

Pradhan Babu and Ors. Vs. Nachimuthu Nagar Kudiyruppor Nala Sangam and Ors.

Civil Appeal No. 5875 of 2023 · Supreme Court of India · 2024-08-28 · Vikram Nath · Ahsanuddin Amanullah · F2J-C-1565

Full judgment text

Pradhan Babu and Ors. Vs. Nachimuthu Nagar Kudiyruppor Nala Sangam and Ors.

A1: Pradhan Babu

A2: Surendirababu

A3: Subramanian

A4: Pazhanivel

A5: Renganayaki

A6: Chandira

A7: Selvaganapathy

A8: Savithri

A9: Hemamalini

A10: Muthukumar

R1: Nachimuthu Nagar Kudiyruppor Nala Sangam represented by its President

R2: Nachimuthu Nagar Kudiyruppor Nala Sangam represented by its Secretary

R3: The Municipal Commissioner, Mayiladhuthurai Municipality

[Civil Appeal No. 5875 of 2023]

Ahsanuddin Amanullah, J.

1. Heard learned counsel for the parties.

2. The present appeal arises from the Final Judgment and Order dated 24.01.2022 (hereinafter referred to as the "Impugned Order"), passed by a learned Single Judge of the High Court of Judicature at Madras (hereinafter referred to as the "High Court") in S.A. No.794 of 2019, whereby the appeal filed by the respondents was allowed setting aside Judgment and Decree dated 25.04.2019 passed in A.S. No.71 of 2017 on the file of the Principal Sub-Court, Mayiladuthurai (hereinafter referred to as the "First Appellate Court") and confirming Judgment and Decree, dated 13.09.2017, passed in O.S. No.265 of 2013 (hereinafter referred to as the "suit") on the file of the Principal District Munsif Court, Mayiladuthurai (hereinafter referred to as the "Trial Court").

A FACTUAL APPRECIATION:

3. For the creation of Nachimuthu Nagar, plots were formed in T.S. No.1000/1, & 2, 1002, 1003/1 & 2, 1004 of Thirumanjanaveethi, Koorainadu, Mayiladuthurai Town by one Nachimuthu Mudaliar. This was approved by the Regional Deputy Director of Town Planning, Thanjai, Trichy and the Municipal Commissioner, Mayiladuthurai. The layout was approved in 1978 and later revised in 1981. In the Layout, a portion was earmarked for public purpose for the welfare of the residents of Nachimuthu Nagar. That earmarked site is the suit land/property admeasuring 11200 square feet.

4. It is the case of the appellants that Nachimuthu Mudaliar died on 29.04.2004 and the suit property was sold by his legal heirs through a Sale Deed on 20.04.2009 to the Appellants No.6-10. Thereafter, vide an Exchange Deed dated 27.03.2013, Appellants no.4 & 5 (parents of Appellant no.1) were put in possession of a total area of 6145 square feet of the suit property. On the same day, through a Sale Deed, the Appellants no.2 & 3 (brother and father-in-law of the Appellant no.1, respectively) purchased the remaining 5055 square feet in the suit property. The cause of action is said to have

arisen in October 2013, when Appellant no.1 made clear his intention of constructing a building on the suit property.

5. Respondents no.1 and 2 are the office-bearers of Nachimuthu Nagar Resident Welfare Association (hereinafter referred to as the "Society"), which is registered with the District Registrar, Mayiladuthurai. They are the original plaintiffs in the suit, which was originally filed against Appellant No.1 (later on, Appellants no.2-10 were impleaded¹ in the suit). The suit sought the grant of "relief of permanent injunction, restraining the defendants, their men, from in any manner, encroaching upon the suit property and put up any construction or disturbing in any manner." (sic).

6. The Trial Court, after hearing the parties and perusing the evidence on record, noted that permission should have been obtained from the Joint Director for changing the public purpose site and to sell the same, in the manner in which approval was obtained for Nachimuthu Nagar layout. In the absence of such permission, the legal heirs of Nachimuthu Mudaliar did not have a right to change the character of the suit property.

