

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. No.34389 of 2016

A.Dasarathan

... Petitioner

Vs.

1.The Commissioner
Corporation of Chennai,
Ribbon Building, Park Town,
Chennai - 600 003.

2.The Member-Secretary,
Chennai Metropolitan Water Supply
and Sewerage Board,
Pumping Station Salai,
Chindadripettai,
Chennai - 600 002.

3.The Zonal Engineer,
Zone-10, Corporation of Chennai,
NSK Salai, Kodambakkam,
Chennai - 600 024.

4.The Collector,
Chennai District,
Chennai.

... Respondents

[Impleaded as 4th respondent as
per order of this court dated 10.11.2016
and made herein]

PRAYER : Writ petition filed under Article 226 of the
Constitution of India for issue of writ of mandamus directing
the 1st and 2nd respondents to consider the Petitioners
representation dated 03.09.2016.

For Petitioner : Mr.P.Thirupathiraj

For R1 & R3 : Mr.C.Manishankar

Additional Advocate General
Asst. by Mr.P.V.Selvakumar
Additional Govt. Pleader

For R2 : Mr.G.Janakiraman

For R4 : Mr.T.M.Pappiah,
Special Govt. Pleader

O R D E R

The petitioner is the owner of the property bearing Door No.6A, Ragava Reddiar Colony 4th Street, Sekar Nagar, West Saidapet, Chennai - 600 083, comprised in Survey No.243/a, Block No.85, Mambalam Taluk, Chennai having purchased the same from one Mrs.Ellammal and others by way of Registered Sale Deed dated 08.07.1998. Even though the petitioner was in possession of the property, during 2012, the first respondent Corporation laid road on the part of the petitioner's property and the second respondent put up the drainage connection for the adjacent plots. Therefore, the petitioner made a representation on 25.09.2014 to the first and second respondents to remove the encroachment and the same is followed by notice dated 13.11.2014. Since no action was taken nor reply was received from the respondents, the petitioner filed WP No.310 of 2015 which was disposed of by this Court on 08.01.2015 with a direction to the first respondent to consider and pass orders on the petitioner's representation dated 25.09.2014.

2. Since the order of this court has not been complied with, Contempt Petition No.2178 of 2015 was filed before this Court. Thereafter, the third respondent filed his report questioning the genuineness of the patta issued in favour of the petitioner by addressing a letter dated 25.08.2015 to the DRO, Collector of Chennai. The District Collector has sent a detailed report on 27.04.2016 alongwith the report of the Tahsildar, Mambalam Taluk, Chennai confirming the petitioner's title and genuineness of the patta issued in favour of the petitioner.

3. In spite of the report of the Tahsildar dated 27.04.2016, the respondents have not taken any steps to remove the illegal encroachment. Therefore, the petitioner sent representations on 06.06.2000 and 03.09.2016 to the respondents for removal of the illegal encroachment and seeking suitable compensation respectively. So far no order has been passed by the respondents which compelled the petitioner to approach this court by way of this writ petition. Since the DRO (L&E) Collector, Chennai has given a detailed report on 27.04.2016 giving positive finding that the petitioner is the owner of the property and the patta issued to him is a genuine document, it is appropriate to implead the said collector. Accordingly, this court, suo moto impleads "The Collector, Chennai District, Chennai" as the 4th respondent in this petition. Mr.T.M.Pappiah, learned Special Government Pleader takes notice on behalf of the newly impleaded 4th respondent.

4. Heard Mr.P.Thirupathiraj, learned counsel appearing for the petitioner, Mr.C.Manishankar, learned Additional Advocate General appearing for the respondents 1 and 3, assisted by Mr.P.V.Selvakumar, Additional Government Pleader and Mr.G.Janaki, learned counsel appearing for the second respondent.

5. It is evident from the records that the petitioner is the owner of the property and he purchased the property through registered sale deed dated 08.07.1998 registered as Document No.1150 of 1998 on the file of SRO, Ashok Nagar. Patta was also issued in favour of the petitioner on 07.02.2005 and moreover the petitioner has also paid the vacant land tax for the year 2009 - 2010. Earlier also, the petitioner filed WP No.310 of 2015 and obtained a direction to dispose of his representation. Only to comply with the order passed by this Court, the genuineness of the patta issued to the petitioner was decided by the Collector and the Collector, by virtue of order dated 27.04.2016 has categorically stated that the petitioner is the owner of the property and the patta issued to him is genuine. When there is a positive finding by the Collector and also the title deeds are standing in the name of the petitioner, the title of the petitioner cannot be suspected.

6. Another submission has been made by the learned Additional Advocate General that suit in O.S.No.5807 of 1998 filed by the petitioner against J.Veerasingh and others was also dismissed and the Appeal Suit filed against the said judgment was also dismissed and the same is pending in SA No.1062 of 2005 on the file of this Court. However, the learned counsel for the petitioner would contend that it is only a suit for permanent injunction with those person and that has got nothing to do with the title. Even a perusal of the Collector's order would reveal that the petitioner's title has been categorically reiterated by referring to various documents and therefore, there cannot be a second opinion with regard to the title of the petitioner. Therefore, it is clear that the respondents have entered upon the petitioner's property and laid the road. At this juncture, the learned Additional Advocate General fairly submits that the suit filed by the petitioner is only for permanent injunction and not the title suit.

7. In view of the above said circumstances, the respondents are directed to measure the property and extent of encroachment or occupation of the respondents in the petitioner's property and grant compensation accordingly, as per the new act. Since the respondents have entered upon the property only for public purpose and the land is used for the past 25 years, it cannot be called as encroachment and if at all they are in occupation of the property only for public purpose. However, the petitioner cannot go empty handed and therefore,

appropriate compensation has to be paid to the petitioner and the same is directed to be paid by the respondents, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. The writ petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner
Corporation of Chennai,
Ribbon Building, Park Town,
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2.The Member-Secretary,
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and Sewerage Board,
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4.The Collector,
Chennai District,
Chennai.

+1cc to Mr.P.Thirupathiraj, Advocate Sr.64605

W.P. No.34389 of 2016

scd[co]
srg 15/12/2016