

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

W.P.Nos.10807 and 10808 of 2015
and
M.P.No.1 of 2015

M/s.AVS Villas,
A Registered Partnership Firm,
Rep. by its Partners - S.Chandiraiah
and R.Leela Shankar Rao,
No.4/371-A1, Godavari Complex,
Moovendar Nagar,
Bagalur Main Road,
Hosur - 635 109,
Krishnagiri District.Petitioner in both W.Ps.

Vs.

- 1.The Sub-Divisional Executive Magistrate-
Cum District Revenue Officer,
Hosur.
- 2.The Block Development Officer,
Hosur Panchayat Union,
Hosur.
- 3.The Tahsildar,
Hosur Taluk,
Krishnagiri District.

4.K.H.KhanRespondents in both W.Ps.

Prayer in W.P.No.10807 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in V.No.5001/2014(P-1) and to quash the order dated 16.03.2015 made therein purported exercise of power under Sec. 142 of the Code and consequently to direct the respondents 1 to 3 to forbear from interfering with the petitioners rights including the compound walls in the Approved Layout No.27 of 2008 issued by the Directorate of Town and Country Planning, by demolition or otherwise .

Prayer in W.P.No.10808 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in ROC.No.5001/2014(B-1) and to quash the order dated 04.12.2014 made therein in purported exercise of power under Section 133 of the code.

For Petitioner in
both W.Ps. : Mr.G.M.Anantha Kumar

For Respondent in
both W.Ps. : Mr.D.Raja
Nos.1 & 3 Additional Government Pleader

For Respondent : Mr.N.Roofus Abraham
No.2

For Respondent : Mr.S.Sivashanmugam
No.4

C O M M O N O R D E R

The petition in W.P.No.10807 of 2015 has been filed by the petitioner challenging the order passed by the first respondent in V.No.5001/2014 (P-1) dated 16.03.2015 under Sec. 142 of the Code of Criminal Procedure (hereinafter referred to as "the Code") and further forbearing the respondents 1 to 3 from interfering with the petitioner's right including the compound walls in the Approved Layout No.27 of 2008 issued by the Directorate of Town and Country Planning and aggrieved over the order dated 04.12.2014 passed by the first respondent in in ROC.No.5001/2014(B-1) under Section 133 of the Code and to quash the same, the petition in W.P.No.10808 of 2015 has been filed.

2.Heard Mr.G.M.Anantha Kumar, the learned counsel for the petitioner and Mr.D.Raja, learned Additional Government Pleader for the respondents 1 & 3, Mr.N.Roofus Abraham, learned counsel for the second respondent as well as Mr.S.Sivashanmugam, learned counsel for the fourth respondent.

3.The gist of the impugned orders dated 04.12.2014 and 16.03.2015 respectively are that the petitioner herein had put up construction of compound walls in the property, which is vested with the Panchayat Union.

4.On a perusal of the grounds raised by the petitioner herein in the affidavit filed in support of the petitions, it is seen that the petitioner had expressed that the property in

Survey Nos.65/1, 65/2, 78/1, 81/1, 81/4, 81/6, 82/1B, 82/2A, 82/2B, 82/3, 82/4, 83/1 and 83/4A1 were developed and promoted into a layout under the name and style of "AVS Villas". It is the case of the petitioner that the said layout is a gated community and that the fourth respondent had attempted to illegally enter upon the layout roads of the petitioner's layout to gain direct access to National Highways N.H.207. Since it is a gated community and the roads are vested with the petitioner herein, the fourth respondent has no legal right over the same and therefore sought for quashing of the impugned orders dated 04.12.2014 and 16.03.2015 passed by the first respondent herein.

5.The learned counsel for the petitioner also submitted that by exercising the powers under Sections 133 and 142 of the Criminal Procedure Code (hereinafter referred to as the Code) it was a mala-fide exercise of powers and that the fourth respondent had no locus-standi to give a complaint before the first respondent herein since the technical approval obtained by him was only for access through the adjoining layout.

6.The learned counsel for the petitioner has also raised a ground stating that the first respondent is not the competent authority to pass the impugned orders dated 04.12.2014 and 16.03.2015 in exercising the power under Sections 133 and 142 of Cr.P.C.

7.In view of an earlier findings, the petitioner has absolutely no legal right to the title over the subject property. I am of the view that the said ground deserves no consideration, even otherwise under Sections 133 and 142 of Cr.P.C., the first respondent is empowered for conditional removal of nuisance or unlawful obstruction and he is vested with power to remove the same from the said place. In view of the earlier findings that after a gift deed executed by the registered owner of the property, in which the layout has been formed, the roads became public place and therefore, the first respondent was well within the jurisdiction to exercise power under Sections 133 and 142 of Cr.P.C.

8.The learned Counsel for the fourth respondent submitted that at the time when the layout approval was granted, the roads and streets earmarked in the layout have already been gifted to the Panchayat Union, Hosur, Krishnagiri District by the registered owners of the properties through a gift deed on 22.04.2008 from whom the petitioner herein has purchased the said property. As such, the petitioner has no right to put up any construction in the said roads, thereby obstructing access to the general public.

