

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2015

CORAM:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.24099 of 2014
and
M.P.No.1 of 2014

A.Lakshmi

... Petitioner

Vs.

1. The District Collector,
Thiruvallur District,
Thiruvallur.
2. The Tahsildar,
Maduravoyal Taluk,
Chennai.
3. The Commissioner,
Thiruverkadu Municipality,
Thiruverkadu.
4. The Rajarathinam Nagar
Pothu Nala Sangam
rep. by its Secretary,
No.48, Rajarathinam Nagar,
II Street, Thiruverkadu, Chennai-77.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Mandamus, directing the Respondents 1 to 3 to forthwith to demolish/remove the encroachment on First Street Rajarathinam Nagar, Thiruverkadu, Chennai-77, put up by the Fourth Respondent, which is blocking the access/entry to Petitioner's property.

For Petitioner : Mr.V.Balakrishnan

For Respondent : Mr.P.S.Sivashanmugasundaram
Nos.1 & 2 Special Government Pleader

For Respondent-3 : Mr.R.Mohandoss

For Respondent-4 : Not ready in notice

O R D E R
[Order of the Court was made by M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in directing the Respondents 1 to 3 to forthwith to demolish/remove the encroachment on First Street, Rajarathinam Nagar, Thiruverkadu, Chennai-77, put up by the Fourth Respondent, which is blocking the access/entry to her property and to pass such further or other orders as this Court deems fit and proper.

2. According to the Petitioner, the property situated at Plot No.1, Rajarathinam Nagar, comprised within old survey No.132 and new survey No.132/1A1B (as per patta) measuring an extent of 1650 sq. ft, Koladi Village, Ambattur Taluk, Thiruvallur District absolutely belongs to her. In fact, the said property was purchased through a registered Sale Deed dated 21.05.1993, bearing Document No.1078 of 1993 on the file of the Sub Registrar Office, Joint II, Saidapet. Further, she is in absolute possession of the property ever since the date of purchase. Also, all revenue records were mutated in her name and she had also obtained a patta in her individual name.

3. The real stand of the Petitioner is that as per the lay out, entry to her property is on the northern side which is Rajarathinam Nagar, First Street and the same reflects the schedule of the Sale Deed. Indeed, apart from the First Street, there is no other entry to her property. Added further, the First Street being a dead end, the Fourth Respondent/Pothu Nala Sangam had encroached the I Street, Rajarathinam Nagar i.e., the front portion of her property and illegally constructed the temple in the road blocking the entry of her property.

4. The Learned counsel for the Petitioner brings it to the notice of this Court that Petitioner being a lady, she is not in a position to prevent the Fourth Respondent from encroaching the street and putting up construction in issue. Moreover, it is represented on behalf of the Petitioner that a legal notice was issued on 01.02.2014, calling upon the Respondents 1 to 3 to remove the unauthorised construction which is put up by the Fourth Respondent/Sangam by encroaching the First Street which is obstructing the access to her property. In spite of the legal notice, no action was taken by the Respondents 1 to 3.

5. The plea of the Petitioner is that once again she made representation on 12.05.2014 in detail with a request to remove the unauthorised construction which is put up by the Fourth Respondent by encroaching the First Street, Rajarathinam Nagar which is obstructing her entry to the property. Soon after the receipt of the representation, the First Respondent/District Collector,

Thiruvallur District directed the Second Respondent/Tahsildar, Maduravoyal Taluk and Third Respondent/Commissioner, Thiruverkadu Municipality to submit a report on her representation. Further, till date, no action was taken the Respondents 1 to 3 for removing the encroachment from the First Street, Rajarathinam Nagar. Hence, she has filed the present Writ Petition.

6.In response, the Learned Special Government Pleader appearing for the Respondents 1 and 2 contends that enquiry reveals that there is a temple by name Sri Jayasakthi Nagar Temple constructed by the Fourth Respondent/Sangam and celebrated Kumbabisegam in the northern portion in Plot No.1 and 113 of Koladi Village in Survey No.132, Rajarathinam Nagar.

7.The Learned Special Government Pleader for the Respondents 1 and 2 submits that the said temple constructed by the Fourth Respondent is in Plot No.1 and 113 of 'Private Patta Lands' and kumbabisegam was performed. In view of the fact that encroachment was made in Private Patta Land, Tahsildar could not remove the encroachment in issue. As a matter of fact, the Petitioner's land is situated on the southern side of Plot No.1 and 113 of Koladi Village in Survey No.132, Rajarathinam Nagar.

8.In view of the clear cut stand taken on behalf of the Respondents 1 and 2 to the effect that as per revenue records, the disputed survey number is not mentioned and maintained as Government land and in fact, the disputed land is in possession of private land owners and the present encroachment by way of temple is treated as private encroachment.

9.Viewed in that perspective, this Court is of the considered view that the Writ Petition filed by the Petitioner is not per se maintainable before this Court. Resultantly, the Writ Petition fails.

10.In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. However, it is made clear that the dismissal of the present Writ Petition will not preclude the Petitioner to seek an appropriate remedy for removal of private encroachments of the subject matter in issue by approaching Competent Civil Forum in the manner known to law and in accordance with law. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

DP

To

1. The District Collector,
Thiruvallur District,
Thiruvallur.
2. The Tahsildar,
Maduravoyal Taluk,
Chennai.
3. The Commissioner,
Thiruverkadu Municipality,
Thiruverkadu.

+1cc to M/s.R.Mohan Doss, Advocate, S.R.No.28956
+1cc to the Government Pleader, S.R.No.29118

W.P.No.24099 of 2014
and
M.P.No.1 of 2014

PPA (CO)
CA (02/07/2015)



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