Further, it was noted that the Family Partition Deed dated 31.07.1980, on the basis of which Sale Deed dated 20.04.2009 was created, was not produced before the court. The Trial Court opined, hence, that the Sale Deed 20.04.2009 was not legally proved. Consequently, the subsequent Sale Deed and Exchange Deed (mentioned supra) made in favour of the appellants was also held not to have been proved. On this basis, the Trial Court decreed the suit and granted permanent injunction against the appellants, as was sought.

7. Aggrieved by the decision of the Trial Court, the appellants filed an appeal viz. A.S. No.71 of 2017 before the First Appellate Court. On consideration of the issues that fell before it, the First Appellate Court allowed the appeal and dismissed the suit of the respondents. While doing so, it was noted that though the suit property was reserved for public purpose, since it was neither in the possession of the respondents or the Municipal Authority nor was it seized, the character of the suit property was not maintained as such. Further, on perusal of the documentary evidence produced before it, the First Appellate Court took the view that transfer of title had taken place in favour of the appellants and the suit was bad for non-joinder of necessary parties and in the absence of a prayer for declaration.

8. Against the decision rendered by the First Appellate Court, the respondents preferred a second appeal, namely S.A. No.794 of 2019 before the High Court, which was allowed vide the Impugned Order and the Judgment and Decree of the Trial Court dated 13.09.2017 was restored.

SUBMISSIONS BY THE APPELLANTS:

9. At the outset, learned senior counsel for the Appellants submitted that the High Court fell in error in reversing the well-reasoned order of the First Appellate Court and holding that, in the absence of permission under Section 38 of the Tamil Nadu Town and Country Planning Act, 1972 (hereinafter referred to as the "Act"), the Sale Deed made by the legal heirs of Nachimuthu Mudaliar would be illegal, without correct appreciation of the provision in its true sense. It was contended that under the said provision, if the land which is reserved for Public Purpose is not utilized/acquired by the Government within 3 years of the reservation, the same stands released automatically from reservation.

10. It was submitted that the suit property in the present case was reserved for 'public purpose' in the year 1978 in the Layout, which reservation was continued in the year 1981. However, since thereafter, no steps were taken by the Municipality for putting up the suit property for public purpose and in fact, the said land was lying as vacant land, for which the owners were paying tax also.

It was urged that as such, by virtue of Section 38(b) of the Act, the suit property is deemed to be released from the Development Plan of the Municipal Council and there is no question for the owners to obtain any permission before selling the suit property. It was submitted that the above provision came into force even before the notifying of the Master Development Plan for Mayiladuthurai Municipality; later the modified Master Development Plan for Mayiladuthurai Municipality, which was notified by the State Government in GO(Ms) No.100 issued by the Housing and Urban Development Department dated 21.03.2005.

11. It was argued that in the present case, the suit property has not acquired the character of public property so as to be owned by all the public of Nachimuthu Nagar but the same was reserved for "Public Purpose" in the Layout Plan by the Municipality. As such the ownership of the property always

remained with the family of Nachimuthu Mudaliar and they always had the right to sell the same, after the suit property was deemed to be released under Section 38(b) of the Act. It was contended that seeking permission is a mere administrative act and seeking such permission is not made mandatory by the Act.

12. Next, it was submitted that Section 38 of the Act is a directory provision and not obtaining previous permission of the Municipal Authorities would not render the Sale Deeds in question invalid. Since, no consequence is provided in Section 38 or any other provision in the Act to treat the transaction in violation of Section 38 as void, the transfer in favour of Appellants no.2 to 10 cannot be regarded as ineffective or invalid. Such a transfer would at best be voidable, that too only at the instance of the Municipality concerned and none else.

