

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:14.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.31545 of 2017

P.Gayathri Devi

.. Petitioner

Vs.

- 1.The Commissioner,
Corporation of Chennai,
Chennai.
- 2.The Regional Deputy Commissioner (Central)
Greater Chennai Corporation,
Chennai.
- 3.The Zonal officer,
Greater Chennai Corporation,
Zone-07 (Ambattur)
CTH Road,
Chennai - 600 053.
- 4.The Tahsildar,
Ambattur Taluk,
Ambattur, Chennai.
- 5.Mani Murugan
- 6.Veera Mageswari

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the Respondents 2 and 3 in ZO-VII/C.No.8205/2016 dated 09.05.2017 and quash the same as illegal, arbitrary, mala fide and void and further directing Respondents 1 to 4 to remove the encroachment of the Public road by the Respondents 5 and 6 in Ebinezar Avenue, Mugappair West, Chennai forthwith.

For Petitioner : Mr.S.Sudarshan
For Respondents 1 to 3 : Mr.K.Soundararajan
For 4th Respondent : Mr.A.N.Thambidurai
Special Government Pleader
For RR 5 and 6 :Mr.J.Kather Hussain for
Mr.Krishna Raveendran

O R D E R

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

Heard the Learned Counsel for the Petitioner and the respective Learned Counsel for the Respondents.

2.The case of the Petitioner is that she and her husband being the lawful owners of the property comprised in 16 & 17, Flat No.G-2, Epinesar Avenue, Mogappair West, Chennai - 600 037. In fact, the 5th and 6th Respondents are the owners and residents of Flat No.G-1, Epinesar Avenue, Mogappair West, Chennai and admittedly, they are neighbours of the Petitioner.

3.In this connection, the Learned Counsel for the Petitioner submits that the common road leading to the building of Respondents 5 and 6 is a 24 feet road being a dead end ending at their building. In fact, at the end of the said road, there is an extension of the said road measuring about 480 sq. ft. which is meant for common use for the purpose of negotiating curves and reverse movements for vehicles in the said common road and the said extension is located on the North Eastern corner of their building.

4.The Learned Counsel for the Petitioner proceeds to point out that the extension of the road belongs to the Corporation of Chennai and the same is under its control. While that be the fact situation, the Respondents 5 and 6 had encroached upon the said common road by putting up steel gates surrounding the same with mala fide intention of grabbing the same for their personal use.

5.The Learned Counsel for the Petitioner contends that objections were raised by the Petitioner against the illegal encroachment made by Respondents 5 and 6 to which they threatening with dire consequences. Presently, Respondents 5 and 6 are arranging to put up permanent structures thereon in addition to the said illegal encroachment. In law, they do not

have the semblance of right and on facts also, they do not have no right to indulge in such activities. A representation of the Petitioner dated 08.04.2016 was submitted before the Respondents 1 and 4 narrating the factual details and also making a request to them to enquire into the matter and initiate appropriate action for removal of encroachment of common road by the Respondents 5 and 6 and to restore the said road and to provide the same for common use immediately. However, no action was taken by the authorities concerned.

6.The Learned Counsel for the Petitioner brings it to the notice of this Court owing to the inaction on the part of the Respondents 1 to 4, the Petitioner was performed to project a Writ Petition in W.P.No.42342 of 2016 on the file of this Court seeking a relief of mandamus directing the Respondents 1 and 4 to consider and take necessary and appropriate action based on the representation dated 08.04.2016.

7.It comes to be known that in the aforesaid W.P.No.42342 of 2016, this Court was pleased to pass an order on 02.12.2016 directing the authorities concerned to take appropriate action for demarcating the property and encroachments, if any found, shall be removed after due notice. Pursuant to the direction issued by this Court in the aforesaid Writ Petition, the 3rd Respondent/Zonal Officer, Greater Chennai Corporation, Zone-07 (Ambattur), Chennai -53 had caused a communication dated 09.05.2017 on behalf of the 2nd Respondent stating that the Petitioner's representation cannot be entertained until further orders from the Court of Subordinate Judge at Poonamallee. In the impugned order, it was clearly mentioned that the exparte order of injunction was procured by the Respondents 5 and 6 in O.S.No.229 of 2014 on the file of the Sub-Court, Poonamallee, as early as on 10.10.2014 itself. As such, the impugned order of the Respondents 2 and 3 are illegal, arbitrary, mala fide one.

