

(2002) 07 MAD CK 0064

In the Madras High Court

Case No : S.A. No's. 645 to 659, 677, 774 and 775 of 1992

Villupuram Municipality

APPELLANT

Vs

M. Subramanian, Thamayanthi, Meena, Bhanumathi, C.
Palanivelu, Thangathai Begum, Alaguvel, S. Radhakrishnan,
Geetha, Damayanthi, Meena, K. Subramanian, M.
Chidambara Mudaliar, M. Sundar and G. Santha

RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2002) 3 MLJ 375

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : G. Rajagopalan, for S. Chandrasekaran, for the Appellant; A. Sivaji, for the Respondent

Judgement

S. Jagadeesan, J.—In all these second appeals Villupuram Municipality is the appellant who filed different suits against the respondents in

each of the appeals herein. The relief sought for by the Municipality in the suits is for the declaration that the suit property is to be kept for the

common use of the residents of the locality, for the purpose of construction of school and playground and also for consequential injunction

restraining the respondents herein from putting up any construction. The first respondent is the erstwhile owner of the property who applied for the

sanction of the lay out . The Deputy Director of Town Planning accorded sanction in his proceedings Ex.A1 dated 16.5.1984 in

Roc.No.1976/1984. As per the said lay out sanction, the property under dispute should be kept for the construction of the school and play

ground. Since the first respondent, contrary to the sanctioned lay out, had

further divided the disputed property in to plots and sold the same to the second respondents in these second appeals and the attempt on the part of the purchasers to built up construction in the disputed property, the appellant filed the suits.

2.The defence of the first respondent is that as per the sanctioned lay out there is no dispute that the suit property is earmarked for the construction of the school and play ground. But within the stipulated time as the local body did not take possession of the disputed property and utilised the same for the purpose for which the same was earmarked, the disputed property vests with the first respondent and as such the first respondent is entitled to use the land as he likes. When that be so, the alienation made by him is quite legal and the purchasers are entitled to use the land as they like. The said written statement was adopted by the purchasers who are the other respondents in the respective appeals.

3.The trial court agreed with the plea raised by the respondents and dismissed the suits, finding that the authorities have to take possession of the land which is earmarked for the common use within the stipulated time and further they ought to have paid the compensation also to the land owner. On the failure to do so by the statutory authorities, the property earmarked for the common purpose in the sanctioned lay out would vests with the land owner and the land owner is entitled to use the same as he likes.

4.As against the same, the appellant herein filed appeals before the Sub Court, Villupuram. The learned Subordinate Judge also concurred with the findings of the trial court and dismissed the appeals.

5.At the time of admission of the second appeals the following substantial questions of law were formulated for consideration:

1.Is not the respondent-1 estopped in law from selling the "C" schedule property which forms part of the "B" schedule property in terms of Ex.A1,

A8 and agreement Ex.A3 wherein the 1st respondent agreed to reserve the "B" schedule property for school building and children playground and shops?

2.Whether the lower appellate court is right in holding that the suit itself is barred by limitation merely on the basis of the date mentioned in Ex.A1?

3.Whether the reasoning of the lower appellate court with regard to the applicability of Sections 36,37 and 38 of the Tamil Nadu Town and

Country Planning Act is correct when the said provisions does not apply at all to the facts and circumstances of the case?

4. Whether the denial of declaratory relief to the appellant is sustainable in the teeth of Ex.A1 to A8?

5. When Section 38 of the Town and Country Planning Act itself does not apply to the facts of the case whether the lower appellate court's finding

that in view of the statutory release of land u/s 38 Ex.A1 and A3 becomes invalid is correct in law?

6. Whether the trial court is right in applying the provisions of Madras Town Planning Act, 1920 for deciding the 4th issue when the Act itself has

been repealed by 1971 Act?

7. Whether Trial Court is right in holding that the suit is bad for non joinder of parties when the appellant itself is competent to maintain the suit on

the basis of Ex.A1 to A8?

