

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2015

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.9388 of 2014 &
M.P.Nos. 1 & 2 of 2014

S.Krishnakumari

.. Petitioner

Vs.

1.The State of Tamil Nadu
rep. By its Principal Secretary to Government
Highways & Ports Department
Fort st.George, Chennai.

2.The Chief Engineer (H) C & M
Chepuak, Chennai 600 006.

3.The Divisional Engineer (H) C&M
Thiruvallur Division
Thiruvallur.

4.The Divisional Engineer (H) C&M
Chenglepet Division
Chenglepet.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of mandamus to direct the respondents to remove the barbed wire fencing erected around the highways land located between the petitioner land in S.No.1/3A Manapakkam Village, Sriperubudur Taluk, Kancheepuram District and the highway (wood creek road) which prevents access of the petitioner to her lands from the highway.

For Petitioner : Mr.G.Jeremiah

For Respondents: Mr.V.Jaya Prakash Narayana
Spl.Govt. Pleader

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mr.G.Jeremiah, learned Counsel appearing for the petitioner and Mr.V.Jaya Prakash Narayana, Special Government Pleader, for the respondents.

3.The petitioner has filed this Writ Petition to direct the respondents to remove the barbed wire fencing erected around the highways land located between the petitioner land in S.No.1/3A Manapakkam Village, Sriperubudur Taluk, Kancheepuram District and the highway (wood creek road) which prevents access of the petitioner to her lands from the highway.

4.The petitioner is stated to be the owner of a land to an extent of 37 cents comprised in S.No.1/3A, Manapakkam Village, Sriperumbdur Taluk, Kancheepuram District, having acquired the same pursuant to a registered 'Will' executed by her great grand father dated 30.11.1999.

5.It is stated that the land in question includes a larger extent, acquired by the petitioner's father and after his demise the said land was divided and the petitioner got her share of 37 cents of the property. It is submitted that the property owned by the petitioner is bounded on one side by a creek road and on the eastern side by a strip of land owned by the State Highways and the Highways land is in between the petitioner's property and the wood creek road and the said road is maintained by the respondent. According to the petitioner, from time immemorial his predecessors in title have been using the Highways land to gain access to the property vice versa. Therefore, it is stated that the respondents having fenced the Highway's property, petitioner's access to the Highways has been prevented and therefore submitted that the respondents should be directed to remove the fence. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of MANGALUR MUNICIPALITY v. MAHADEOJI, [1965 AIR (SC) 1147].

6.The learned Special Government Pleader appearing for the respondents by relying upon the counter affidavit submitted that the writ petitioner has to go to her land through the edge of the boundary/ margin line as an access to her land and that position has been well stated in law. Further, it is stated that the land in question was encroached by more than 65 persons and after orders were passed by this Court in W.P.No.9975 of 2010, eviction of the encroachers were done and in order to protect the Highways land, fencing has been erected. Further, it is stated that the area now fenced by the Highways Department is required for future widening of the Mount-Poonamallee Road.

7.A reply affidavit has been filed by the writ petitioner disputing the allegations made by the respondents that the petitioner's access to the property through the edge of the

boundary/margin and the learned counsel for the petitioner submitted that the 'highway' as defined under section 2(12) of the Tamil Nadu Highways Act, 2001, means, any road, way or land which is declared to be a highway and therefore, it is submitted that the land should be kept free and the petitioner should be permitted to have ingress or egress to her property through the Highways land.

8. After hearing the learned counsel for the petitioner and the respondents, it is seen that there is a serious dispute as to whether the petitioner has any other access, except the access through the Highway land. The photographs produced would show that the land is a barren land, a compound wall was constructed, there are few shops, there is no development in the property, the compound wall is also thoroughly eroded, the fencing erected by the Highway is abutting the road and they are justified in doing so to protect the abduction of the property from encroachment and in fact encroachment was removed pursuant to the direction issued by this Court pointing out that the petitioner's right of access had in effect is an easementary right, the petitioner has to necessarily approach the Civil Court, wherein the petitioner has to satisfy that she has no other access to reach her property and therefore, the petitioner being the owner of the said land, she is entitled to have the right of access. In fact, the decision of the Hon'ble Supreme Court, referred supra, arose out of a civil dispute, where the plaintiff who was the owner of the property came forward with the similar plea.

9. Considering the evidence which was available, the Hon'ble Supreme Court, rendered the said decision. Therefore the decision of the Hon'ble Supreme Court does not render any support to the case of the petitioner herein. Accordingly, the prayer sought for cannot be granted.

10. Accordingly, the Writ Petition fails and the same is dismissed. However, this order will not prevent the petitioner from approaching the Civil Court for necessary relief by impleading the Highways Department as party defendant. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

1.The State of Tamil Nadu
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+ 1 cc to Mr.G. Jeremiah, Advocate SR.5023
+ 1 cc to the Government Pleader Sr.5111

W.P. No.9388 of 2014

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Eu 21.02.15



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