

(2002) 06 MAD CK 0116

In the Madras High Court

Case No : Writ Petition No. 13391 of 2002, W.P.M.P. No. 18005 of 2002 and
W.V.M.P. No. 650 of 2002

Tamil Nadu Housing Board (Pallavan Nagar) Residentials'
Welfare Association

APPELLANT

Vs

The Executive Engineer and Administrative Officer, Vellore
Housing Unit, Sathuvachari, Vellore, The Director of Town and
Country Planning, Chennai, State of Tamil Nadu and The
Executive Officer, Sevilemedu Town Panchayat

RESPONDENT

Date of Decision : 17-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 06 MAD CK 0116

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : S. Doraisamy, for the Appellant; R. Muthukumaraswami, A.A.G. for
D. Veerasekaran and N. Sampath, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—As requested by both sides, main writ petition itself is taken up for final disposal. Tamil Nadu Housing Board (Pallavan Nagar) Residents' Welfare Association, Kancheepuram, aggrieved by the Notification of the Executive Engineer and Administrative Officer, Vellore Housing Unit, published in "Dhina Bhoomi" Daily dated 17-03-2002 calling for applications from the eligible persons for allotment of houses, has filed the above writ petition to quash the same on various grounds.

2. The case of the petitioner is briefly stated hereunder: According to them, the petitioner Association is a registered Association under the Societies Registration Act. The first respondent Board in 1980 have proposed to form out a neighbourhood scheme at Kancheepuram. For that purpose, 51.78 acres of Patta land were acquired through the third respondent. After getting 3.31 acres by way of assignment from the Government, a development plan was prepared by the

first respondent which was approved by the second respondent in his proceedings dated 11-2-81. The approved plan prescribes certain places as non-saleable areas. 5.07 per cent area was left for school and play ground to the extent of 1,21,653 sq.ft. and 10.50 per cent area was left for park and open spaces to the extent of 2,51,968 sq.ft. After completing the developmental facilities and laying of the roads and the construction of houses, the first respondent herein called for applications from the public for the purchase of individual houses under the hire purchase and also out right purchase basis during the years 1985, 1992. The cost of each house is calculated on the basis of the land cost, including the land acquisition enhanced cost, development charges, amenities, construction charges and service charges. As per the allotment order, the allottee should form a co-operative society for the purpose of maintenance within the 6 months period failing which the Board will withdraw from the maintenance. The allottees have paid the maintenance charges to the first respondent Board till 1993. The whole non-saleable area was handed over to the Sevilimedu Town Panchayat except school and play ground, Tamil Nadu Housing Board Field Office and Land Bank. After taking over the maintenance, the said panchayat is levying property tax and water tax and the panchayat is maintaining the roads, streets, lights, sanitary convenience, water, etc. Though many institutions came forward with starting of a school in the area reserved for school and play ground, it seems the first respondent refused to part with the area. Thus, no other place is reserved for the school except in S.No. 582 and 581/4. The residents are sending their children to Kancheepuram for even Kinder Garden School. Without reference to the difficulties of the allottees, the second respondent had given approval for reduction of the area earmarked for school and play ground without following the procedure laid down in the Tamil Nadu Town and Country Planning Act, 1971 (in short "the Act"). Hence the present writ petition.

3. The Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Vellore/first respondent herein has filed a counter affidavit disputing various averments made by the petitioner. It is stated that in order to form Kancheepuram Neighbourhood Scheme, Phase-I, an extent of 28.07 Hectare of land was placed under the disposal of the Tamil Nadu Housing Board by L.A. authorities. The lay out was prepared and approved by the Deputy Director of Town and Country Planning, Chengalpattu Region, Madras vide CR/DTCPM 81-17 LP No.12 dated 11-2-81. In the approved lay out, residential plots, area reserved for flats, shopping and commercial community buildings like school and hospital totally to an extent of 13.82 Hectare have been reserved as buildable/saleable area. After the revised layout was approved by D.T.C.P. for the actual extent of 55.07 Acre, an extent of 11,301 Sq.Metre (1,21,653 Sq.ft) was earmarked for school and playground under saleable area. The tentative cost of school site is Rs.48 lakhs during the year 1997-98. It is lying vacant for long period. Finally an advertisement was made in Newspaper and auction conducted on 5-3-98, but there was no response. In order to safe guard the Board's property, it has been

