

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.P. No.20546 of 2000
and connected miscellaneous petitions

Thangavelu Street, Civic Association,
New No.13/Old No.8, Thangavelu Street,
T.Nagar, Chennai-600 017,
rep. by its President
R.Raghupathi Naidu. ... Petitioner

-vs-

- 1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.
- 2.The Chairman,
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy,
Chennai-600 032.
- 3.M/s.C.E.S. Onyx Pvt. Ltd.,
6, Rajamannar Street,
T.Nagar, Chennai-600 017
rep. by its General Manager.
- 4.The Commissioner of Police,
Egmore, Chennai-600 008.
- 5.Thangavelu Street Hutment,
Dwellers Welfare Association,
(Reg.No.46/2000)
rep. by its Secretary,
Thangavelu Street,
T.Nagar, Chennai-600 017.
- 6.C.Kamalakannan

7.The Government of Tamil Nadu,
rep. by the Secretary,
Department of Revenue,
Fort St. George,
Chennai-600 009.

8.The Slum Clearance Board,
rep. by its Chairman,
No.5, Kamarajar Salai,
Chennai-600 005.

9.Neel Metal Fanalca,
rep. by its Director,
Plot No.1868, I-Block,
26th Street,
Anna Nagar West,
Chennai-600 040.

10.The District Collector,
Collectorate office,
Rajaji Salai,
Chennai. ... Respondents

(Respondent No.5 impleaded as per the
order dt. 3.4.2002 in WMP.14713 of 2002)
(Respondent No.6 impleaded as per the
order dt. 11.9.2003 in WMP.20154/2003)
(Respondent Nos.7 to 9 impleaded as per the
order dt. 13.12.2007 in WMP.2834/2007)
(Respondent No.10 impleaded as per this
order dt. 04.8.2016)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents 1 and 4 to remove the encroachments put up on the Thangavelu Street, T.Nagar, Chennai-600 017 by restoring the original road width of 30 ft. as also the pavement space on both sides of the road and also directing the respondents 1 and 3 to shift the dumping yard and transit place of garbage from H.Cattle Depot opposite Thirumalai Road, T.Nagar, Chennai-600 017 to any other place on the outskirts of the City as it causes great noise and air pollution.(amended as per order dt.4.8.2016 in WMP.No.2835/07 in WP.No.20546/2000.

For Petitioner : Mr.N.L.Rajah
Senior Counsel for
M/s.Sayathkumar Associates

For Respondents : Mr.K.Soundararajan for R1
Mrs.Rita Chandrasekar for R2
Mr.M.K.Subramanian

Govt. Pleader for R4, R7 & R10
Mr.P.V.S.Giridhar for R5
Mr.Y.Bhyvanesh Kumar for R8
R3 & R6 - No Appearance
R9 - Not ready in notice

O R D E R

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

The writ petition has been filed as public interest litigation aggrieved by the inaction of the respondent authorities to remove the encroachments put up on Thangavelu Street, T.Nagar, Chennai-17, as also the pavement space on both sides of the road and to restore the original road width of 30 feet. Apart from this, a prayer is also made to shift the dumping yard and transit place of garbage from cattle depot opposite Thirumalai Road, T.Nagar, Chennai-17 to any other place on the outskirts of the City, as it causes great noise and air pollution.

2. Unfortunately, the matter has been pending for the past 16 years and everyone seem to have lost the sight of pendency of the matter.

3. The learned Senior Counsel for the petitioner submits that while reference being made to public street, an excuse was sought to be given earlier that the road margins and the pedestrian area would not fall within public street, which is the responsibility of the Corporation. In this behalf, he has referred to Sec.2(20) of the Chennai City Municipal Corporation Act, 1919, which defines "public street" and reads as under:-

"(20) public street - "public street" means any street, road, square, court, alley, passage or riding-path (over which the public have a right of way, whether a thoroughfare or not) and includes -

(a) the roadway over any public bridge or causeway;

(b) the foot-way attached to any such street, public bridge or causeway; and

(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, veranda or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private property or property belonging to the Government."

4. We find force in the submission made by the learned Senior Counsel for the petitioner that the foot-ways attached to any such street would also form part of the street.

5. It is, thus, the obligation of the Corporation to ensure that the full width of the street and its margins is kept free from encroachment.

6. We may take note of the submission of the learned counsel appearing for respondent No.5 - Thangavelu Street Hutment, Dwellers Welfare Association that the hutment dwellers undoubtedly have encroached the public land, but that they are beyond the street and its margin.

7. We may note that the Secretary, Department of Revenue, Government of Tamil Nadu and the Slum Clearance Board have also been subsequently impleaded as respondent Nos.7 and 8.

8. We are of the view that the first respondent / Corporation should re-inspect the area and ensure that the full width of the road and its margins is kept free of any encroachments. This exercise be completed within a period of two months of the receipt of copy of this order. Needless to say that if any police assistance is required, the same shall be made available.

9. The second limb arising from the prayer is the rights claimed by respondent No.5 as occupiers of the Government land. The State of Tamil Nadu is respondent No.7. We are informed that the District Collector, Chennai will look into the issue as to whether the members of respondent No.5 are entitled to occupy the public land or not, if not, are they entitled to rehabilitation somewhere else and if they are, then naturally patta should be issued, so that uncertainty is removed. This decision making process has to be naturally by the concerned revenue authorities. This exercise be also undertaken within the period of two months of the receipt of copy of this order, after notice to all concerned. The District Collector, Chennai is impleaded as respondent No.10 in the present petition. The learned Government Pleader accepts notice for the said respondent.

10. In so far as the third aspect, which is the second prayer arising from the re-location of the garbage dumping yard and the transit place, that aspect may be examined by the first respondent and a decision taken on the same within the same period of two months from the date of receipt of copy of this order. If no location is found feasible to shift the dumping yard, then it must be ensured that all hygienic para-meters are met. In any case, this requirement, even as of now should be fulfilled. We, thus, call upon respondent No.2/Tamil Nadu

Pollution Control Board to carry out an inspection of the area within the period of fifteen days from the date of receipt of the copy of this order and submit a report to the Corporation setting out the requirements to be completed to maintain the area in hygienic manner, with a copy to the petitioner. The Corporation would immediately comply with those requirements, as the consequence of non-compliance would be the closure of the yard.

11. We, thus, dispose of the writ petition with the aforesaid directions. No costs. Consequently, all connected miscellaneous petitions are closed.

12. Compliance report be filed by all the concerned authorities at least three days prior to the next date of hearing with advance copy to all the learned counsels on record in this matter.

13. List for compliance on 07.10.2016.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai-600 003.
- 2.The Chairman,
Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy, Chennai-600 032.
- 3.The Commissioner of Police,
Egmore, Chennai-600 008.
- 4.The Chairman,
Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai-600 005.
- 5.The District Collector,
Collectorate office,
Rajaji Salai, Chennai.
6. The Secretary,
The Government of Tamil Nadu,
Department of Revenue,
Fort St. George, Chennai-600 009.

+ 1 cc to MR.P.U.S. Giridhar Associates SR.44494

+ 1 cc to M/s. Rita Chandrasekar, Advocate Sr.44314

W.P.No.20546 of 2000

PUR(CO)

EU 02.09.16