



W.A.(MD)No.1300 of 2015

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

| Date of Reserving the Judgment | Date of Pronouncing the Judgment |
|--------------------------------|----------------------------------|
| 23.01.2024                     | 12.02.2024                       |

**CORAM:**

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN  
and  
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**W.A.(MD)No.1300 of 2015  
and  
M.P.(MD)No.3 of 2015**

The Commissioner,  
Thanjavur Corporation,  
Thanjavur.

... Appellant

vs.

M.Kanimozhi Sofia

... Respondent

**PRAYER:** Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 14.08.2015, made in W.P.(MD)No.17346 of 2014.

For Appellant

: Mr.N.Dilipkumar  
Standing Counsel

For Respondent

: Mr.S.C.Herold Singh  
for Mr.R.Rajesh



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## **JUDGMENT**

**DR.G.JAYACHANDRAN, J.**  
**and**  
**C.KUMARAPPAN, J.**

The proceedings of the Commissioner, Thanjavur Corporation, dated 27.06.2014, is subject matter of challenge in W.P.(MD)No.17346 of 2014.

2. The respondent, who purchased a plot, measuring to an extent of 3735 sq.ft. in Survey No.201/1, New Survey No.201/9C2 at Pandiyan Nagar, Melaveli Thottam Village, Thanjavur, through a registered sale deed, dated 30.12.2011, sought for building plan approval from the Commissioner, Thanjavur Corporation, but her application, dated 26.06.2001 and further representation dated 15.04.2014, was negatived by the Commissioner, Thanjavur Corporation, vide order dated 27.06.2014, which was impugned in the Writ Petition, seeking Certiorarified Mandamus, to quash the proceedings and direct the Commissioner, Thanjavur Corporation to grant plan approval and licence to construct building in the property.



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3. The Commissioner, Thanjavur Corporation contested the Writ Petition on the ground that while granting approval to the layout, the portion upon which, now the planning permission is sought, was reserved for park and playground. A piece of land earmarked for public purpose cannot be converted for any other purpose neither it can be sold after being dedicated for public purpose. The Pandian Nagar Rural Co-operative Housing Society, Thanjavur, formed a layout dedicating the subject land for public purpose, morefully, for park and playground. While so, the Society has sold the property to one Indrakumar on 15.03.1983 plotting out the piece of land earmarked for public purpose and in turn, Indrakumar has sold the property to one Selvaraj, who is the vendor of the respondent/writ petitioner. Relying upon the judgments of the Hon'ble Supreme Court and the High Court, wherein it has been categorically held that no land earmarked for public purpose can be sold or converted for any other purpose, the Commissioner of Thanjavur Corporation, had sought for dismissal of the Writ Petition.

4. However, the learned Judge considering the peculiar facts involved in this case, namely, the layout was approved long ago, but the land earmarked for



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public purpose never been gifted to the local body and the ownership of the land never changed either to the Members of the Society or to the local body. Further, the vendor of the respondent/writ petitioner was given plan approval and licence to construct a building as early as 26.06.2001 by the very same appellant/respondent. While so, the benefit conceded to the vendor should pass on to the subsequent buyer. Hence, the learned Judge recording that when the appellant/respondent has chosen to grant plan approval to the respondent's/writ petitioner's vendor, there is no valid reason as to why the appellant has rejected the application filed by the respondent/writ petitioner for grant of approval to construct a house.

5. The learned Judge has also recorded that though it is claimed by the appellant/respondent that the subject plot reserved for park and playground, absolutely no material or tangible evidence was placed before this Court to show that Plot No.23 was reserved for park and playground. Therefore, allowed the Writ Petition.



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6. The learned Standing Counsel appearing for the appellant relying upon the plan approval granted in the year 1969, wherein a piece of land, which is the subject matter of the Writ Petition, is marked as playground, submitted that the land once earmarked for public purpose, cannot be used for any other purpose. The plan approval and licence granted to the vendor of the respondent/writ petitioner cannot be taken advantage by the respondent/writ petitioner, since the said plan approval and licence itself are contrary to the statute and there cannot be any estoppel against the statute. In support of his argument, the learned counsel appearing for the appellant relied upon the following judgments:-

(i) **Pt.Chet Ram Vashist (Dead) By LRs. vs. Municipal Corporation of Delhi** reported in **1995 (1) SCC 47**

(ii) **Lal Bahadur vs. State of Uttar Pradesh and others** reported in **2018 (15) SCC 407**

(iii) **Municipal Corporation of Greater Mumbai and others vs. Hirman Sitaram Deorukhar and others** reported in **2019 (14) SCC 411**

(iv) **Vinayak House Building Cooperative Society Limited vs. State of Karnataka and others** reported in **2021 (14) SCC 409**



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7. This Court has given its anxious consideration to the submissions made by the learned counsel on either side and the judgments cited.