proposed to convert a portion of school site area into residential plots; accordingly the land use conversion has been got approved by the competent authority (Government) and another revised layout was approved by DTCP dated 21-3-2001. In the revised lay out also, an extent of 6437 Sq.Metre was earmarked as school site under saleable area. Further, 41 residential plots are also incorporated in the revised layout. For all 41 houses amount has been collected towards non-refundable initial deposit amount of Rs.60.50 lakhs. At this juncture the petitioner Association filed the above writ petition and obtained an order of stay of all further proceedings. After getting the land, a lay out was prepared and duly approved by the Deputy Director of Town and Country Planning, Chengalpattu Region dated 11-2-81 and the contrary statement made by the petitioner is incorrect. Since no one has come forward to purchase the site for running a school, a portion of the area alone was duly converted into a residential site, in addition to providing an extent of 6,437 Sq.Metre in the same for any future school to come up. The conversion was approved by the competent authority as well as DTCP. Regarding non-availability of school in and around their residential area, it is stated that about 11 schools are located within 1 K.M. from Kancheepuram Neighbourhood Scheme Phase-I Scheme area.

4. In the light of the above pleadings, I have heard Mr. S. Doraisamy, learned counsel for the petitioner and Mr. R. Muthukumaraswamy, learned Additional Advocate General for respondents 1 to 3.

5. Mr. S. Doraisamy, learned counsel for the petitioner has raised the following contentions:

(i) The respondents failed to follow the procedure for conversion prescribed u/s 32 of the Tamil Nadu Town and Country Planning Act, 1971;

(ii) Having reserved an area for school and play ground and sold the constructed flats after getting money for the entire area, including the open area, the respondents are not justified in reducing the school area and converting the same into residential plots.

Mr. R. Muthukumaraswamy, learned Additional Advocate General, after showing the approved lay out plan, has contended that the conversion, namely, reduction in school and play ground area was approved by the competent authority, namely, Government and Director of Town and Country Planning after following the procedure. He also contended that no one has come forward to purchase the site intended for school and play ground to construct a school earmarked in 11,301 sq.metre, that in order to safe guard the interest of the Board and also taking note of all the other aspects, the area intended for school and play ground alone was reduced to 6,437 sq.metre and that the same was properly approved by the competent authority. He also demonstrated before me that even now such area, namely, 6,437 sq.metre is available for school and play ground and apart from this, about 11 schools are located at a distance of 1 K.M. from Kancheepuram Neighbourhood Scheme Phase-I area.

6. I have carefully considered the rival submissions.

7. With regard to the first contention, it is seen that in order to form Kancheepuram Neighbourhood Scheme Phase-I, an extent of 28.07 Hectare land was placed at the disposal of the Tamil Nadu Housing Board by the land acquisition authorities. The lay out was prepared and approved by the Deputy Director of Town and Country Planning, Chengalpatta Region in CR/DTCPM 81-17 LP No.12 dated 11-2-81. A perusal of the approved lay out shows that residential plots area reserved for flats, shopping and commercial community buildings like school and hospital totally to an extent of 13.82 Hectare have been reserved as buildable/saleable area. After the inclusion of the Government land to an extent of 3.31 Acres, it is seen that an extent of 11,301 sq.metre (1,21,653 sq.ft) was earmarked for school and play ground under saleable area. According to the Housing Board, the tentative cost of school site is Rs.48 lakhs during the year 1997-98. It is further seen that in order to run a school, the respondents made an advertisement in the Newspaper and an auction was conducted on 5-3-98 in which there was no response. In the light of the said position and in order to safe guard the Housing Board's property and to avoid further revenue loss to the Board, it is stated that the Board has decided to convert a portion of the school site area into residential plots. As contended by Mr. S. Doraisamy, learned counsel for the petitioner, variation or conversion or modification has to be made as per the procedure prescribed under the Act. As per Section 32 of the Act, a regional plan, master plan or new town development plan approved u/s 28 may at any time be varied or revoked by a subsequent regional plan, master plan or new town development plan with the approval of the competent authority. As per sub-section (2) of this Section (Section 32), the competent authority is the Government. In this case, it is specifically stated that though in the earlier layout approved by the authority, an extent of 11,301 sq.metre was reserved for school and play ground, in the absence of any offer to purchase the same to run a school and in order to safe guard their property and mitigate the revenue loss, the Board had taken a decision to reduce the school area and convert the remaining portion as a residential area. For this, in the counter affidavit of the first respondent, it is specifically stated that the conversion has been approved by the competent authority, result in another lay out as approved by the DTCP vide LP/DTCP No. 56/2001 dated 21-3-2001. It is also stated that as per the revised lay out, an extent of 6437 sq.metre was earmarked as school site under saleable area. Learned Additional Advocate General has also produced the original approved plan. In the light of the fact that the said conversion has got approved by the competent authority, namely, Government and the DTCP, as referred to above, and even after such conversion, a large extent of land, namely, 6437 sq.metre is available as school site under saleable area, I am unable to accept the first contention raised by the learned counsel for the petitioner.

