

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2017

CORAM

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

WP.No.11152/2017

V.Selvaraj

... Petitioner

vs

1.The District Collector
Coimbatore.

2.The Assistant Director of Town Panchayats
Coimbatore Region, District Collector's
Office compound, Coimbatore.

3.The Tahsildar
Annur Taluk, Coimbatore.

4.The Executive Officer
Annur Town Panchayat
Annur, Coimbatore District.

5.Mr.K.A.Nanjappan

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 to 4 to consider the representation dated 11.04.2017 of the petitioner and to take appropriate action for the removal of the encroachments made by the 5th respondent in the 23 feet road of Ammani Aruna Nagar, Coimbatore North Taluk, located in between the plots in Plot Nos.102 and 103 on the western side and the Plot No.104 and 114 on the Eastern side as per the approved layout in DTP.No.726/1992.

For Petitioner : M/s.Sai, Bharath & Ilan

For RR 1 to 4 : Mr.A.N.Thambidurai, Spl.GP

For R5 : Mr.R.M.D.Nazrullah

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 claims to be the owner of the housing site bearing Plot No.96 [96-A], admeasuring to an extent of 1200 sq.ft. with a superstructure thereon measuring to an extent of 960 sq.ft., being the Northern portion of the said plot situate at Ammani Aruna Nagar comprised in SF.No.444 and 445, Annur Village and Taluk, Coimbatore District. The petitioner had purchased the said landed property by virtue of the Sale Certificate dated 23.11.2011 executed by the Authorise Officer, Indian Overseas Bank, in exercise of the powers under the SARFAES Act and the said Sale Certificate was also registered as Document No.13102/2011 on the file of the office of the Sub Registrar, Annur. The petitioner would further aver that Ammani Aruna Nagar is an approved layout bearing Approval No.726/1992 by the Directorate of Town and Country Planning and the said layout comprises about 119 residential plots comprised in S.Nos.444 and 445 and for the user of the public and other public purposes, a road with the width of 23 feet to 40 feet had also been laid apart from providing Open Space Reservation such as park etc. The petitioner also states that the 5th respondent is the owner and promoter of the said layout and he also retained some of the plots. It is the specific case of the petitioner that the 23 feet road is in existence in between Plot Nos.102 and 103 on the Western side and Plot Nos.104 and 114 on the Eastern side and it is also evidenced by the sanctioned layout approved by the Directorate of Town and Country Planning. It is also the specific case of the petitioner that the 5th respondent had now encroached upon the 23 feet road and put up certain construction including a compound wall covering plot Nos.100, 103 and 104 on the Southern side and thereby, completely blocking 23 feet public road. In this regard, the petitioner has submitted a representation dated 11.04.2017 to the respondents and though the representation was received and acknowledged on 17.04.2017, no action has been taken so far and hence, the petitioner came forward to file the present writ petition.

3 The writ petition was entertained on 18.07.2017 and notices were ordered to the respondents.

4 The 4th respondent has filed the counter affidavit stating among other things that the layout approval was accorded

vide Document bearing No.726/1992 by the Directorate of the Town and Country Planning and denied the averment as to the location of the site in Plot No.96-A for the reason that as per the approved layout, the said plot bearing No.96-A is not in existence. The 4th respondent would further state that as per the approved layout, 119 residential sites were approved and the 5th respondent had also executed a registered Gift Settlement Deed bearing No.2750/2000 dated 08.09.2000 in favour of the 4th respondent, in and by which, he gifted open space, park and reserved areas, admeasuring to an extent of 0.91 cents [170 sq.ft] in SF.No.444 in Annur Village and he has also executed a registered Gift Deed bearing Document No.2381/2007 dated 30.03.2007 in favour of the 4th respondent, in and by which, he had gifted all the roads shown in the approved layout, except the 23 feet road running South to North, adjoining the Eastern side of site No.102 and 103. The 4th respondent would further aver that the 5th respondent had constructed 23 feet width compound wall between the site Nos.103 and

104, thereby obstructing the layout road which is in clear violation of the approved layout conditions and on receipt of the representation, a notice dated 24.07.2017 was issued to the 5th respondent for removal of the same and further proceedings are not taking place on account of the pendency of the present writ petition.

