

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P. No.704 of 2010

and

M.P. No. 1 of 2010

Prakirthi Foundations Limited,
Represented by its Power of Attorney
Heritage Property Development
Company P.Ltd., rep. By its
Chairman & Managing Director
Mr.V.Krishnaprasadh
18, Umapathy Street,
West Mambalam,
Chennai 600 033.

.. Petitioner

-vs-

1. The Forest Ranger
Forest Ranger Office
Tambaram Forest Range
Old State Bank Colony Road
West Tambaram
Chennai 600 045

2. Sembakkam Town Panchayat rep. By its
Executive Officer
tambaram Velachery Road
Sembakkam
Chennai 600 073

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 1st respondent to reconstruct and restore the fence and the Retaining Wall to the extent already demolished and damaged by the 1st Respondent on the Eastern boundary of Heritage Jayendra Nagar situated in S.Nos.149 and 150 in Sembakkam Village, Kancheepuram District pursuant to their show cause notice bearing C.No.278/2009 dated 29.05.2009.

For petitioner : Mr.Najeeb Usman Khan
For respondent No.1 : Mr.Santhanaraman
Additional Government Pleader
(Forest)

For Respondent No.2 : Mr.R. Murali

ORDER

Mr. Najeeb Usman Khan, learned counsel is present on behalf of the writ petitioner, Mr.Santhanaraman, Additional Government Pleader (Forest), is present on behalf of the first respondent. Mr.R.Murali, learned counsel, is present on behalf of R2.

2. By consent of all the learned counsel, the main Writ Petition itself is taken up for disposal.

3. This writ petition has been filed by a Company, Prakirthi Foundations Limited, (herein after referred as "the said Company" for the sake of brevity and convenience).

4. The said Company had developed a large piece of land into residential houses and sold them to various individuals/entities and the lands so developed are comprised in Sr.149 and 150 of S.Nos.149 and 150 in Sembakkam Village, Tambaram Taluk, Kancheepuram District.

5. The dispute pertains to a contentious boundary wall between developed Sr.Nos and forest land. It is the say of the writ petitioner/Company that a fence was put up by their vendor more than 30 years ago to demarcate the boundary wall.

6. It is also a further say of the writ petitioner that while developing the property, they did not remove the fence, but only constructed a wall to a height of just 3 feet, which is now the contentious wall.

7. It is the case of the first respondent (herein after referred to as "Forest Department") that the said contentious wall has encroached upon forest land. Under the said circumstances, the writ petitioner would contend that there was a Survey, but the land could not be clearly localised and demarcated as the village stone was not readily identifiable.

8. Be that as it may, the Forest Department, according to the writ petitioner, proceeded with demolishing the contentious boundary wall and put up a 3 feet retaining wall.

9. It is the case of the writ petitioner that they are aggrieved by this and that the boundary wall has to be reconstructed.

10. Per contra, Mr.Santhanaraman, learned Additional Government Pleader (Forest) submitted that the writ petitioner Company had already written to the Forest Department vide letter dated 10.06.2009 stating that the land on which boundary wall stands has been gifted to the local body (2nd respondent

before this court). The gift deed dated 22.04.2003 executed by the petitioner company in favour of the 2nd respondent local body has also been placed before this court.

11. Learned Additional Government Pleader further submitted that, as there is neither a report nor any objection from the Executive Officer regarding Forest Range Officer letter dated 19.10.2009, it was ordered by the District Forest Officer to evict the encroachment vide order dated 30.12.2009. Accordingly after proper intimation to Police and Revenue Officials the contentious compound wall constructed in the encroached area was removed in the presence of Police and Revenue Officials. At the time of evicting the encroachment the 'Heritage Jeyandra Nagar Building Owners Association' have represented that the drainage pipes and electric cable have been laid under the road, hence requested not to damage the road in the processes of evicting encroachment and accordingly the road was not removed.

12. It is the further case of the Forest Department that pursuant to the stand taken by the petitioner company that they have already gifted the land and that proceedings, if any, have to be between the Forest Department and the Local Body, the Forest Department issued an eviction notice under 68 (A) of Tamil Nadu Forest Act, 1882.

13. It is also the further case of the Forest Department that this eviction notice was sent to the second respondent, who is the lone noticee in this eviction notice. It is also submitted that the second respondent did not respond to the eviction notice.

14. Forest department proceeded to pass an Order under Section 68(A) of Tamil Nadu Forest Act, 1882. This order is dated 30.12.2009 bearing reference Na.Ka.No.3510/09/.

