

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.01.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.30176 of 2017 and
WMP No.32794 of 2017

N.Lakshmanan

.. Petitioner

Vs.

The Commissioner,
Kanchipuram Municipality,
Annai Indira Gandhi Street,
Kanchipuram

..Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the Respondent to consider and dispose the Petitioner's Representation dated 11.11.2017 within a time frame to be determined by this Court.

For Petitioner : Ms.S.P.Arthi

For Respondent : Mr.G.P.Rajesh

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard both sides.

2. According to the Petitioner, he is the absolute owner of the property bearing No.69, Ekambaranathar Sannidhi Street, Kanchipuram. The property is more than a century old and has been built using basalt rocks, similar to the temple structures. The building is strong and safe one. As a matter of fact, the said property was acquired by his father under the Decree of the Court dated 11.08.1958 passed in O.S.No.139 of 1952. After his demise, the Petitioner's siblings and himself effected partition of numerous family properties by virtue of Partition Deed dated 31.05.2016, registered as Document No.1657/ 2016. Pursuant to the Partition Deed so effected, the Petitioner has become owner of the property aforesaid measuring an extent of 5148 sq.ft or thereabouts.

3. The stand of the Petitioner is that the aforesaid property is 'L' shaped and also has a frontage at Vaidhyar Street, a neighbouring road. The property is assessed to property tax for the Address No.1/1, Vaidhyar Street, Kanchipuram. The Petitioner is in payment of regular Revenue Dues and as such, he has no arrears. The plea taken on behalf of the Petitioner is that the entrance to property from Vaidhyar Street has been used ever since his family had acquired the property and continuous to be so till date.

4. It is to be noted that the said Vaidhyar Street is a rather lengthy street running into several metres and frontage of Petitioner's property of Vaidhyar street is about 37' abutting the road and 20' leading to the road from his property. He has kept this entire stretch vacant, though the same was enclosed with a compound wall that was built abutting the road. Indeed, all neighbours of Vaidhyar Street have built up properties right upto the road and this includes the Petitioner's immediate neighbour, who had constructed the building abutting Vaidhyar Street and has an entrance on the said street, as he does.

5. It comes to be known that the Respondent had addressed a letter to the Petitioner with an averment that he has encroached into the road on Vaidhyar Street by constructing a compound wall and was called upon to demolish the same to an extent of 400 Sq. Ft. in Survey No.2305/1,2 and as such, demolition of the compound wall was also sought and repossession of the area so purportedly encroached was also prayed for.

6. The grievance of the Petitioner is that he is perturbed that it was his compound wall that was exclusively demolished, while all neighbours with whom he was sharing the same boundary line / road margin, remained undisturbed. It was only his property regarding which issues were raised and alleged encroachment sought to be removed. In short, demolition of his compound wall leaving the neighbouring walls intact, has made the road margin distorted. Now rather than having a straight road margin, the stand of the Petitioner is that there is now a kink in the road only in front of his property, such kink being not less than 20' deep, he has also gathered that the land is classified as 'Grama Natham' and not meant to be a road or road margin. He has been singled and targeted and still he is agitating his rights to the said extent that has been in his family's possession for years on end now.

7. The Petitioner brings it to the notice of this Court that he has addressed a letter to the Respondent on 11.11.2017 explaining that his family and himself are in possession of the said lands in question for 125 years and that they have access to property through the road. In fact, the Petitioner has

placed on record the fact that the extent of alleged encroachment was stated as 20' X 20' while the extent of land taken away from him is a larger extent of 37' X 20', which is a illegal one. Explaining his difficulty, he has requested not to put up any construction that could impede his access to the road. Without heeding to the request of the Petitioner, the Respondent's office, according to the Petitioner, is making efforts to start construction activity at the earliest. If the site is cleared and construction is commenced, then, he shall be put to irreparable loss and hardships. In this regard, the Petitioner has made a representation dated 11.11.2017 making a request to the Respondent to consider the case and therefore, has filed the present Writ Petition.

8. Per contra, it is the submission of the Learned Counsel for the Respondent / Municipality that the representation of the Petitioner dated 11.11.2017 will be disposed of by the Respondent within a time frame to be determined by this Court.

9. Before parting with the case, it is needless for this Court to make a pertinent mention that it is open to the Respondent to take lawful action against the other encroachers in the subject matter in issue, then, the Respondent shall take the proceedings initiated against the other encroachers to its logical conclusion, ofcourse in the manner to known to Law and in accordance with Law. It is open to the Petitioner to produce necessary documents (including the Judgment and Decree copy of the subject suit in O.S.No.139 of 1952. before the Respondent)

10. In view of the submission of the Learned Counsel appearing for the Respondent and also this Court taking note of the fact that the representation of the Petitioner dated 11.11.2017 is pending as on date, without progress in the subject matter in issue, at this stage, this Court, simplicitor without going into the merits and contents of the representation of the Petitioner dated 11.11.2017 and also not delving deep into the merits of the case, Fair Play, Equity and Good Conscience and even as a matter of prudence, directs the Respondent to look into the representation of the Petitioner within a period of 10 days from the date of receipt of copy of the order and if the Respondent finds any substance in the representation of the Petitioner dated 11.11.2017, then, the Respondent is directed to pass a reasoned speaking order on merits, ofcourse, after providing opportunity to the Petitioner and others concerned, if any, by adhering to the 'Principles of Natural Justice' within a period of four weeks thereafter. It is open to the Petitioner to raise all factual and legal pleas before the Respondent, who shall advert to the same in the final order to be passed, in a qualitative and quantitative manner.

11. It cannot be gainsaid that the Respondent has to pass

the orders in a fair, free, just, unbiased in a dispassionate manner and in any event within the time adumbrated by this Court.

With the aforesaid observation(s) / direction(s), this Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

ssd

To

The Commissioner,
Kanchipuram Municipality,
Annai Indira Gandhi Street,
Kanchipuram

+1cc to M/s.S.P.Arthi, Advocate, SR No.2053

+1cc to Mr.G.P.Rajesh, Advocate, SR No.1665

W.P.No.30176 of 2017

RK(CO)

rsi (03/02/2018)

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