

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1618 of 2016
and C.M.P.No.20063 of 2016

S.Rajamani Appellant/4th Respondent

... Vs ...

1. K.Ramkumar
Rep. by power Agent
N.Krishnamoorthy 1st Respondent/Writ petitioner
2. The Tahsildar,
Tiruchengode Taluk,
Namakkal District.
3. The Commissioner,
Tiruchengode Municipality,
Tiruchengode Taluk,
Namakkal District.
4. The Town Surveyor,
Tiruchengode Municipality,
Tiruchengode Taluk,
Namakkal District.
5. M.Bakhiyam Respondents 2 to 4/Respondents 1 to 3
(R.5 impleaded vide order of this
Court dated 03.01.2017 made in
C.M.P.No.116 of 2017 in W.A.No.1618
of 2016.)

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 02.11.2016 made in W.P.No.33192 of 2016. Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Mandamus Directing the 2nd & 3rd respondents to fence their ear marked portion of park and Road by excluding A B C portion of the entire property of an extent of 1605.50 sq.ft as per Sketch dated 13.06.2016 in TSLR No.13/1, in Block-10, Ward No.-F Tiruchengode Village and Town, Namakkal District by considering the petitioners representation dated 22.08.2016 and consequently direct the 1st

respondent to Sub Division the above property and issue the separate patta

For Appellant : Mr.R.Singaravelan, Senior Counsel
for M/s.K.Sasindran

For R-1 : Mr.V.Raghavachari
Assisted by Mr.Ma.Pa.Thangavel

For RR-2 to 4 : Mr.P.S.Shivashanmuga Sundaram
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by
RMT.TEEKAA RAMAN,J.)

Challenging the correctness of the order dated 02.11.2016 made in W.P.No.33192 of 2016, the fourth respondent, who was impleaded in the writ petition, has filed this writ appeal.

2. The first respondent in this appeal has filed the writ petition praying for issuance of a writ of mandamus, directing the second and third respondents therein to fence their earmarked portion of park and road by excluding A, B, C portion of the entire property of an extent of 1605.50 sq.ft. as per Sketch dated 13.06.2016 in TSLR No.13/1, in Block-10, Ward No.-F, Tiruchengode Village and Town, Namakkal District by considering the petitioner's representation dated 22.08.2016 and consequently, direct the first respondent therein to Sub-divide the above property and issue the separate Patta.

3. The short facts projected by the petitioner is that he had formed a lay-out of his land and submitted for approval of the plan before the third respondent-Town Planning Officer-cum-Special Officer, Tiruchengode Municipality and the same was approved and under the proceedings bearing Na.Ka.No.9674/2016/F1, dated 25.10.2016 of the Town Planning Officer-cum-Special Officer of Thiruchengode Municipality, he was requested to execute a Gift Deed and accordingly, executed a Gift Deed which was registered as Document No.2140 of 1998 and he had gifted a portion of his land in favour of the Municipality for the purpose of laying road and a park as shown in the plan. Now, the petitioner projected that while fencing the park, the Municipality had exceeded the area and fenced the area as park over and above the extent of land as shown in the approved lay out and the Gift Deed and also filed necessary

documents to that effect. Recording the communication dated 25.10.2016 of the third respondent-Town Planning Officer-cum-Special Officer, Tiruchengode Municipality, who has filed the statement before the Court that "even though the petitioner gifted certain portion of the land by executing a Gift Deed in favour of the Municipality, while fencing the lands, the Municipality has fenced the land belonged to the petitioner which was not covered under the Gift Deed", the learned Single Judge has ordered for removal of the excess fencing.

4. At the time of final disposal of the writ petition, the appellant herein has filed impleaded petition and the same was allowed by an order dated 02.11.2016 and the impleaded respondent was arrayed as fourth respondent in the writ petition, who had contended before the learned Single Judge that he had already filed a suit in O.S.No.172 of 2016 before the District Munsif Court, Thiruchengode, against the Commissioner of Thiruchengode Municipality, the third respondent herein praying for a decree of mandatory injunction from in any way altering the physical features of the suit land, which was earmarked as a park by the Municipality. As stated above, the learned Single Judge has directed the Municipality to re-fence the land as per the measurement given in the Gift Deed, leaving it open to the fourth respondent therein viz., the appellant herein to agitate the matter and to ventilate his grievance in the civil suit pending before the District Munsif, Thiruchengode.

5. Aggrieved against the said direction, the fourth respondent had preferred an appeal and reiterated the same contention. When the matter was heard by the another Division Bench, by an order dated 03.01.2017, the following interim order has been passed.

"To find an easy way out, out of a seemingly interminable conflict of interest amongst several parties, including that of Tiruchengode Municipality, we consider it appropriate to direct the Assistant Director of Survey, Namakkal District to depute one of his responsible officers immediately to inspect, survey and fix boundaries of the land gifted by Sri.N.Krishnamoorthy, son of R.Natesan, V.P.Sakthivel, Son of Perumal Gounder, donors, who gifted certain land in favour of Tiruchengode Municipality on 05.8.1998 for purposes of securing approval of lay out on 14.10.1998 and submit a detailed report in a sealed cover to this Court, within a maximum period of three weeks from the date of receipt of this order. It is needless to observe that the donors to the gift deed,

Thiruchengode Municipality and the two Principal Objectors, Sri.S.Rajamani/appellant and Sri K.Ramkumar, rep. by power agent N.Krishnamoorthy/first respondent, shall be put on notice of the time of inspection and survey and survey must be conducted in the present of these parties."

6. Pursuant to the interim direction given by the Division Bench of this Court, a report has been filed in a Sealed cover on 20.03.2017 and copies were given to the parties and objection also filed by the appellant. After hearing both sides and after perusing the sketch filed along with the report as stated supra, this Court finds that the direction issued by the learned Single Judge is in conformity with the physical features as projected by the writ petitioner/first respondent herein and the records produced by the writ petitioner before the learned Single Judge duly tallies with the report now filed, in pursuant to the interim order as stated supra. In view of the above said discussion, we do not find any illegality or irregularity in the finding arrived at by the learned Single Judge and the consequent direction issued thereunder. The Assistant Director, District Survey Office, Nammakkal, has categorically stated that at the time of survey, the Brown coloured area shown in the draft sketch (Brown Coloured Box) is fenced by the Municipality which is excess area compared with the Gift Deed executed by N.Krishnamoorthy, power Agent of the writ petitioner.

7. Accordingly, we are of the considered view that the direction issued by the learned Single Judge is appropriate and we do not find any infirmity or illegality to interfere with the same. Accordingly, this writ appeal is devoid of merits and the same is liable to be dismissed.

8. In the result, this Writ Appeal is dismissed. It is also hereby made clear that it is open to the appellant herein to agitate his grievance, if any, before the Civil Forum in which he has already filed a civil suit. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The Tahsildar,
Tiruchengode Taluk,
Namakkal District.
2. The Commissioner,
Tiruchengode Municipality,
Tiruchengode Taluk,
Namakkal District.
3. The Town Surveyor,
Tiruchengode Municipality,
Tiruchengode Taluk,
Namakkal District.

+1cc to Mr.Ma.Pa.Thangavel, Advocate, S.R.No.41682

W.A.No.1618 of 2016

GP(CO)
CS/07/07/17



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