
(1995) 08 MAD CK 0002
In the Madras High Court

M.R. Gopalakrishnan

APPELLANT

Vs

Special Officer, Corporation and Others

RESPONDENT

Date of Decision : 04-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 1 LW 397 : (1996) 1 MLJ 108

Hon'ble Judges : S.M. Ali Mohamed, J

Bench : Division Bench

Judgement

S.M. Ali Mohamed, J.—The prayer in this writ petition is to issue a writ of certiorarified mandamus or any other order or orders or

appropriate writ or direction in the nature of writ calling for the records connected with proceedings No. 1551/85, dated 7.4.1985 of the 2nd

respondent in Survey No. 2191/1 No. 4A, Nelson Road, Sarthy Nagar, Srirangam, Trichy District and quash the same and consequently direct

the first respondent not to acquire the petitioner's land to an extent of 6,700 sq. ft.

2. The petitioner in his affidavit filed in support of the writ petition states that he purchased a plot of land measuring to an extent of 6,700 sq. ft. in

the year 1983 for a consideration of Rs. 16,400. The petitioner along with four persons approached the authorities for approval of the lay out to

the then Srirangam Municipality in the same S. No.2191/1 and the same was sanctioned on 12.7.1984, subject to certain conditions. Some of the

important conditions were that the petitioner should maintain a playground, park and shopping area among other conditions given in the sanctioned

lay out. In the year 1984 the area covered by the Srirangam Municipality was brought within the jurisdiction of Tiruchirapalli Corporation. It is

further stated that on 11.12.1994 the first respondent without due notice to the petitioner demolished a part of the superstructure constructed by

the petitioner. Aggrieved by the same, the petitioner has approached this Court.

3. A counter-affidavit has been filed on behalf of the first respondent wherein it is stated as follows:

The writ petitioner herein along with M/s. N.P. Padmaraj, S.M. Rangawamy and T.R. Srinivasan purchased lands comprised in T.S. No. 2191/1

(part) measuring 2.13 areas, Block No. 49, Ward No. 2, Nelson Road, Tiruvanaikoil, Srirangam Municipality. For securing the approval of the

then Srirangam Municipality the petitioner divided the land into 23 plots and conveyed the same in favour of 23 persons under various sale deeds.

The purchasers applied to this respondent for approval of building plan, which was rejected by the Municipality as no lay-out has been approved

in the area. Thereafter, the petitioner herein along M/s. N.P. Padmaraj, S.N. Rangasamy and T.R. Srinivasan residing at No. 26, Thirunagar

Colony, Tiruvanaikoil and who are related to each other applied for approval of layout, besides securing necessary power of attorney deed from

the persons, who have purchased plots from them. The four applicants while requesting for approval of lay out undertook to abide by the

conditions that may be imposed by the second respondent herein.

4. Out of the 23 plots, the applicants proposed to retain plot No. 23 with themselves as seen from the application. In the layout plan submitted by

the petitioner along with the said three persons in respect of T.S. No. 2191/1 (part), the land measuring 2.13 acres was divided into 23 plots. The

applicants provided two 30" roads running east to west and provided open space for the public purposes such as park, playground and shopping.

After calling for a report and after investigation, the second respondent by his office proceedings in Na. Ka. 1551/05/TT.M4, dated 7.4.1985

granted approval for the layout subject to the conditions and stipulations set out in the said proceedings. In terms of the said proceedings of the

second respondent, an extent of 6,700 sq. ft. was reserved for children playground 2,250 sq. ft. for park and 1,600 sq. ft. for putting up shopping

complex. A total 10,550 sq. ft. i.e. 11.27 of 2.13 acres of land was reserved for the said public purposes. The petitioner and 3 other applicants

have agreed for the said reservation for the public purposes. The petitioner

herein has also executed an agreement agreeing to abide by the various stipulations and conditions set out in the lay out approval proceedings of the second respondent dated 7.4.1985. The petitioner by his latter dated 16.4.1985 has also agreed to abide by the said stipulations and conditions and for reserving of 10,550 sq. ft. for common purposes.

