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WP.No.31096 of 2022, CRP.No.612 of 2023 and SA.No.156 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

WP.No.31096 of 2022,
CRP.No.612 of 2023 and SA.No.156 of 2023
WMP.No.25266 of 2023

WP.No.31096 of 2022:-

1. Arakkonam Ganesh Nagar Residents' Welfare Association
by its President, K.Thandavamoorthy,
Arakkonam 631003, Ranipet District Petitioner

Vs

1. The Secretary to Government, Municipal Administration
Fort St.George, Chennai-9
2. The Commissioner, Arakkonam Municipality, Arakkonam 631 003
3. The Director, Directorate of Town and Country Planning
Chennai-2
4. The Deputy Director of Town and Country Planning
Ranipet Region, Navalpur Ranipet 632402
5. R.Jayapalanivelu Naidu



WP.No.31096 of 2022, CRP.No.612 of 2023 and SA.No.156 of 2023

6. Kalavathi

7. N.Anandan (Impleaded as per the order dated
12.04.2024 in WMP.No.28814 of 2023)

Respondents

CRP.No.612 of 2023 and SA.No.156 of 2023:-

Arakkonam Municipality by its Commissioner
Arakkonam

Petitioner-CRP
Appellant-SA

vs.

J.Kalavathi

Respondent-CRP
Respondent-SA

Prayer:- This Writ Petition has been filed, under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd Respondent to restore and maintain the park area in Ward-B, Block 38, Ganesh Nagar, comprised in SF.No.37 (TS.No.83/1Part)(Old S.No.244/2), measuring an extent of 444 sq.m (4608 sq.ft.) as per Town Survey Land Register Extract, Arakkonam, Vellore District, presently Ranipet District, pursuant to the representations of the Petitioner, dated 09.11.2020 and 15.03.2021.

This Civil Revision Petition has been filed to set aside the order dated, 06.02.2023, passed in EP.No.36 of 2018 in OS.No.198 of 2000, by the District Munsif Court, Arakkonam.

This Second Appeal has been filed against the judgement and decree, dated 17.09.2014, passed in AS.No.24 of 2014, by the Subordinate Court, Arakkonam, confirming the judgement and decree, dated 16.04.2010, passed in OS.No.198 of 2000, by the District Munsif Court, Arakkonam.



WEB COPY



WP.No.31096 of 2022, CRP.No.612 of 2023 and SA.No.156 of 2023

For Petitioner : Mr.M.Himavanth-WP
Mr.D.Ravichander-CRP

For Appellant : Mr.D.Ravichander-SA

For Respondents : Mr.P.Kumaresan, AAG,
assisted by Mrs.S.Anitha, SGP-RR1,3 and 4-WP

R5-WP- No Appearance

Mr.D.Ravichander-R2-WP

Mr.K.Ashok Kumar-R6-WP and R1-CRP&SA

Mr.R.Sankarasubbu-R7-WP

COMMON ORDER AND JUDGEMENT

(Order of the Court was made by S.S.SUNDAR, J.)

1. This Writ Petition has been filed to issue a Writ of Mandamus, directing the 2nd Respondent, Arakkonam Municipality to restore and maintain the park area in Ward-B, Block 38, Ganesh Nagar, comprised in SF.No.37 (TS.No.83/1Part)(Old S.No.244/2), measuring an extent of 444 sq.m (4608 sq.ft.) as per Town Survey Land Register Extract, Arakkonam, Vellore District, presently Ranipet District, pursuant to the representations of the Petitioner, dated 09.11.2020 and 15.03.2021.
2. This Civil Revision Petition has been filed to set aside the order dated, 06.02.2023, passed in EP.No.36 of 2018 in OS.No.198 of 2000, by the



District Munsif Court, Arakkonam.

