

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.11216/2014

M.S.Siva Subramanian

... Petitioner

vs

1.The Commissioner
Avadi Municipality,
Avadi, Chennai.

2.M/s.Hari Constructions
Plot No.1227, 18th Main Road
West Anna Nagar,
Chennai 600 040.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus, directing the 1st respondent to remove the encroachment into the road or any offending construction by the 2nd respondent in Anna Street, Senthil Nagar, Thirumullaivoyal, Chennai-62, especially opposite to Door No.16 of the petitioner.

For Petitioner : Mr.T.Thiyagarajan
For R1 : Mr.P.Srinivas
For R2 : Mr.V.Manisekaran, Spl.GP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal.

2 The petitioner, in the affidavit filed in support of this writ petition would aver among other things that the 2nd respondent is constructing a residential Apartment opposite to his house and between his property and the 2nd respondent's property, a 30 feet road is there. According to the petitioner, the 2nd respondent while putting up the construction, has encroached upon the road portion by 2 feet, thereby reducing the width of the road to 28 feet as against the existing 30 feet

and in this regard, a legal notice dated 11.01.2014 was sent by the petitioner to the 2nd respondent for which, a reply was given on 22.01.2014, refuting the allegations made in the legal notice. The 2nd respondent has also lodged a Caveat Petition No.33/2014 on the file of the Court of the District Munsif, Ambattur, Chennai, anticipating that the petitioner may file a suit.

3 The writ petition was listed for admission on 21.01.2014 and notices were ordered to the respondents.

4 The learned counsel for the petitioner would submit that the 2nd respondent is not only guilty of encroaching upon the public road to the extent of 2 feet, but also putting up unauthorized construction and a Surveyor was appointed to find out the said illegal act and through the survey and measurement has been done, a copy of the same has not been furnished and hence, prays for appropriate orders to abate the illegal act on the part of the 2nd respondent.

5 Mr.P.Srinivas, learned Standing counsel appearing for the 1st respondent would submit that in the light of the Surveyor's Report, no cause of action enures in favour of the petitioner.

6 Mr.V.Manisekaran, learned counsel appearing for the 2nd respondent has drawn the attention of this Court to the reply notice dated 22.01.2014 as well as to the counter affidavit of the 2nd respondent and would submit that the Avadi Municipality has sanctioned the Building Plan on 13.02.2013 vide proceedings No.97/13/F2 and based on the planning permission, the 2nd respondent started putting up th construction and on the basis of the complaint given by the petitioner, the 1st respondent has appointed a Surveyor to measure the land and to conduct an enquiry and to file a report and as per the report of the Surveyor, the 2nd respondent is putting up the construction well within the schedule of the property. It is the further submission of the learned counsel that the 2nd respondent has put up the construction strictly in accordance with the sanctioned plan and he has not encroached upon any portion, more particularly, the public road and hence, prays for the dismissal of this writ petition.

7 The Court has considered the rival submissions and also perused the materials placed before it.

8 During the course of hearing in this writ petition, a copy of the Surveyor Report has also been furnished to the learned counsel for the petitioner.

9 In the light of the stand taken by the 2nd respondent in his reply to the legal notice dated 22.01.2014 coupled with the averments made in the counter affidavit filed by the 2nd respondent, this Court is of the view that nothing survives for adjudication in this writ petition.

10 Therefore, the writ petition is closed. No costs.

Sd/-
Assistant Registrar (AR-J)

//True Copy//

Sub Assistant Registrar

AP

To

The Commissioner
Avadi Municipality,
Avadi, Chennai.

+ 1 cc to Mr.V. Manisekaran, Advocate Sr.80874
+ 1 cc to Mr. T. Thiyagarajan, Advocate Sr.81564

W.P.No.11216/2014

AR-J
EU(11/12/2017)

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