

(2013) 08 MAD CK 0249

In the Madras High Court

Case No : Writ Petition No. 29497 of 2008

K.S.M. Amintha Sharifa and Others

APPELLANT

Vs

Executive Engineer, Zone-X and Others

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2014) 1 MLJ 66

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : G. Thilakavathi, for the Appellant; V. Bharathidasan, R. Jayaseelan, A. Kumar and R. Vijaya Kumar, Additional Government Pleader, for the Respondent

Judgement

T. Raja, J.—The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the impugned order passed by the first respondent/the Executive Engineer, Corporation of Chennai, Adyar, Chennai, in proceedings No. Z.O.X.C. No. 7363, dated 15.10.2008, by calling for the records connected thereto and consequently, to direct the second respondent/the Executive Engineer, Tamil nadu Housing Board, Chennai, to implement the approved layout in a manner known to law and thereupon, direct the third respondent/the Member Secretary, Chennai Metropolitan Development Authority, Chennai, to approve the planning permission for the proposed construction of residential building at Plot Nos. E.170/1, 2, 3 & 4 at the fourth cross street, Besant Nagar in T.S. Nos. 10/2, 3, 4 & 5, 4/2, Plot Nos. 38 & 40 of Urur Village. The case of the petitioners is that they have purchased the plot Nos. E170/1, E170/2, E170/3 and E170/4, situated at 4th Cross Street, Urur Village, Besant Nagar, Chennai, from the original allottees of the Tamil Nadu Housing Board and thereafter, they have also obtained pattas in their names. While so, in order to develop the above mentioned properties into a residential complex, they sought a permission from the third respondent/CMDA, but the same is pending. During the pendency of the application for permission, the third respondent also requested the Commissioner, Corporation of Chennai, to inform the status of the road and also

the width of the 4th cross street, abutting the site for taking further action regarding the approval of plan submitted by the petitioners for construction. Thereafter, third respondent-CMDA had also sent a letter dated 15.10.2007 rejecting the permission for construction on the ground that the proposed site for residential complex is adjacent to a road, which is not a public road. Subsequent to that, the petitioner had sent a detailed representation dated 18.4.2008 to the second respondent/the Executive Engineer, Tamil nadu Housing Board, Chennai, requesting to hand over the layout road, as the same was approved by the third respondent-CMDA. On receipt of the representation, the second respondent/Tamil-nadu Housing Board had sent a letter dated 22.4.2008, marking a copy to the petitioner, stating that the road abutting the plots may be taken over by the Corporation of Chennai/first respondent herein and the same has to be declared as public road.

2. At this juncture, learned counsel for the third respondent-CMDA submitted that as long as the adjacent road abutting the petitioners' property has not been declared as a part of the approved lay out, the request of the petitioner cannot be considered for permission to construct the residential complex.

3. Learned counsel appearing for the second respondent/the Tamil nadu Housing Board stated that a gift deed dated 5.3.2004 was entered between the Tamil Nadu Housing Board and the Corporation of Chennai, mentioning the schedule of property, namely, T.S. No. 52, Block No. 16 of Urur Village and Survey No. 155-part, Thiruvannamiyur Village, admeasuring 31.30 acres, and to that effect, he has also produced a copy of the gift deed. He further submitted that by way of gift deed, when the land in question has already been gifted to the Corporation of Chennai, it is the bounden duty on the Corporation of Chennai, Madras/first respondent herein to declare the road in question as public road.

4. The first respondent/Corporation of Chennai has also filed their counter, wherein, at paragraph 4, it is held thus:

4.....the Corporation of Chennai is prepared to take over the layout roads and open space reservation land without any encroachments pre-existing. After taking over from the second respondent herein, the road and open space reservation area will be developed as per Rules. Hence, the Corporation can form the road and declare as public, only after the second respondent handed over the layout roads and O.S.R. Land as per the guidelines. This above fact was intimated to the petitioner vide letter No. Z.O.X.C. No. 7363/2008, dated 15.10.2008.

5. In view of the fact that the land in question has already been gifted to the Corporation and the Corporation also has taken over the layout and open space reservation area, as per the above extracted portion, the issue of removal of encroachment would take time cannot be accepted. That apart, the plots purchased by the petitioners originally belonged to Tamil Nadu Housing Board and due to this, the petitioners, with a fond hope that there is no difficulty in

starting construction, have decided to jointly develop the above said properties into a residential complex and thereby, they have also applied for sanction of plan to CMDA. Moreover, the second respondent, in his letter dated 22.4.2008, categorically stated that the road abutting the plots may be taken over by the Corporation of Chennai and thereafter, the same has to be declared as public roads. When the layout road has already been surrendered by way of gift deed to the Corporation of Chennai, it is the bounden duty of the second respondent to take up the road as public road. Therefore, rejection of the petitioners' request for grant of approval for construction in the above said site is unjustified. As a matter of fact, when the gift deed for the road has already been prepared and sent to the Corporation for execution, the respondents cannot insist upon the donor to handover the land free of encroachment. Admittedly, since some of the encroachers are unlawfully residing in the land belonging to the Corporation, they should be removed by the Corporation of Chennai forthwith.

6. In fine, for the aforesaid reasons, the first respondent is directed to remove the encroachment with the assistance of the Revenue Authorities/respondents 4 and 5 herein within a period of three months from the date of receipt of a copy of this order and after the removal of the encroachment, the application submitted by the petitioner for grant of planning permission may be considered in accordance with law thereafter. The writ petition is disposed of with the above direction. No Costs. Consequently, connected miscellaneous petitions are closed.