6. It is the contention of the learned counsel for the appellant that when once the place is earmarked for common use under the sanctioned lay out,

there is no obligation on the part of the statutory authorities to pay any compensation to the land owner and to take possession of the land. On the

contrary, it is obligatory on the part of the land owner to keep the land earmarked for common use as it is and the land owner has no right over the

suit property to use it otherwise or to alienate the same. Consequently both the courts below have wrongly applied the legal principles and

delivered the judgment contrary to the statutory provisions.

8. On the contrary, Mr.Sivaji, the learned counsel for the respondents contended that Section 49 of the Tamil Nadu Town and Country Planning

Act, 1971 (Tamil Nadu Act 35 of 1972) enables the owner of the land to file an application for the sanction of the lay out. When once the lay out

is sanctioned, Section 50 of the said Act makes it clear that such permission is valid and shall remain in force for a period of three years from the

date of permission. Hence the permission for the sanctioned layout can be valid only for three years from the date of sanction or from the date of

order. Consequently the sanction had expired as early as 15.5.1987, three years subsequent to Ex.A1 and hence the suit is barred by limitation.

Further after the lapse of three years, the owner of the land has got absolute right to deal with the same and the manner as he likes. Though the

courts below have proceeded on the wrong assumption that the respondents are entitled for compensation and the possession of the land has to be

taken over by the statutory authorities, now in view of the above legal principles pointed out by the learned counsel for the respondent, the second

appeals are liable to be dismissed for the reasoning of the courts below, if not, by sustaining the judgment of the courts below for the above

reasons.

9.I carefully considered the above contentions of both the counsel. The question arises for consideration is whether as per Section 50 of the Tamil

Nadu Town and Country Planning Act the building permission lapses after the expiry of the period of three years and consequently whether the

land earmarked for the common use would vest with the land owner?

10.In view of the submission made by the learned counsel for the respondent that the courts below have proceeded on the wrong assumption that

the respondent ought to have been paid the compensation and possession ought to have been taken by the statutory authorities, it is unnecessary

for this court to deal with the correctness of the reasoning of the courts below. Straightaway it can be held that the reasoning of the courts below

also cannot be sustained and consequently the judgment and decree of the courts below also cannot be sustained and liable to be dismissed.

11.Now it is for this court to consider whether the second appeals are liable to be dismissed on the contention raised by the learned counsel for the

respondent that Section 50 of the Tamil Nadu Act 35 of 1972 contemplates that the sanctioned plan will be in force only for three years and

thereafter the permission lapses and consequently the same cannot be enforced. In my view, the contention of the learned counsel for the

respondent is totally a misconceived one and cannot be sustained.

12.In order to appreciate the contention of the learned counsel for the respondent, one has to consider the purpose of the Act and necessity for the

individual to get the sanction for the lay out. As the Supreme Court pointed out in the case of Pratibha Co-operative Housing Society Ltd. and

another Vs. State of Maharashtra and others, the tendency of the public is to raise unlawful constructions and unauthorised encroachments which is

increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public

interest and hazardous to the safety of occupants and the residents of multi storied buildings. Any regulation is being brought in only to curb the illegal activities. Section 49 of the said Act contemplates the filing of application for such sanction of lay out. When the owner of the land, without considering the interest of the purchasers of the land, including the basic necessity, started to alienate the properties by laying out the plots and by providing small lanes as roads, it became necessary for the authorities to prescribe the norms to regulate the sanction of the lay out. It is unnecessary to deal with every provision under the Act. But the basic principle is to provide the roads with minimum width and also the other amenities such as open space to have the park for the use of the residents of the area and also to have necessary open space to have the play ground for both elders as well as youngsters and children to have a healthy life and also to have the school, temple and other necessities in the area. In order to make it compulsory the individual land owner had been directed to approach the authorities in accordance with Section 49 of the Tamil Nadu Act 35 of 1972. When such application is being filed by the individual, the authorities have to consider the viability of the lay out and sanction the same, imposing the conditions which are necessary in the public interest. When such permission is granted for the lay out then Section 50 makes it clear that every permission granted u/s 49 shall remain in force for a period of three years from the date of such permission. The learned counsel for the respondent mainly relied upon this provision in support of his contention that after the expiry of three years period the sanction would lapse and as such the authorities are not entitled to enforce the conditions imposed therein. As already submitted, there is total misconception on the part of the learned counsel for the appellant. When once the lay out is sanctioned, it has to be kept as it is for ever; especially in respect of the earmarked portions of the area for public purpose. The conditions imposed for the sanction of the lay out are the conditions coupled with the sanction of the lay out. In that case, the lay out is being sanctioned only on the expectation that the land owner will comply with the conditions imposed thereunder. When the conditions are imposed for sanction of the lay out the compliance of such condition is mandatory and is not for the time being to satisfy the requirement of the sanction. When that be so any condition imposed for the sanction of the lay out must

