

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.26960 of 2017

and
W.M.P.No.28765 & 28766 of 2017

1.S.Jyotheeswaran
2.Dr.Girija Jotheshwaran ... Petitioner

Vs.

1.The Principal Secretary,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai.

2.The Principal Secretary,
Home Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai.

3.The District Collector,
Kancheepuram District,
Collectorate,
Kancheepuram-631 501.

4.The District Revenue Officer,
Kancheepuram District,
Collectorate,
Kancheepuram-631 501.

5.The Commissioner,
Tambaram Municipality,
No.28, Muthuranga Mudali Street,
Tambaram West, Chennai-600 045.

6.The Assistant Commissioner of Police,
Muthu Ranga Mudali Street,
Tambaram, Chennai-600 045.

7. Inspector of Police,
Selaiyur Police Station,
Chennai-73.

8. G. Gopalakrishnan

9. Mr. R. M. Chockalingam

10. Mr. V. Ramakrishnan

11. Dr. N. Pazhamalainathan

12. Mr. K. Rajagopalan

13. Mr. S. Rajagopal

14. Mr. V. T. Srinivas

15. Dr. Amutha Karunanidhi

16. Sumathi Sankaranarayanan ... Respondents

R9 to R16 are impleaded as per order dated 18.01.2018 in
WMP.No.31725/2017

PRAYER: Writ petition filed under Article 226 of the
Constitution of India praying for issuance of Writ of Mandamus,
directing the Respondents 1 to 6 to remove the illegal blockade
constructed in the public road at Govinda Pillai Street in Old
S.No.151/2A, T.S.No.92 in Selaiyur Village, Tambaram Taluk,
Kancheepuram District by the 8th respondent in collusion with the
7th respondent.

For Petitioners : Mr. K. Doraisamy, Senior Counsel
assisted by Mr. Muthumani Doraisami

For Respondent : Mr. A. N. Thambidurai, Spl GP
for R1 to R4 & R6 & R7

Mr. P. Srinivas for R5

Mr. M. Subramanian
for Mr. V. Chandrakanthan for R8 to R16

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ORDER

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

By consent, the writ petition is taken up for final disposal.

2. The petitioners claim that they are joint owners of the land and property, admeasuring to an extent of 4,462 sq.ft in Old S.No.150/1, T.S.No.81/2, Selaiyur Village, Tambaram Taluk, Kancheepuram District and the said property was purchased by them through registered Sale Deed bearing Doc.No.3065/2001 registered on the file of the office of the Sub Registrar, Tambaram. The petitioners would claim that the above said property is situated at the dead end of the public road viz., Govinda Pillai Street and it is in old S.No.151/2A, T.S.No.92, Selaiyur Village, Tambaram Taluk, Kancheepuram District and all along, the said road has been used to have ingress and egress to their property. The petitioners would further aver that the said road came into existence after the legal heirs of Late Mr.Govinda Pillai earmarked the land in old S.no.151/2A, T.S.No.92, Selaiyur Village, Tambaram Taluk, Kancheepuram District, as road at the time of developing their ancestral land, as required under law and it is also reflected in the Sale Deed executed by the legal heirs of late Mr.Govinda Pillai, which includes the 8th respondent. The legal heirs of Mr.Govinda Pillai had also sold lands located on either side of the said road to various third parties by plotting it out.

