



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.08.2017

Pronounced on : 15.12.2017

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CORAM :

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

W.P. (MD) No.12177 and 13189 of 2013
and
M.P. (MD) Nos.2 of 2013 and 1 of 2014

V.Chockalingam ... Petitioner in W.P. (MD) .No.12177/2013
M.Muthulakshmi ... Petitioner in W.P. (MD) .No.13189/2013

vs.

1. The Commissioner,
Madurai Corporation,
Madurai.

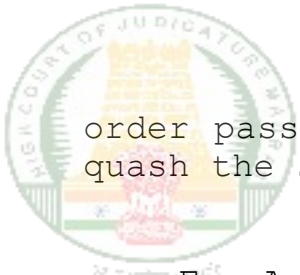
2. The Assistant Commissioner/
Deputy Collector,
Zone I, West Zonal Office,
Madurai Corporation,
T.P.K.Road, Madurai.

... RR1 & 2 in both
petitions

3.M.Muthulakshmi ... R3 in W.P. (MD) .No.12177/2013
4.V.Chokkalingam ... R3 in W.P. (MD) .No.13189/2013

Prayer in W.P. (MD) No.12177 of 2013: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the respondents to remove the encroachment made by the 3rd respondent preventing the access of the petitioner and other common public in the 20 feet common public metal road situated in Anantha Nagar, H.M.S.Colony at Ward No.22, Zone - 1 within the limits of the respondents Corporation based on the order passed by the second respondent dated 05.07.2013 within a time frame as fixed by this Court.

Prayer in W.P. (MD) No.13189 of 2013 : Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned



order passed by the 2nd respondent in No.Nil, dated 05.07.2013 and quash the same.

For Appellant in

W.P.(MD).No.12177/2013 : Mr.Mr.M.Ajmalkhan, senior counsel
for M/s.Siva Ayyappan Associates

For Appellant in

W.P.(MD).No.13189/2013 : Mr.M.Saravanan

For Respondents

: Mr.M.Govindan, Spl.G.P.
for RR1 and 2 in both petitions

Mr.M.Saravanan for R3 in
W.P.12177/2013

Mr.M.Ajmalkhan, senior counsel
for M/s.Siva Ayyappan Associates
for R3 in W.P.13189/2013

COMMON ORDER

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

The writ petitioners are promoters of adjacent lay outs in Kokulappi village, Madurai South Taluk. Muthulakshmi, the petitioner in WP (MD) No. 13189/2013 purchased agricultural lands in Survey Nos.19/1 and 19/2 on 9.1.2002 and converted them into house sites and promoted Ananda Nagar. She executed gift deeds on 22.2.2007 and 25.1.2012 in favour of the Commissioner, Madurai Corporation, based on which roads were formed and underground pipe lines were also extended.

2.Chokkalingam, the petitioner in WP (MD) No.12177/2013 owned agricultural lands on the western side. He entered into an agreement dated 6.3.2009 with Muthulakshmi and he was granted permission to use the Ananda Nagar road as access to reach his agricultural lands. The son of Chokkalingam gifted 440 sq. ft. of land in Survey No.17/3A in favour of the Commissioner of Madurai corporation, the first respondent herein and this led to extension of the already laid road and underground pipe line.

3.In the year 2012, Muthulakshmi blocked the said 20' road by putting up stone pillars and raising fence on 1.8.2012. The Corporation passed an order for removal of the same. Later, on 16.8.2012 the order was withdrawn. This was challenged by Chokkalingam by filing W.P.(MD) No. 13034/2012. The order dated 16.8.2012 was quashed and the matter was remitted to the file of the authority for deciding the issue afresh and after notice to the parties. Pursuant to the order passed by this court, the Assistant Commissioner, Zone 1, Madurai Corporation conducted an enquiry and passed the order dated 5.7.2013 directing removal of



the blockade. Since the said order was not implemented, Chokkalingam filed W.P.(MD) No. 12177/2013. Aggrieved by the said order, Muthulakshmi filed W.P.(MD) No.13189/2013.

4. Heard the counsel on either side and also perused the materials on record.

5. It is beyond doubt that the petitioner in W.P.(MD) No.13189/2013 purchased agricultural lands in the year 2002 from one Valliammal and subsequently developed the same into a housing lay out. The lands belonging to Chokkalingam are lying immediately contiguous to the lands of Muthulakshmi. Both parties had executed gift deeds in favour of the local authority. There is also an agreement between the two providing for access through Ananda Nagar to reach the lands of Chokkalingam. When a promoted lay out is contiguous to the land of another, the access road must continue further. Only then there will be an orderly development. This is an elementary principle of town planning. In this case the gift deeds executed by the parties had been accepted by the local authority and also acted upon. Road and underground pipe line were laid and extended thereby connecting the lands promoted by both the parties. The blockade made by Muthulakshmi divides the 20' public road, developed by the Madurai Corporation. This finding of fact recorded in the impugned order dated 5.7.2003 passed by the Assistant Commissioner, Zone 1, Madurai Corporation is not challenged. It is obvious that the petitioner in WP (MD) No.13189/2013 has erected the fence and stone pillars and blocked the public road only to extract money from the other writ petitioner. The action of the writ petitioner in WP (MD) No.13189/2013 is clearly illegal. The local authority has rightly directed her to remove the same and restore the original use of the public road. The authority has passed the said order only after hearing both parties and after taking into account all the relevant circumstances. The order dated 5.7.2013 passed by the Assistant Commissioner, Zone 1, Madurai Corporation is perfectly legal. There are no merits in WP (MD) No. 13189/2013. It is liable to be dismissed. Consequently and as a corollary WP (MD) No.12177/2013 has to be allowed.

6. Accordingly, WP (MD) No.12177/2013 is allowed and WP (MD) No.13189/2013 is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

1. The Commissioner,
Madurai Corporation,
Madurai.

2. The Assistant Commissioner/
Deputy Collector,
Zone I, West Zonal Office,
Madurai Corporation.

+ 1 cc TO Mr.R.Subramanian , Advocate in SR No. 92905
+ 1 cc TO The Special Government Pleader in SR No. 93193
+ 2 ccs TO Mr.A.Sivasubramanian , Advocate in SR No. 93264,93265

Arul

AE/SKN RSK/SAR4/22.01.2018/4P/7C

Order made in
W.P. (MD) Nos.12177 and 13189 of 2013
and
M.P. (MD) Nos.2 of 2013 and 1 of 2014
15.12.2017