5 The 5th respondent has filed the counter affidavit and took a stand that he had constructed houses in Plot Nos.100 to 103 and also erected a compound wall from Plot Nos.100 to 104 and however, he has laid 30 feet road in Plot No.105 and the same runs parallel to the originally formulated road. The 5th respondent would further contend that the petitioner has deliberately suppressed certain material facts, especially with regard to laying of 30 feet road in the plot under his occupation which runs parallel to the originally contemplated 23 feet road and in this regard, the 5th respondent has also submitted a representation/application to the 4th respondent seeking approval of the change made by him in the original plan and the said change in no way materially affect the users of the other plots in the layout and in fact, the 30 feet road laid by him is a Tar road and it is also used by the other plot owners and in the light of the same, the access to the petitioner's plot has not been denied at all and prays for dismissal of this writ petition.

6 The petitioner has also filed the reply affidavit refuting the said allegations and reiterated the stand taken by him in the affidavit filed in support of this writ petition.

7 The learned counsel for the petitioner has drawn the

attention of this Court to the counter affidavits of the respondents 4 and 5 and would submit that admittedly, the 5th respondent had encroached upon the 23 feet public road which is in existence as per the approved layout and had put up a compound wall and the only defence of the 5th respondent is that he has put up an alternate road of 30 feet and since the same is in violation of the terms and conditions of the approved layout, the offending construction is to be removed forthwith.

8 Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 4 would submit that it is for the 4th respondent to take appropriate action and that since the 5th respondent has put a construction on the public road, a notice dated 24.07.2017 was issued to remove the same and since this writ petition is pending, further proceedings could not take place.

9 The learned counsel appearing for the 5th respondent would submit that in the light of the fact that the 5th respondent has provided an alternate road which is also a pucca road and that the residents of the approved layout are also having access to their respective properties through the said road, the petitioner cannot be said to be really an aggrieved person and necessary approval has also been sought for from the 4th respondent and the said application / representation is pending and as such, the said alleged offending construction put up by the 5th respondent cannot be ordered to be removed.

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

11 A perusal of the counter affidavit filed by the 4th respondent would disclose that the 5th respondent had put up a construction on the 23 feet public road in the form of a compound wall between plot Nos.103 and 104 and thereby, obstructed the said road and the same is in clear contravention of the conditions imposed while according approval for the layout promoted by the 5th respondent.

12 The 5th respondent in his counter affidavit has also conceded as to the putting up of the construction; but however, his version is that he has laid 30 feet in the plots under his occupation which runs parallel to the originally contemplated 23 feet road and in order to regularise / ratify it, he has also approached the 4th respondent in the form of representation / application and till the 4th respondent takes a call on the said representation, his possession cannot be disturbed.

13 A perusal of the materials placed before this Court coupled with the submissions made by the respective learned

counsel for the respective parties would disclose that the 5th respondent has put up a construction obstructing the 23 feet public road which came to be formed as per the approved layout conditions. Though it is the stand of the 5th respondent that he has given alternate way in the form of 30 feet road, the fact remains that the same is in violation of the approved layout and de hors the pendency of the ratification sought for by the 5th respondent as to the 30 feet road which has been put up as an alternate one, in the

considered opinion of the Court, the same is prima facie appears to be unsustainable for the reason that by putting up an offending construction on the public road, the 5th respondent has violated the approved layout conditions and as such, it should be removed by the 4th respondent by following due process of law.

14 In the light of the above facts and circumstances, the 4th respondent shall proceed further in terms of the notice dated 24.07.2017 and after putting the petitioner and the 5th respondent on notice, shall take appropriate action in accordance with law to remove the offending construction put up by the 5th respondent on the 23 feet public road. The 4th respondent shall also, after putting the petitioner as well as the 5th respondent on notice, shall consider and dispose of the representation / application submitted by the 5th respondent, if any, in respect of the approval of the alternate 30 feet road put up by him after causing physical inspection, as expeditiously as possible in accordance with law and communicate the decision taken, to the petitioner as well as to the 5th respondent herein.

15 The writ petition stands disposed of with the above direction. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP

To

1.The District Collector
Coimbatore.

2.The Assistant Director of Town Panchayats
Coimbatore Region, District Collector's
Office compound, Coimbatore.

3.The Tahsildar
Annur Taluk, Coimbatore.

4.The Executive Officer
Annur Town Panchayat
Annur, Coimbatore District.

+1cc to M/s.Sai Bharath & Ilan, Advocate, S.R.No.84546

+1cc to Mr.K.V.Shanmuganathan, Advocate, S.R.No.84544

+1cc to the Government Pleader, S.R.No.85119

WP.No.11152/2017

MG (CO)

RRK (19/12/2017)



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