15. It is also necessary to notice that the two other writ petitions viz., W.P.Nos.703 and 719 of 2010 were filed. While W.P.Nos.703 of 2010 was filed by the same writ petitioner company and W.P.N.719 of 2010 was filed by the Building Owners' Association in the name of Heritage Jeyandra Nagar (according to the submission made which he purchased independent residential houses from the writ petitioner)

16. While the writ petition filed by the said Company sought for issuance of a Mandamus against the Forest Department to forbear them from proceeding with any further work of demolition, removal or construction in the 'Heritage Jeyandra Nagar' situated in S.Nos.149 and 150 in Sembakkam Village,

Kancheepuram District, pursuant to their show cause notice bearing C.No.278/2009 dated 29.05.2009.

17. Writ petition filed by the Owners Association was one seeking a Writ of Mandamus and the prayer reads as follows:

Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st respondent to forbear from taking any further action affecting the 3rd Main Road or any other area being part of the sanctioned lay-out bearing CMDA approval P.P.D.L.O.No.35/2003 vide letter No.L1/34475/2002 dated 25.04.2003 and allegedly situated in the North West corner of S.F.No.157 of Nanmangalam village, Sembakkam Town Panchayat, without following the procedure stipulated in Section 68-A of the Tamil Nadu Forest Act, 1882 and the Rules framed thereunder and affording an opportunity of being heard to the petitioner's members.

18. This writ petition, after full contest, came to be disposed of by a common order dated 01.07.2010. The operative portion of the said order in para-10 reads as follows:

10. In view of the above facts and circumstances, I am constrained to pass the following order:

(i) In W.P.No.703 of 2010, the first respondent is directed to consider the objection raised by the petitioner dated 10.06.2009 to the show cause notice issued by the first respondent to the petitioner dated 29.05.2009 and pass orders as required under Rule 2 (2) of the Tamil Nadu Forest Lands (Eviction and Encroachments) Rules, 1981 within six weeks from the date of receipt of a copy of this order.

(ii) After orders are passed, the first respondent is directed to communicate the same to the petitioner and if the orders are adverse to the petitioner, the petitioner is at liberty to adjudicate the same in the manner known to law.

(iii) Till such time, the first respondent shall not take any steps to evict the petitioner.

(iv) As far as W.P.No.719 of 2010 is concerned, the first respondent is directed to cause notice to the petitioner under Section 68-A of the Tamil Nadu Forest Act, 1882 within two weeks from the date of receipt of a copy of this order.

(v) On receipt of the same, the petitioner thereon is directed to offer explanation for the same, within eight weeks thereafter.

(vi) On receipt of the reply, the first respondent is directed to pass orders as required under the Rules referred to above.

(vii) Till the order is passed, the first respondent shall not take any steps to evict the members of the petitioner association.

19. It is now fairly conceded that the Forest Department's order dated 30.12.2009 bearing Na.Ka.No.3510/09/t, pursuant to the eviction notice issued to the second respondent Local Body was not brought to the notice of the learned Single Judge when the above order came to be passed and this resulted in sub- paras 1 and 2 of para 10 which has been extracted supra.

20. Now the position that emerges is that the Forest Department had issued notice to the second respondent Local Body owing to the stand taken by the writ petitioner company that they have already gifted the contentious lands to the local body. The second respondent did not respond to the notice which is in the nature of a show cause notice. Therefore, the Forest Department proceeded to pass an order dated 30.12.2009.

21. It is submitted by the Mr. Najeeb Usman Khan, learned counsel appearing for the Writ Petitioner Company that the above said order was not communicated to the writ petitioner company. The Forest Department cannot be found fault with. The lone noticee was the second respondent and orders have been passed as the second respondent did not reply. The second respondent was the lone noticee owing to the stand taken by the writ petitioner company that they have already gifted the contentious lands to the second respondent. Further, the copy of the order dated 30.12.2009 is now part of the typed set of papers dated 10.02.2012 which has been furnished to the writ petitioner.

22. The case of the learned counsel appearing for the Writ Petitioner Company is that they have gained knowledge about the above said order only on the typed set being served on them on 23.02.2017. It is open to the writ petitioner to assail the same in a manner known to law, if they so desire, but no relief can be granted in the instant writ petition as the prayer sought for herein is a direction to the Forest Department (1st respondent) to reconstruct and retain the wall to the extent already demolished and allegedly damaged by the 1st respondent.

23. This order shall be read in conjunction with the earlier order dated 01.07.2010 being the common order made by this court in WP.Nos.703 and 719/2010 for the purpose of complete clarity in the writ petition.

24. In the result, Writ Petition is dismissed and Consequently, connected miscellaneous petition is closed.

The parties are left to bear their respective costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Forest Ranger,
Forest Ranger Office,
Tambaram Forest Range,
Old State Bank Colony Road
West Tambaram,Chennai 600 045

+1cc to M/s.Reyan & Arya,sr.16587

+1cc to Special Government Pleader sr.15943

W.P. No.704 of 2010
and
M.P. No. 1 of 2010

nr(co)
ss(12/4/2017)

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