

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.01.2018

Coram

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

W.P.No.9817 of 2017

P.Dinesh

.. Petitioner

Vs.

1.The District Collector,
Vellore District,
Vellore

2. The Commissioner,
Arakkonam Municipality,
Arakkonam, Vellore District

3. Saravanan

4. Thiagarajan

5. Baskar

6. Murali

..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent made in Na.Ka.No.2292/F1/2015 dated 30.01.2017 and quash the same and consequently direct the 2nd Respondent to remove encroachments made by the Respondents 3 to 6 in T.S.No.37, Ward-B, Block- 4, bearing Municipal Door No.9, Gandhi Road, Thiruttani Road, Arakkonam Town, Vellore District.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.A.N.Thambidurai for R1
Special Government Pleader

For Respondent 2 : Mr.S.S.Swaminathan

For Respondents 3,6 : Mr.Rahul Balaji

O R D E R

[Order of the Court was made by S.VAIDYANATHAN, J.]

The petitioner has come forward with this Writ Petition challenging the order dated 30.01.2017 passed by the 2nd Respondent.

2. The brief facts of the case are that the petitioner is the owner of the vacant house site comprised in T.S.No.35/1, Old S.No.344/1, 258/2D Ward B, Block 4, having an extent of 1170 sq.ft., situated at Door No.9, Gandhi Road, Arakonnam Tiruttani Road and he had purchased the property under a deed of sale dated 23.03.2015. According to the petitioner, number of encroachments have been made over the road margin, thereby the access to the highway has been completely taken away. Thereafter, a representation has been submitted by the petitioner on 19.09.2015 and a reminder dated 31.10.2015 was also submitted to the respondents, but, the same has not been considered by them. Subsequently, the 2nd respondent, having admitted that the encroachment was made by the respondents 3 to 6 over the battai Poromboke situated adjacent to the State highway connecting Arakonnam - Tiruttani Road, failed to advert to any of the statutory provisions of the Tamilnadu District Municipalities Act, while passing the impugned order dated 30.01.2017. Hence the petitioner is before this Court challenging the said order.

3. The learned counsel for the petitioner submitted that a Division Bench of this Court, in a number of cases, had specifically directed that the encroachments adjoining the road side and road poramboke, cannot be permitted irrespective of the period of encroachment and further pleaded to quash the impugned order dated 30.01.2017.

4. Per contra, a detailed counter affidavit has been filed by the respondents, wherein the 1st respondent has stated that the petitioner is not entitled to the Government Property and the petitioner, along with his sister, had filed many litigations just to raise the value of their property, which is adjacent to the main road in T.S.No.37 of Arakonnam Town. The 2nd Respondent had averred in the counter that there is no disturbance to the traffic on the highway or even to the public and in case, the land is required for the Government in future, the same will be taken over. The 4th respondent in his counter had stated that the 2nd respondent, on a consideration of facts and records placed before the authority, had categorically found that the occupation by the respondents 3 to 6 are neither hindrance nor causing any nuisance to any body and consequently to defer any eviction, which is legal and valid.

5. Heard the learned counsel on either side and perused the documents placed on record.

6. A perusal of the impugned order shows that on the Eastern side of the petitioner's property, there is a Government poromboke land, viz., T.S.No.37. However, during registration of the sale deed, Eastern side was wrongly shown as Gandhi Road - 6, instead of Government Poromboke land. Further, the respondents 4 and 5 have constructed a building measuring an extent of 440 sq.ft without obtaining any permission from the Municipality. The impugned order also says that the petitioner has access to his property through Rajendra Girisingh Street and the respondents 3 and 4 have already given the pathway to the petitioner between their encroachment in T.S.No.37 and as and when it is required, the same will be removed depending upon the then existing situation. The learned counsel for the petitioner also relied upon a Scheme, namely, "Kalaingar Veetu Vasathi Thittam" more particularly to Column 17. However, if the order impugned in this Writ Petition is allowed to stand, all the persons / authorities will start asking the similar relief, ie., permitting the existing encroachments to continue and that the same will be removed as and when the situation warrants and thereafter, they will seek for regularisation. The contention of the 5th respondent that they cannot be evicted, cannot be accepted.

7. The First Bench of this Court, in the Judgment reported in 2017 (2) CTC 392 [K.K.Pudur Residents', Welfare Association and others V. The District Collector, Coimbatore District and others] has held that once it is not in dispute that road is a public road vesting with Local Authority, occupation / encroachment for any length of time cannot confer any kind of indestructible right to encroachers. Merely because money has been spent towards improvement of area for basic amenities, it cannot be said that encroachers have indestructible right. If anyone knowingly or unknowingly constructs a building by encroaching the public place, they shall not be shown any sympathy on the ground that money has been spent on illegal constructions.

8. This Court, being bound by the aforesaid Judgments, is inclined to allow the Writ Petition and the order dated 30.01.2017 is set aside. As the authorities concerned receive monthly salary, they are expected to work atleast for a few hours a day and hence they shall remove all the encroachers in and around the subject property within a period of one month from the date of receipt of copy of this order to avoid disciplinary action and major punishment that may be entered in their service records.

The Writ Petition is allowed with the above direction. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd

To

1.The District Collector,
Vellore District,
Vellore

2. The Commissioner,
Arakkonam Municipality,
Arakkonam, Vellore District.

+1cc to Mr.G.Jeremiah, Advocate, S.R.No.465

+1cc to Mr.Rahul Balaji, Advocate, S.R.No.296

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.350

+1cc to the Government Pleader, S.R.No.806

W.P.No.9817 of 2017

NRK(CO)
RRK(23/02/2018)

सत्यमेव जयते

WEB COPY