8.Per contra, it is the submission of the Learned Standing Counsel for the 3rd Respondent that as on date, there is no Gift Deed was executed by the Association handing over the said road. Further, the layout in Ebinesar Avenue is an unapproved layout and as such, no area for the road has been handed over to the local body. The said road is used by the public to reach the Kalamegam Salai which is a Corporation Road and the same is utilised by the Public for the past 10 years and the said Road is a Public Road and therefore, the Corporation of Chennai had laid the BT Road and the Streetlights were provided by it. The then Ambattur Municipality also had collected the Regularisation Charges, OSR Charges and improvement charges from the Plot Owners in the Ebinesar Avenue and therefore, the road is now maintained by the Chennai Corporation.

9.The plea of the Learned Standing Counsel for the 3rd Respondent is that the disputed area in which compound wall was raised by the Respondents 5 and 6, on verification of the unapproved layout, it is found that the same was shown as road and the Respondents 5 and 6 had put up a compound wall who are having three flats in the ground floor and first floor. As a matter of fact, the Writ Petitioner is residing in the ground floor of the flats.

10.The Learned Standing Counsel for the 3rd Respondent brings it to the notice of this Court that from the approval granted by the then Ambattur Municipality, the area on which the flat was being promoted, does not included the road portion shown in the unapproved layout and hence, it cannot be termed as a private property belonged to the Respondents 5 and 6.

11.Proceeding further, the 3rd Respondent takes a plea that the the 6th Respondent on behalf of the 5th Respondent filed a Civil Suit in O.S.No.229 of 2014 on the file of the Sub Court seeking a relief of declaration pertaining to B schedule property as not the public road and for the consequential injunction by the Defendants 1 to 3 therein who are the Junior Engineer and the Commissioner of the Corporation of Chennai and secured an exparte injunction in I.A.No.799 of 2014. In the suit, a written statement was filed by the Zonal Officer of the Corporation stating that the disputed area is a road and as such, the suit is not maintainable before the trial Court.

12.The Learned Standing Counsel for the 3rd Respondent draws the attention of this Court that the 1st Respondent/ Corporation of Chennai had filed an Advance Hearing Petition before the trial Court and after the Advance Hearing Petition was taken up for hearing and after hearing the respective counsels appearing for the parties, the trial Court had vacated the order of interim injunction granted to and in favour of the Respondents 5 and 6 on 02.03.2018. The 4th Respondent/Tahsildar, Ambattur had inspected the disputed site and he had furnished a report to the effect that the suit property in T.S.No.105/1, 2 & 3 and Ward - G, Block No.22, Athipattu Village, Ebinesar Nagar is an unauthorised layout and the same comes under the Urban Land Ceiling Act. Also that, it appears no sub division was made in the suit area.

13.This Court, after hearing the Learned Counsel appearing for the parties in the present case, is of the considered view that the suit property in T.S.No.105/1 is an unauthorised layout and when the Corporation of Chennai had clearly pointed out that it is a Road and further, it is maintained by them by providing streetlights etc., this Court opines that by no stretch of imagination, the Respondents 5 and 6 cannot put up any steel

gates etc. or any construction and in short, they can only be termed as "Encroachers" against whom necessary action will have to be taken in the eye of Law.

14. Viewed in that perspective, this Court, in the interest of Justice, Equity, Fair Play, Good Conscience and even as a matter of prudence, directs the 1st Respondent/Commissioner, Corporation of Chennai to ensure that the encroachment made by Respondents 5 and 6 are removed in a complete and comprehensive manner, within a period of two weeks from the date of receipt of a copy of this order. It is open to the 1st Respondent/Commissioner of Corporation of Chennai to entrust the task of removing the encroachment made by the Respondents 5 and 6 in the subject property to any responsible officer of the Corporation of Chennai under whose personal jurisdiction, the encroachment in question shall be removed [other than the 4th Respondent]. It is abundantly made clear that the order of this Court in removing encroachment made by Respondents 5 and 6 is not carried out scrupulously, by any of the officials of Corporation that too in true letter and spirit (to whom it is entrusted), then, it is needless for this Court to make a significant mention that the departmental action for dereliction of duty or act of omission or commission shall be initiated and the said proceedings may also be taken to its logical end so as to advance the cause of Justice.

15. With the above observation and direction, the Writ Petition stands disposed of. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

सत्यमेव जयते

Sub Asst. Registrar

Sgl

To

1. The Commissioner,
Corporation of Chennai,
Chennai.

2. The Regional Deputy Commissioner (Central)
Greater Chennai Corporation,
Chennai.

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3.The Zonal officer,
Greater Chennai Corporation,
Zone-07 (Ambattur)
CTH Road,
Chennai - 600 053.

4.The Tahsildar,
Ambattur Taluk,
Ambattur, Chennai.

+ 1 cc to Mr.K.Soundararajan Advocate,SR.20018

+ 1 cc to Mr.Krishna Raveendran Advocate,SR.19783

+ 1 cc to The Govt.Pleader, SR.20074

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