3. The 1st petitioner would submit that after his retirement, he started putting up construction on the land in the year 2016 and the 8th respondent, who is also an Advocate by profession and being one of the legal heirs of Mr.Govinda Pillai tried to extort huge some of money from him for the usage of public road. He has also issued a legal notice dated 24.07.2016 alleging that the public road at Govinda Pillai Street is his private property by way of Gift Deed. The 8th respondent has also lodged a complaint against the petitioner and his wife and the legal notice sent by the 8th respondent was also suitably replied on 08.08.2016. The petitioner has also stated that the 8th respondent, along with two others, had also filed O.S.No.90/2000 on the file of the Court of District Munsif, Tambaram against the Commissioner, Tambaram Municipality against one Mr.Mohan/predecessor in title and one Mr.Vijayaraghavan, praying for declaration that the planning permit granted by the first defendant in favour of the 2nd defendant dated 02.07.1999 is null and void and for permanent injunction restraining the 2nd and 3rd defendant from putting up any building or superstructure in pursuance of planning permit and the said Suit was dismissed on

25.07.2003, wherein a categorical finding has been made to that effect that the 2nd defendant is having right of way from Agraharam Road through the above described 20 feet width private lane, known as Govinda pillai Lane, which is an egregious lie and in the light of the said findings, it is not open to the 8th respondent to take contra stand.

4. It is also averred that a small Temple has also come into being on the said public road and it is the categorical stand of the petitioner that since as per the records of the 5th respondent Municipality, the Govinda Pillai street is shown as public road and the property of the petitioners lies adjacent to the said road, they are having right of way and access to the said road and since the private respondents have put up wall right across the said public road, came forward to file this writ petition praying for appropriate direction directing the respondents 1 to 6 to remove the illegal blockade constructed in the said public road viz, Govinda Pillai Street by the 8th respondent in collusion with the 7th respondent.

5. This writ petition was entertained on 20.10.2017 and notices were ordered and this Court, vide order dated 18.01.2018, has directed the 5th respondent to file two copies of layout sketch with regard to the said land in question and since it was not filed, the Commissioner, Tambaram Municipality was also summoned with relevant records and accordingly, the sketch and layouts have been filed.

6. The 5th respondent has filed two counter affidavits dated 10.02.2018 and 23.03.2018 and in the first counter affidavit, they took a stand that the writ petitioner is not at all entitled to any relief as prayed for and would submit that there was a civil dispute among them in O.S.No.83 of 2000 on the file of the District Munsif Tambaram and the same was also came to be decreed on 19.07.2005 against one Mohan and one Vijayaragavanan from interfering with the property known as Govinda Pillai Street. It is further avered in the counter affidavit that Govinda Pillai Street is gifted to the Tambaram Municipality by a formal document and by way of entry in the Town survey register and the Town Survey Block Map, it is shown as a Street. The Street is marked as 62 Meteres in length from East and 7.5 Meters in width in the east and 7.5 meteres in the West and there is also a Vinayaga Idol located in pedestal without any walls and with a cement sheet roof and thereafter the 5th respondent has took a stand that the petitioner, while applying for the Building Permission, has shown his access only from the Bharathi Nagar Main Road on the North, by means of a private pathway leading to his land with a width of 10 feet and as such, reiterated the stand that the parties are already bound by a Civil Court decree and prayed for dismissal of this writ

petition.

7. In the second counter affidavit dated 23.03.2018, the 5th respondent took a stand that their office is maintaining the road for more than twenty years and recently laid a Black Top which was renewed by the respondent Municipality in the year 2014 and encroachments, if any, will be removed, if the Court directs the 5th respondent municipality. The sum and substance of the stand taken by the 5th respondent municipality as regards the claim of the public road by the petitioner is that there are no formal documents vesting that the road with the Municipality and however, they are maintaining the road and also periodically renovating it.

8. The 8th respondent had filed a counter affidavit denying the averments made in the affidavit and took a stand that the predecessor in title viz., Mr.Mohan filed O.S.No.86 of 2000 against him and his brother viz.,Mr.Chellaperumal praying for permanent injunction in respect of the very same property and it was dismissed for default on 19.07.2005 and no steps have been taken to restore the same and as such, the petitioner, who is the Successor in Interest, may not have any better right than his predecessor in title. It is further averred that as per the Sale Deed dated 21.06.2001 purchased by the petitioner and as per the approved plan granted by the Tambaram Municipality in PPL.No.453 of 2016 dated 07.12.2016, the petitioners are having access only through Bharathi Nagar main road and as such their claim that they are having right of way and access through Govinda Pillai Street, is wholly untenable and the decree in O.S.No.90 of 2000 would not come to their aid for the reason that the dismissal of the suit in O.S.No.86 of 2000 have not been brought to the knowledge of the concerned Court and prayed for dismissal of this writ petition.

