

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24..08..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.20496 of 2018

and

W.M.P.No.24081 of 20198

1.I.Thiyagarajan

2.T.Gandhimathi

... Petitioner

-Versus-

1.The Corporation of Chennai,
Rep. by its Commissioner,
Ripon Buildings,
Chennai.

2.The Assistant Executive Engineer (T & P),
No.61, Basin Bridge Road,
Royapuram,
Chennai 600021.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the orders in PPA/WDCN 05/04716/2018 dated 03.07.2018 on the file of the 2nd respondent and to quash the same and to issue a direction to the respondents to forthwith issue Planning Permission and Building Permission to the petitioners fro the premises at Old Door N.65, New Door No.98, Comprised in Re-Survey No.1115/9, Monegar Chowltry Road, Old Washermenpet, Tondiarpet, Chennai 600021 without insisting the petitioners to execute and handover a Gift Deed and to handover the area earmarked (33.63 square meters) for the proposed road widening and to allow the petitioners to carryout the construction over the area excluding the area meant for the proposed road widening.

For Petitioner

: Mr.B.Selvamurugan

For Respondents

: Mr.V.C.Selvasekaran,
Standing Counsel for R1
and R2

ORDER

This writ petition has been filed challenging the intimation of the 2nd respondent requiring the petitioners to execute a Gift Deed thereby gifting a portion of their land abutting the existing road for the purpose of widening the road.

2. The brief fact leading to the filing of the writ petition is as follows: The petitioners are husband and wife. They are the joint owners of the land measuring 1784 square feet situate at Old No.65, New Door NO.98, comprised in Re-Survey No.1115/9, Monegar Choultry Road, Old Washermenpet, Tondiarpet, Chennai 600021. They have jointly submitted an application before the 2nd respondent for Planning Permission and Building Permission on 29.06.2018. While so, the 2nd respondent directed the petitioners to submit a Gift Deed thereby gifting a portion of their land abutting the public road for the purpose of widening the road. The respondents sought to impose such a condition in anticipation of road widening project. The grievance of the petitioner is that since there is no immediate proposal, the respondents cannot insist upon the petitioners to execute such a Gift Deed. Hence, this writ petition.

3. Heard both sides.

4. Admittedly, the land in question is abutting the Moneyagan Choultry Road. Now, as per Second Master Plan, there is a proposal to widen the road. In the said circumstances, the respondents insisted upon the petitioners to execute such a Gift Deed in order to avoid complications in the future.

5. On the earlier occasion when the writ petition came up for hearing, the learned counsel appearing for the petitioner submitted that without prejudice to their right, the petitioners are willing to file an affidavit thereby undertaking that they would not put up any construction in the area earmarked for the purpose of widening the road and shall keep the same clear and they would surrender the possession for the implementation of the project whenever the authorities required the same.

6. The learned standing counsel for the respondents, on instructions, submitted that if the petitioners submit their affidavit before the concerned authority, their application would be considered in accordance with law.

7. Today, the learned counsel for the petitioners submitted an undertaking affidavit sworn-in by the petitioners. Para 3 of the undertaking affidavit filed by the petitioners reads as follows:

"3. We further state that in accordance with the order of the Hon'ble High Court, Madras passed on 20.08.2018 in the above W.P.No.20496 of 2018, we hereby undertake not to put up any construction in the areas earmarked for the purpose of road widening and undertake to keep the area clear and further undertake to surrender the portion for implementation for road widening without prejudice to our right to claim compensation in respect of the building along with land situate on the Western row of Monegar Choultry Road, Chennai 600021, bearing part of R.S.No.11159/9 and bearing Old Door No.65, New Door No.98, Monegar Choultry Road, Old Washermenpet, Chennai 600021 measuring an extent of 1784 square feet. Hence, we file this affidavit of undertaking before this Hon'ble Court."

8. Considering the submissions made by the learned counsel on either side and the undertaking given by the petitioner, this court is of the view that it would suffice to direct the petitioners to approach the 2nd respondent and to file an undertaking affidavit as undertaken before this court and on filing such affidavit, the 2nd respondent is directed to consider application of the petitioners dated 29.06.2018 for planning permission and building permission, if the same is otherwise in order without insisting for any Gift Deed within a period of two weeks from the date of receipt of a copy of this order. This writ petition is disposed of accordingly. No costs. Consequently, connected WMP is closed.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

kmk

+1 CC to Mr.B.Selvamurugan, Advocate sr 58482.

W.P.No.20496 of 2018

SP(11/09/2018)