

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.6358 of 2017
and
W.M.P.Nos.6855 & 6856 of 2017

R.Sekaran

... Petitioner

Vs.

1. The Secretary to the Government,
(Local Administration)
Government of Puducherry,
Goubert Avenue,
Puducherry - 605 001.
 2. The Member Secretary,
Town and Country Planning Department,
Government of Puducherry,
Puducherry.
 3. The Member Secretary,
Karaikal Planning Authority,
Karaikal.
 4. The Sub Inspector of Police,
Kottucherry Police Station,
Kottucherry,
Karaikal.
 5. Panchunathan @ Kuppusamy
No.265, Bharathiyar Road,
Karaikal.
- ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the third respondent to demolish forthwith the illegal construction put up by the fifth respondent in the said Plot No.11, A.J.A. Nagar, Kottucherry, Karaikal as mentioned in the third respondent proceeding an order dt. 24.1.2017 vide No.865/KPA/Pet/2016/63.

For Petitioner : Mr.T.Annamalai

For Respondents : Mr.K.R.Harin
Addl. G.P. (Pondy)

ORDER

(Order of the Court was made by the Acting Chief Justice)

Mr.K.R.Harin, learned counsel takes notice for respondents 1 to 4.

2. The petitioner has filed this writ petition seeking issuance of a Writ of Mandamus directing the third respondent to demolish forthwith the illegal construction put up by the fifth respondent in Plot No.11, A.J.A. Nagar, Kottucherry, Karaikal as mentioned in the third respondent's proceeding dt. 24.1.2017.

3. The case of the petitioner is that he is the owner of the Plot No.10, A.J.A. Nagar, Kottucherry, Karaikal. The fifth respondent, who purchased Plot No.11, converted the said plot as passage/road for the unapproved plot named as Marudham Garden, located back side of the approved housing plot of the fifth respondent's Plot No.11. The Marudham Garden property belongs to the fifth respondent. The fifth respondent used 3/4th of Plot No.11 for the purpose of layout passage and in the remaining 1/4th of portion of Plot No.11, he is carrying on unauthorised construction without permission from the third respondent. The fifth respondent is carrying on construction without proper basement and the foundation itself is very fragile condition and without leaving proper set back space on both sides of the building. The fifth respondent has constructed a septic tank near the petitioner's drinking bore well water. The petitioner has also made two representations to the respondent authorities and the third respondent also issued stop work notice to the fifth respondent. Hence, the petitioner seeks a direction to the third respondent to demolish the illegal construction put up by the fifth respondent.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader (Pondy) appearing for respondents 1 to 4.

5. The main grievance of the petitioner is that the fifth respondent has converted a portion of his plot as passage/road to reach his unapproved layout and in the remaining area of the plot, he is putting up unauthorised construction by affecting

the easementary right of the petitioner. We are of the view that the dispute between the petitioner and the fifth respondent regarding easementary right is purely civil in nature and the petitioner must approach the Civil Court for relief. Further, the violation of easmentary right alleged by the petitioner is a matter of evidence, which cannot be decided in the writ petition.

6. As far as the violation of building plan/unauthorised construction by the fifth respondent is concerned, based on the complaint given by the petitioner, the Karaikal Planning Authority has issued stop work notice to the fifth respondent. The said fact is evident from page 2 of the typed set of papers filed by the petitioner. If really, there is building violation/unauthorised construction, the respondent authorities will take care of the issue.

7. The writ petition, accordingly, stands disposed of. However, this will not preclude the respondent authorities from proceeding in accordance with law based on the notice already issued. No costs. Consequently, W.M.P.Nos.6855 & 6856 of 2017 are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to the Government,
(Local Administration)
Government of Puducherry,
Goubert Avenue, Puducherry - 605 001.
2. The Member Secretary,
Town and Country Planning Department,
Government of Puducherry, Puducherry.
3. The Member Secretary,
Karaikal Planning Authority,
Karaikal.

4. The Sub Inspector of Police,
Kottucherry Police Station,
Kottucherry, Karaikal.

+1cc to Mr.T.Annamalai, Advocate Sr.16136
+1cc to the Government Pleader Sr.16330

W.P.No.6358 of 2017

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