
(2011) 08 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No. 734 of 2007 and M.P. (MD) No. 1 of 2007

Neelamegam Nagar House Owners Association

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0057

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : G.R. Swaminathan, for the Appellant; S. Bharathi, Gov. Advocate for R-1, R-2 and R-4, M. Saravanakumar, for R-3, K. Srinivasan for M.P. Senthil, for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner Association, which is a registered Association of the Neelamegam Nagar House Owners, has invoked

the extra ordinary jurisdiction of this Court, with a prayer for issuance of a Writ, in the nature of Mandamus, directing the Respondent Nos. 1 to 4,

to preserve the common usage of lands, as notified in the lay out approval of Neelamegam Nagar, Y. Othakkadai, Madurai District.

2. The Petitioner pleaded case is, that Thiru.K.R. Annamalai got approved a lay out plan vide No. 63/84 from the Deputy Director, Town

Planning, Madurai Region on 21.08.1984, which was conveyed vide order No. 4276/84.

3. The land was divided into 100 plots with seven 30" internal roads for common passage, and allotment of places for public purposes namely play

ground, library, religious worship, community hall and for shops. The purchaser of the plots have constructed houses therein, and are using the

land left for common purposes for which it was earmarked.

4. The case of the Petitioner, is that the area left for play ground has been sold to the fifth Respondent, who is trying to convert the change of its

use from playground, and is restraining the residents from using the area as play ground.

5. The Petitioner, being aggrieved by the action of the fifth Respondent, has approached this Court, praying for relief as noted above.

6. In support of the prayer, the Learned Counsel for the Petitioner placed reliance on the decision of a Division Bench of this Court in K.

Rajamani, R.M. Chinna Alamu rep. by Power Agent V. Ramasamy and R.M. Meenakshi rep. by Power Agent V. Ramasamy Vs. Alamunagar

Residents Welfare Association, The State of Tamil Nadu and The Special Commissioner Town and Country Planning Department, .

7. On notice of the writ petition, counter affidavit has been filed by the fifth Respondent, wherein the stand taken by the fifth Respondent is as

under:

3. So for the allegations in Para 3(ii) and (iii) a re concerned, I respectfully submit that it is true that a lay out has been approved in R.S. No.

70/1A, Rajakamberam Village by the Deputy Director of Town Planning bearing approval No. L.P./R(M.R) No. 63/1984 and it is also true that

there a re places set apart for public purposes. But factually either the Panchayat/3rd Respondent or 1st and 2nd respondents have not initiated

any action since from the year 1984 to t aken possession of the places set apart for public purposes and hence they a re not under the control of

Panchayat/3rd Respondent and also it is deduced that the original owners of the land have not gifted the common places in favour of the

panchayat. At the same time, the common places set apart for public purposes could not be used for purpose for which the same came to be set

apart besides all the common places set apart except the playground under challenge are completely covered by bushes and a re being utilized by

the cattle owners of the nearby a area and also as open toilet and neither the Panchayat nor the residents are able to take any action to clear the

bushes and utilize for the purpose for which it was set apart. So far this instant case is concerned, the allegations that the places allotted for

common purpose should not be used for any private purpose and when the

deviation is done it should be curbed by the Respondents No. 1 to 4

or they should not allow these places to be commercialized is not correct. In fact, the property covering an extent of 27 cents allotted for park and

playground is purchased by this Respondent only for the purpose of using it as a playground for the benefit of the students studying in the Raghav

Public Matriculation School which is under the control of the above mentioned trust. As such, there is no deviation of the common places as

alleged in the writ petition, so far the above said 27 cents is concerned

8. In spite of the stand taken in paragraph 3 of the counter affidavit, the learned Senior Counsel for the fifth Respondent, on instructions, states that

the area purchased would be maintained as playground for the use by all the residents, including the children of the school, and its user will not be changed.

9. In view of the statement made by the learned Senior Counsel for the fifth Respondent, the Learned Counsel for the Petitioner does not press this writ petition.

10. The writ petition is accordingly, dismissed as not pressed. However it is ordered that the fifth Respondent shall be bound by the statement made before this Court. It is also made clear, that in the event of the fifth Respondent not maintaining the area properly, it will always open to the authorities to maintain the play ground for use of all the residents.

11. No costs.

12. Consequently, the connected miscellaneous petition is closed.