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3. This Second Appeal has been filed, against the judgement and decree, dated 17.09.2014, passed in AS.No.24 of 2014, by the Subordinate Court, Arakkonam, confirming the judgement and decree, dated 16.04.2010, passed in OS.No.198 of 2000, by the District Munsif Court, Arakkonam.
4. Since the Writ Petition, Civil Revision Petition and Second Appeal are interconnected with each other and the core issue in these cases are also one and the same, they are heard together and disposed of, by this common order and judgement.
5. The facts, which are necessary for disposal of these Writ Petition, Civil Revision Petition and Second Appeal, are as follows:-
 - (a) The Writ Petitioner Association is a Society, registered under the Tamil Nadu Cooperative Societies Registration Act. The Members of the Writ Petitioner Association are the residents of Ganesh Nagar, Arakkonam, which is an approved layout, comprised in S.No.244/2, TS.No.83/1A Part of Arakkonam Town. It is the case of the Writ Petitioner that a layout was formed in the year 1981 with an extent of about two acres and odd and the said layout was approved by



WEB COPY



WP.No.31096 of 2022, CRP.No.612 of 2023 and SA.No.156 of 2023

File No.2970/1981, bearing layout plan No.CR/DTCP:81/LP-64, dated 25.07.1981.

(b) The fact that in the said layout, measuring an extent of 41322 sq.m, consisting of about 11 residential plots, a plot, measuring an extent of 4608 sq.ft. was reserved and earmarked as Park for public use is not in dispute. From the records, it is seen that out of the total extent of 41322 sq.m, 11 house sites, a plot with an extent of 4608 sq.ft. as a Park area and another extent of 1711 sq.ft. as a Shop were shown in the approved layout plan. Contending that the private persons are encroaching the Park area contrary to the approved layout plan, the Writ Petitioner Association has sought for a direction to the Arakkonam Municipality to take action and restore and maintain the Park area as per the approved layout plan, by way of this Writ Petition.

(c) It is admitted before this Court that the 5th Respondent in the Writ Petition is the Promoter of the approved layout in question. The 6th Respondent in the Writ Petition appears to have purchased a plot, measuring an extent of 2331 sq.ft. in the same layout from and out of the plot, which was reserved as Park area for public purpose, as



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per the approved layout. The sale deed, under which, the 6th Respondent has purchased the property is dated 21.04.1986. It is seen that the 6th Respondent purchased it from one Sundari Ammal, whereas the said Sundari Ammal purchased the said plot from one Jayapalanivelu. The 7th Respondent herein is impleaded, since it is stated by him that he has also purchased the property to an extent of 2331 sq.ft., under a sale deed dated, 11.12.2020. The fact remains that the disputed property, which was reserved and earmarked as a Park area in the approved layout, was purchased by the Respondents 6 and 7.

(d) The 6th Respondent has filed the suit in OS.No.198 of 2000, before the District Munsif Court, Arakkonam, seeking for a judgement and decree, granting permanent injunction, restraining the Defendant therein, who is the Arakkonam Municipality represented by its Commissioner, from interfering with her peaceful possession and enjoyment of the suit property, covered under the sale deed, dated 21.04.1986, which is the disputed property in the Writ Petition, measuring an extent of 2331 sq.ft.

(e) The said suit was filed based on her assertion of title, by virtue of



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the said sale deed obtained by her from previous owner, who in turn had purchased the same on 21.04.1983. It is to be noted that the 6th Respondent had not submitted before the Trial Court any other record to show that her claim is independent of the title of the Promoter/5th Respondent. The fact that the layout was approved by the Local Body, by proceedings dated, 25.07.1981 is not in dispute.

(f) Even though the 6th Respondent, who is the Plaintiff in the suit, has not produced any material before the Trial Court, relating to his vendor's independent title, this Court, from the records, has no difficulty to conclude that the claim of the 6th Respondent is not independent and it is evident from other records and proceedings initiated by the Defendant Municipality, which are made available before this Court in the Writ Petition. The 6th Respondent is only claiming title under the Promoter/5th Respondent, in respect of a plot of land in the approved layout where the plot was reserved as a Park area.

