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W.P.No.25898 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM:

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

W.P.No.25898 of 2024

Jose Brijo Tharagan

.... Petitioner

Vs

1. The Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai – 600 015.

2.The Director,
Tamil Nadu Town and Country Planning,
Chennai – 600 002.

3.The Member Secretary/
Deputy Director,
Coimbatore Local Planning Authority,
Door No.50, FCI Road, Gandhima Nagar,
Ganapathy, Coimbatore – 641 004.

4.N.M.Sukumar
(R4 is impleaded vide order dated 06.09.2024
made in WMP No.29167 of 2024 in
W.P.No.25898 of 2024)

.... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India
praying for the issuance of a Writ of Mandamus, directing the
respondents to declare that the petitioner's land comprised in



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S.F.No.716/2, 716/3, Sri Ganapathy Garden, Vellalore Village, bearing Plot No.7,8,11, totally measuring about 5190 sq.ft. is deemed to be released from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 and consequently direct the respondent to pass appropriate orders for release of petitioner's land comprised in S.f.No.716/2, 716/3, Sri Ganapathy Garden, Vellalore Village, bearing Plot No.7, 8, 11, totally measuring about 5190 sq.ft.

For Petitioner : Mr.M.R.Dhalapathy Vignesh Kumar

For R1 to R3 : Mr.V.Manoharan
Additional Government Pleader

For R4 : Mr.M.Purushothaman

ORDER

This Writ Petition has been filed for a direction, directing the respondents to declare that the petitioner's land comprised in S.F.No.716/2, 716/3, situated at Sri Ganapathy Garden, Vellore Village, bearing Plot Nos.7, 8 & 11 admeasuring 5190 sq.ft. is deemed to be released from the reservation under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

2. Heard the learned counsel appearing on either side and perused the materials available on record.



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3. The petitioner purchased the property comprised in S.F.No.716/2, 716/3, situated at Ganapathy Garden, Vellore Village, bearing Plot Nos. 7, 8 & 11 admeasuring 5190 sq.ft. registered vide Sale Deeds dated 23.05.2014, 23.05.2014, 30.01.2015 registered vide Document Nos.4190/2014, 4191/2014 & 821/2015. When the petitioner approached the third respondent for building approval, the petitioner was informed that they had dropped the 60 feet scheme road runs across the said land, hence without getting appropriate order of deleting the scheme road, the third respondent cannot proceed with the building plan approval.

4. The learned counsel appearing for the petitioner would submit that the scheme road was formed in the subject property, it is shown as 60 feet scheme road as per the Vellore Detailed Development Plan No.10 of the year 1994. Thereafter, there was no acquisition of the said land for forming the land in order to comply the provision under Sections 37 and 38 of the Tamil Nadu Town and Country Planning Act, 1971. If the said land is not acquired within a period of three years, the acquisition proceedings will automatically be lapsed.



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5. The learned counsel appearing for the fourth respondent would submit that the petitioner is not residing in India. At the time of swearing the affidavit filed in support of the writ petition, he is in abroad. That apart, the subject land is shown as road in the Ganapathy Garden Layout of the year 2014-2015. The total area of 2.86 acres comprised in S.F.Nos.716/2A, 2B and 3 was laid out as Sri Ganapathy Garden. A gift deed was also executed on 22.04.2021 vide document No.3684 of 2013 in favour of the third respondent in which, the subject land was earmarked as public purpose, such as 'park site' in the layout. However, the said land was sold out and subsequently, the petitioner purchased the same. Therefore, the said land was not part of the scheme road as per the detailed development plan.

6. That apart, a similar request was made by one M.Savithri in W.P.No.2253 of 2024 and the same was dismissed by this Court, by an order dated 06.02.2024. While dismissing the said writ petition, this Court observed as follows :-

“5. So far as the sites over which the petitioner claims right is concerned, it is situated in the layout by name “Sri Ganapathy Garden”. There is no quarrel on



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the same. However, the petitioner claims that the site which was purchased by him has been approved and regularized as per the orders of the appropriate authority on 18.11.2022 and 12.12.2022 respectively.

6. From the layout plan submitted by the petitioner it is seen that the layout has been obtained by one P.Velumani and probably the petitioner should have been the second purchaser of the sites involved in Plot Nos.3 and 4. It is submitted by the first respondent that the petitioner's husband is actively helping one K.V.Jayaraman to get approval of his 41.58 acres of land and for which approval has been given as early as in the year 2018 in Reg.No.DTCP/L/0071199/2017 dated Nil.05.2018.

7. In the said layout certain area is shown for public purposes like roads, etc. As per the layout, the Open Space Reservation land is demarcated especially for public purposes and it has been settled in favour of the Town Panchayat. The sites for which the petitioner claims right is actually the road area involved in the layout approval granted in favour of K.V.Jayaraman for Sri Ganapathy Nagar.

8. If the property now purchased by the petitioner forms part of the public area which was approved in the year 2018, the subsequent layout approval or regularization granted in the name of the petitioner could



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not have been correct. If the said property still remains as the public area donated to the town planning authorities by the layout owners, the petitioner cannot claim right over the same.

9. Since lot of disputes arose in respect of the property involved in the layout and the petitioner's husband was alleged to have grabbed the area demarcated for public purpose by creating sale deeds and then file writ petition for seeking directions by suppressing the said facts, an enquiry has been initiated pursuant to the orders of this Court in W.P.No.10946 of 2023 and upheld by the Division Bench of this Court in W.A.No.3085 of 2023. When such is the course of action taken by the appropriate authorities in pursuant to the orders of the Court, the petitioner could very well appear before the said authority and produce all documents in order to arrive at a conclusion whether the property now said to be in the hands of the petitioner continues to remain as house site in Sri Ganapthy Nagar or forms part of the scheme road. If the sites are part of the scheme road, it is needless to state that the petitioner cannot claim any right over the same.

10. The petitioner further submitted that even if the sites form part of the area demarcated for a scheme road, that can be materialised only through acquisition by the third respondent. But the very contention of the learned



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counsel for the fifth respondent including the third respondent is that the original owner of the land himself has donated the area demarcated for the scheme road and hence there cannot be any question of land acquisition at all.”

7. In view of the above, the prayer sought for in this writ petition cannot be considered. Thus, the writ petition lacks merits and it is liable to be dismissed. Accordingly, this writ petition stands dismissed. No costs.

06.09.2024

Internet: Yes

Index : Yes/No

Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J,

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