

THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 15.09.2025

Order pronounced on : 19.09.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.2296 of 2024
& CMP.No.12062 of 2024

Saleem Durani
 Rep. by his Power Agent
 S.Vahidha Saleem Durani

..Petitioner

*[Recognized the power agent
 S.Vahidha Saleem Durai for the
 petitioner vide order dated
 10.06.2024 in CMP.No.11600 of
 2024 in CRP.SR.No.43589 of
 2024]*

Vs.

The Commissioner & Estate Officer,
 Mayiladuthurai Municipality,
 Mayiladuthurai.

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed in C.M.A.No.8 of 2019 dated 13.12.2023 on the file of the learned District Judge, Mayiladuthurai, confirming the order of the Commissioner and Estate Officer, Mayiladuthurai Municipality, Mayiladuthurai in Na.Ka.No.13919/2012 F1 Va.Thi dated 27.08.2019.

For Petitioner : Mr.A.Muthukumar



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For Respondent : Mr.P.Srinivas, Standing Counsel

ORDER

The Revision Petitioner challenges the judgment and decree in CMA.No. 8 of 2019 on the file of the learned District Judge Mayiladuthurai, confirming the order of the Commissioner and Estate Officer, Mayiladuthurai Municipality dated 27.08.2019.

2.The crux of the issue is the proceedings initiated by the Municipality under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act,1975. It is the contention of the revision petitioner that the very invocation of the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act, 1975, is wholly unsustainable and consequently, the impugned proceedings issued by the Municipality is vitiated and liable to be set aside.

3.I have heard Mr.A.Muthukumar, learned counsel for the revision petitioner and Mr.P.Srinivas, learned Standing Counsel for the respondent Municipality.



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4.Mr.A.Muthukumar, learned counsel for the revision petitioner would state that the petitioner's predecessors in interest had formed a layout and also got it approved from the respondent Municipality. One of the conditions for approving the layout was that an extent of 2796 square feet was to be set apart for a childrens' park. However, admittedly, the vendor of the revision petitioner violated the said approval condition, by putting up an unauthorized residential building in the said site earmarked for park and also subsequently sold it to the revision petitioner.

5.Mr.A.Muthukumar, learned counsel would also take me through the earlier litigation, touching the very same subject property and also refer to the various orders passed, including the order in WP. No.10793 of 2018.

6.It is the primordial contention of Mr.A.Muthukumar, learned counsel for the petitioner that even though the layout condition required an area to be earmarked for childrens' park, the same has admittedly not been handed over and there has been violation of the approval condition. However, he would contend that as long as the municipality is not the owner of the subject area earmarked as childrens' park and there is also no vesting of the said land in the



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respondent municipality, it is not open to the respondent to invoke the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act, 1975. He would also contend that, today, admittedly the land, which was to be earmarked for childrens' park, is not available and a residential building has been constructed and the only remedy open to the respondent Municipality is to acquire the lands and instead, it is not open to them to initiate proceedings under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act, 1975, treating the revision petitioner as an unauthorized occupant.

7.The learned counsel for the petitioner would also place reliance on the decision of this Court in *Commissioner, Tirupur Corporation vs. Vasanthakumari*, reported in 2020 (1) CTC 636 and the decision of the Honourable Supreme Court in *PT.Chet Ram Vashist (dead) by Lrs vs. Municipal Corporation of Delhi*, reported in (1995) 1 SCC 47.

8.Per Contra, Mr.P.Srinivas, learned Standing Counsel for the respondent would mainly contend that the predecessors in interest of the revision petitioner had challenged the proceedings initiated by the Municipality and they were



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unsuccessful in the earlier round of litigation. In such circumstances, he would contend that the petitioner is now estopped from objecting to the action initiated by the Municipality, as they are bound by the result of the earlier proceedings, which were taken admittedly by the predecessors in interest of the revision petitioner.

9.Mr.P.Srinivas, learned Standing Counsel for the respondent would also state that this Court, in WP.No.10793 of 2018, had given liberty to proceed in accordance with law, seeking eviction and taking possession of the subject property and therefore, it is only in pursuance of said liberty that the present proceedings have been taken and therefore, he would contend that there is no infirmity in the either the order of the Commissioner and Estate Officer, and also the Appellate Court, namely the District Judge Mayiladuthurai. He would also further contend that the Municipality is entitled to ensure that the area is earmarked as a park and therefore, the Municipality cannot be found fault with for initiating the impugned proceedings.

