

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 30070 of 2015

&

M.P. No. 1 of 2015

1.Thiru G. Mohan

2.Tmt. Revathy

... Petitioners

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 3.

2. The Assistant Executive Engineer,
Corporation of Chennai,
Zonal Office, Zone XI,
Ward N 155, Chennai 3.

3. The Assistant Engineer/
Assistant Executive Engineer,
Town Planning Approval Section,
Regional Office (South),
Corporation of Chennai,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai - 600 020.

4. The Member Secretary,
Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

... Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Mandamus directing respondents 1
to 3 to forthwith subdivide the property bearing Door No. S.No.
46/1A1C & 46/1A1D, Plot Nos. 15 & 16, Kamaraj Salai, G.R. Nagar,

Ramapuram, Chennai - 600 089, without insisting to handover the midst of the property through a registered Gift Deed to CMDA or the Corporation of Chennai.

For Petitioners : Mr.L. Chandrakumar

For Respondents : Mr.P.V. Selvakumar for
R1 to R3
Mr.K. Raja Srinivas for R4

O R D E R

The writ petition is filed for issue of a Writ of Mandamus directing respondents 1 to 3 to forthwith subdivide the property bearing Door No. S.No. 46/1A1C & 46/1A1D, Block No. Plot Nos. 15 & 16, Kamaraj Salai, G.R. Nagar, Ramapuram, Chennai - 600 089, without insisting to handover the midst of the property through a registered Gift Deed to CMDA or the Corporation of Chennai.

2. The petitioners are absolute owners of the property bearing Plot Nos. 15 & 16, Kamaraj Salai, G.R. Nagar, Ramapuram, Chennai - 600 089. The petitioners made an application dated 04.06.2015 to the 3rd respondent herein, for subdivision approval of the above said land, so as to go in for demolition and reconstruction. For the said purpose, the 3rd respondent directed the petitioners to comply with certain conditions, which included execution of a registered Gift Deed to the local Corporation, in anticipation of road widening, over a portion of the petitioners' property vide W.D.C. No. SD/WDCN11/00275/2015 dated 22.06.2015 for property bearing Door No.S.No. 46/1A1C & 46/1A1D, Block No. Plot Nos. 15 & 16, Kamaraj Salai, G.R. Nagar, Ramapuram, Chennai - 600 089. According to the petitioners, there is no provision under the Town and Country Planning Act, which insists upon execution of a Gift Deed, in respect of portion of the property to be acquired, in anticipation of widening of an existing road. Hence, the petitioners are before this Court seeking a direction to respondents 1 to 3 to subdivide the property in question forthwith without insisting upon execution of Gift Deed in favour of Chennai Metropolitan Development Authority or Corporation of Chennai.

3. Heard Mr.L. Chandrakumar, learned counsel for the petitioners, Mr.P.V. Selvakumar, learned counsel for respondents

1 to 3 and Mr.K. Raja Srinivas, learned counsel for the 4th respondent.

4. The approach of the respondents, in insisting upon execution of a Gift Deed, in anticipation of road widening, cannot be found fault with. The respondents have, in fact, correctly done so, keeping in view, the developmental activities to be undertaken in future. However, according to the petitioners, the portion in respect of which the Gift Deed is sought to be executed, falls in the midst of the property and only when prospective proposals are made, such claim can be resorted to. Further, in paragraph Nos. 5 & 6 of the affidavit filed in support of the writ petition, the petitioners have stated thus:

"5. The petitioners further submit that it is pertinent to state at this juncture that the demand of gifting the portion falls in the midst of the above said property which at any stretch of imagination cannot be made or demanded and only when prospective proposals are made, such claim can be resorted to and also in the teeth of the fact that unless it is essentially required, the petitioners state that despite such a direction and being a person with a practical approach of public domain express their willingness and also undertake to handover the requisite portion if the process commences for road widening without any reservation whatsoever. In fact, further undertakes that they will not put up any construction in the area earmarked for road widening and to the said alleged extent in anticipation of road widening.

6. The petitioners further submit that the above assurance to handover vacant possession in case of road expansion and for the purpose of such developmental activities to be required by the statutory authority shall without any reservation and protest be acquired and the petitioners would be satisfied with whatever adequate compensation is to be disbursed. Further, they specifically undertake that not to put up any construction in the proposed road widening area. It is on the basis of this affidavit of undertaking, the respondents may be directed to sub-divide the aforesaid property."

In view of the above assurance given by the petitioners, the interest of the respondents is protected. Hence, the writ petition is disposed of directing the petitioners to file an affidavit before respondents 1 to 3, undertaking not to put up any construction, in the portion earmarked for road expansion and also to surrender possession of requisite portion of the property, if it is required for road widening, without prejudice to their rights to claim compensation. The said affidavit of undertaking shall be filed by the petitioners within a period of one week from the date of receipt of a copy of this order. On receipt of the same, respondents 1 to 3 shall consider and process the application of the petitioners, for subdivision approval, in the light of the affidavit of undertaking to be submitted by the petitioners and in accordance with law, within two weeks thereafter. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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Chennai - 3.
2. The Assistant Executive Engineer,
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Adyar, Chennai - 600 020.

4. The Member Secretary,
Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

+1cc to Mr.K.Raja Srinivas, Advocate, S.R.No.58015
+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No.57993
+1cc to Mr.P.V.Selvakumar, Advocate, S.R.No.58055

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KJI (CO)
CA(30/10/2015)



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