strictly be complied with. If the contention of the learned counsel for the respondent is to be accepted then the conditions imposed for the sanction of the lay out can be patently violated after the lapse of the validity period of sanction. If that be so, then the conditions imposed for sanction of lay out would become mockery as the land owner can make a belief of such compliance for the time being alone without any relevance to the reality of the fact that such conditions are imposed for the public interest and the conditions have to be complied with some sincerity and the lay out must be maintained for ever in accordance with the sanction. If this is not the intention of the legislature, then there is no need for imposing any condition knowing fully well that the conditions are temporary one which can be enforced only during the subsistence of the validity of sanction. When the conditions are imposed, there is purpose behind this requirement and such conditions shall be complied with and the reservations made under the conditions should be kept intact for ever.

13. Coming to Section 50 of the said Act, as already pointed out, Section 50 contemplates the period for which the sanctioning order will be in force. The period prescribed u/s 50 is only for the compliance of the conditions imposed under the sanction of the lay out and also for the owner to make the lay out ready within the prescribed period. In case if the land owner is unable to make the lay out ready within the prescribed period of three years, the proviso comes into play which empowers the planning authority to extend such period for such time as it thinks proper, but not exceeding a period of three years, on an application made in that behalf before the expiry of the prescribed period of three years. The second proviso to Section 50 envisages that the expiry of the period of three years is not a bar for the land owner to file an application for fresh permission under this Act. This section is to be read along with two provisos attached therein which are clear that this section is only to enable the land owner to make the sanctioned lay out ready within the prescribed period of three years and if for any reasons he is unable to comply with the same he can seek for extension of time by filing an application prior to the expiry of the prescribed period of three years or after the expiry of the prescribed period of three years, it is open to him to file an application for fresh permission. Hence the provision is only an enabling provision for the land

owner to strictly comply with the sanction of the layout. Hence it cannot be construed that by expiry of the period of three years, the sanction itself is lapsed and consequently the conditions imposed under the sanctioned layout also lapse and cannot be enforced. If the contention of the learned counsel for the respondent is to be accepted, then it may not be open to the land owner to sell the plot as sanctioned lay out after the lapse of such sanction as contemplated u/s 50 of the said Act. As already said, the conditions are being imposed for the benefit of the public and the society at large and the residents of the locality in particular. When the purchasers of the plots in the sanctioned lay out get a vested right for their benefit at large, it may not be open to the land owner to usurp the land for his own benefit, depriving the beneficiaries who purchased the land only with an understanding and expectation that the earmarked portions of the land for common use shall be kept for ever for the use of the residents. The provision do not relate to the right of the land owner alone. When once the place is earmarked for the common use, the land owner loses his individual right over the same and he is supposed to hold the same for the benefit of the purchasers of the plots under the sanctioned lay out obtained by him. There cannot be any doubt that the land owner obtained the sanction of the lay out with a condition that he will keep the place or the extent of the land earmarked for a particular purpose only for the said purpose.

14. I am fortified with the judgment of this court in *GOPALAKRISHNAN v. SPECIAL OFFICER, CORPORATION OF TRICHY* 1996 WLR

185 where the learned Judge has held as follows:

(1) The ownership in the common plot of land reserved for playground will vest with the petitioner, but subject to conditions contained in the sanctioned lay out 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 for which it has been reserved as per the conditions contained in sanctioned lay out 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 or building it shall take appropriate action in the matter in accordance with law.

