



W.A(MD)No.265 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2024

CORAM:

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**W.A(MD)No.265 of 2024
and
CMP(MD)No.2469 of 2024**

V.Boovalingam,
The President,
Arulanandammal Nagar
Welfare Society,
Arulananthammal Nagar,
Thanjavur.

... Appellant

-VS-

1. Ponnamani
W/o. Nagaiah,
Represented by its Power of Attorney
R.Jaisankar,
S/o. P.Rajagopal,
No.75, Teachers Colony 5th Street,
Nanjikottai Road,
Thanjavur Taluk,
Thanjavur District-613 006.

2. The Director,
Town and Country Planning
2nd, 3rd and 4th Floor,
C & E, Market Road,
Koyambedu,
Chennai-600 107.

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3. The Assistant Director/The Member Secretary,
Thanjavur Local Planning Authority,
No.5, 2nd Street, Gnanpathi Nagar,
Medical College Road,
Thanjavur-613 007.

... Respondents

PRAYER: Appeal filed under Clause 15 of Letters patent, against the order dated 21.04.2022 passed in W.P(MD)No.7607 of 2022 on the file of this Court.

For Appellant : Mr.S.C.Herold Singh
For R1 : Mr.R.Karunanidhi
For R2 & R3 : Mr.T.Amjadkhan, Government Advocate

J U D G M E N T

[Judgment of the Court was made by The Hon'ble CHIEF JUSTICE]

We have heard Mr.S.C.Herold Singh, learned counsel appearing for the appellant, Mr.R.Karunanidhi, learned counsel appearing for the respondent No.1 and Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents 2 and 3.

2. The respondent No.1/writ petitioner filed writ petition bearing W.P(MD)No.7607 of 2022 for release of her land to an extent of

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WEB C 55164 sq.ft in Old Survey No.3297 and New Survey No.33 situate at Arulanandammal Nagar, Ward No.29, Thanjavur Town, Thanjavur District. It is submitted that the said piece of land was reserved for school in the Detailed Development Plan under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971. The writ petitioner also prayed to direct the 2nd respondent to grant approval for converting the said land property as residential plots as per the Circular dated 14.08.2021 issued by the 2nd respondent herein. The learned Single Judge partly allowed the said writ petition and declared the said land reserved for school to have lapsed from the Detailed Development Plan under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, as the said land was not developed for 5 years and directed the respondent authority to take a decision with regard to the writ petitioner's application for converting the said land property as residential plots.

3. Learned counsel for the appellant/third party strenuously contends that the appellant is the Association namely, Arulanandammal Nagar Welfare Association. The Association is of all the plot holders of the said layout wherein, the subject land property was reserved for

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WEB COPY school. It is further submitted that the same is required to be used for school as per the reservation for the beneficial use of the layout holders. The respondents cannot be allowed to change the user of the said land as per their convenience and to the detriment of the plot holders. Learned counsel for the appellant also submits that the writ petitioner, who had filed writ petition, has purchased the subject land reserved for school with a condition of constructing a school on the said site.

4. Learned Advocate for the respondent No.1/writ petitioner submits that the said piece of land was reserved for school in the Detailed Development Plan and also the sanctioned layout. As per Section 38 and the provisions of the Tamil Nadu Town and Country Planning Act, 1971, if the land reserved for public purpose in the Detailed Development Plan is not used for 5 years, the reservation stands lapsed and the same has been considered by the learned Judge. Learned counsel for the writ petitioner relies upon the Circular dated 14.08.2021 issued by the 2nd respondent herein, to contend that if the public purpose facility for which the plot is earmarked is available outside the approved layout within a vicinity of 2 to 3 kilometres, then the powers can be exercised by the official respondents for conversion of

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use from public purpose to other allowable uses like residential etc.

According to the learned Advocate for the writ petitioner, in the sale deed, only narration of the property was mentioned as school land and there was no condition of constructing the school in the said land.

5. Learned Government Advocate appearing for the official respondents submits that the order of the learned Single Judge is already implemented, the land in question, reserved for school, has been de-reserved from the Detailed Development Plan and also the layout. A decision has been taken to that effect.

6. We have considered the submissions canvassed by the learned counsel for the parties.

7. There cannot be any dispute with the proposition that the open space reserved in a layout is meant for public amenities and/or for the benefit of layout plot owners. The land reserved as an open space, park, playground etc., in a layout can never be allowed to be de-reserved.



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WEB COPY8. In the present case, the land in question was reserved for school in the Detailed Development Plan and also the layout. As far as the de-reservation of the land in the Detailed Development Plan is concerned, no fault can be found with the order of the learned Single Judge, as since 1973, the land reserved is not used for any public purpose. As per the provisions of the Tamil Nadu Town and Country Planning Act, 1971, if for five years the land reserved for public purpose is not utilised, then, the reservation stands lapsed. As far as the layout is concerned, in the layout also, the said land is reserved for school. It was not reserved for open space, park or playground. The place meant for park, open space, playground cannot be used for any other purpose. The parks and playgrounds are the lungs of a City and they are meant to be kept open for the beneficial use and enjoyment of the layout plot holders.

9. In the present case, the land in question was reserved for school in the layout also. The layout is sanctioned in the year 1973. The same is not utilised for the school. The notification has been issued by the Government on 04.02.2019 in exercise of the powers conferred



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under sub-section (4) of Section 32 and Section 122 of the Tamil Nadu Town and Country Planning Act, 1971, wherein, under Rule 47 of the Tamil Nadu Combined Development and Building Rules, 2019, it has been clarified that the building and use of land shall conform to the conditions that may be imposed while sanctioning the layout. The space set apart for commercial, institutional, industrial or other uses shall be used only for the purpose set apart. However, conversion of the use of these non-residential use sites can be considered and decided on merits when it is proved by the developer that demand for the same does not exist.

10. It is submitted that there are about 15 to 16 schools within the periphery of 2 to 3 kilometres of the said site. The Circular is issued by the State of Tamil Nadu on 14.08.2021. Clause 5(h)(b) of the said Circular provides that public purpose facility for which the plot is earmarked i.e., Kalyana Mandapam, Community Hall, School, Dispensary etc., is available outside the approved layout within a vicinity of 2 to 3 kilometres, the plot reserved can be allowed to be converted from public purpose to other allowable uses like residential etc. The same, it appears, has been considered by the respondent

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authorities. The said Circular or the Notification referred herein is not the subject matter of challenge in the present case. In view of the Circular and the Notification as exist today, the order is passed. Moreover, the learned Single Judge has not directed to decide the matter in a particular manner and he has only directed the authority to take a decision upon it.

11. In view of the above, the order of the learned Single Judge need not be interfered with. It is for the aggrieved person to take steps with regard to the Notification and the Circular as may be permissible under law.

12. The Writ Appeal stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[S.V.G., C.J.]

[P.D.B., J.]

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Index : Yes / No
Neutral Citation : Yes / No
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THE HONOURABLE CHIEF JUSTICE
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P.DHANABAL, J.

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