

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.12.2018

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.34293 of 2016

G. Viswanathan

... Petitioner

Vs

1. The Commissioner,
Tambaram Municipality,
Tambaram,
Chennai - 600 045.

2. N.R. Vijayakumar

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the First Respondent to perform their statutory obligation by demolishing the illegal and unauthorised construction and structure raised in land comprised in Old Survey No.268/6 and New Survey No.268/10 and Old Survey No.268/6 and New Survey No.268/9, Plot No.18A, Lakshmi Nagar, Tambaram Taluk within the Sub Registration District of Tambaram and Registration District of Chennai South.

For petitioner : Mr.Mr.J. Kannan
& Mr.N. Mathanraju

For R.1 : Mr.P. Srinivas
For R.2 : No appearance

ORDER

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

Heard both sides.

2. In respect of the Second Respondent, Court Notice was served as early as on 04.10.2016. Yet, there is no appearance on his behalf either in person or through Learned Counsel at the time of taking the matter today.

3. The Petitioner has filed the present Writ Petition stating that the First Respondent/Tamabram Municipality is hesitating to perform its statutory obligation in removing the structure, put up by the Second Respondent and hence the Petitioner has approached this Court by filing the present Writ Petition seeking for issuance of a Writ of Mandamus directing the First Respondent to perform their statutory obligation by demolishing the illegal and unauthorised construction and structure raised in land comprised in Old Survey No.268/6 and New Survey No.268/10 and Old Survey No.268/6 and New Survey No.268/9, Plot No.18A, Lakshmi Nagar, Tambaram Taluk within the Sub Registration District of Tambaram and Registration District of Chennai South.

4. The Learned Counsel for the First Respondent/Tambaram Municipality submits that the Petitioner and the Second Respondent do have a dispute in regard to the property between them and that the Second Respondent had instituted a Civil Suit in O.S.No.48 of 2008 on the file of District Munsif, Tambaram, seeking the relief of Permanent Injunction and the said suit was decreed on 22.07.2208.

5. The learned Counsel for the First Respondent/Tambaram Municipality emphatically projects an argument that the area was inspected by the Town Planning Staff and after inspection, it came to light that the dispute between the Petitioner and the Second Respondent was the access to the side of the Petitioner and in fact, the Petitioner claims that the access is by means of a 20 feet wide road and there is no such road on site. That apart, a private land leading from the adjacent public street by name Lakshmi Nagar Extension is there and it is only 6 feet wide.

6. The plea of the First Respondent/Municipality is that the right of way across the lands of the Second Respondent is not a matter and it is not within the domine of the Municipality. As such, it is for the Petitioner to work out his remedy before the competent Civil Court for getting access to his lands and this aspect was duly replied to the Petitioner by the Municipality on 22.08.2016.

7. To put it precisely, the First Respondent/Tambaram Municipality has come out with a categorical stand that Survey No.268/6 and 268/10 are private lands and there is no public pathway in the lands and hence the Petitioner is not entitled to seek the relief as prayed for in the present Writ Petition.

8. On a careful consideration of respective contentions and also this Court taking note of the fact that already a Civil Suit in O.S.No.48 of 2008 was filed by the Second Respondent on the file of trial Court, seeking a relief of Permanent

Injunction, which was decreed on 22.07.2008, in which, the Petitioner was not a successful party and obviously when the Petitioner claims the right of way across the land of the Second Respondent, then, it is for the Petitioner to approach competent Civil Form for redressal of his grievance of Right 'Easementary' Right', of course, in the manner known to Law and in accordance with Law.

9. That apart, when the fact of the matter is that Survey Nos.268/6 and 268/10 are private Lands and there is no public pathway in the same, in which event, in the considered opinion of this Court, the Petitioner is not entitled to seek the relief of Mandamus because of the reason that disputed questions of facts cannot be gone into a Writ Petition.

10. Looking at from any angle, the Writ Petition sans merits and the same is dismissed, leaving the parties to bear their own costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sr

To

The Commissioner,
Tambaram Municipality,
Tambaram,
Chennai - 600 045.

+1 cc to Mr.P.Srinivas, Advocate Sr.No.84563

+1 cc to Mr.J.Kannan, Advocate Sr.No.84317

W.P.No.34293 of 2016

MG (CO)

CSL/28.12.2018

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