13. It was submitted that respondents have no right or interest in the suit property as the same is still a private property in the hand of the original owners, even though reserved for Public Purpose at one point of time. And admittedly, till date the suit property was/is not utilised for Public Purpose (even after a lapse of more than 30 years) by the Municipality concerned.

Therefore, reservation in respect of the same stood lapsed long back in terms of Section 38 of the Act. It was pointed out that undisputed possession and enjoyment of the suit property, based on registered documents, for over three and a half decades had remained with the appellant(s) concerned and their predecessors-in-title, and they had acquired rights thereupon by way of adverse possession. Thus, the claim made by a newly-formed Society [Respondents no.1 and 2] after 35 years is barred by limitation.

14. It was further submitted that the suit filed by the original plaintiffs/respondents without seeking the relief of declaration as to title is not maintainable in view of the fact that the suit property is not a public property, but a private property reserved for public purpose whose character has changed over the years. The further contention was that the suit filed by the original plaintiffs/respondents is not with bonafide intention which is evident from the fact that the sangamsociety was formed just prior to the filing of the suit and that too without following the requisite procedure. For all these reasons, the learned senior counsel prayed for allowing the appeal and sought setting aside of the Impugned Order.

SUBMISSIONS BY RESPONDENTS NO.1 AND 2/SOCIETY:

15. Learned counsel for the Society began by submitting that there is no question of law, much less, a substantial question of law involved in the present case under Article 1362 of the Constitution of India and therefore the appeal is liable to be dismissed in limine. He submitted that the Trial Court has given a just, fair and cogent judgment based on reliable evidence, which has been affirmed by the High Court, and as such, does not require interference by this Court.

16. It was submitted that the Act provides for planning the development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith. The suit property was part of the Housing Layout and it was earmarked for public purpose when the Layout was formed in 1978 or when it was revised in 1981. The land was not acquired as required under the Act and Section 38 of the Act is not applicable to the suit property, submitted learned counsel.

17. It was canvassed that once, as per the Layout Plan, the area is notified as being for public purpose while forming the Layout, the same cannot be converted into personal property. It was contended that the suit property is not acquired by the Government under the Act and therefore the provisions in the Act cannot be invoked in respect of Nachimuthu Nagar. The Act will apply in a case where acquisition is made, and property is kept vacant without construction. Therefore, the Trial Court and High Court correctly appreciated the distinction and decreed the suit as prayed for. Learned counsel prayed for the dismissal of the appeal.

RE RESPONDENT NO.3/THE MUNICIPALITY:

18. Respondent no.3 was impleaded under our Order dated 16.05.2024 for a limited purpose. In view of the discussion infra, nothing more needs to be noted.

ANALYSIS, REASONING AND CONCLUSION:

19. Having given our anxious thought to the lis, after perusing the materials and in view of the submissions advanced, we find that the moot question involved is whether the suit land was under any sort of legal encumbrance so as to make it unfit for transfer of right, title and interest thereon in light of the Layout Plan notified by the Deputy Director, Town and Country Planning, Thanjavur region in the

year 1978 and later revised in the year 1981.

20. On this, the admitted fact is that at the time when the Layout Plan was originally notified in the year 1978, the suit property reflected as being in private hands as per the record of the land registry, not belonging to the State Government nor to the Municipality/Respondent no.3. At the relevant time i.e., in 1978, only the intention of the competent authority under the relevant statute was discernible that it had formed an opinion with regard to the suit land/property being required to be kept reserved for 'public purpose'. It would be useful to extract Chapter IV of the Act containing Sections 36 to 39 titled 'Acquisition and Disposal of Land':

'36. Power to acquire land under the Land Acquisition Act.-

Any land required, reserved or designated in a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (Act 1 of 1894) and may be acquired under the said Act as modified in the manner provided in this Act.