4. Mr. P.H. Pandiyan, learned senior counsel appearing for the petitioner contended that out of an extent of 20,000 sq. ft. reserved for the children playground, the petitioner is the owner of 6,700 sq. ft. and the Corporation is not the owner of the portion of the playground. In support of the said contentions, learned senior counsel cited the ruling of the Supreme Court in Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi, , wherein the Supreme Court upon the facts of the case observed as follows:

Sub-section (3) of Section 313 of the Delhi Municipal Corporation Act empowers the Standing Committee to accord sanction to the layout plan

such conditions as it may think fit. The expression such conditions" has to be understood so as to advance the objective of the provision and the

purpose for which it has been enacted. The Corporation has been given the right to examine that the layout plan is not contrary to any provision of

the Act or the rules framed by it. But the power cannot be construed to mean that the Corporation in the exercise of placing restrictions or

imposing conditions before sanctioning a layout plan can also claim that it shall be sanctioned only if the owner surrender a portion of the land

transfers it in favour of the Corporation free of cost. That would be contrary to the language used in the section and violative of civil right which

vests in every owner to hold his land and transfer it in accordance with law. The resolution passed by the Corporation directing the appellant to

transfer the space reserved for tubewells, school and park in its favour free of cost was depriving the owner of his property and vesting it in the

Corporation against law. Such condition amounts to transfer of ownership and not merely transfer of right of management. The two rights, namely,

of ownership and of management, are distinct and different rights. Once a vacant site is transferred in favour of another free of cost then the person

transferring it ceases to be owner of it. Whereas in transfer of right of management the ownership continues with the person to whom the property

belongs and the local authority only gets rights to manage it. But the conditions imposed by the standing committee clearly meant to transfer the

ownership in favour of the Corporation. In absence of any provision in the Act the open space left for school or park in a private colony cannot

vest in the Corporation. The section impose a bar on exercise of power by the owner in respect of land covered by the layout plant. But it does

not create any right or interest of the Corporation in the land so specified. The resolution of the standing Committee, therefore, that the area

specified in the lay out plan for the park and school shall vest in the Corporation free of cost, was not in accordance with law, public purpose is, no

doubt, a very important consideration and private interest has to be sacrificed for the welfare of the society. But when the appellant was willing to

reserve the two plots for park and school then he was not acting against public interest. This cannot be stretched to create a right and title in favour

of a local body which utmost may be entitled to manage and supervise only.

and contended that the ownership of the property to the extent of 6,700 sq. ft. for the children playground is owned by him and the Corporation of

Tiruchirapalli as a successor-in-interest of Srirangam Municipality is only the custodian and the right of ownership in the area vest in the petitioner.

5. On the other hand, Mr. K. Padmanabhan, learned Counsel appearing for the first respondent/Corporation contended that the writ petition itself

is not maintainable on the ground that the impugned order dated 7.4.1985 challenged and the petitioner has approached this Court under Article

226 of the Constitution of India only in the year 1994 i.e. 26.12.1994 and as such the writ petition has to be dismissed for laches and the delay in

preferring the writ petition has not been explained by the petitioner. He further submitted that the prayer of the writ petitioner cannot be granted as

it will amount to questioning the layout plan sanctioned in 1985, wherein the petitioner and three other have given undertaking to comply with the

conditions of the layout and among the other conditions with regard to the playground, the petitioner is bound to comply with the same.

6. Mr. V. Raghavachari, learned Counsel appearing for the third respondent/Sarathy Nagar Welfare Association submitted that to safeguard the

interests of the persons who have purchased the plot, the petitioner is bound by the conditions of the layout and if any change is made contrary to

the said conditions it will affect the enjoyment of the other persons who have purchased the plots and constructed dwelling units on the same.

