

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:08.03.2018

Coram

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

W.P.No.5223 of 2017

WMP.No.5551 of 2017

- 1.P.V.Shanmugam
- 2.V.Durai
- 3.Shantha
- 4.V.Kumar

.. Petitioners

Vs.

- 1.State of Tamil Nadu
Rep. By its Secretary,
Town and Country Planning Department,
Fort St.George, Chennai - 9.
- 2.The Commissioner
Corporation of Chennai
Rippon Building, Chennai - 3.
- 3.The Assistant Commissioner,
Zone-X, Corporation of Chennai,
Kodambakkam, Chennai - 24.
- 4.The District Collector,
Chennai District,
Singaravelar Maligai,
Chennai - 1.
- 5.The Tahsildar,
Guindy Taluk,
Richardon Park,
Saidapet, Chennai - 15.
- 6.M.S.Rajamanickam
- 7.N.K.Munshi
- 8.R.Balachandran
- 9.T.Arul

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents particularly the Respondents 1 to 5 to take action as against the Respondents 6 to 9 for removal of

obstruction/encroachment made in the 30 feet Devaraj Street, T.Nagar, Chennai - 600 017, comprised Block No.130, comprised in Survey Nos.5783, 5784 and 7425 and Re-survey No.151/2, on the basis of the 1st Petitioner's representation dated 10.01.2017 sent for himself and on behalf of the petitioners.

For Petitioners : Mr.R.Thanjan

For RR 1, 4 & 5 : Mr.A.N.Thambidurai
Special Government Pleader

For RR 6 to 9 : Mr.M.Jawahar

For RR 2 & 3 : Mr.A.Nagarajan

O R D E R

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

Heard the Learned Counsel for the Petitioners; the Learned Special Government Pleader for the Respondents 1, 4 and 5 and the respective Learned Counsels for Respondents 2, 3 and 6 to 9. No counter is filed on behalf of the Respondents.

2.According to the Petitioner, he along with other Petitioners are residing at Devaraj Street, T.Nagar, Chennai - 600 017 in respective door numbers for the past 70 years etc. He and others are having a Family Card and other relevant documents to prove the ownership of house property by paying Government taxes and other charges. In fact, near their residence, there were several hutments and for their access, there is a 30 feet width road, presently known as Devaraj Street, which is only access from South-West Boag Road and the same ends at V.O.C. Street, thereafter joining with South Dhandapani Street through Link Road (YY Scheme Road) and the said Devaraj Street in Block No.130, comprised in Survey Nos.5783, 5784 and 7425 and Re-survey No.151/2 is being used not only by them, but also the neighbours from the time immemorial and the sketch and documents annexed along with the petition would show the existence of said 30 feet Devaraj Street right from inception.

3.The version of the Petitioner is that the whole property, including the said Devaraj Street in Block No.130, comprised in Survey Nos.5783, 5784 and 7425 and Re-survey No.151/2, originally owned by Mr.Lakshmipathy Reddiar, M.Jayachandra Reddiar and M.Chandrasekara Reddiar along with their father's younger brother S.Devarajulu Reddiar and while disposing their properties, provided the said 30 feet Devaraj Street for the access for the purchasers of the said properties, which was confirmed through G.O.Ms.No.1396 dated 28.04.1956, issued by the Health and

Education Local Administration Department, the 1st Respondent herein. It appears that few purchasers of the said land had removed all hutments for a heavy cost and converted into vacant land for promoting housing flats by the Respondents 6 to 9, who is representing the Vasanth Builders and N.K.Munshi, representing Best Real Estates are attempting to encroach the said 30 feet Devaraj Street by using J.C.B. Machines upto V.O.C. Road, including the Link Road by raising a compound wall and blocking the access of their house properties, though the Respondents 6 to 9 have no right or title over the said Devaraj Street, despite protest made by him and others and also neighbours.

4.As a matter of fact, such encroachments and blockade of the wall made by Respondents 6 to 9 jointly on 06.01.2016 and more particularly by the 9th Respondent on behalf of other Respondents 6 to 8, along with their henchmen numbering around 20 people, was made by raising a wall by using J.C.B. Machines and also erecting temporary tin sheet as obstruction. The Petitioner and others pleaded with them not to do such illegal act and pleaded for removal of such obstruction/block instead to removing the same, threatened their lives and proceeded further. Hence, the Petitioner was forced to give a complaint before the Inspector of Police, R-1 Mambalam Police Station, Chennai - 17 and in the meanwhile, the 9th Respondent together with other Respondents 6 to 8 are not only raised a compound wall, but also dumped the debris in the 30 feet Devaraj Street, thus blocking access to their properties and after an enquiry by the Inspector of Police, in C.S.R.No.32/2017 a promise was given to enquire into the subject matter and the 9th Respondent was warned with an observation to maintain status quo and also to remove the debris from the said Devaraj Street.