(3)The members of the Sarathy 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 put up a board in the land demarcated as playground in the sanctioned lay out as per the request of the learned senior counsel for the petitioner.

15.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 to transfer/ ownership of the space reserved for use as school or 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

then the person transferring it ceased to be the owner of it. Whereas in case of the transfer of ownership of management, the ownership continues

with the person to whom the 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.

16.Yet another judgment of this court is also worth to mention in KRISHNA NAGAR RESIDENTS WELFARE ASSOCIATION .v. THE

DIRECTOR OF TOWN AND COUNTRY PLANNING 2001 3 LW 828 where the learned Judge has held as follows:

It is not disputed that in the layout plan, the disputed property has been shown

as a park. Therefore, there can be absolutely no justification on the part of the fourth respondent to claim the property as her own nor is it open to the authorities to concede such a demand. It may be open to the Town Planning authorities to convert the use of the land for any other public purpose other than purpose for which the land was earmarked.

Normally, a park can be converted into a place for hospital, school or Kalyana Mandapam etc for common use. The purpose should continue to remain only as public and for the benefit of the entire colony. But in the present case, the attempt is to convert the property as belonging to the fourth respondent herself which is definitely not permissible. The very lay out is sanctioned and granted only on the understanding that all the places marked as common would continue to remain as common and no individual like the fourth respondent can claim ownership of the property, which is sought to be done in the present case and which has also found acceptance by the public authorities namely respondents 1 to 3. I am unable to sustain the said claim on the part of the fourth respondent that she is entitled to have property to be converted to her own use. Otherwise, there is no purpose in submitting a lay out plan and the Government sanctioning the lay out plan subject to the requirements being satisfied. The learned counsel for the petitioner has rightly relied on the judgment of Supreme Court in Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi, . The Supreme Court has held that reserving any site for any street, open space, park, school, etc., in a layout plan in normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It would create an obligation in nature of the trust and may preclude the owner from transferring or selling his interest in it.

Therefore, the attempt on the part of the fourth respondent to assert the title over the property and rights over the property to utilise the property in any manner he likes in order to get income from the property cannot at all be accepted. Therefore, permission granted by the respondents 1 to 3 in this context is totally illegal and cannot be sustained.

I am unable to accept any of the other submissions made by the learned counsel

for the fourth respondent. It is true that the Civil Court has found in favour of the petitioners as regards the possession of the property. The fact that the petitioner continues to be in possession of the property alone cannot entitle the fourth respondent or other respondents to convert the use as against the purpose for which the lay out plan was sanctioned. Even assuming that the petitioner was in possession, as pointed out by the Supreme Court, *supra*, the owner would be holding it only for the benefit of the residents.

17. In fact the Apex Court had an occasion to deal with such an issue in the case of *Bangalore Medical Trust Vs. B.S. Muddappa and others*, . In the said case, the place was earmarked for public park. Bangalore Development Authority granted permission to construct a hospital in the said place which was held as illegal on the ground that the place earmarked for public park cannot be converted to other purpose, even though the allotment may be for some other public purpose.

18. In the case on hand, it is much worse that where the erstwhile land owner who is expected to hold the land as a trustee on behalf of various purchasers of the different plots from out of the sanctioned lay out, now claims the property earmarked for public purpose, as his own.

19. It may be worth to refer yet another judgment of the Apex Court *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, where it has been held as follows:

By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain the park which cannot be permitted.

But then one of the obligatory functions of the Mahapalika u/s 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the

locality including density of population living in the area, the floating population and other certain relevant considerations. This study was never

done. The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would

be violative of the doctrine of public trust as expounded by this Court in *Span Resort Case* (*M.C. Mehta Vs. Kamal Nath and Others*, Public

trust doctrine is part of Indian law. In that case the respondent who had

constructed a hotel located at the bank of River Beas interfered with the natural flow of the river. This Court said (at SCC p.413 para 35) that the issue presented in that case illustrated.

the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and

other charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it

necessary to encroach to some extent upon open lands heretofore considered inviolate to change.