8. Public trust doctrine has gained momentum after the categorical pronouncement of the Hon'ble Supreme Court in **Bangalore Medical Trust vs. B.S.Muddappa** reported in **1991 (4) SCC 54**.

9. Following the above judgment, a catena of judgments has been rendered by the Hon'ble Supreme Court as well as the High Courts, wherein the duty of the Government as well as the Court to protect the environment and the need of open space and recreation and fresh air in urban areas has been emphasised. The law now is well settled that the area once referred for garden/park/playground in a development plan under statutory provisions, cannot later be converted for any other purpose. The obligation of the statutory authorities to act in trusteeship of the common property such as, air, open space, sea water, forest etc. is a right guaranteed under Article 21 of the Constitution of India and the proportionate duty on the citizen and authority under Article 51-A of the Constitution of India. However, at the same time, the property right of a person cannot be divested



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without manner known to law. This principle has been highlighted by the Hon'ble Supreme Court in **Pt.Chet Ram Vashist** [cited supra]. While considering the provisions of the Municipal Corporation Act of Delhi vis-a-vis right of promoters of a layout, the Hon'ble Supreme Court has observed as below:-

*"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*



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*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 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 for the same in law.*

*7. Even then the question is, should we set aside the order of the High Court and the appellate court and restore that of the trial court or we may alter the order passed by the courts below so as to do substantial justice. We have opted for the latter course for the reasons to be mentioned hereinafter. The appellant's plan was sanctioned subject to the conditions imposed by the Corporation. He did not raise any objection immediately and appears to have proceeded to sell and transfer the land. The suit was filed after nearly one year from the date of sanction. The Corporation has been exercising right over the land in dispute as transferor, since then, for nearly a quarter of a century. In these circumstances interfering with the order of the High Court would be setting at nought settled state of affairs. It was also*



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*stated by the learned counsel for respondent that the appellant has no land or house in the locality.*

*8. For these reasons even though the judgment and decree of the High Court are liable to be set aside but we refrain from doing so. Yet in order to protect interests of the owners of house and residents of the colony it is directed that the order of the High Court shall stand modified to the following effect:*

*(1) The Corporation shall have right to manage the land which was earmarked for school, park etc.*

*(2) The Corporation shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents of the colony.*

*(3) It is left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the layout plan was accorded."*

**10.** Looking into the facts of the case in hand in the light of the above observation made in the judgment cited supra, we find that the layout approval



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granted in the late 1960's though earmarked certain portions for public purpose, they were not gifted or given possession to the local body, but retained by the promoters themselves. The alteration to the layout has led to alienating the portion and the respondent/writ petitioner is the third in the line of transfer of title. Her immediate predecessor-in-title had been granted licence to construct a building in the year 2001 itself. It is too late for the appellant/Corporation to deny permission to the respondent/writ petitioner to put up construction on a land over which she is a rightful owner and the alleged dedication of the land for public purpose is not pursuant to any statutory approval. By March of Law and change of legislation, any semblance of right vest with the local body could be only to request the land owner to transfer the land in favour of the local body, paying the market price as prevalent. Without recognizing the statutory right to hold the land and without paying the adequate compensation for the land, the appellant cannot force the land owner to keep the land vacant and at the same time, refused to take possession paying adequate compensation.

**11.** The layout plan referred by the Commissioner/Appellant is of the year 1969, but there is no indication in the blue print to show the portions earmarked

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for park, gifted to the local authority or handed over to the local authority for maintenance all along these years. In the said circumstances, this Court finds that there is no merit in the Writ Appeal and hence, it deserves to be dismissed. Accordingly, W.A.(MD)No.1300 of 2015 stands dismissed. The order of the learned Judge is upheld. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes  
NCC : Yes  
smn2

**[G.J., J.] & [C.K., J.]**  
**12.02.2024**



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**DR.G.JAYACHANDRAN, J.**  
**and**  
**C.KUMARAPPAN, J.**

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**PRE-DELIVERY JUDGMENT MADE IN**  
**W.A.(MD)No.1300 of 2015**

**12.02.2024**

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