

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION No. 18423 of 2015
and M.P.Nos.1 & 2 of 2015

E.Jeevanandam

...Petitioner
Vs.

1. The Managing Director,
Chennai Metropolitan Water
Supply & Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600 002.
 2. The Superintending Engineer,
Construction - V,
Chennai Metropolitan Water
Supply & Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600 002.
 3. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.
 4. The Zonal Officer,
Zone-XI,
Corporation of Chennai,
Arcot Road,
Valsarawalkam, Chennai - 87.
 5. Rukmani Nagar Residents Welfare Association
rep by its Vice President Mrs. R. Sakila
Plot No 15, 2nd street, Rukmani Nagar
Maduravoyal, Chennai 600 095.
(R5 is impleaded as per order dated 28.08.2015 in MP 3/15 in WP
18423 of 2015)
 6. The Tahsildar
Maduravoyal Village, Chennai
(R6 is Suo motu impleaded as per order dated 21.08.2015 in WP
18423 of 2015)
- ...Respondents

Prayer: This writ petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus or any other order in the nature of writ calling for the records relating to the impugned letter dated 19.06.2015 Ref.CMWSSB/SE-V/Madvl/UGSS/P-2/Spl/2015 issued by the 2nd respondent and quash the same and consequential forbear the respondents, their men, servants or agents, or their men, contractors from carrying out any construction of sewerage lines or pumping station or any other activity in the petitioner's private property in Survey No.297, present survey Nos. 297/1,2,3 & 4 Maduravoyal Village, Maduravoyal Taluk, previously Ambattur Taluk.

For Petitioner : Mr.S.Thankasivan
For Respondent : Mr.S.Diwakar - for R6
Special Government Pleader
Mr.Manishankar - for R1&R2
Addl Advocate General
Assisted by Mr.Perumal
Mr.Venkataramani-for R3&R4
Addl Advocate General
Assisted by Mr.Selvakumar
Mr.R.S.Rangabashyam-R5

O R D E R

The petitioner was the chairman of the erstwhile Maduravoyal Town Panchayat and at present a councilor. During his tenure as chairman, a resolution was passed by the said local body vide Res.3 dated 28.11.2001, to provide sewerage facilities to the Maduravoyal area, enclosing the list of streets, in which Ward No.7 in Rukmani Nagar street is also included.

2. A request was made by the local body to the first and second respondents to prepare a total estimation for the under ground sewerage scheme. A comprehensive scheme was prepared followed by another resolution of the local body dated 05.09.2008. The Government has accorded the administrative sanction for Rs.57.45 Crores vide G.O.No.2(D)47, dated 03.06.2009.

3.The scheme has commenced on 18.08.2009. The sewerage was laid as there was no objection except at Rukmani Nagar Road for the length of 110 meter. The sewerage main was completed on the upstream and downstream side of Rukmani Nagar except an extent of 119 meters at Rukmani Nagar street.

4. The petitioner purchased lands in the year 2011, which is inclusive of the street over which the proposed sewerage line is sought to be taken-Rukmani Nagar street. Now the petitioner's

claim is that the said extent is part of the private land. The following is the evidence produced by the second respondent to show the existence of the street for several decades.

"10.i) In a Gift deed dated 03.09.1997 registered as document No.3487 of 1997 in SRO, Virugambakkam, it has been clearly stated in the boundaries of the schedule that on the East by 30 feet existing tar road;

ii) In a sale deed dated 15.04.2002 registered as document No.1953 of 2002 in SRO, Virugambakkam, it has been clearly stated in the boundaries of the schedule that on the East by 30 feet existing tar road;

" iii)CMDA has approved Mada Avenue Layout in Survey No.296/1B, Maduravoyal Town Panchayat vide Lr.No.L1/8501/09, dated 28.02.2000 and thereafter approval was granted by Executive Officer, Maduravoyal Town Panchayat vide Lr.D/Dis 21/97, dated 18.05.2000 indicating existing Rukmani Nagar Road (30'-Road);

iv)A resolution vide Res.No.3, dated 28.11.2001 was passed by the petitioner herein while he was the Chairman of the erstwhile Maduravoyal Town Panchayat to provide sewerage facilities to Maduravoyal area, enclosing the list of streets along with Plan in which in Ward No.7, Rukmani Nagar roads are included;