37. Power to purchase or acquire lands specified in development plan.-

(1) Where after the publication of the notice in the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, any land is required, reserved or designated in such plan the appropriate planning authority may, either enter into agreement with any person for the acquisition from him by purchase of any land which may be acquired under Section 36 or make an application to the Government for acquiring such land under the Land Acquisition Act, 1894 (Act 1 of 1894): Provided that if the value of such land exceeds fifty thousand rupees, the appropriate planning authority shall not enter into such agreement without the previous approval of the Government.

(2) On receipt of an application made under sub-section (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may make a declaration to that effect in the Tamil Nadu Government Gazette, in the manner provided in Section 6 of the Land Acquisition Act, 1894 (Act 1 of 1894), in respect of the said land. The declaration so published shall notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said Section 6 of the said Act: Provided that no such declaration in respect of any particular land covered by a notice under Section 26 or Section 27 shall be made after the expiry of three years from the date of such notice.

(3) On the publication of such declaration, the Collector of the district within whose jurisdiction the land is situate shall proceed to take order for the acquisition of such land under the said Act; and the provisions of that Act shall, so far as may be apply to the acquisition, of the said land, with the modification that the market value of the land shall be the market value prevailing on the date of the publication of the notice in the Tamil Nadu Government Gazette under Section 26 or Section 27, as the case may be.

38. Release of land.-

If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under Section 26 or Section 27- (a) no declaration as provided in sub-section (2) of Section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or (b) such land is not acquired by agreement such land shall be deemed to be released from such reservation, allotment or designation.

39. Right to compensation.-

(1) Any person whose property is injuriously affected by virtue of any of the provisions contained in any regional plan, master plan, detailed development plan or a new town development plan made under this Act shall, if he prefers a claim for the purpose to the Tribunal with such particulars and within such period as may be prescribed, be entitled to obtain compensation in respect thereof as determined by the Tribunal:

Provided that property shall not be deemed to be injuriously affected by reason of any of the provisions inserted in any development plan which impose any condition or restriction in regard to any of the matters specified in clause (f) of sub-section (2) of Section 15, or in clauses (k) and (f) of

sub-section (2) of Section 17 or in clauses (m) and (n) of sub-section (1) of Section 20, as the case may be.

(2) If at any time after the day on which any regional plan master plan, detailed development plan or a new town development plan has come into force, such plan is varied, or revoked, any person who has incurred any expenditure for the purpose of complying with such plan, shall, if he prefers a claim for the purpose to the Tribunal with such particulars and within such time as may be prescribed, be entitled to obtain compensation in respect thereof as determined by the Tribunal, if by reason only of the variation or revocation of such plan, such expenditure has ceased to be in any way beneficial to him.'

21. A perusal of Chapter IV of the Act brings to the fore the scheme thereunder. For the present, we are unbothered by Section 39 of the Act. Section 36 of the Act states that any land required, reserved or designated in a regional plan, master plan, detailed development plan or a new town development plan shall be deemed to be land needed for a 'public purpose' and can be acquired under the land acquisition laws as modified under the Act. Section 37(1) of the Act permits the appropriate planning authority to enter into an agreement with a person to acquire such land by way of purchase, or to apply to the Government for acquisition of such land under the land acquisition laws in force.

Section 38 of the Act mandates that if, within three years from the date of publication in the Tamil Nadu Government Gazette under Sections 26 or 27 of the Act, (a) no declaration under Section 37(2) is published, or (b) the land in question is not acquired by agreement, such land would be deemed released from reservation/allotment/designation. At this juncture, we may also examine the meaning and scope of the term 'public purpose' employed in the Act. The relevant definitional clause reads as under:

'2. Definitions.- In this Act, unless the context otherwise requires,-

(36) "public purpose" means any purpose which is useful to the public or any class or section of the public;'

22. The position under the Act is that law permits a planning authority to come out with a Layout Plan or a Master Plan for an area in which certain area may be reserved for public purposes. Given how our cities are fast expanding, the salutary purpose and objective behind Section 36 of the Act is obvious. Read with Section 2(36), 'public purpose' has been given a very wide connotation and could even include keeping the identified land as open spaces to act as lungs for the city in view of environmental considerations.

