



W.P(MD)No.20012 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20012 of 2020

and

W.M.P.(MD)Nos.16669, 16670 and 16671 of 2020

S.Anavarthan

... Petitioner

Vs.

1.The Director of Town and Country Planning,
807, Anna Salai, Chennai – 2.

2.The Member Secretary (Incharge),
Tirunelveli Local Planning Authority,
Tirunelveli – 627 005.

3.The District Collector,
Tirunelveli District,
Tirunelveli.

4.The Block Development Officer,
O/o. The Block Development Officer,
Manoor Village Panchayat,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.2259/2019/THIUTHIKU dated 13.12.2019 on the file of the Respondent No.2 and the consequential



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impugned order in Na.Ka.No.Aa7/1807/2017 dated 18.11.2019 on the file of the respondent No.4 and quash the same as illegal and consequently direct the respondent No.1 to declare the Reservation made in respect of the petitioner's land in Survey No.314/2, Kondanagaram Village, Tirunelveli Taluk, Tirunelveli District Detailed Development plan to have lapsed in light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN ACT of 1974) within the time period stipulated by this Court.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.M.Lingadurai,
Spl. Government Pleader.

ORDER

Heard both sides.

2.The writ petitioner is an ex-service man. He purchased 5.688 cents of land in S.No.314/2, Kondanagaram Village, Tirunelveli Taluk vide registered sale deed bearing Document No.386/1994 dated 24.03.1994. He has been in possession and enjoyment of the same ever since. Patta stands in the name of the petitioner. Copy of the joint patta No.1093 issued by the jurisdictional Tahsildar has been enclosed at Page No.5 of the typed set of papers. The petitioner's name is figuring at Serial No.22. The petitioner after retiring from



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Army wanted to build a house in the said property. When he applied for approval, it was negated on the ground that the plot purchased by the petitioner falls within the area earmarked as park in the approved layout. Challenging the stand of the Member Secretary, Tirunelveli Local Planning Authority, the present writ petition has been filed.

3.The learned Special Government Pleader is entirely right in his contention that an area earmarked as park cannot be alienated and there is also no scope for regularizing the same. In fact, counter affidavit has been filed on the same lines and the learned Special Government Pleader took me through its contents.

4.The legal position is well settled and the Writ Court ought not to deviate from the same. But considering the special facts and circumstances of the case, I am inclined to grant some relief to the petitioner. As already noted, the petitioner is a senior citizen and an ex-service man. The land earmarked as park / play ground ought to have been straightaway included in the prohibitory index and its value should have been shown as nil. If such an action had been taken immediately by the officials concerned, the petitioner would not have registered the sale deed. The petitioner appears to be an innocent victim. The



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total extent of land purchased by him is little over five cents. The jurisdictional Tahsildar also subsequently issued joint patta in favour of the petitioner. The petitioner realized that he had been taken for a ride by his vendor only recently. The petitioner is not in a position to go after his vendor because he is said to have passed away.

5.As per Rule 7(e)(g)(ii) of the Tamil Nadu Regulation of Unapproved Layouts and Plots Rules, 2017, 10% of the overall extent of land sought to be promoted should be dedicated as Open Space Reservation. In this case, proceedings issued by the Director of Town and Country Planning vide proceedings bearing No.ம.வ.ந.உ.இ.எண்.1181/91 indicates that total extent of land is 11.51 acres / 5,01,375.6 sq. ft. 10% of the same will come to 50,137.5 sq. ft. In this case, the layout promoter had dedicated 51,398 sq. ft for park and children's playground. That comes to 10.25%. Since the petitioner is a bona fide and innocent purchaser and since the officials have also not taken any steps, the OSR area can be fixed at 10%. That would leave 1,260 sq. ft. Though the petitioner has purchased little over five cents of lands, his entitlement can be confined to 1,260 sq. ft. alone. The petitioner is permitted to submit a fresh application for building plan and approval before the local body or the concerned authority. Subject to fulfilment of other usual norms, the said



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application shall be approved by the concerned authority / local body within a period of five weeks from the date of receipt of the application. I have not interfered with the impugned order but given relief to the petitioner in the above terms.

6.This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

13.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

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G.R.SWAMINATHAN, J.

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