9. Mr.R.M.Chockalingam/9th respondent has filed a counter affidavit on behalf of respondents 9 to 16, wherein he took a stand that the predecessor in title viz., Thiru.Mohan along with Mrs.Neelavathiammal, attempted to demolish the compound wall put up on the property and it was subsequently prevented and reiterated the stand taken by the 8th respondent and prays for dismissal of the writ petition.

10. Mr.K.Doraisamy, learned Senior Counsel assisted by Mr.Kandhan Duraisamy, learned counsel appearing for the petitioner has invited the attention of this Court to the findings recorded by the Court of District Munsif at Tambaram in O.S.No.90 of 2000 and would submit that it is the case of the plaintiffs, which include the 8th respondent, but for the planning permission, in and by which, the 2nd defendant viz., Thiru.Mohan, predecessor in title, is having right of way from

Agraharam Road through the above described 20 feet width private lane known as Govinda pillai Lane, has been negatived and the Suit after contesting came to be dismissed on 25.03.2003 and in the absence of any challenge to the said decree, it has become final and as such, it is not open to the 2nd plaintiff / 8th respondent herein to take a contra stand. It is the further submission of the learned Senior Counsel appearing for the petitioners by drawing the attention of this Court to the counter of the 5th respondent that the road is maintained by the said Local Body and periodical maintenance is also done and therefore in terms of Section 180-A of the Tamil Nadu District Municipalities Act, 1920 'all streets vested in or to be vested in or maintained by a municipal council shall be open to persons or whatever caste or creed' and as such, it has to be treated as public road and as per the Topo Sketch filed by the 5th respondent Municipality, the property owned by the petitioner lies just adjacent to the public street and in order to prevent access, the private respondents had put compound wall, which has been demolished forthwith so as to extend access to the public road and prays for appropriate orders.

11. Mr.P.Srinivas, learned Standing counsel appearing for the 5th respondent / Municipality would submit that as of now, the Municipality did not have any record to show that the said Street has been vested with them, however, they periodically maintaining the road depending on the orders passed by this Court and in the event of any positive direction being issued, they will take steps to remove the encroachment.

12. Mr.V.Chandrakanthan, learned counsel appearing for the 8th respondent has drawn the attention of this Court to Sections 179 and 180 of the Tamil Nadu District Municipalities Act, 1920 and would submit that unless the formalities contemplated under the said provisions are complied with, there cannot be any vesting of the private street viz., Govinda Pillai Street, the local body and the 5th respondent would treat it as public road. The predecessor in title of the property viz, Thiru.Mohan has filed a Suit in O.S.No.86 of 2000 on the file of the Court of District Munsif, Tambaram praying for permanent injunction restraining the 8th respondent as well as one Chella Perumal from interfering with his possession and enjoyment of the 'B' schedule property viz., 25 feet wide road called Govinda Pillai street commencing from his property viz., 'A' Schedule property in S.No.150/1, to Agaram road and the said Suit was dismissed for default on 19.07.2005 and no steps has been taken to restore the said Suit and it has become final and the said Suit is subsequent to the decision of the suit in O.S.No.90 of 2000 and as such, the petitioners cannot claim any right in respect of the road viz., Govinda Pillai street which according to him is a private street and prays for dismissal of this writ petition.

