

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.27563 of 2017

M.Mary Selvi Suseela Bai

.. Petitioner

Vs.

The Avadi Municipality
rep.by its Commissioner,
Avadi Municipality, Avadi,
Chennai - 600 054.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the respondents from initiating any steps to put up any construction either in the guise of putting up dumping yard for Bio degradable waste or Non Bio degradable waste collected by the respondent herein viz., Avadi Municipality in respect of the property at in Ward No.14 of the Avadi Municipality comprised in survey No.645/5 of Thirumullaivoyal village measuring about 0.07 cents totally 3666 sq.ft bearing present Door No.1 and 2 the building ground floor with vacant site in Railway Car Shed (Station Road), Sivasakthi Nagar, Annanur, Chennai 109 bounded on the North by survey No.645/5, south by Station road, East by Balu Naicker property west by Balu Naicker property within the Sub Registration District of Ambattur and Registration District of Chennai North except otherwise in accordance with law.

For Petitioner : Mr.S.Xavier Felix

For Respondent : Mr.P.Srinivas

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus, to forbear the respondents from initiating any steps by putting up any construction either in the guise of putting up dumping yard for Bio degradable waste or Non Bio degradable waste collected by the respondent herein viz., Avadi Municipality in respect of the property in Ward No.14 of the Avadi Municipality comprised in Survey No.645/5 of Thirumullaivoyal village, measuring about 0.07 cents, totally 3666 sq.ft bearing present Door No.1 and 2 the building & ground floor with vacant site in Railway Car Shed (Station Road), Sivasakthi Nagar, Annanur, Chennai 109, bounded

on the North by Survey No.645/5, South by Station road, East by Balu Naicker property & West by Balu Naicker property, within the Sub Registration District of Ambattur and Registration District of Chennai North, except otherwise in accordance with law.

2. The case of the petitioner is that they have been in peaceful, uninterrupted possession and enjoyment of the property in question and that the petitioner has purchased the property, vide sale deed Document No.6844 of 1988, registered in the Sub Registrar Office, Ambattur. The property was originally owned by Savitri in Ward No.14 of the Avadi Municipality comprised in Survey No.645/5 of Thirumullaivoyal village, measuring about 0.07 cents totally 3666 sq.ft. bearing present Door No.1 and 2, the building & ground floor with vacant site in Railway Car shed.

3. The petitioner is said to have purchased the property and portion of the property of survey No.645/5, is in Lake mentioned supra. The schedule of the property clearly shows that it is an Ambattur lake. Now the petitioner has produced documents to show that the application for patta has been made and the title deed have been deposited and obtained loan and that the petitioner's property has been assessed to property tax and Electricity Service connection was also obtained in her name.

4. Admittedly, the property lies in the lake. Unless there is collusion between the parties and the officials, the said property would not be registered. There are no details as to how the property devolved upon the petitioner from the original owner. Even though the sale deed dated 18.09.1982 had been produced before this Court, from the documents, this Court cannot come to any conclusion with regard to the ownership / title to the property of previous owner.

5. Mr.P.Srinivas, learned counsel appearing for the respondent produced documents to show that Survey No.645/5 to an extent of 7.180 hectares in Ambattur is in lake and that the petitioner has no right to occupy the property in water course by means of any document much less the sale deed. From the sketch and records produced, it appears that the property is in lake.

6. From the reply submitted by the petitioner, it is seen that there are several houses in the lake and all the persons have got to be displaced and several persons have purchased the property there. If anybody had occupied in the lake, certainly they have no locus to claim right over the property. Since they are not before this Court, this Court will not give any opinion on this aspect. It is open to the concerned authorities to take

steps to restore the lake. The contention of the petitioner that her property had been identified for putting up dumping yard for Bio Degradable and Non-bio degradable, cannot be gone into by this Court and the dump yard for Bio Degradable and Non-bio degradable waste cannot be used as such in the lake. The relief sought for by the petitioner in this writ petition cannot be granted. Hence, this writ petition is dismissed. This order will not prevent the respondent from taking steps to evict any encroachers in Survey No.645/5 after due notice to them.

7. No court below shall permit encroachment to be continued in the lake and the Court should be cautious while granting any interim relief, if any suit or petition is filed by any of the encroachers. The Civil Court shall direct the encroachers to remove the encroachment in respect of the water course properties / lake etc. The learned counsel for the respondent prayed that the dumping yard may be permitted for bio-degradable and non-bio degradable waste without disturbing lake. It is open to the respondent to have dumping yard without damaging / spoiling the water / lake.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pvs

To:

The Commissioner,
Avadi Municipality, Avadi,
Chennai - 600 054.

+1cc to Mr.S.Xavier Felix Advocate, S.R.No. 76267/17

W.P.No.27563 of 2017

KGK (CO)
TR(20/11/2017)

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