10.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the decisions relied on by the

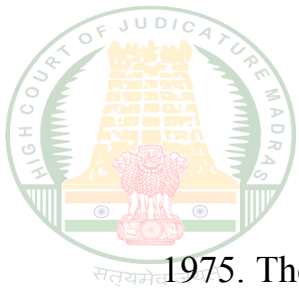


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learned counsel for the petitioner. I have also gone through the orders impugned in the present revision.

11. Admittedly, the original landowner, with an intention to lay out the land, has approached the Municipality and sought for approval. An approval has also been sanctioned with certain conditions. It is an admitted fact that, as a condition for approval, the original landowners have also executed gift deeds in respect of the road portions, etc. However, admittedly, in respect of the area earmarked as a childrens' park, there has been no gift deed executed by the original owners. The said area that was earmarked for the purposes of setting up a childrens' park has been sold by the original landowners to the revision petitioner after putting up construction and the petitioner has been residing in the said property for the past several years.

12. The respondent Municipality initiated proceedings under Section 362 of the Tamil Nadu District Municipalities Act, 1920 on 28.02.2017, but, subsequently, a notice dated 14.03.2017 has been issued invoking the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act,

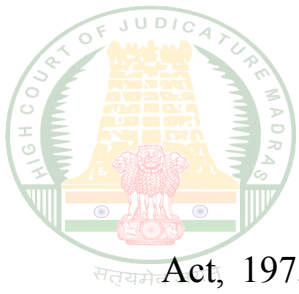


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1975. The said notice was challenged by the revision petitioner in WP.No. 5936 of 2017 and by order dated 12.12.2017, the Division Bench of this Court partly allowed the writ petition, setting aside the impugned notice dated 28.02.2017 issued under the Tamil Nadu District Municipalities Act, 1920, giving liberty to the Municipality to proceed under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act, 1975.

13. In fact, the petitioner also filed a suit for bare injunction in O.S.No.119 of 2011, before the Principal District Munsif Court, Mayiladuthurai. The Municipality was arrayed as a defendant in the suit. The suit was decreed and the findings of the trial Court also came to be confirmed by the First Appellate Court. However, in S.A.No.161 of 2015, by judgment dated 15.11.2016, this Court gave liberty to the Municipality to proceed against the respondent in accordance with law.

14. It is the contention Mr.P.Srinivas, learned Standing Counsel for the respondent that it is only pursuance of the judgment in Second Appeal, as well as the liberty granted by the Division Bench that the proceedings were initiated under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant)



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Act, 1975. He would also strongly rely on the earlier litigation between the predecessors in interest of the revision petitioner in O.S.No.119 of 2007, where they, as plaintiffs, filed the said suit to restrain the municipality from taking any coercive steps. The said suit was dismissed and as against the same, First Appeal in A.S.No.89 of 2008 was also dismissed by the Sub Court, Mayiladuthurai, on 14.10.2009 and the Second Appeal, S.A.No.161 of 2015 was also dismissed.

15.It is therefore contended by Mr. P.Srinivas, that the petitioner, having stepped into the shoes of the original owners, is not entitled to any relief and the Municipality is bound to ensure that the childrens' park is made available in terms of the layout conditions. The approval of the layout has been sanctioned under the provisions of the Planning Rules and Regulations. Unlike the Land Acquisition Act, there is no provision either in the Town and Country Planning Act or the District Municipalities Act, where the lands vest with the State or the Government. That is the reason why the owner of the property is called upon to execute a gift deed, handing over the common areas like roads, streets and other areas like parks, playgrounds, which are set apart for common use.



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16. Admittedly, the owners have proceeded to execute two gift deeds in favour of the municipality. However, both the gift deeds do not include the land that has been earmarked as the childrens' playground or park. Therefore, the respondent Municipality, in the absence of such a gift deed being executed in respect of the land earmarked for the childrens' park, cannot claim to be the owner of such land. Under the statute also that there is no vesting of such lands as already discussed herein above.

17. Now, coming to the relevant definitions under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act, 1975.

“..... (e) "public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Government, and includes-

(1) any premises belonging to, or taken on lease by, or on behalf of-

(i) any company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty-one per cent of the paid up share capital is held by the Government; and

(ii) any corporation not being a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) or a local authority established by or under any law and owned or controlled by the Government; and

(2) any premises belonging to, or vested in, a local authority or any Board constituted under any law;”



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“..... (g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.....”

Therefore, in order to even term the petitioner as an unauthorized occupant and invite the provisions of the Act, the fundamental requirement is that the occupation must be of a public premises. The definition of “public premises” also means only a premises belongs to the Government or taken on lease or requisitioned by, or on behalf of the Government.