However, the caveat is that though the planning authority can include private land, the way ahead to acquire the land, either by way of resort to land acquisition laws as modified by the Act or by way of agreement with the person(s) concerned [Section 37], but in accordance with the procedure as laid out in Chapter IV of the Act. In the case at hand, although the Layout (originally 1978 and revised in 1981) shows that it has been earmarked for a public purpose. However, admittedly, nothing happened thereafter in terms of Section 37 of the Act, namely, neither was the land acquired under land acquisition laws nor any agreement was made with the person(s)/owners.

Neither the State Government nor Respondent no.3 acted to takeover or gain ownership of the suit property. Clearly, no steps were taken either by the planning authority or the State Government to acquire the land which as per the Act was required to be done within 3 years from publication. This apart, ultimately in the year 2005, the Layout itself was revised showing it as a mixed residential area. Be that as it may, on the core issue, we find that the original owner of the suit property, never lost right, title, interest and usage therein.

The deeming provision under Section 38(b) of the Act would operate to release the suit property, as the 3-year period would have lapsed, latest in 1984, counted from the year of revision i.e., 1981, after the initial Layout in the year 1978. This Court in *Pillayar P K V K N Trust v Karpaga N N U S*, (2010) 9 SCC 344, in the facts of that case, concluded 'that the land is not acquired by agreement till the date of the judgment of the High Court, the deeming clause would certainly come into force and, therefore, the land concerned would certainly be deemed to have been released.'

The original owner, thus, was competent in law to transfer the suit property to any other person on 20.04.2009 (date of the first Sale Deed). Obviously, *nemo dat quod non habet*³ and any transfer of property would carry with it inherently the same restrictions which were existing/passed on to the

vendor at the time of passing of the title to the concerned vendee.

23. It is not, and has not ever been, the case of the private respondents that the appellants, who had originally bought the suit land and later transferred it have violated the conditions of the Layouts of the years 1978 and 1981 by constructing over it or using it other than for a 'public purpose'. The only cause of action on which the suit was filed by the private respondents was that the appellants had started construction of the boundary wall.

This has been explained by the appellants, who have stated that it was for demarcation of the land in question and no further construction has been made on the suit property. Moving further, even if it is accepted for the sake of argument that some of the appellants, who were now claiming ownership in their favour by way of Registered Sale Deed(s) in the suit property, had made any construction and had started using the land, there could, perhaps, be a cause of action for the respondents to move before the appropriate forum for preventing such appellants from either continuing with the construction or using it for a purpose other than 'public purpose'.

The same would then have been required to be decided by the appropriate forum after considering what was the Layout/Master Plan applicable to the area on the date of such consideration and whether the proposed construction or usage was in conformity with the Plan operative on such date. However, as we are informed, by way of the 2005 Layout, the suit property lies in a mixed residential area.

24. Thus, for and upon a totality of reasons aforesaid, we find that the suit filed by the respondents had absolutely no cause of action evincible from a reading of the plaint. We hold that rightly the First Appellate Court interfered and dismissed the suit. The reasoning given by the Trial Court as well as the High Court, is erroneous, and cannot be sustained. Accordingly, the order of the Trial Court as well as the Impugned Order passed by the High Court are set aside. The Judgment and Decree of the First Appellate Court is restored.

25. The appeal is allowed.

26. Parties are left to bear their own costs.

27. Pending applications are closed.

.....J. [Vikram Nath]

.....J. [Ahsanuddin Amanullah]

New Delhi

August 28, 2024

1 Appellant nos.2-5 were impleaded vide Order of the Trial Court dated 21.02.2014. Appellant nos.6-10 were impleaded vide Order of the Trial Court dated 17.12.2014.

2

'136. Special leave to appeal by the Supreme Court.- (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.'

3 No one can give what they do not possess.

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