(g) In the said suit, a written statement was filed by the Local Body, who is the Arakkonam Municipality, represented by its Commissioner, specifically stating that the property, which was



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purchased by the 6th Respondent, was reserved as a Park area and was under the control of the Arakkonam Municipality, the Defendant in the suit and maintained as a Park with a total extent of 4608 sq.ft. It is the case of the Local Body that the Arakkonam Municipality is in enjoyment of the said property and the document relied on by the 6th Respondent/ Plaintiff is not valid and binding on the Defendant Municipality.

(h) The Trial Court framed the following issues for determination:-

- 1) Whether the Plaintiff is entitled for permanent injunction as prayed for in respect of the suit property?
- 2) Whether the contention of the Plaintiff that the Respondent is not entitled to claim title over the suit property, since the Petitioner is in continuous possession and enjoyment of the suit property, thereby she perfected title by adverse possession, is true?
- 3) Whether the contention of the Defendant that since the suit property belonged to the Defendant, the Plaintiff is not entitled to the relief, as prayed for by her in the suit, is true?

(i) Before the Trial Court, on the side of the 6th Respondent/ Plaintiff, Ex.P1 to Ex.P4 were marked and PW.1 and PW.2 were examined and on the side of the Defendant Municipality, Ex.D1 and D2 were marked and DW.1 was examined. Ex.C1 and Ex.C2 were marked.



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After trial, the Trial Court held that the Defendant Municipality had not proved their case that the property in question in the approved lay out was earmarked for public purpose. But, on the basis of the sale deed obtained by the Plaintiff, who is the 6th Respondent in the Writ Petition, the Trial Court held that the suit property is the property of the Plaintiff and that the Defendant Local Body had not proved the approved plan, by producing the original of the same. The Trial Court, refusing to accept the case of the Local Body, held that the Plaintiff is entitled to a judgement and decree for permanent injunction.

(j) It is pertinent to mention that the Trial Court wrongly shifted the burden on the Defendant Local Body to prove their case and held that the Plaintiff is entitled to succeed by virtue of the sale deed, under which, the property in question was purchased by her from her vendor. The Trial Court held that the Defendant failed to prove its case, by filing the original layout approved plan and granted a judgement and decree, as prayed for by the 6th Respondent/ Plaintiff by the impugned judgement and decree.

(k) As against the judgement and decree of the Trial Court, the Local



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WP.No.31096 of 2022, CRP.No.612 of 2023 and SA.No.156 of 2023

Body filed an appeal in AS.No.24 of 2014. By a judgement and decree, dated 17.09.2014, the lower appellate court also held that the Local Body failed to produce before the Court the original layout plan as approved to prove its case. Even though it is held that the Defendant had not proved its case and that the Plaintiff is entitled to a judgement and decree, admittedly there is an approved layout, showing the suit property as one reserved as Park. It is seen that as against the impugned judgement and decree of the lower appellate court, confirming the judgement and decree passed in favour of the 6th Respondent in the Writ Petition by the Trial Court, the Arakkonam Municipality has filed the above Second Appeal. This Court, while admitting the Second Appeal, has framed the following substantial questions of law:-

- (a) Whether the relief of permanent injunction is maintainable, without the relief of declaration in view of the dispute relating to title?
- (b) Whether the courts below are justified in rejecting the xerox copy of the layout plan approval by DTCP when the original was not traceable?
- (l) After passing of the judgement and decree in the suit, the Plaintiff, who is the 6th Respondent in the Writ Petition, appears to have filed



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an execution petition in EP.No.36 of 2018 before the District Munsif Court, Arakkonam, under Order 21 Rule 32 of CPC to punish the judgement debtor, namely, the Commissioner of Arakkonam Municipality, by arresting and committing him to civil prison. The said execution petition was allowed, ordering arrest of the Commissioner of Arakkonam Municipality, by the order dated 06.02.2023, which is impugned in the Civil Revision Petition in CRP.No.612 of 2023 by the Arakkonam Municipality, represented by its Commissioner.