v) A resolution vide Res. No.174 dated 24.01.2006 was passed by the petitioner herein while he was the chairman of the erstwhile Maduravoyal Town Panchayat to provide water facilities to Maduravoyal area enclosing the list of streets along with Plan in which in Ward No.7, Rukmani Nagar streets are included (water mains already laid in the Rukmani Nagar road which the petitioner herein claims to be owner);

vi) The then Maduravoyal Town Panchayat laid road for two times and also passed a resolution dated 02.03.2009 vide Res.No.10 to repair the existing Rukmani Nagar Road along with Krishna Nagar 21st street and Krishna Nagar 3rd Main Road for an estimated value of Rs.9,00,000/-;

vii) The then Maduravoyal Town Panchayat Executive Officer accorded planning permission vide Res.No.WK294/2010 for and on behalf of CMDA and building permission vide 38/2010-11 for the building plan for plot No.48, Dasari Padma Nagar in Survey No.296/1B in Maduravoyal Village indicating existing Rukmani Nagar Road;

viii)Corporation of Chennai, Zone XI has accorded planning permission vide No.TXI/1636/2013 and building permission No.T11/01846/2014, Dt., 10.03.2014 for the Plot No. 28, Door No.8, Survey No.296/18 indicating existing Rukmani Nagar Road in existence;

ix) Exelectric poles for electrifications was provided by the 3rd and 4th respondents (Corporation of Chennai) in the said Rukmani Nagar Road;

x) The then Maduravoyal Town Panchayat has approved the road pattern and Area details of the Surve No.296/1B of Maduravoyal Village with Rukmani Nagar Road in existence."

5. Therefore, from the above, one can draw the prima facie conclusion about the existence of the road. Though this Court is not willing to go into the fact whether it belongs to the petitioner or otherwise, there is a suit filed by third parties against the petitioner in O.S.No. 311 of 2015 on the file of the District Munsif Court, Poonamallee, claiming protection over the road and an order of injunction has been obtained in I.A.No.832 of 2015 in O.S.No.311 of 2015.

6. In view of the objection raised by the petitioner, a notice was issued under Section 67(3) of the Chennai Metropolitan Water Supply and Sewerage Act, 1978. Now the petitioner made a representation to the respondents seeking construction of the alternative route. Challenging the impugned order dated 19.06.2015 invoking the provisions of Section 67(3) of Chennai Metropolitan Water Supply and Sewerage Act 1978, (hereinafter referred to as 'The Act') the present writ petition has been filed.

7. This notice was issued without going into the issue of title as claimed by the petitioner. Pending the writ petition, the petitioner's representation was considered and rejected. It appears that even on the earlier occasion, the request of the petitioner was considered but no final decision was taken in view of the pendency of the Writ Petition, which is seen from the letter dated 21.01.2016 produced by the learned Additional Advocate General. By the communication dated 16.03.2017, the representation of the petitioner was rejected. It has been stated that relaying is not feasible in view of the cost factor, time factor and causing inconvenience to the people living in three streets, as they would be deprived of sewerage facilities.

8. Heard the learned counsel appearing for the parties and also the learned counsel appearing for the petitioner in W.P.No.21705 of 2016.

9. W.P.No.21705 of 2016 is not taken up in view of the request made by the learned counsel for the petitioner in this writ petition that he wants to file an affidavit.

10. The learned counsel appearing for the petitioner would submit that the three streets consist of encroachers and unauthorized lay out owners. The petitioner's request deserves

to be acceded to, no compensation is paid for the proposed laying of pipeline through his land. There can be adjustment of amount due to him qua compensation with the one payable by him. Thus, if that issue is considered then the cost as they claimed would not be available. To show the title of the petitioner, the learned counsel has relied upon the proceedings of the Tahsildar, which states that it is a patta land. In support of the contention, the learned counsel for the petitioner relied upon the judgment of the Supreme Court in Laljibhai Kadvabhai Savaliya & Ors. Vs. State of Gujarat & Ors reported in 2016 Legal Eagle (SC) 759.

11. The learned Additional Advocate General, on instructions, would submit that almost the entire work is completed except an extent of 119 meter in the road-Rukmani Nagar street. Power is available to the respondents to undertake the said exercise as mandated under Sections 63, 67(C) and 67(3) of the Act. There is no co-relation between the exercise to be undertaken and the compensation as claimed by the petitioner.

