

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.09.2016

Coram:

The Honourable Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Honourable Mr.Justice R.MAHADEVAN

W.P.No.15564 of 2016

N.Manoharan

... Petitioner

Versus

1. The Managing Director
Tamil Nadu Housing Board,
Anna Nagar, Thirumangalam
Chennai 600 101.

2.The Executive Engineer,
Tamil Nadu Housing Board,
Anna Nagar Division,
Thirumangalam,
Chennai 600 101.

3.The Member Secretary,
CMDA, Thalamuthu Natarajan
Buildings, Egmore, Chennai 600 008.

4.The Commissioner,
Corporation of Chennai,
Chennai 600003.

5.Pushkar Properties,
represented by its Director,
51, F-Block II Main Road,
Anna Nagar East, Chennai 40.

6.Dream homes by Inland Builders(P) Ltd.,
'DAFFODIL', Ground floor,
V-6, 4th Main Road,
Anna Nagar, Chennai 600 040.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of Mandamus, to direct the 4th respondent to remove the encroachment on public road connecting Sushine Apartment and Sangam Apartment in blocks bearing Nos.364 and 365 in Belly area Anna Nagar, Madras 600 040 forthwith.

For Petitioner ::: Mr.V.Raghavachari

For Respondents::: Mr.V.Anandhamoorthy for R.1 and R.2
Mr.C.Johnson for R.3
Mr.K.Soundararajan for R.4
Mr.R.Srinivas for R.5
Mr.V.Premkumar for R.6.

O R D E R

(The Order of the Court was made by The Hon'ble
The Chief Justice)

The petitioner has filed the present Public Interest Litigation seeking a writ of mandamus directing the 4th respondent/Corporation to remove the encroachment on the Public road connecting Sunshine Apartment and Sangam Apartment in Blocks bearing Nos.364 and 365 in Belly area, Anna Nagar, Madras.

2. The petitioner is an Advocate by profession and resides at No.281/4, Sangam Apartment. He purchased the property some time in 1994, being the plot in question. It is the say of the petitioner that the Tamil Nadu Housing Board/ first respondent had developed properties and formed lay out as Belly area in Anna Nagar, where the eastern portion constituted Blocks A and B - 364 and 365, declared as HIG flats, while on the western side of the plot, there is a 30 feet wide road, which connects Sangam Apartment with the playground adjacent to the flats. The road is stated to be maintained by the Corporation, with development amenities and this road is stated to have been utilized for the last 30 years.

3. The aforesaid position is stated to have been disturbed by the construction of a compound wall obstructing the free movement of public and residents of the apartments by the 5th and 6th respondents, who are builders developing the land as multi-storied apartments. It is the say of the petitioner that the plan sanctioned by the Government is shown as public street and that Electricity cables also runs on the road, which was maintained with amounts coming from the public exchequer.

4. The petition is contested by all the respondents. Insofar as the Corporation is concerned, it is the say that when the area was handed over to them by the Housing Board/first respondent, at the stage of the handing over the common area, no such road was handed over, which itself would belie the allegation of the petitioner. The Housing Board also denied the existence of any road and the stand of the builders would naturally be no different.

5. In order to get to the bottom of the matter, we issued certain specific directions after hearing the parties. This was so as the petitioner sought to rely on a lay out plan of the year 1981 approved by the Madras Metropolitan Development Authorities (MMDA), predecessor of Chennai Metropolitan Development Authorities (CMDA), the third respondent. On the other hand, the Housing Board and the private respondents sought to rely on the 1984 plan. In the first plan, a road exists, while in the second plan, it does not. It was in these circumstances, we had posed three queries on 11.07.2016:

- (i) Whether the 1981 plan did include the road?
- (ii) Whether there is 1984 plan, which modified the 1981 plan in accordance with law?
- (iii) What is the effect of there being no road in the 1984 plan?

6. The second affidavit filed by the Housing Board addresses these three issues and it was categorically stated that the 1981 plan did include the road. However, the original proposal of developing plots was given up and the Housing Board constructed only 690 flats and thus, that portion of the road was not maintained, as in the 1984 part lay out plan, the road does not exist.

7. In order to appreciate the locational situation, the plan filed by the 5th respondent, being of the first respondent, as the lay out sketch, is extracted herein below:

(*)

8. The petitioner is in Block No.281. It is his say that the 30 feet wide road in front of his block, which moves in front of Block Nos. 279, 278 and 277, would turn to the 30 feet wide road before Block Nos.366 and 367. The Yellow portion is Block Nos.364 and 365, which are sought to be developed by the Builder. Thus, a part of the Yellow portion, according to the petitioner, would connect the Blue portion to the Orange portion and is not capable of being constructed upon.

9. Learned counsel for the 5th respondent has also relied on a sale deed in respect of the flat in Block Nos.277 executed by the Housing Board, which would show that on the east, it is bound by Block No.364 and not by any road. Thus, if the road existed, it is the submission of the learned counsel, it would have been otherwise.

10. In the conspectus of the aforesaid, we find that though the 1981 approved lay out plan did contain a road, the subsequent 1984 plan, which was the part lay out plan duly approved, did not provide so, for reasons of development as per

the first respondent. It is thus not permissible for the petitioner to claim that on account of the 1981 plan, that position be restored, when the 1984 plan, which is now 32 years old, has provided otherwise. It is also not as if the petitioner has no access, but his route may have become a little longer. His Block has a 30 feet wide road in the front, but he would have to take a more circuitous route rather than connecting to the orange portion through a Blue portion, as the Yellow portion comes in between.

11. We may also notice that a petition has been filed as a Public Interest Litigation, though it appears to be more of a grievance of the petitioner. We, however, examined the issue, as allegation was of conversion of a public street into a development area.

12. We are thus of the view that the writ petition must fail and it is accordingly dismissed, leaving the parties to bear their own costs.

(*) Xerox Copy enclosed

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

ksr

To

1. The Managing Director,
Tamil Nadu Housing Board,
Anna Nagar, Thirumangalam,
Chennai 600 101.

2.The Executive Engineer,
Tamil Nadu Housing Board,
Anna Nagar Division,
Thirumangalam, Chennai 600 101.

3.The Member Secretary, CMDA,
Thalamuthu Natarajan Buildings,
Egmore, Chennai 600 008.

4.The Commissioner,
Corporation of Chennai, Chennai 600003.

- + 1 cc to Mr.C. Johnson, Advocate for 54012
- + 1 cc to Mr.V. Raghavachari, Advocate Sr.53989
- + 5 ccs to Mr.G. Vijayakumar, Advocate Sr.53818
- + 1 cc to Mr.V. Anandhamurthy, Advocate Sr.53970
- + 2 ccs to Mr.V. Premkumar, Advocate SR.53816
- + 1 cc to Mr.K. Soundarajan, Advocate Sr.54445

W.P.No.15564 of 2016

SK(CO)
Eu 03.10.2016



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