6. This Court heard the learned counsel on either side, considered their submissions and also perused materials placed on record.
7. The only issue in all the proceedings is whether the property, which was purchased by Respondents 6 and 7 in the Writ Petition is the property, which is reserved as a Park area in the approved layout that was approved in the year 1981 and promoted by the 5th Respondent in the Writ Petition.
8. The 5th Respondent has not appeared before this Court. However, the approved layout plan produced before this Court in the Writ Petition by the Writ Petitioner is not in issue.



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9. The said approved layout plan reveals that the 5th Respondent had obtained approval for developing his property, measuring an extent of about 41322 sq.ft. comprised in S.No.244/2 of Arakkonam Village. Since the layout is in respect of a small area, except reservation of an extent of 4608 sq.ft. as a Park area and an extent of 1711 sq.ft. as a shop, the remaining extent was laid out as plots, numbering plot nos.1 to 11. The Arakkonam Municipality approved the layout plan subject to certain conditions and the said layout approval was also acknowledged by the Deputy Director of Town and Country Planning. Before this Court, neither the Promoter nor the Respondents 6 and 7 disputed the layout plan as produced before this Court by the Writ Petitioner, showing that the plots sold in favour of the Respondents 6 and 7 is reserved as Park.

10. The law is well settled that a land reserved or designated for public purpose in an approved layout shall be deemed to be the land reserved for public purpose. In this context, it is apposite to refer to the ratio laid down in the decision of the Honourable Supreme Court reported in **1995 SC 430 (Chet Ram Vashist Vs. Municipal Corporation of Delhi)**, wherein it was held as under:-



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WP.No.31096 of 2022, CRP.No.612 of 2023 and SA.No.156 of 2023

“6. Reserving any site for any street, open space, park, school, etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the Society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But, the question is does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. 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 thing 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 in the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for parks and school was an order for transfer without there being any sanction for the same in law.”

11. In the case on hand, though the property in question reserved as a Park area is not transferred in favour of the Local Body, namely, the Arakkonam Municipality, either the Promoter or the Local Body cannot claim ownership over the property in question reserved as a Park area. After reserving the land as Park, the Promoter ceases to be the owner.



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The Promoter in this case sold the plot reserved as Park and the sale deed is void and not binding on other owners of plots in the layout. It is to be noted that the Trial Court and the lower appellate court have wrongly shifted the burden on the Defendant Local Body and therefore, this Court is of the view that both the courts below have erroneously held that the Plaintiff is entitled to a judgement and decree for permanent injunction based on the void sale deed. Even though the Local Body is the Defendant in the suit, there is no transfer of ownership in favour of the Local Body. The suit, without impleading the other owners of the plots in the layout or the Writ Petitioner is liable to be dismissed for non-joinder of necessary parties.

12.This Court is of the view that the 6th Respondent/ Plaintiff, who did not dispute the approved layout and reservation of the plot as Park area, approached the civil court, suppressing the material facts and therefore, there is an element of fraud on the part of the Plaintiff by filing a suit without impleading necessary party and without producing the approved plan.

13.It is to be noted that the 7th Respondent purchased the property by virtue of the sale deed, dated 12.12.2020, from which, it is seen that the



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7th Respondent purchased the property from the previous owner. It is further seen that the property is shown as the property, which is bounded by house sites and roads of the layout, which was earlier known as “Ganesh Nagar. The plot purchased by the 7th Respondent is also shown as the property, which is on the South of the property purchased by the 6th Respondent in the Writ Petition, who is the Plaintiff in the suit. Therefore, it is evident that the Respondents 6 and 7 have purchased the plots with reference to the same lay out plan and their vendors never had any independent title to claim except through the Promoter. Therefore, considering the law settled by the Honourable Supreme Court in several judgements and the view expressed by this Court, the property in question, which is reserved in the approved layout for public purpose is not the property of the Promoter, the 5th Respondent in the Writ Petition and that the Promoter or the Arakkonam Municipality is expected to maintain the property as a Park area for the benefit of the public.