5.It is to be pointed out that there were litigations between the encroachers and the residents of Devaraj Street, including one Pushpavathi Kuppusamy and the Petitioner's deceased father Varadaraj Naicker and in this regard, S.A.No.1037 of 2012 is pending on the file of this Court for final disposal. The encroachers, according to the Petitioners, have raised a lengthy compound wall from South-West Boag Road on the eastern side of Devaraj Street upto the obstruction wall created by the Respondents 6 to 9. In fact, the Devaraj Street commenced from South-West Boag Road ends upto V.O.C. Road and thereafter linking the South Dhandapani Street through the Link Road (YY Scheme Road), however, the Respondents 6 to 9 have not only blocked the end of the Devaraj Street, but also the entire Link Road (YY Scheme Road), nearly 6 grounds and the same is to be prevented by intervention of this Court by way of issuing suitable directions being issued to the Respondents 1 to 5 to take action against the Respondents 6 to 9 or otherwise, there will be permanent block on the Northern side of the Devaraj Street and also the Link Road

(YY Scheme Road) in the aforesaid manner.

6.The grievance of the Petitioner is that a detailed representation was addressed to the Respondents 2 to 5 and also copy of the representation was sent to Respondents 6 to 9, including the 1st Respondent and in spite of service of the same, nothing tangible has come out positively. In the meanwhile, the Respondents 6 to 9 are trying to put up a permanent wall on the northern side of Devaraj Street with a view to grab the same, measuring an extent of 4 grounds of property and also two grounds of property in the Link Road and if they do so, the Petitioner and others including the neighbours would be deprived of their access to the properties for ever. Hence, the present Writ Petition is filed by the Petitioners seeking for issuance of direction of this Court in directing the Respondents particularly Respondents 1 to 5 to take action against Respondents 6 to 9 for removal of obstruction/ encroachment made in the 30 feet Devaraj Street, T.Nagar, Chennai - 17 comprised in Block No.130, comprised in Survey Nos.5783, 5784 and 7425 and Re-survey No.151/2 based on his representation dated 10.01.2017 sent for himself and on behalf of the other Petitioners.

7.Per contra, it is the submission of the Learned Counsel for the Respondents 2 and 3 that the Tahsildar, Guindy Taluk had furnished the extract from the Town Survey Land Register, it was found that the land in Survey Nos.5783 and 5784 do stand in the name of M.S.Rajamanickam and the land at Survey No.7425 stand in the name of Chandrasekar Chettiyar and others. Further, since the aforesaid land in Survey Nos.5783, 5784 and 7425 are private land in the name of aforesaid Rajamanickam and Chandrasekar Chettiyar and others, no further action can be taken by the Greater Chennai Corporation. As such, the claim of the Petitioner cannot be considered and that Corporation of Chennai is not in a position to remove the encroachments, as sought for in the Writ Petition.

8.It is represented by the Learned Special Government Pleader, on behalf of the Respondents 1, 4 and 5, that Survey numbers of the Petitioners comprise within Block No.130, T.S. No.7425/10 in T.Nagar Village and the only access to them lies through Devaraj Street upto South West Boag Road which lies within Block 130, T.S.No.7425/1 of T.Nagar Village. In fact, the Petitioners had averred that along with their residence, there were some other hutments in the nearby area and for their access, there is a 30 feet width road, presently known as Devaraj Street which is comprised in Block No.130, T.S.Nos.5783, 5784 and 7425 and Re-survey No.151/2 and that this Devaraj Street is the only access from South-West Boag Road and the same ends at V.O.C. Street thereafter joining with South Dhandapani Street through Link Road (YY Scheme Road). Indeed, on ground, there is a lane

available with width 15 feet and length 75 metres in the name of Devaraj Street in Block No.130, T.S.No.7425/1 of T.Nagar Village in which storm water drainage was laid by Greater Chennai Corporation. The Petitioners have no access through Devaraj Street to V.O.C. Street in the other survey numbers in Block No.130, T.S.Nos.5783, 5784 which are registered as "Ryotwari Manai" in the name of individuals.

9. In fact, as per the Permanent Land Register, the lands in Block No.130, T.S.Nos.5783, 5784 and 7425/1 do stand registered as under:

Village	T.Nagar
Name of the locality or street	Maduraiveeran Koil Street
Block No.	130
T.S.No.	5783
Old Survey No.	5783
Municipal Door No.	10
Govt. Mitta, Zamindari Inam	Ryotwari
Dry, Wet, Unaccessed Poramboke House-site	Manai
Extent	06.88.0 Acres
Assessment	10.00
Adangal	M.S.Rajamanickam
How the adangal is used	Vacant
Village	T.Nagar
Name of the locality or street	Dhandapani street (South)
Block No.	130
T.S.No.	5784/1
Old Survey No.	5784
Municipal Door No.	10
Govt. Mitta, Zamindari Inam	Ryotwari
Dry, Wet, Unaccessed Poramboke House-site	Manai
Extent	07.28.5 Acres
Assessment	10.00
Adangal	M.S.Rajamanickam

