



W.A(MD)No.766 of 2018

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 30.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.A(MD)No.766 of 2018
and
C.M.P(MD)No.4539 of 2018**

The Commissioner,
Sivakasi Municipality,
Sivakasi.

... Appellant

versus

1. Poomani
2. The District Collector,
Virudhunagar District.
3. The Tashildar,
Sivakasi.
4. K.S.S.P.Subburajan
5. Suresh Kumar
6. Giridharan
7. K.S.S.P.Dharmarajan
8. Sudarsan

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9. Uma Shankar

10. P.Dhanasekaran

11. Amarnath

12. Jeganath

13. Savithri

14. Jawahar

15. Gopinath

16. D.Vathslin

17. P.Rajasekaran

18. Abilasu

...Respondents

(R4 to R18 are impleaded vide order dated 26.06.2018 made in C.M.P.(MD)No.5204/2018 in W.A.(MD)No.766 of 2018)

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to set aside the order of this Court made in W.P(MD)No.2973 of 2008, dated 02.12.2016.

For Appellant : Ms.S.Devasena

For R2 and R3 : Mr.M.Sarangan
Additional Government Pleader

For R4, R7 and R13 : Died

For RR5, 6, 8 to 11,
14, 15 and 18 : Mr.Anand Chandrasekar
for M/s.Saravabhauman Associates



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For R16

: No appearance

JUDGMENT

(Judgment of the Court was made by **P.VELMURUGAN.,J**)

The writ petitioner/first respondent herein filed a writ petition before this Court in W.P.(MD)No.2973 of 2008, challenging the order of the second respondent herein, namely, the District Collector, Virudhunagar District, passed in Ref. Na.Ka.No.E3/A.V.No:90/06 NP dated 17.10.2007. The said writ petition was allowed by the Writ Court, by order dated 02.12.2016. Aggrieved over the same, the appellant herein, namely, the Commissioner, Sivakasi Municipality, has filed the present intra Court Appeal.

2. The case of the writ petitioner/first respondent herein is that she purchased a housing plot measuring 3272.5 sq. ft. in old Survey No.628/1A, new Survey No.725/1, old T.S No.88, new T.S No.114, Sivakasi Village, Sivakasi Taluk, Virudhunagar District, under a registered sale deed dated 06.07.1995. The said housing plot forms part of a larger extent of plot approved for layout by the appellant herein. On 11.07.1994, the appellant herein granted approval for building plan. In pursuance of the said approval, several shops were constructed



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in the said area. After construction, there was a registered partition deed effected between the family members on 19.01.1995. From the date of partition, the possession of the property was vested with the vendor of the first respondent herein and prior to that, i.e from 1962 onwards, the possession was vested with their ancestors. After the purchase of the property, the writ petitioner/first respondent herein is in exclusive possession of the property. While so, the second respondent herein, namely, the District Collector, Virudhunagar District, has passed an order dated 30.06.2005 that the subject property has been reclassified as poromboke. Challenging the same, the writ petitioner/first respondent herein filed a writ petition before this Court in W.P.No.7298 of 2005. This Court, by order dated 10.08.2005, allowed the said writ petition, by setting aside the order of the second respondent herein and also directed the second respondent herein to give an opportunity to the writ petitioner/first respondent herein and pass the orders on merits. Pursuant to the same, the second respondent herein conducted an enquiry and after giving opportunity to the writ petitioner/first respondent herein, passed an order on 17.10.2007, confirming the order dated 30.06.2005. Challenging the same, the writ petitioner/first respondent herein filed the present writ petition in W.P.(MD)No.2973 of 2008 on the ground that the second



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respondent herein has no jurisdiction to pass the order dated 17.10.2007 and patta issued in the name of the owner of the property ought to be cancelled only due process of law. The Writ Court, after hearing both sides, allowed the writ petition, by order 02.12.2016. Challenging the same, the Commissioner, Sivakasi Municipality, has filed the present appeal.

3. The case of the appellant herein is that the subject property was classified earmarked for public purpose and it was classified in the revenue records as play ground. Once the subject property was earmarked for public purpose and classified as play ground, the owner of the property is not entitled to get patta. The appellant herein, without verifying the land physically and only based on the revenue records along with the title deeds submitted by the previous owner of the property, granted the building plan approval on 13.07.1994. However, no construction was made within the stipulated time. Therefore, the building plan approval was lapsed. Though the appellant herein by mistakenly granted the building plan approval, the writ petitioner/first respondent herein cannot claim right over the property, based on the building plan approval. Since the subject property was earmarked for public purpose, the vendor of the writ



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petitioner/first respondent herein has no right to alienate the subject property and convey the subject property. Therefore, the writ petitioner/first respondent herein is not entitled to any right and title over the property.

4. The learned counsel appearing for the appellant herein submits that the second respondent herein has rightly cancelled the building plan approval, since the subject land is earmarked for public purpose and the same was also classified in the revenue records as play ground. Though the officials of the Municipality have mistakenly granted the building plan approval, it does not mean that the local authority has given up the right of the property, which is earmarked for public purpose. Once the property is earmarked for public purpose, the same cannot be utilized for any other purpose. Therefore, the order passed by the second respondent dated 17.10.2007 is correct. However, the Writ Court has failed to consider the same and only by pointing out the mistake committed by the officials of the Municipality, allowed the writ petition. Therefore, the order of the writ court dated 02.12.2016 passed in W.P.(MD) No.2973 of 2008 warrants interference.



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5. The learned counsel for the writ petitioner/first respondent herein would submit that though there are violations in granting approval to the building plan and issuance of patta, the second respondent herein, namely, the District Collector, Virudhunagar District, has failed to take any action against their officers. He further submits that before the cancellation of patta and building plan approval, the District Collector has not issued any show cause notice and without giving an opportunity, the impugned order has been passed. Considering all those aspects, the writ Court has rightly allowed the writ petition. Therefore, the order of the writ court does not warrant any interference.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the subject land was covered under the layout plan. While getting the approval of layout plan, the subject land was earmarked for public purpose and classified as playground. The layout was approved subject to the condition that the subject land was reserved for public purpose and playground. Once the subject land is earmarked for public purpose, the title of the property is vested only with the local authority and no one can claim right over the property.



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Even a person, who is the owner of the property, is not having any right over the said property. Further, at the time of getting approval of layout, if the land is reserved for public purpose, the same cannot be taken back by the owner, who dedicated the land to the local authority.

8. In this case, the appellant herein has granted plan approval for construction. However, no construction was made in accordance with the plan approval and subsequently, the same was lapsed. Even otherwise, in the property of the Government or public authority, the officials have no authority to alienate the property. If some mistakes have been committed by any one of the officials, the purpose of the land would not be affected. It is not in dispute that the subject land was not earmarked for public purpose and classified in the revenue records as playground. Once the subject land was earmarked for public purpose and classified in the revenue records as playground, no individual can use the land, which was earmarked for public purpose. Therefore, the writ petitioner cannot take advantage of the act committed by the officers of the appellant and defeat the purpose of the land. Therefore, this Court finds that the order of the writ court warrants interference.



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9. Accordingly, the intra Court Appeal is allowed. The order dated 02.12.2016 passed in W.P.(MD)No.2973 of 2008 is set aside and the order passed by the second respondent herein, namely, the District Collector, Virudhunagar District is restored. No costs. Consequently, connected miscellaneous petition is closed.

[P.V.,J.] [K.K.R.K.,J.]
30.08.2024

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

1. The District Collector,
Virudhunagar District.
2. The Tashildar,
Sivakasi.



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