

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.24415/2017

&

WMP.No.25810/2017

G.Joseph

Petitioner

Versus

1. The District Collector,
Thiruvallur District, Thiruvallur.
2. The Superintending Engineer,
Chennai Metropolitan Water Supply
and Sewerage Board, [Avadi Water
Supply and Drainage Scheme]
Chennai 600 002.
3. The Commissioner
Avadi Municipality, Avadi,
Chennai 600 054.
4. The Tahsildar
Avadi Taluk, Avadi,
Chennai 600 054.
5. Masjid-e-Mohamadia
rep.by its Secretary,
Mr.Amsa Bai, No.11,
Karumariyamman Koil Street,
Nandhavana Mettur, Avadi
Chennai 600 054.

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Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 3rd respondent to remove the encroachment put up by the 5th respondent herein at Gandhi 1st Street, Nandhavana Mettur,

Chennai 600 054, comprised in Town Survey Field No.14, Block No.29, G-Ward, Vilingiyambakkam Village, Avadi Municipality, in pursuance of the Notice in RC.No.8099/2015/F1 dated 09.03.2017 of the 3rd respondent immediately.

For Petitioner : Mr.N.Anand Venkatesh
For R1&R4 : Mr.A.N.Thambidurai, Spl.GP
For R2 : Mr.N.Ramesh
For R3 : Mr.P.Srinivas

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 and 4 ; Mr.N.Ramesh, learned Standing counsel accepts notice on behalf of the 2nd respondent and Mr.P.Srinivas, learned Standing counsel accepts notice on behalf of the 3rd respondent.

2 The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that the house property admeasuring to an extent of 353 sq.mt comprised in old survey No.246/1 Part, SF.No.13, Block No.29, Vilinigyambakkam Village, Avadi Municipality, Chennai-54, belongs to his father-in-law [late] Selvaraj and the Assignment Patta was also issued to him in the year 1966 on account of the fact that the land has been classified as "Gramanatham" in the revenue records. The father-in-law of the petitioner died in the year 1984, leaving behind his three daughters and a joint patta was also issued in their names. The petitioner is the husband of Maria Rita and he would further aver that the 5th respondent has filed OS.No.1246/1989 on the file of the Court of District Munsif, Poonamallee, for mandatory injunction, directing the Tamil Nadu Electricity Board to remove the overhead electricity cable running through their property and for permanent injunction, restraining the sisters-in-law of the petitioner from interfering with the peaceful possession and enjoyment of the property and the said suit was dismissed for non-prosecution on 30.01.1994.

3 It is the specific case of the petitioner that the only access of the property in Gandhi 1st Street, Nandhavana Mettur, Chennai 600 054, is through a 10 feet passage which is running through the property of the 5th respondent and it has also been shown as "Road". The petitioner would further aver that the 3rd respondent through the services of the 2nd respondent had commenced the work of laying underground drainage system in the entire Nandhavana Mettur area and started digging up the Gandhi

Nagar I Street and it was opposed by the 5th respondent and on account of the same, laying of underground drainage system was abruptly stopped.

4 The petitioner had also repeatedly corresponding with the concerned officials for the removal of encroachment on the part of the 5th respondent and in response to the same, the 3rd respondent had sent a communication dated 02.11.2015 in Na.Ka.No.8099/2015/F1 to the 5th respondent with a copy marked to the petitioner, indicating that the inspection / survey was done by the Town Inspector and as per the Town Survey Sketch available as well as the other materials, it has been shown as "Lane" and therefore, requested the 5th respondent to remove the encroachment on the lane. The 3rd respondent as a follow up to the above said communication, has also sent a notice dated 09.03.2017 under sections 182 and 183 of the Tamil Nadu District Municipalities Act, 1920, [Amended], calling upon the 5th respondent to remove the encroachment within three days from the date of receipt of the notice, failing which, the other consequences would follow.

5 Mr.N.Anand Venkatesh, learned counsel appearing for the petitioner would submit that though the notice was sent as early as on 09.03.2017, no follow up action has been taken and as a result, the 5th respondent continue to occupy the lane meant for public use and thereby, causing difficulties and hardships to the petitioner as well as to the residents of the other locality and prays for appropriate orders.

6 Mr.P.Srinivas, learned Standing counsel appearing for the 3rd respondent would submit that due process of law will be followed to remove the encroachment caused by the 5th respondent at the earliest.

7 This Court heard the submissions of Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 and 4 and Mr.N.Ramesh, learned Standing counsel appearing for the 2nd respondent and perused the materials placed before it.

8 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the 3rd respondent to act on the communication dated 02.11.2015 and the notice dated 09.03.2017 issued under sections 182 and 183 of the Tamil Nadu District Municipalities Act, 1920, [Amended] and after putting the 5th respondent on notice, shall take appropriate action in accordance with law within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as to the 5th respondent herein.

9 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

AP

To

1. The District Collector,
Thiruvallur District, Thiruvallur.

2. The Superintending Engineer,
Chennai Metropolitan Water Supply
and Sewerage Board, [Avadi Water
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3. The Commissioner
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Avadi Taluk, Avadi,
Chennai 600 054.

+1 CC to Mr. P. Srinivas, Advocate sr 66593.

+1 CC to Govt. Pleader sr 66433.

+1 CC to Ms. N. Anand Venkatesh, Advocate sr 66323.

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GP (CO)
sp (09/10/2017)