14.The sale deeds obtained from the purchasers or Promoter cannot confer any right or title in favour of the Respondents 6 and 7 in the Writ Petition and therefore, this Court finds that the claim of the Plaintiff in



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the suit, who is the 6th Respondent in the Writ Petition is unsustainable.

This fraudulent sale by the Promoter in respect of plots reserved for public purpose is void and invalid and has resulted in problem for the other plot owners, who have also purchased plots believing that the plot, which is reserved for their convenience and meant for public purpose, will be kept and used as Park.

15.It is stated that the property in question is lying as a vacant land. Since both the courts below have held that the Plaintiff/6th Respondent in the Writ Petition is in possession of the property in question, it is also presumed that the 7th Respondent is also in possession of the property. Since the private Respondent 6 is not entitled to a decree for injunction as against the Local Body based on a void transaction, the suit is liable to be dismissed. On the admitted facts, the Plaintiff cannot claim title to the property and the decree for injunction based on void sale is liable to be set aside. Accordingly, the substantial questions of law are answered in favour of the Arakkonam Municipality, represented by its Commissioner. Since the decree for injunction is set aside and the suit itself is liable to be dismissed, the order in execution Petition under Order 21 Rule 32 of CPC cannot stand.



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16. In the result, these Writ Petition, Civil Revision Petition and the Second

Appeal are allowed, as prayed for. No costs.

17. The impugned judgement and decree, dated 17.09.2014, passed in AS.No.24 of 2014, by the Subordinate Court, Arakkonam, confirming the judgement and decree, dated 16.04.2010, passed in OS.No.198 of 2000, on the file of the District Munsif Court, Arakkonam are set aside and the suit filed by the 6th Respondent in the Writ Petition in OS.No.198 of 2000 stands dismissed. The impugned order dated, 06.02.2023, passed in EP.No.36 of 2018 in OS.No.198 of 2000, by the District Munsif Court, Arakkonam is set aside.

18. The 2nd Respondent Municipality in the Writ Petition is directed to restore the property in question, measuring 4608 sq.ft., which is reserved as a Park area in the approved layout for public purpose and maintain the same for the purpose for which it was reserved, as stated above. It is also open to the 2nd Respondent Municipality to take action for removal of encroachment by resorting to the provisions contemplated under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998 and such an exercise shall be completed within a period of three months from the date of receipt of a copy of this order.



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19. In case the Respondents 6 and 7 herein surrender their possession to the Local Body without necessity of initiating proceedings under the Urban Local Bodies Act, the residents of other plots shall not make any claim for damages for use and occupation for having prevented them from using the property in question for public use. In case the Respondents 6 and 7 do not come forward to surrender the plots in question on their own, it is open to the Writ Petitioner to file a suit for damages as against the Respondents 6 and 7. Considering the peculiar facts and circumstances and as this Court also realises that the Respondents 6 and 7 are also the victims, there is no order as to costs.

(S.S.S.R.J.) & (N.S.J.)
12.04.2024

2/2

Index: Yes/No
Web: Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
Srcm

To

1. The Secretary to Government, Municipal Administration Fort St. George, Chennai-9
2. The Commissioner, Arakkonam Municipality, Arakkonam 631 003



WP.No.31096 of 2022, CRP.No.612 of 2023 and SA.No.156 of 2023

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3. The Director, Directorate of Town and Country Planning Chennai-2
4. The Deputy Director of Town and Country Planning Ranipet Region,
Navalpur Ranipet 632402.
5. The District Munsif Court, Arakkonam.
6. The Subordinate Court, Arakkonam



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WP.No.31096 of 2022, CRP.No.612 of 2023 and SA.No.156 of 2023

S.S.SUNDAR, J.
and
N.SENTHILKUMAR, J.

Srsm

WP.No.31096 of 2022,
CRP.No.612 of 2023 and
SA.No.156 of 2023

2/2

12.04.2024