

(2011) 07 MAD CK 0313

In the Madras High Court

Case No : W.P.No. 15333 of 2011 and M.P.No.1 of 2011

Sonny George

APPELLANT

Vs

The Commissioner, St. Thomas Mount Panchayat Union,
Chitlapakkam, Chennai.

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) WritLR 610

Hon'ble Judges : M.Y. Eqbal, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon'ble T.S. Sivagnanam, J.—In this writ petition, the petitioner has sought for issuance of a writ of Certiorari to quash a notice issued by the respondent Panchayat Union, calling upon the petitioner to furnish certain details as regards the land and building in plot Nos.29 & 30 in survey No.256/2 and the adjoining site at Kottivakkam village and as regards the nature of activity carried on in the said premises.

2. The notice states that the land adjoining plot Nos.29 & 30 has been reserved for children's playground and a building has been constructed by the petitioner without obtaining planning permission. In this regard, the information has been sought for from the petitioner.

3. The case of the petitioner is that he had purchased an extent of 3.42 acres of land comprised in S.F.No.256/2, Kottivakkam village during 1965. The lands were plotted out and approval was obtained from the competent authority under the Town and Country Planning Act. It appears that the petitioner retained two plots being plot Nos.29&30 for himself. Adjacent to the said plot, an area has been earmarked for children's playground and the petitioner claims to be in possession and enjoyment of the said area also since 1968. The petitioner further states that the patta has been granted in his favour during 1982 and he

has put up construction and has been paying property tax to the panchayat.

4. The learned senior counsel appearing for the petitioner, while assailing the correctness of the notice would submit that for over 40 years, the petitioner has been in possession of the land earmarked for children's playground and the respondent did not utilize the said land and by efflux of time, the respondent has abandoned its right over the property and the respondent is not justified in calling upon the petitioner to furnish details as sought for and upon failure to do so, threatening to demolish the building is illegal. The learned senior counsel would further submit that the petitioner has been paying property tax for the building and the respondent cannot threaten to demolish the building, which has been in existence for over 30 years. The learned senior counsel in support of his contentions placed reliance on the decisions of the Supreme Court in Balakrishna H. Sawant and Others Vs. Sangli, Miraj and Kupwad City M. Corpn. and Others, and Raju S. Jethmalani and Others Vs. State of Maharashtra and Others, , for the proposition that by efflux of time, the area earmarked for a public purpose having not been utilized for several years had lapsed.

5. We have heard the learned senior counsel for the petitioner and perused the materials available on record.

6. It is a settled legal principle that this Court while exercising jurisdiction under Article 226 of the Constitution seldom interferes in a show cause notice, unless it is established that it is wholly without jurisdiction. However, the case of the petitioner is that the respondent panchayat is not justified in calling upon the petitioner to furnish the details sought for, on the ground that though an area was earmarked for a public purpose in the layout plan, the respondent having not taken any action to utilise the said land for the said public purpose, such reservation had lapsed and therefore, there is no jurisdiction for the respondent to call for details.

7. It is to be noted that whether any action was taken by the respondent for utilizing the said land is essentially a question of fact which cannot be gone into at this stage. The further question whether by efflux of time, the reservation for a public purpose itself had lapsed and by virtue of which, the petitioner could claim an absolute right over the property is also a question of fact, which cannot be gone into in a writ petition.

8. The case before the Supreme Court in Balakrishna H.Sawant referred supra, was relating to reservation of an area for school and playground in a development plan and taking note of the facts of the said case, that no steps were taken by the Government for acquiring the said lands, their Lordship's opined that the reservation will serve no purpose. In the case of Raju SJethmalani, referred supra, a private land was reserved in the development plan for park and garden to which the land owner had no objection, however the land was not acquired and private persons to whom the land was sold by the original owner moved for de-reservation of the land to use it for residential purpose,

Government after following the procedure and issuing notification, inviting objections against the proposed de-reservation and the residents of the area having raised no objection and the Municipal Commissioner having expressed inability to muster up necessary funds for acquiring the land, notification granting de-reservation was issued. This notification was challenged by a public interest writ petition and considering the facts of the said case, the Supreme Court granted six months time to the residents to raise funds for the acquisition of the land by the Government, failing which, granted liberty to the appellants therein to use the land for residential/other purposes.

9. In our view, the decisions relied on, have no application to the facts and circumstances of the case on hand. Admittedly, the petitioner, who was the land owner of the total extent of 3.42 acres had divided it into house sites and applied to the town planning authority for layout approval. The competent authority on being satisfied that the layout plan conforms to the requirements under the provisions of the Town and Country Planning Act and the Rules, that sufficient place has been earmarked for roads and other public purposes granted approval of the layout during 1968.

10. Be that as it may, the impugned proceeding is only a show cause notice. Therefore, the petitioner must submit his objections/reply to the notice and pursue the same. Therefore, we are not persuaded to interfere at this stage, and accordingly, the writ petition is disposed of with the following directions:-

(i) The petitioner is directed to submit further objections/reply to the impugned notice, raising all contentions and on receipt of the same, the respondent shall after affording an opportunity of hearing to the petitioner pass a reasoned order without being in any manner influenced by the observations made in this order.

(ii) It is needless to state that in the meantime the status-quo as regards possession of property in question shall be maintained.

(iii) Consequently, connected miscellaneous petition is closed. No costs.