8. Regarding the second contention, learned Additional Advocate General has produced the original lay out approved by the DTCP and the revised lay out also

approved by the DTCP. Since we are concerned with the area reserved for school and play ground, it is unnecessary to refer the other areas. Though Mr. S. Doraisamy has produced a plan which shows that the area earmarked for school and play ground is not saleable, learned Additional Advocate General has produced the authenticated original as well as revised approved lay out. In the light of the contentions raised, I have carefully verified the plans produced by the learned counsel for the petitioner as well as learned Additional Advocate General. In the original lay out plan, an extent of 11,301 sq.metre was earmarked for school and play ground under saleable area. It is the specific case of the Housing Board that in spite of proper advertisement in the Newspaper, no one has come forward to purchase the site for running a school in the area earmarked. Considering the fact that the large extent of land reserved for school and play ground is kept idle and not being utilised for a long time, to avoid further revenue loss to the Board, it has been proposed to convert a portion of school site area into residential plots. After taking necessary decision, the conversion has been approved by the competent authority (Government) and thereafter revised lay out was approved by DTCP vide LP/DTCP No. 56/2001 dated 21-3-2001. It is further seen that in the revised lay out an extent of 6437 sq.metre was earmarked as school site under saleable area. It is clear that in view of the fact that large extent of land reserved for school and play ground could not be used for want of qualified persons, the Board decided to reduce the area. Even after the revised lay out, sufficient extent of land is available for school and play ground. After perusing the revised approved layout, I am satisfied that in the existing place any interested person can run a school with play ground. Even according to the petitioner, there is no dispute regarding the existence of other open space for community centre, field office, park, C.P.S., land bank, roads etc. It is also brought to my notice that while finalising the cost of the scheme residential area, shops, commercial site, community hall and school site (with play ground for school) have been considered only as saleable area and not to be handed over to the local body, as separate 10 per cent has been provided for open space, including Parks, Children play space, Roads etc., as per the norms of the D.T.C.P. The first respondent has also explained that on the approved layout by the DTCP, open space reservation ratio of 10.83 per cent has been maintained and handed over to the local body which is more than the fixed norms of 10 per cent of total layout extent. A perusal of the approved revised layout plan shows that as per Section 17 of the Act, necessary provision for open space, Children play space, school site, roads have been provided and the contrary apprehension raised by the petitioner is liable to be rejected. I have already stated that the school site reserved in the layout was also proposed for sale. As there was no response from any one to purchase the site and run a school, a portion of the area alone was converted into residential site along with the 6437 sq.metre of school area. In other words, even in the revised lay out, nearly 6437 sq.metre is still available for school site which was approved by the DTCP and I hold that there is no violation of Section 17 of the Act as claimed.

9. Apart from the above facts, in the counter affidavit the first respondent has disputed the statement of the petitioner that they are not having adequate school in and around the residential area. In paragraphs 9 and 10 they furnished the details of 11 schools located within 1 K.M. of Kancheepuram Neighbourhood Scheme Phase I. In such a circumstance, the said contention is also liable to be rejected. They also specifically stated that before the revised layout got approved from the DTCP, the details of schools located surrounding the scheme area, their children strength and the balance requirement for residents had been thoroughly analysed. Apart from this, it is seen that in the revised layout approved by the DTCP 33 MIG plots and 8 HIG plots are provided. An advertisement had been made in the Newspaper on 17-3-2002. Since Tamil Nadu Housing Board is selling the houses at affordable price, it is informed that 73 numbers of application were received for 41 houses along with 25 per cent of non refundable initial deposit amount. In order to select the prospective buyers, lots had been conducted on 11-4-2002 and 41 allottees have been selected and allotment confirmation orders has also been sent even on 17-4-2002. It is further stated that for construction of buildings, tenders were called for and according to them, the work is in the advanced stage of commencement for execution. After selecting 41 persons by lots, it is stated that the Board has collected Rs.60.50 lakhs as initial deposit as against the full cost. Most of the allottees are from middle income group. After having invested lakhs of rupees, they are eagerly waiting for completion of the scheme. It is further stated that since the Board is committed to hand over the building in March, 2003, tenders have been called for and the works are to be commenced immediately.

10. In the light of what is stated above, I do not find any merit in the claim made by the petitioner; consequently the writ petition fails and the same is dismissed. No costs. Consequently, the Interim stay granted in W.P.M.P.No. 18005/2002 is vacated and the vacate stay petition, namely, W.V.M.P.No. 650/2002 is closed.