12. Residents of the three streets would be deprived of the facility if the realignment as sought for by the petitioner is undertaken. The road has been shown as a public road as stated in the counter affidavit filed, through various documents. In fact it has been shown as such. Even during the tenure of the chairmanship of the petitioner, the scheme was contemplated and proposed by the local body. The road has also been relaid by the local body on two occasions. It is only a link road between Ganga Nagar and Rukmani Nagar.

13. The learned counsel appearing for the petitioner in W.P.No. 21705 of 2016 submits that it is not factually correct to state that all the residents are putting up construction in the common approved layout as the road has been shown as part of the layout even in the year 1985. It is being used as a road for decades. The civil suit along with the interim order is pending, therefore, appropriate order will have to be passed.

14. The facts narrated above are not in dispute. Section 63 of the Act deals with the power of Board to carry pipes superstructures etc and to maintain works. Therefore, the said provision gives sufficient power to the respondents to undertake the works by carrying the sewer line across, under or over or all the side or any land or building.

15. Two Provisos merely state that the care that is required to be taken while doing so and the entitlement of the affected party to get compensation which we are not concerned at this stage. Section 67 (1) (c) of the Act, deals with the power to enter upon the land etc., and to place and maintain the mains etc. Section 67 (1)(c) of the Act deals

with power to enter upon any immovable property for the purpose of maintaining mains, pipes, sewers and other installations upon, along, across or under any such property. Section 67 (3) of the Act explains that Board shall not acquire any title to or any right other than user to the land, building or immovable property other than property belonging to the board in respect of which any action has been taken under this Section and before commencing any action under this Section, the authorised authority shall except in the case of an emergency obtain the prior permission of the authority concerned where the land, building or immovable property is owned by and is in the possession of such authority. As rightly submitted by both the counsels that provisions do give power to the Board, though rigorous in nature.

16. With the above said back drop, if this Court sees the case of the petitioner, there is no arbitrariness involved in the decision made to lay the sewer. One thing is clear. If at all somebody who knows about the land project and the road, it is the petitioner being a party to the decision made in the year 2001. He has purchased the property in the year 2011. Under his chairmanship, the road was included as part of the project for the purpose of taking sewerage line. The fact that the road has been relaid by the the local authorities is not in dispute apart from the existence of link road between Ganga Nagar and Rukmani Nagar.

17. The power of judicial review in such matter is rather limited. This Court does not find any extraneous consideration involved in this scheme. There is neither any malice in law or fact involved. The rejection of alternative proposal given by the petitioner is also not faulted with. On facts it is not in dispute that the residents of three streets would be affected, if one accepts the alternative suggestions made by the petitioner. There is no material to hold that the entire residents of the three streets put up construction unauthorizedly.

18. Even otherwise the said issue may be germane to the issue involved as it may take substantial number of years to remove such alleged encroachers while considering the alternative suggestion made by the petitioner. Though the learned counsel for the petitioner disputed that project is not almost completed, the record produced by the learned Additional Advocate General lends credence to the said statement made.

19. Granting compensation is one thing and relaying sewerage line is another. Therefore, the decision relied upon by the learned counsel for the petitioner does not apply to the

case on hand. So long as the power is available to the respondents Board and in the absence of any malafide intention involved, this Court cannot declare the scheme in so far as taking sewerage line from the road as bad in law. As stated earlier, prima facie it appears through the documents, as recorded by this Court from the counter affidavit of the respondents in Para 10, there exists a road being used for the last few decades, which has been taken note of by the local authority and as well as CMDA. It is not as if the petitioner was unaware about the laying of the sewer since, he dealt with the said issue, though in a different capacity in the year 2001. Buying the property in the year 2011 will not change the situation.

20. Accordingly this Court does not find any merit in the writ petition. Hence, this writ petition is dismissed. However, it is made clear that any observation made by this Court qua the existence of the road is prima facie in nature, which will not have any bearing on any adjudication either pending or to be raised before the appropriate forum. No costs. Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

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Chennai Metropolitan Water
Supply & Sewerage Board,
No.1, Pumping Station Road,
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5. The Tahsildar
Maduravoyal Village, Chennai

+1 CC to Mr. P.V. Selvakumar, Advocate sr 20124

+1 CC to M/s. S. Thankasivan, Advocate sr 20258

+1 CC to Govt. Pleader sr 21018

+4 Ccs to Mr. R.S.Rangabashyam, Advocate sr 20870,20353

+1 CC to Mr. V. Perumal, Advocate sr 20311

W.P.No. 18423 of 2015
and M.P.Nos.1 & 2 of 2015

SAI (CO)
sp/10/4



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