



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.09.2017
Pronounced on : 15.12.2017

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.10709 of 2017

S.Suresh

... Petitioner

vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Revenue Divisional Officer,
Sattur, Virudhunagar District.
3. The Tahsildar,
Rajapalayam Taluk,
Rajapalayam.
4. The Executive Engineer and Administrative Officer,
Tamilnadu Housing Board,
Ellis Nagar, Madurai - 10.
5. The Tamil Nadu Housing Board,
rep. by its Chairman and Managing Director,
Nandanam, Chennai - 05.
6. D.Balu
7. The President,
Melapatta Karisalkulam Panchayat,
M.P.K.Pudhupatti,
Rajapalayam Taluk,
Virudhunagar District.

(R7 impleaded vide order dated 19.07.2017 made in WMP(MD)
10425/2017)

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 5, to remove the encroachments made by the 6th respondent.



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For Petitioner : Mr.M.Vijayarathinam
For Respondents : Mr.M.Govindan, Spl.G.P. for
RR1 to 3 and 5
Mr.R.Anand for
Mr.K.N.Balasubramanian for R6
Mr.M.Saravanan for
Mr.S.Nagarajan for R4

ORDER

(Order of the Court was made by G.R.SWAMINATHAN, J.)

The petitioner is the purchaser of plot E.101 in Sammanthapuram Village, Rajapalayam Taluk. The Tamil Nadu Housing Board had converted the properties in Survey No.207/3, 207/4 and 208/4 in the said village into housing plots and sold the same.

2.Plot E.101 was allotted to one Subbulakshmi by the housing board. The said allottee constructed a house. She sold the same to one Rajesh, who settled the same in favour of his mother Saraswathy. From her, the petitioner herein purchased the house property in the name of his mother on 12.6.2014.

3.The grievance of the petitioner is that though as per the schedule of the sale deed, he is entitled to 25' on the southern side. The sixth respondent herein has blocked 12 ½'. He had also encroached further by putting up a toilet, a water tank and also a washing stone. He had also sent legal notice to the petitioner that the vacant space in front of the petitioner's house also belongs to him. The petitioner sent representations to the 5th respondent calling for removal of encroachment. But there is no response. Therefore, he has filed the present writ petition.

4.The Tamil Nadu Housing Board has filed its counter affidavit. The 4th respondent would contend that the predecessor in title of the writ petitioner was allotted E.101 while E.102 was allotted to the 6th respondent herein. Since the said house plot allotted to the 6th respondent was situated at the dead end of the road, an additional area of 250 sq.ft., was included in the said plot on 22.3.2000. The 6th respondent had remitted the additional land cost for the same. The maintenance of the scheme was also handed over to the Melapattam Karisalkulam Panchayat. According to the 4th and 5th respondents, the writ petitioner is estopped from questioning the same.

5.The 6th respondent had also filed his counter affidavit. His primary contention is that it is not open to the writ petitioner



to invoke the jurisdiction under Article 226 of the Constitution of India for enforcing a private right. He reiterated the stand taken by the 4th respondent housing board.

6. Heard the learned Counsel on either side and perused the materials on record. The photographs pertaining to the respective houses were also seen by us. We also carefully went through the original lay out.

7. It is admitted by the 4th and 5th respondents that lay out plot No.100(E.101) was allotted to Subbulakshmi on 23.1.1981. She had paid the full cost. A pucca sale deed was also executed in her favour on 30.6.2005. Therefore, it is not open to the Housing Board to have sold a portion of 20' road in favour of the 6th respondent on the ground that lay out plot No.101(E.102) is situated at the dead end. The housing board had admitted in the counter affidavit that maintenance of scheme road was already handed over to the local body. What has been ear-marked as a road in the lay out, shall always remain a road. If a portion of the said road was sold by the housing board to the 6th respondent, it is a nullity.

8. The local body has a statutory duty under the Panchayats Act to maintain the public roads free of any encroachments. When it comes to removal of encroachment on a public road, the occupant cannot invoke the plea of limitation or estoppel. Merely because the writ petitioner or his predecessor in title did not question the allotment made in favour of the 6th respondent, the same would not become legal. We have no hesitation to reject the stand taken by the housing board and the 6th respondent.

9. Direction is issued to the respondents 3, 4 and 6 to remove the encroachment committed by the 6th respondent. Since 6th respondent is a party to this proceedings, he is given a month's time to remove the encroachment on his own. In the event of his failure to do so, the official respondents viz., respondents 3, 4 and 6 shall take action in the manner known to law.

10. The writ petition is allowed as prayed for. No costs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar



To

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Revenue Divisional Officer,
Sattur, Virudhunagar District.
3. The Tahsildar,
Rajapalayam Taluk,
Rajapalayam.
4. The Executive Engineer and Administrative Officer,
Tamilnadu Housing Board,
Ellis Nagar, Madurai - 10.
5. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 05.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 93196

ARUL

TE/KK/SAR-4 : 05/02/2018 : 4P/7C

Order made in
W.P. (MD) No. 10709 of 2017
15.12.2017