13. This Court has considered the rival submission and also perused the materials placed before it.

14. The predecessor in title of the petitioners viz., Thiru.Mohan has filed a suit in O.S.No.86 of 2000 on the file of the Court of District Munsif, Tambaram, against the 8th respondent as well as one Mr.Chellaperumal praying for permanent injunction restraining the defendants, or their men or agents from interfering with his possession and enjoyment of the suit 'B' schedule property viz., 25 feet wide road called Govinda Pillai street commencing from his property viz., 'A' Schedule property in S.No.150/1 admeasuring to an extent of 4,462 sq.ft, to Agaram road as shown in the plaint sketch. The said Suit came to be dismissed for default on 19.07.2000 and admittedly, no steps have been taken to restore the said Suit and it is has become final.

15. The learned Senior Counsel appearing for the petitioners has placed heavy reliance upon the judgment and decree dated 25.03.2003 in O.S.No.90/2000. In the said suit, the 5th respondent is shown as the 1st defendant and the predecessor in title of the petitioner is shown as 2nd defendant and Mr.Vijayaragavan, is shown as 3rd defendant. A perusal of the said judgment would disclose that the defendants 2 and 3 did not file their written statement. The 1st respondent Municipality took a stand that once a layout has been planned, roads and other appurtenants are designed and the plots comprising thereof when sold out would be without right of the purchasers of the plots. The Trial Court found that once the owner of the layout sells out the plots, there remains nothing for him.

16. It is to be noted at this juncture that it is not even the case of the predecessor in title of the petitioner herein that one of the purchasers of the plot developed by Mr.Govinda Pillai and their layout is separate and therefore in the considered opinion of this Court, the finding rendered upon in the Civil Suit would not prima facie come to their aid and that apart, the Suit filed by Thiru.Mohan on the file of the Court of District Munsif, Tambaram with regard to the very same property, which is the subject matter of the present writ petition for permanent injunction, was also came to be dismissed for default on 19.07.2005 and it has also become final. It is also important to note that the 5th respondent Municipality took a stand that there are no records available to them to show that the Govinda Pillai street is vested with them and however, for the past twenty years, they are maintaining the road and recently laid a Black Top and renewed by the respondent Municipality in the year 2014. The 5th respondent Municipality asserted that the Govinda Pillai street is a public road and they have taken a stand in

paragraph no.8 of the counter affidavit dated 23.03.2018 that the encroachment in question will be removed by the 5th respondent, if this Court directs the respondent Municipality.

17. It is also relevant to extract Sections 179, 180 and 180 A of the Tamil Nadu District Municipalities Act, 1920:

"179. Right of owners to require street to be declared public .- If any street has been levelled, paved, metalled, flagged, channelled, drained, conserved and lighted under the provisions of Section 178, such street shall, on the requisition of not less than three-fourths of the owners thereof, be declared a public street.

180. Prohibition against obstructions in or over streets .-No one shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street, except as hereinafter provided.

180-A. Public streets open to all .- All streets vested in or to be vested in or maintained by a Municipal Council shall be open to persons of whatever caste or creed.

18. Section 179 contemplates that if any private street has been levelled, paved, metalled, flagged, channelled, drained, conserved and lighted under the provisions of Section 178 of the Tamil Nadu District Municipalities Act, 1920, such street shall, on the requisition of not less than three-fourths of the owners thereof, be declared as a public street.

19. In the considered opinion of this Court, that unless, the required formalities are complied with in terms of Section 178 of the Tamil Nadu District Municipalities Act, 1920, Sections 179, 180 and 180-A of the said Act have no application and that apart the 5th respondent have no records to show that the said street is vested with them, except by taking a stand that more than twenty years, they are maintaining the road periodically and laying Black top also. It is pertinent and important to note at this juncture that the petitioner has obtained planning permission from the 5th respondent Municipality and a perusal of the same would disclose that they have shown access to their property through 10 feet passage, which lead to 24 feet wide Bharathi Nagar main road and not through Govinda Pillai street.

20. This Court has also put a specific question to the learned Senior Counsel appearing for the petitioners that in the absence of showing their access to the Govind Pillai road in their planning permission, how they can claim their right to have access to the said road and the answer given by the learned Senior Counsel is that since it is a public road, they are having right to access to it, as a matter of right.

