

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.28615 & 28530 of 2017
& W.M.P.Nos. 30781 & 30670 of 2017

R.Ganesan ... Petitioner in W.P.No.28615 of 2017
R.Shankar ... Petitioner in W.P.No.28530 of 2017

Vs.

1.The Director,
Defence Estates,
Ministry of Defence,
Southern Command,
Pune-1 ...Petitioner in W.P.No.28615/2017.

2. The Director, Directorate of Cantonment
Boards, Military Estate Lands (Southern
Commands) Pune ...Petitioner in W.P.No.28530/2017.

Vs

The Chief Executive Officer,
Cantonment Office,
St.Thomas Mount,
Chennai - 600 016. ...2nd Respondent in both the petitions

Prayer in W.P.No.28615 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the 2nd respondent to pass an appropriate order in petitioner's representation dated 28.10.2017 within time framed manner.

Prayer in W.P.No.28530 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus forbearing the 2nd respondent, his men, agent, servant or servants acting for and on behalf of the 2nd respondent from in any manner interfering with the petitioner's peaceful possession of the land measuring 384 square feet in the western end of the land in R.S.No.1772, St.Thomas Mount Village, Alandur Taluk, Kancheepuram District.

For Petitioner in

W.P.No.28615/2017: Mr.I.C.Vasudevan
for M/s.K.Sudhakar

For Petitioner in

W.P.No.28530/2017: Mr.T.S. Vijayaraghavan
For R1 : Mr.Venkataswamy Babu, SPC GOI
For R2 : Mr.C.Mohan
for M/s.King & Patridge

C O M M O N O R D E R

The petitioner in W.P.No.28615 of 2017 has come forward with this petition to direct the 2nd respondent to pass an appropriate order in petitioner's representation dated 28.10.2017 within time framed manner.

2. The petitioner in W.P.No.28530 of 2017 has come forward with this petition forbearing the 2nd respondent, his men, agent, servant or servants acting for and on behalf of the 2nd respondent from in any manner interfering with the petitioner's peaceful possession of the land measuring 384 square feet in the western end of the land in R.S.No.1772, St.Thomas Mount Village, Alandur Taluk, Kancheepuram District.

3. It is an admitted case that the property sought to be used by the petitioner Ganesan is a cantonment defence land and the 2nd respondent has filed a detailed counter affidavit and GLR records have been produced. The respondents are permitting the said Ganesan to use the place for ingress and egress to the property from Mettur Street without putting up any structure and that place would be taken back in case of widening of road in future or for any other purpose. Though there is a dispute with regard to 384 sq.ft. of the land, which according to the petitioner Shankar, it belongs to him. The said land devolved upon him, pursuant to the order obtained by his mother in the year 1977 and that by means of adverse possession, the cantonment has no right to encroach upon the property and that after 40 years, the respondents are trying to deprive the said property, through which the petitioner would be entitled to ingress and egress to the property, apart from other access available to him.

4. According to Shankar, the property the gate put up by him, has been demolished and that cantonment has no right to demolish the construction put up by him.

5. Whether the documents of the year 1977 is valid and that whether by means of adverse possession, Shankar is entitled to the property are all matters to be adjudicated before appropriate Civil forum. Hence without going into the merits of

the matter, taking note of the written instructions given by the learned counsel for the 2nd respondent, which is extracted below;

- "a) Mr.Ganesan can be allowed to use B4 land (Cantonment Defence Land under the management of Cantonment Board as admitted / accepted by Mr.Ganesan) without putting up any structure for ingress and egress purpose from Mettu Street subject to widening of road in future or for any other purpose.
- b) Mr.Shankar can be allowed to use B4 Land (Cantonment Defence Land under management of Canotnment Board) without putting up any structure for ingress and egress purpose from Mettu Street subject to widening of road in future or for any other purpose. Mr.Shankar's claim that the land belongs to him is denied as it is B4 Land under the management of Cantonment Board as per GLR records.
- c) The above mentioned persons shall not put up any construction and they can use the subject land for ingress and egress purpose from Mettu Street as per the orders of the Honourable High Court of Madras.
- d) The rights of the parties over the defence land claimed by the petitioner/s be decided by the Civil Court and other Courts.
- e) The lease cannot be given tot he parties on Defence Land by this office as the subject matter of lease pertains to the Government of India, Ministry of Defence."

permission is granted to Ganesan to use the place from Mettur Street for the purpose of ingress and egress and act in accordance with the conditions extracted supra. Insofar as Shankar is concerned, though roads have been granted by the cantonment, whether such right need to be obtained from Cantonment, is matter of issue that should be decided before Civil forum as Shankar contends that by means of adverse possession, he is the owner of the property.

6. Leaving all the issues open, the writ petitions are disposed of, with liberty to the parties to agitate their rights before the appropriate Civil forum and any observations made in this order with regard to the merits of the matter, will not affect the rights of the parties before the appropriate Civil forum. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

pvs

To

- 1.The Director,
Defence Estates,
Ministry of Defence,
Southern Command, Pune-1
- 2.The Chief Executive Officer,
Cantonment Office,
St.Thomas Mount, Chennai - 600 016.
3. The Director, Directorate of Cantonment
Boards, Military Estate Lands (Southern
Commands) Pune

+1 CC to Mr.T.S. Vijayaraghavan, Advocate sr 84689.
+1 CC to Mr. Venkatasamy Babu, Advocate sr 84600.
+2 Ccs to Ms. King and Patridge, Advocate sr 84524 & 84523

W.P.No.28615 & 28530 of 2017

SP(18/12/2017)



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