9.I have given careful considerations to the submissions

made by the learned counsels appearing for the parties.

10.It is not in dispute that the layout formed by the petitioner herein are the Survey Nos.65/1, 65/2, 78/1, 81/1, 81/4, 81/6, 82/1B, 82/2A, 82/2B, 82/3, 82/4, 83/1 and 83/4A1. It is also seen from the gift deed dated 25.04.2008 that the properties mentioned therein, have duly been gifted to the Panchayat Union, Hosur, Krishnagiri District. The moment such a gift deed was executed, the said properties covered under the gated community become vested with the Panchayat Union. In other words, the owners of the property who had formed the layout ceased the title over the subject properties. While that being so, the petitioner cannot have any right to create an obstruction or hindrance to the very access of the roads vested with the Panchayat Union.

11.Insofar as the impugned orders are concerned, it is seen that the same has been passed under Sections 133 and 142 of Cr.P.C. The said order is a well considered order wherein the first respondent herein had dealt with the rights of the petitioner over the property and had come to the conclusion that the petitioner has no right to put up any construction thereby causing hindrance to the general public from accessing the roads.

12.The learned Additional Government Pleader by relying upon the counter affidavit filed by the respondents 1 to 3 herein submitted that owing to the business rivalry between the petitioner and the fourth respondent herein, the wall has been illegally put up by the petitioner, the learned Additional Government Pleader further submitted that the petitioner has no right over the subject property since the same has already been gifted to the Panchayat Union, Hosur, Krishnagiri District and the same is vested with the Panchayat Union. I do not find any infirmity or illegality in the order passed by the first respondent herein, since the gift deed was executed by the owners of the properties in which the petitioner has formed the layout and also taking into account the fact that the properties which are now vested with the Panchayat is being obstructed by the petitioner thereby denying access to the general public for approaching the National Highways, I am of the view that the Writ Petition is liable to be dismissed.

13.In the result, this Writ Petitions stand dismissed. No costs. Consequently connected miscellaneous petition closed.

Sd/-

Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

dna/DP

To

1.The Sub-Divisional Executive
Magistrate-Cum District
Revenue Officer,
Hosur.

2.The Block Development Officer,
Hosur Panchayat Union,
Hosur.

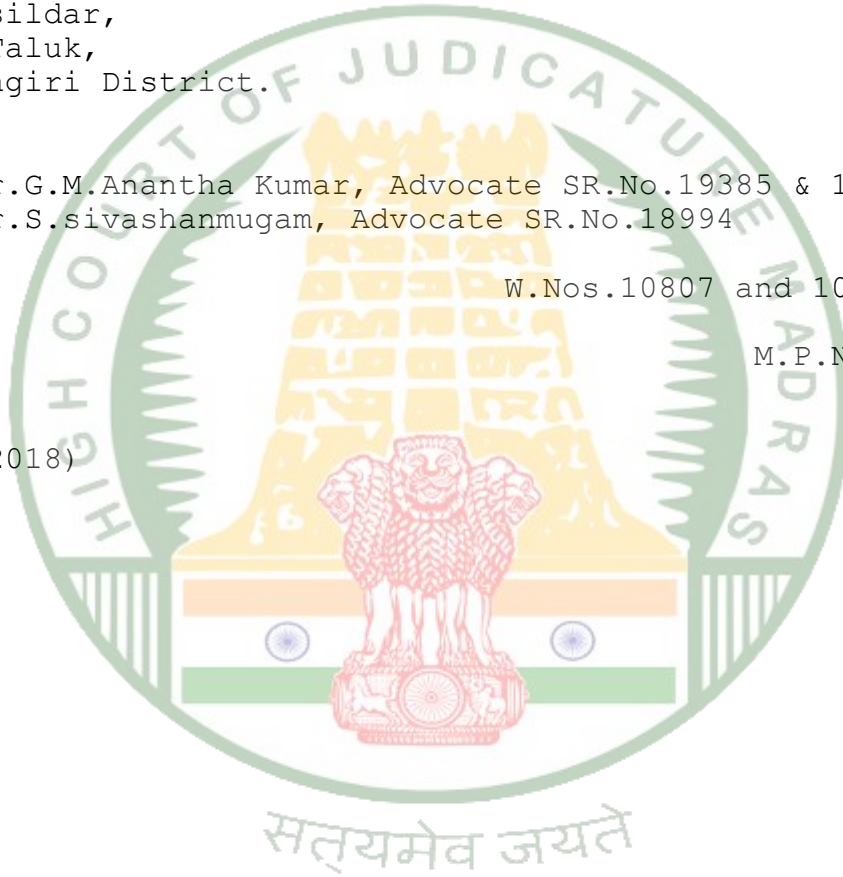
3.The Tahsildar,
Hosur Taluk,
Krishnagiri District.

+2cc to Mr.G.M.Anantha Kumar, Advocate SR.No.19385 & 19386

+1cc to Mr.S.sivashanmugam, Advocate SR.No.18994

W.Nos.10807 and 10808 of 2015
and
M.P.No.1 of 2015

SSD (CO)
GN (27/04/2018)



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