18.I have already discussed that the Municipality has not become the owner of the subject lands and they also cannot claim that the lands are vested with the Municipality. Therefore, the subject land clearly falls outside the scope of the enactment itself.

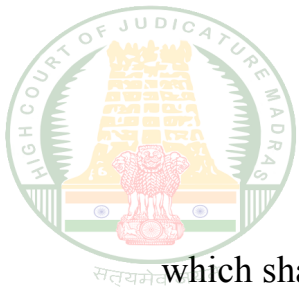
19.In very similar circumstances, this court in *Vasanthakumari's case* (referred herein supra), has held that when the lands which were supposed to be gifted in pursuance of an approval, never vested with the corporation at any point of time, then it is not open to the Municipality or the Corporation and in



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almost identical circumstances, this Court found that when the lands were handed over, the authorities did not insist for handing over of the suit land as well, and it continued to remain with the owner who had also subsequently dealt with it by way of a sale and this court held that the Corporation can only initiate acquisition proceedings and if not, the lands would continue to vest only with the original landowner.

20. In *PT. Chet Ram Vashist's case* (referred herein supra), the Honourable Supreme Court, also dealing with a case where the sanction of a layout plan had been issued by the municipal corporation and spaces were reserved in the approved plan for public purposes, namely park, school, etc, in such circumstances held that the Corporation would only get a right as a custodian to manage the same, but cannot acquire any right, title or interest thereof. The Honourable Supreme Court also held that it was 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. On the facts of the said case, the Honourable Supreme Court also held that the Corporation shall have the right to manage the area which was earmarked for school, park, etc., and that 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.

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21.The sum and substance of the principle, that has been enunciated in the above cases, is that the Corporation or the Municipality does not acquire any vested right, title or interest in the land earmarked for public purposes unless and until a registered gift deed is executed by the owner. No doubt, as a custodian the Municipality or Corporation is entitled to ensure that the lands are used for the originally intended purposes. However, in the instance case when the Municipality has ensured that the road portions had been gifted and two gift deeds also came to be executed by the original land owners in favour of the Municipality, the Municipality did not exercise due diligence in requiring a further gift deed in respect of the lands earmarked for the childrens' park.

22.The said lands continued to be in enjoyment and possession of the original owners, who, subsequently alienated the same in favour of the revision petitioner as well, that too, after putting up a residential building thereon. Today, the land earmarked for the childrens' park is in fact not available. The present proceedings that have been initiated are admittedly under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act, 1975.



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23.As already seen from the definitions, the Municipality cannot claim to be the owner in order to even invoke the provisions of the said enactment. No doubt, as held by this Court as well the Honourable Supreme Court, it is open to the respondent Municipality to initiate acquisition proceedings and acquire the land. However, presently, the invocation of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act, 1975 is clearly unsustainable.

24.Insofar as the arguments of Mr.P.Srinivas that the petitioner has stepped into the shoes of the original land owners who promoted the layout and is estopped from claiming any right, the earlier proceedings that were between the land owners and the Municipality were admittedly arising out of proceedings that were initiated under the District Municipalities Act, 1920. The present proceedings are under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act, 1975 and taken against the revision petitioner, alleging that the revision petitioner is an unauthorised occupant. Therefore, I do not see how the earlier decisions, though attained finality, would estop the petitioner from objecting to the very maintainability of the proceedings initiated by the Municipality.



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25. Also merely because the Honourable Division Bench as well as this Court in Second Appeal had given liberty to the respondent to initiate proceedings, such liberty can be availed of, only in accordance with law, if permissible. The liberty granted cannot be taken advantage of by the Municipality to initiate proceedings under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupant) Act, 1975, when the very invocation of the provisions of the Act itself is not available to the respondent Municipality. All these factors have not been properly factored and appreciated by the Commissioner and Estate Officer, Mayiladuthurai, as well as the District Court, Mayiladuthurai, and the findings rendered by them are therefore liable to be set aside.

26. In fine, the Civil Revision Petition is allowed. The judgment and decree in CMA.No.8 of 2019 dated 13.12.2023 on the file of the District Judge, Mayiladuthurai, is set aside. However, it is open to the respondent Municipality to initiate action for either acquiring the subject lands or take such other steps in a manner permissible in law, to ensure that the childrens' park is made available in terms of the layout conditions. There shall be no order as to costs. Connected



Civil Miscellaneous Petition is closed.

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19.09.2025

Neutral Citation : Yes/No
Speaking/Non-speaking order
Index : Yes/No
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To

The District Judge, Mayiladuthurai.

P.B.BALAJI.J.

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Pre-delivery order made in
CRP.No.2296 of 2024



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& CMP.No.12062 of 2024

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