7. I have considered the respective contentions of the learned Counsel for the petitioner and the respondents. There is force in the contention of

Mr. P.H. Pandiyan, learned senior counsel appearing for the petitioner that with regard to the ownership of the property, the petitioner continued

to be the owner, with regard to 6,700 sq. ft. However, this ownership is subject to the permanent easement viz., as contained in the conditions laid

down by the Srirangam Municipality, which granted layout and one of the conditions is that the space reserved for the playground shall be kept as

playground and shall not be used for any other purpose. The Supreme Court in Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation

of Delhi, , has clearly laid down the law that just because a layout is sanctioned, the ownership in the common property does not vest in the

Corporation or the authority who sanctions the layout, but impose certain restrictions on the user of the common area demarcated and the

ownership will vest with the owners of the land on the date when the sanctioned layout was granted and any resolution passed contrary to the

transfer the space reserved for such purpose shall be used school park in favour of the authorities free of cost deprived the owner of this property,

which is not permissible unless the transfer of ownership is effected under the law. Merely transfer of right of management will not amount to

transfer in the ownership of the property. The Supreme Court also pointed out that the two rights viz., the ownership and management are distinct

and different rights. Once a vacant site is transferred in favour of another free of cost when the person transferring it ceased to be the owner of it.

Whereas the transfer of ownership of management, the ownership continues with the person to whom property belongs and the local authority only

gets right to manage it. But the conditions imposed by the Standing Committee clearly meant to transfer the ownership in favour of the

Corporation. In the absence of any provision in the Act the open space left for school or park in a private colony cannot vest in the Corporation.

8. Mr. E. Padmanabhan learned Counsel for the respondents pointed out that a clause in the sanctioned lay out which states that the petitioner has

agreed to try to transfer the common area as playground. In pursuance of the said clause, no sale deed was executed by the petitioner and other

co-owners transferring the right in the property to the Tiruchirapalli Corporation. In view of the above, technically the ownership will vest with the petitioner, however, the Tiruchirapalli Corporation is the manager of the property to enforce the conditions imposed when the layout was sanctioned and the Tiruchirapalli Corporation within the rights to enforce the conditions contained in the layout sanctioned and the petitioner and other co-owners are bound to comply with the same. If any infringement is caused, it is also the duty of the first respondent to see as a custodian that the conditions imposed in the layout are strictly in force and if any violation is committed by any co-owner, to take appropriate steps to prove such violations of the conditions of the layout. The Tiruchirapalli Corporation is within its right to issue show-cause notice to the petitioner when it came to its knowledge that the petitioner was attempting to put up a structure on the space specifically reserved for a playground, for common purpose.

9. These restrictive covenants regarding user of the land or building are imposed by statutory authorities for sanctioning planning permission for lay out of the site and building permission by virtue of power given under various enactments regarding use of particular land or building in a particular area in public interest and have an element of community of interest with reciprocal obligations. Such restrictions or covenants should be regarded as an equitable burden on use of land or building by virtue of building scheme or scheme of development under various enactments like the Tamil Nadu Town and Country Planning Act, 1971, the District Municipalities Act, 1920 and the Madras City Municipal Corporation Act, 1919 and annex them to land or building as appurtenance so as to bind all successors-in-title and successive) owners of land or building.

10. There is force in the contention of the learned Counsel for the respondents 1 and 2 that the writ petition is belated and suffer from laches. The petitioner has approached this Court after ten years from the date of cause of action and that too to cancel the lay-out sanctioned. He has not explained the reasons as to why the petitioner has approached this Court after ten years. On this ground also, the writ petition is liable to be dismissed. In view of the above, it is ordered as follows:

(1) The ownership in the common plot of land reserved for playground and

petitioner, but subject to conditions contained in the sanctioned layout

No. 35 of 1985. However, the said right of ownership is subject to permanent restrictions on user of land and that the petitioner shall not put up

any structure or use it for any other purpose apart from the purpose for which it has been reserved as per the conditions contained in sanctioned

layout plan:

(2) It shall be the duty of the first respondent as the Manager of the land which is subject-matter of the lay out, to see the conditions imposed in the

lay-out are strictly complied with and if any person violates the conditions with regard to the usage of the land, it shall take appropriate action in the

matter in accordance with law.

(3) The members of the Sarthy Nagar Welfare Association, the third respondent herein shall strictly comply with the restrictions and conditions

imposed by the Srirangam Municipality in sanctioned lay-out No. 35 of 1985.

(4) The petitioner is permitted to name the playground as M.G.R. playground and fixing a brand in the land demarcated as playground in the

sanctioned lay-out as per the request of the learned senior counsel for the petitioner.

There will be no order as to costs.