatically vested with Corporation of Chennai. No one has right to develop and construct any structure in the above said open space as the same is reserved, demarcated as play ground of Corporation of Chennai. It is a public



purpose land belonging to the Corporation of Chennai. Already a case is pending before the Division Bench of this Court in W.A.No.2274 of 2005.

An individual cannot claim planning permission in the land belonging to Corporation of Chennai. The land belongs to Corporation of Chennai. Therefore, no one can claim planning permission and no one have no right to put up any structure. Hence, encroachment notice had been issued and huts put up by the private party were removed. The plaint filed by the plaintiffs is barred by limitation and there is no cause of action to maintain the suit and prayed for dismissal of the suit.

5. Joint Trial was ordered and during the trial, PW1 was examined and Exs.A1 to A30 were marked. On the side of the defendants, Exs.B1 to B3 were marked.

6. On consideration of both oral and documentary evidence and also taking note of the fact that the 1st plaintiff is encroacher of the land which has been classified as children play space as per approval layout in DTP No.25/1974 and received into DTP 168/74. After approval layout, the children play space vested with the Corporation of Chennai. As per layout in DTP No.25/1974 and received in DTP No.168/74, there is no plot



number viz. 36A, 37A and 38A. The 1st plaintiff being rank trespasser is not entitled to file the suit and dismissed the suit.

7. Aggrieved against the said order and judgment passed by the Trial Court in both the suits, they filed two appeals viz. A.S.Nos.120 & 121 of 2017. Both the case have been tried together and on re-appreciation of the evidence, both the Appeal Suits were dismissed and hence the present Second Appeals have been filed by the appellants/plaintiffs.

8. As against the concurrent judgment of rejection by the Lower Appellate Courts below, the plaintiffs have preferred these Second Appeals.

9(i) The learned counsel appearing for the appellants would contend that the property with larger extent, which originally belonged to one Krishnamurthy Mudaliar was divided into plots by them in the year 1974. However, their attempt to get DTP approval was unsuccessful. They got only technical approval from the Directorate of Town Planning, Chennai in LPDM/DTCP No.25/1974. In that original layout plan, the suit property was shown as children play area. However, the said Krishnamurthy submitted a revised plan for town planning layout approval which was given



technical approval in LPDM/DTCP No.168/1974. This approval is also not a complete one for want of local body approval. As far as the plaintiffs are concerned, since the attempt of the original owner Krishnamurthy in getting Town Planning approval was not a complete one, the layout remained unapproved. Hence, the said Krishnamurthy sold the house sites in unapproved layout. When the property remains unapproved, there is no question of earmarking children play area or public park in the property. When the property remains unapproved, ownership of the original owner remains with them as no area is earmarked for public utility. They have right to sell every inch of property to third parties.

9(ii) The learned counsel for the appellants further contended that the earmarked area for children play space was not handed over to the local body. As per the appellants' counsel, the defendants/respondents have not produced any document to show that the layout was an approved layout. So, as per the appellants, when the layout remains unapproved, the owner of the property has every right to sell every inch of the property they own to third parties.



10(i) On perusal of the earlier order passed by this Court in both Writ Petition and Writ Appeals, this Court finds that the first round of litigation by way of Writ Petition and Writ Appeal have been rejected under special jurisdiction as admitted by the appellants in Writ Petition and Writ Appeals. The second point raised was that in the written statement, the Municipal Corporation herein has specifically stated that in the layout approved plan, there are no plots with number 36A, 37A, 38A. The property purchased by the appellants is shown as children play area. The copy of revised layout plan approval in No.168/74 which the appellants claim as incomplete technical plan approval was filed as Exs.A4 & A5. Even in this revised layout plan, the suit property is shown as park and there are no plots with Plot Nos.36A, 37A & 38A.

10(ii) It is pertinent to note that the 1st appellant has purchased the property in the year 1991 from a person named Thulasinga Mudaliar who claims to be the power agent of the original owner Krishnamurthy, based on a power of attorney deed executed by the said Krishnamurthy in the year 1979. It is not known whether power of attorney deed was in subsistence on the date of execution of the sale deed by the power agent in 1991 and whether the principal namely the said Krishnamurthy was alive on the date



of execution of the sale deed in favour of the 1st appellant by the power agent.

10(iii) As per the layout prepared by Krishnamurthy, there was no plots with numbers as 36-A, 37-A & 38-A. In the layout, it was shown only as children play area and public park. That being the case, whether the sale of the children play area and park area, by numbering the same as plot numbers 36A, 37A & 38A was effected with the knowledge and consent of the original owner Krishnamurthy or not, is also an important question goes unanswered. Hence, in the factual position, both the Courts below have specifically rendered a concurrent finding that once the property is earmarked for public purpose in the layout, even the owner ceased to be the legal owner and holds the property as the trustee of the public in general. Further, whether the property is transferred to the Corporation or not, the Corporation becomes the custodian of the earmarked property and gets a right to manage the same. Therefore, the vendor of the 1st appellant has no right to sell the suit property which was reserved as children play area and park.



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10(iv) The present suit has been filed to declare the notices Exs.A15 & A16 issued by the defendant Corporation under Section 220 r/w 222 of the Corporation Act as illegal and void abinitio. It is seen that it is a show cause notice issued to remove the encroachment from the suit property and on the factual position, a concurrent finding has been rendered that the property in question has been reserved for children play area and park and nobody is empowered to change the intended purpose of the property. As per the decision of the Hon'ble Supreme Court, the Corporation has custodian of the same. The residents Association of Abirami Avenue to whom the plots of the layout have been sold, have petitioned the Corporation for development and maintenance of the public park as can be seen from the original earmarked position. It appears that the appellants, without verifying the records and without getting the legal position, had purchased the property earmarked for public purpose and hence he is not entitled to the relief and also when the vendor of the appellants is not having the title to convey since it has already been earmarked for the children play area and park in the layout and it is vested with the Corporation. The vendor has no right or titled to convey the same. In this regard, it remains to be stated that in the decision of the Hon'ble Supreme Court in ***“Pt.Chet***



Ram Vashist Municipal Corporation of Delhi” reported in 1995 (1) SCC

47, it has been held as follows -

6..... The Corporation, by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same things as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the committee to transfer land in the colony for park and school was an order for transfer without there being any sanction of the same in law.

11. In view of the above, I find that the appellants have no case of plea and both the Courts below have rightly considered the factual position rejected by the Corporation and Exs.A15 & A16 have been issued in consonance under Section 220 & 222 of the Madras City Municipal Corporation Act. Hence, I find no reason to interfere with the well considered judgments of the Courts below which does not suffer from any irregularity or illegality warranting interference by this Court and no substantial questions of law arise for consideration in these appeals. Accordingly, both the Second Appeals are liable to be dismissed. At this juncture, the learned counsel for the appellants would submit that other



cases are pending before the other courts. Hence, liberty is given to the appellants to agitate his case in the other suits.

12. In the result, both the Second Appeals are dismissed confirming the judgment and decree of the learned V Additional City Civil Court, Chennai in A.S.Nos.120 & 121 of 2017 dated 02.02.2019 confirming the judgment and decree in O.S.Nos.560 & 2434 of 2008 dated 28.09.2016 on the file of the learned IV Assistant Judge, City Civil Court, Chennai. No costs.

01.04.2024

Index : Yes/No
Speaking/Non-speaking order
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To
1.The V Additional Judge,
City Civil Court,
Chennai.

2.The IV Asst. Judge,
City Civil Court,
Chennai.

3.The Section Officer,
V.R.Section,
High Court,
Madras.

RMT.TEEKAA RAMAN, J.



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