In the treatise Environmental law and Policy, Nature, Law and Policy, Nature, Law and Society by Plater Abrahams Goldfarb (American

Casebook Series, 1992 under the chapter on Fundamental Environmental Rights, in Section 1 (The Modern Rediscovery of the Public Trust

Doctrine) it has been noticed that "long ago there developed in the law of the Roman Empire a legal theory known as the "doctrine of the public

trust". In America public trust doctrine was applied to public properties, such as shore lands and parks. As to how that doctrine works it was

stated.

The scattered evidence, taken together, suggests that the idea of a public trusteeship rests upon three related principles. First, that certain interests

like the air and the sea have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership.

Second, that they partake so much of the bounty of nature, rather than of individual enterprise, that they should be made freely available to the

entire citizenry without regard to economic status. And finally, that it is the principal purpose of a Government to promote the interests of the

general public rather than to redistribute public goods from broad public uses to restricted private benefit.

With reference to a decision in Illinois Central Railroad Co., Vs. Illinois 146 US 387: 37L.Ed.1018 1892, it was stated that "the court articulated

in the case the principle that has become the central substantive thought in public interest litigation. "When a state holds a resource which is

available for the free use of the general public, a court will look with considerable scepticism upon any governmental conduct which is calculated

either to reallocate the resource to more restricted uses or to subject public uses

to the self-interest of private parties"".

Thus by allowing construction of underground shopping complex in the park the Mahapalika has violated not only section 114 of the Act but also

the public trust doctrine"".

20.From the above dictum, it is clear that when the conditions imposed are restrictive covenants on the land for obtaining sanction of the lay out,

such restrictive covenants goes with the land and it cannot be taken away by lapse of time.

21.It may also worth to mention that under the provision of the statute, there is no obligation on the part of the statutory authorities to pay any

compensation to the land and to take possession of the area which is earmarked for common use. Even in respect of the extent of land earmarked

for roads, it is obligatory on the part of the land owner to execute a gift deed in favour of the Corporation or the Municipality or the local authority,

as the case may be. This condition is because the land owner is seeking the sanction of the lay out under the statutory provision. Hence it is for the

land owner to comply with the statutory conditions and it is not open to him to give a go by to the conditions under which the sanction has been

made. Many an occasion the violation of the conditions would entitle the cancellation of the sanction itself depending upon the case. But in a case

of sanctioned lay out the total cancellation may not be justified. Hence the authorities are enforcing the conditions imposed under the sanctioned

layout which cannot be an unlawful one.

22.From the above discussion it is clear that the reasoning of the courts below to dismiss the suits filed by the appellant cannot be sustained.

Consequently the judgment and decree of the courts below are set aside and the second appeals are allowed with a direction to the appellant to

take necessary steps for the construction of the school and also to make the area into a park within six months from today. This direction is being

issued as there is no purpose in keeping the land vacant without using the same for the purpose for which it is earmarked under the sanctioned lay

out.

23.Though the second respondents may be purchasers, as already stated, they failed to verify the sanctioned plan as to whether the plots

purchased by them form part of sanctioned lay out. The second respondents,

being purchasers of unapproved lay out, cannot claim any equity.

24. In all the appeals a memo has been filed by the appellant stating that the first respondent is no more. When there is no need to bring the legal

representatives, as the second respondent in all the appeals are the purchasers of the property from the first respondent, virtually the first

respondent has no right in the litigation. Hence the second respondent/purchasers may be treated as a necessary parties and the appeals can be

heard.

25. Mr. A. Sivaji raised an objection stating that in case if the purchasers loses in the second appeal it is for them to proceed against the legal

representatives of the first respondent, the owner of the land to claim the sale consideration and as such the legal representatives of the first

respondent are necessary parties. As rightly pointed out by the learned counsel for the appellant that the first respondent having parted with his

right in the property which is the subject matter of the litigation, there is no need to bring the legal representatives of the first respondent on record.

The right of the second respondent/purchasers to proceed against the legal representatives of the first respondent do not arise out of this

proceeding; but arise out of the recitals in the sale deed in favour of the second respondent which can always be enforced, depending upon the

terms of the sale deed in their favour. Hence the memo filed by the appellants is recorded. Pending CMPs are closed.