How the adangal is used	Vacant

Village	T.Nagar
Name of the locality or street	South West Boag Road
Block No.	130
T.S.No.	7425/1
Old Survey No.	--
Municipal Door No.	10
Govt. Mitta, Zamindari Inam	Ryotwari
Dry, Wet, Unaccessed Poramboke House-site	Manai
Extent	09.87.0 Acres
Assessment	14.25
Adangal	Chandrasekar Chettiar S.Devaraju Chettiar Jayachandra Chettiar Lakshmipathy Chettiar
How the adangal is used	---

and in reality, they do not belong to Corporation of Chennai and not registered as streets/roads. The aforestated lands are Ryotwari Manai (Patta Lands) in the names of individuals.

10.The Learned Special Government Pleader contends that out of the aforestated survey numbers mentioned by the Petitioners in the affidavit as Block No.130, T.S.Nos.5783, 5784 and 7425 and Re-survey No.151/2, state on ground reveals that the access to the Petitioners from the said Devaraj Street to South West Boag Road, T.Nagar, Chennai - 17 lies only within Block No.130, T.S.No.7425/1 of T.Nagar Village which is registered as Ryotwari Manai in the names of Chendrasekar Chettiar, S.Devaraju Chettiar, Jayachandra Chettiar, Lakshmipathy Chettiar and the G.O.No.1396 dated 28.04.1956 issued by the Health, Education and Local Administration Department is the town planning sanctioned in 1950.

11.According to mutual consent, the residents in the subject land, used a lane of 15 feet width and length about 75 metres for access to the South West Boag Road in the name of Devaraj Street. The compound wall raised in the subject land lies within the

patta land and the same had not obstructed the access of the Petitioners or any other occupants in this area from their residence through Devaraj Street to South West Boag Road. The Lands T.S.No.7425/1, the other lands mentioned by the Petitioners do stand registered as "Ryotwari Manai (Patta Lands)" in the name of individuals and there is no road in the name of "Link Road" in the revenue records for the aforesaid lands. Moreover, for the representation of one P.V.Shanmugam dated 10.01.2017 addressed to the Tahsildar, Guindy Taluk against the Respondents 6 to 9 wherein a prayer removal of obstruction/encroachment was made in the 30 feet Devaraj Street, T.Nagar, Chennai - 17 comprised in Block No.130, T.S.Nos.5783, 5784 and 7425 and the Petitioner was issued with a reply from the office of the 5th Respondent in letter No.A1/0153/ 2017 dated 27.02.2017 stating that the lands are "Ryotwari Patta lands" and hence, his office has no jurisdiction to effect the encroachment which lies in a patta land.

12.In effect, the Learned Special Government Pleader submits that originally the access to South West Boag Road was formed in the patta lands of Block 130, T.S.No.7425 of T.Nagar Village in the name of Devaraj Street and in fact, there is no obstruction found constructed through the existing Devaraj Street to South West Boag Road (15 feet x 75 metres) and therefore, in no way the access of the Petitioners or any other occupant through Devaraj Street to South West Boag Road is blocked. Hence, there is no encroachment found in any Government land.

13.According to the Learned Counsel for the Petitioner, there is no scheme road or link road to the south Dhandapani Street and that the Respondents 6 to 9 had not made any encroachment in the subject matter of the land.

14.In view of the fact that there is no construction or much less any obstruction made in the 30 feet Devaraj Street, Tamil Nadu Chennai - 17 comprised in Block No.130, Survey Nos.5783, 5784 and 7425, there is no need for this Court to pass necessary orders for removal of obstruction or encroachment based on the representation of the Petitioner and others dated 10.01.2017. If any debris is found on account of the construction allegedly thrown by Respondents 6 to 9 thereby if any obstruction caused because of the construction activity, then, such obstruction/encroachment shall be removed by the Respondents 6 to 9 at their own costs and expenses within a period of two weeks from the date of receipt of a copy of this order. It is also abundantly made clear that if Respondents 6 to 9 had blocked or is blocking any 30 feet Devaraj Street, then, it is open to the authorities to remove the such blockade to advance the cause of substantial Justice.

15.With the aforesaid observations, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sgl

To

- 1.The Secretary,
Town and Country Planning Department,
Fort St.George, Chennai - 9.
- 2.The Commissioner
Corporation of Chennai
Rippon Building, Chennai - 3.
- 3.The Assistant Commissioner,
Zone-X, Corporation of Chennai,
Kodambakkam, Chennai - 24.
- 4.The District Collector,
Chennai District,
Singaravelar Maligai,
Chennai - 1.
- 5.The Tahsildar,
Guindy Taluk,
Richardon Park,
Saidapet, Chennai - 15.

+1cc to Mr.M.Jawahar, Advocate, S.R.No.17987

+1cc to the Government Pleader, S.R.No.18172

RRK(06/04/2018)

W.P.No.5223 of 2017

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