21. In the considered opinion of this court, in the light of the planning permission obtained by the petitioner, in not showing that the Govinda Pillai Street has access to their property, the claim made by them is untenable.

22. This Court in the light of the reasons assigned above is of the considered view that the writ petition filed by the petitioner lacks merits and deserves to be dismissed and accordingly dismissed. The petitioners, if so advised and it is available to them under law, they are at liberty to invoke the common law remedy subject to Law of Limitation and accordingly, the writ petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai.

2.The Principal Secretary,
Home Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai.

3.The District Collector,
Kancheepuram District,
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4.The District Revenue Officer,
Kancheepuram District,
Collectorate,
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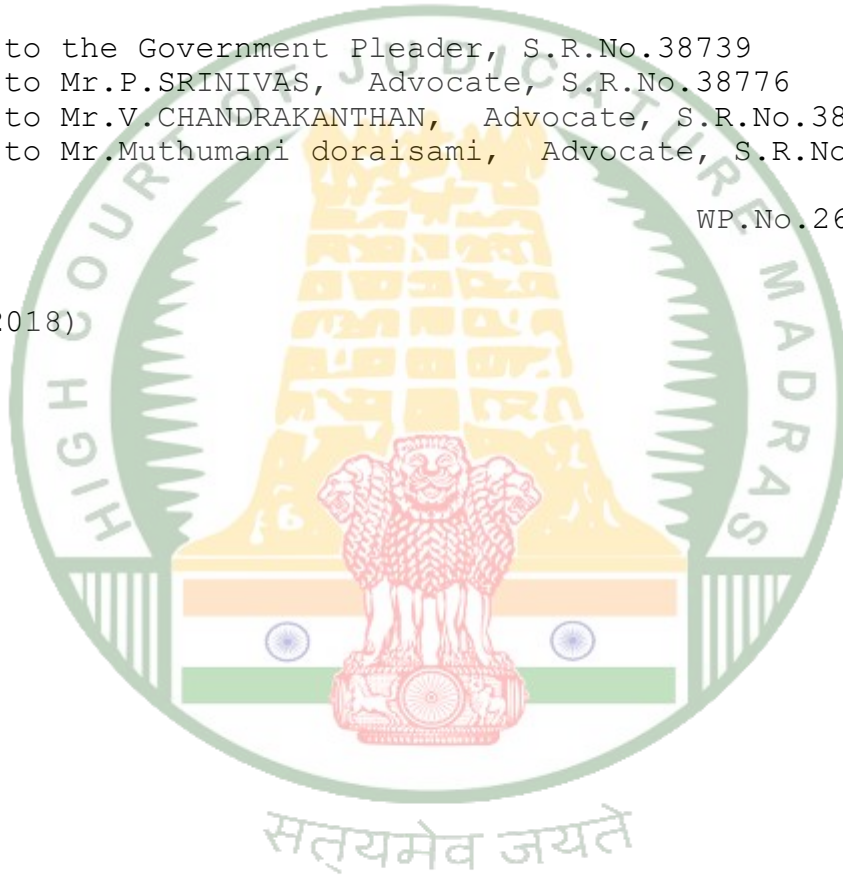
5.The Assistant Commissioner of Police,
Muthu Ranga Mudali Street,
Tambaram, Chennai-600 045.

6.Inspector of Police,
Selaiyur Police Station,
Chennai-73.

+1cc to the Government Pleader, S.R.No.38739
+1cc to Mr.P.SRINIVAS, Advocate, S.R.No.38776
+3cc to Mr.V.CHANDRAKANTHAN, Advocate, S.R.No.38605
+1cc to Mr.Muthumani doraisami, Advocate, S.R.No.38599

WP.No.26960 of 2017

SSD(CO)
TR(17/07/2018)



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