

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 24503 of 2013

and

M.P. No.1 of 2013

Janbee Ammal

rep. By her Power of Attorney

Mr. D. Bilal Basha

.. Petitioner

Vs.

The Commissioner
Corporation of Salem
Salem.

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the respondent from constructing open drainage in the land belonging to the petitioner comprised in Survey No.257/4, T.S. No.1/2, Patta No.1327 at Jagir Ammapalayam, Ward A, Block No.58, Salem measuring 1545 Sq.ft. and pass such further orders.

For Petitioner : Mr. S.A. Akbar

For Respondents : Mrs. K. Bhuvaneswari
for Salem Corporation

O R D E R

The petitioner has filed the present writ petition, to forbear the respondent from constructing open drainage in the land belonging to the petitioner comprised in Survey No.257/4, T.S. No.1/2, Patta No.1327 at Jagir Ammapalayam, Ward A, Block No.58, Salem measuring 1545 Sq.ft.

2. Learned counsel for the petitioner submitted that the petitioner is the absolute owner of the land comprised in Survey No.257/4, T.S. No.1/2, Patta No.1327 at Jagir Ammapalayam, Ward A, Block No.58, Salem measuring 1545 Sq.ft., by virtue of registered sale deed. While constructing open drainage in the street, the respondent Corporation suddenly started digging the petitioner's land, for continuance of the

open drainage system, without following due process of law. When the same was objected by the petitioner, the respondent had informed that if it is not constructed along the side of the road, through the petitioner's property, it will narrow down the width of the road as there is a temple encroaching the road opposite to the petitioner's property. Learned counsel for the petitioner further submitted that although the Government is vested with unfettered power to remove the encroacher from the property belonging to the Government, the respondent is unlawfully, using the private land of the petitioner. The petitioner made several representations but no action has been taken by the respondent and hence this writ petition has been filed, seeking the aforesaid prayer.

3. Initially, the respondent filed his counter affidavit. Subsequently, as directed by this Court, the respondent again has filed an additional counter affidavit, along with a sketch enclosed with the plan. Learned counsel for the respondent, based on the counter affidavits, submitted that based on the directions of this Court, the officials of the respondent department inspected the premises along with a surveyor on 23.01.2017 and found that the petitioner has annexed upon the Government land, which can be seen from the said plan. He further submitted that the Corporation has reconstructed the drain along the existing alignment of the damaged drain to prevent health hazard to nearby school children and has not intentionally made any new encroachment. Further, the drainage construction has been completed in the year 2013 itself and the same is put to public use ever since.

4. In view of the submission made by learned counsel for the respondent, the statement made in the additional counter affidavit and the plan shown in the sketch filed along with the additional counter affidavit, the writ petition fails and the same is liable to be dismissed.

5. Accordingly, the writ petition is dismissed. Consequently, the connected M.P is closed. No costs.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

avr

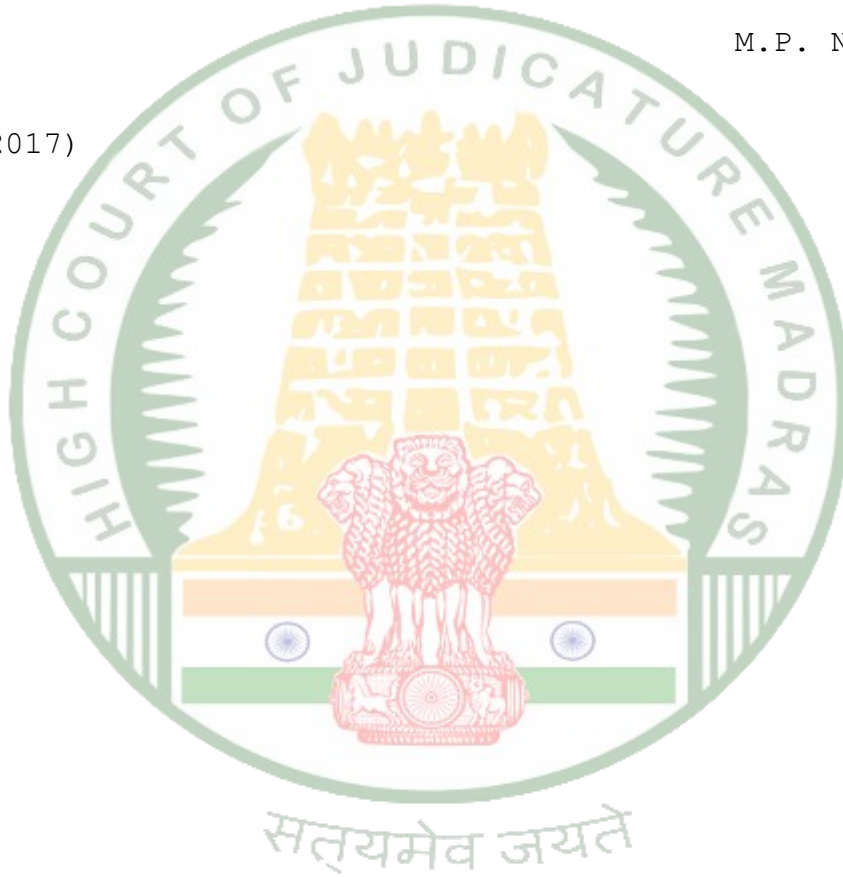
To

The Commissioner
Corporation of Salem
Salem.

+1cc to M/S. S.A. Akbar Counsel for Petitioners, Sr. 10175

W.P. No. 24503 of 2013
and
M.P. No.1 of 2013

SJ(CO)
VR(18/04/2017)



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