

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2018

CORAM:

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

W.P.No.28599 of 2017

M.Baskar

... Petitioner

vs.

1. The District Collector,
Kancheepuram District.
2. The Commissioner,
Municipal Administration Department,
Ezhilagam.
3. The Executive Officer,
Thiruneermalai Town Panchayat,
Chennai 600 044.
4. P.Banumathi..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the 3rd Respondent to dispose of the representation of the Petitioner, dated 16.08.2017 insofar as to remove the encroachment (public pathway) measuring an extent of 522 sq. ft. and to ensure free access to the pathway.

For Petitioner :Mr.E. Srikanth

For Respondents 1 to 3 :Mr.A.N.Thambidurai,
Special Government Pleader

For 4th Respondent :Mr.G.Subramanian

O R D E R

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

Heard the Learned Counsel for the Petitioner; the Learned Special Government Pleader appearing for Respondents 1 to 3 and the Learned Counsel appearing for the 4th Respondent.

2. According to the Petitioner, he is the absolute owner of the property bearing Plot No.23, Jayaram Nagar,

Thiruneermalai, Lakshmipuram, Chromepet, Chennai 600 044. The Plot in question is situated in Survey No.360/4C and the total extent of the Plot is about 1419 sq. ft. and the same was purchased in the year 2004 from one Tamilselvi, the Power Agent of E.Palani and registered vide Doc.No.4088/2004. Ever since the date of purchase, he is in absolute possession and enjoyment of the property.

3. The stand of the Petitioner is that at the time of purchase, to the south of his property, there was a vacant land and to the east of his property is Jayaram Nagar - I Road, which is not ending with the said vacant land on south, but, it continues further into Sakthi Nagar - II Road. Hence, Jayaram Nagar - I Road connects to Sakthi Nagar - II Road and the pathway is used by the general public, i.e. the residents of Jayaram Nagar and Sakthi Nagar. Furthermore, the entire layouts in Jayaram Nagar were unapproved ones, but the above said properties are patta lands. The same is maintained by the 3rd Respondent/Thiruneermalai Town Panchayat and the said road measuring 4 metres width and 30 metres length, was laid by Thiruneermalai Town Panchayat.

4. The case of the Petitioner is that the 4th Respondent viz. P.Banumathi, wife of C.Parthasarathy has purchased the land adjacent to that of the Petitioner's Plot on 27.02.2012 to an extent of 1448 sq. ft. vide Doc.No.1115/2012. Even at the time of purchase of his property, the pathway, which exactly connects both Jayaram Nagar - I Road and Sakthi Nagar - II Road was in usage. However, to his surprise, the 4th Respondent, during the year 2016, had put up superstructure and compound wall, thereby obstructing the public pathway. The front portion of the 4th Respondent's Plot is now elongated to Jayaram Nagar - I Road and she had also fixed a gate facing towards North direction on the said encroached area and it became a corner-most Plot of Jayaram Nagar and Sakthi Nagar. Due to the said illegal act, there is no connectivity road between the above said two roads. As a matter of fact, the act of the 4th Respondent had caused great hardship to the residents of the locality to have access to the other side of the road.

5. The Learned Counsel for the Petitioner submits that the encroached area measures an extent of 4 metres width 12 metres length, totalling to 522 sq. ft. (approximately) and the 4th Respondent had acted with an ulterior motive and blocked the public pathway to cause hardship not only to the Petitioner, but also to the residents of the locality. In the Sale Deed of the 4th Respondent, dated 27.02.2012, it is evident that to the south of her property, there exists a road and therefore, it is impliedly understood from the Document that there is a pathway connecting Jayaram Nagar - I Road and Sakthi Nagar - II Road.

6. The grievance of the Petitioner is that from 2016 onwards, he made oral representations to the Executive Officer of Thiruneermalai Town Panchayat on several occasions to initiate appropriate action against the 4th Respondent and to remove the encroachments. However, there was no response from the 3rd Respondent.

7. The Learned Counsel for the Petitioner proceeds to point out that the encroached area is not a Patta land and it is a Revenue land, which is maintained by Thiruneermalai Town Panchayat, to provide easy access to the public by connecting both the Roads. The Petitioner and his predecessors have been using the said Road (pathway) without any interruption from time immemorial. The 4th Respondent does not have any right over the pathway, as the same is meant for public utilization. However, the 4th Respondent had encroached and caused disruption. Hence, the Petitioner was constrained to issue legal notice to the 4th Respondent narrating necessary facts that the 4th Respondent had encroached the Road (pathway), which is an illegal one and calling upon her to remove the encroachments (public pathway) measuring an extent of 522 sq. ft. to ensure free access to the pathway. Even on receipt of the said legal notice, the 4th Respondent had not removed the encroachment. Hence, he filed a written representation to the authorities.

8. The Directorate of Town Panchayat, Kuralagam, had directed the 3rd Respondent/Executive Officer, Thiruneermalai Town Panchayat to take appropriate action against the encroachments (public pathway), based on the Petitioner's representation, dated 16.08.2017.

9. The Director, Directorate of Town Panchayat, Kuralagam and the Tahsildar, Pallavaram Taluk, are required to initiate appropriate action against the 4th Respondent to remove the encroachments. However, they have not removed the encroachments and had not furnished reply to the Petitioner's representation. Hence, the Petitioner has filed the present Writ Petition.

10. Per contra, it is the submission of the Learned Special Government Pleader appearing for Respondents 1 to 3 that the area in Ward No.9 and Survey No.360 is known as Jayaram Nagar 1st Street and 2nd Street and Sakthi Nagar and very recently, several houses were constructed in the unapproved layouts. The entire area is a prohibited area as per the Archaeological Department, as 'Pachaimalai Hill' is situated and maintained by the Government of India. In reality, for any construction within 200 metres from the bottom of the Hill, they have to get 'No Objection Certificate' from the Central Government Department. In this case, none has obtained any permission or 'No Objection Certificate' from the Archaeological Department, Government of India and several unauthorized

constructions came up recently and the 3rd Respondent is taking steps to remove the unauthorized constructions by issuing necessary Notices to remove such constructions.

11. The Learned Special Government Pleader appearing for Respondents 1 to 3 brings it to the notice of this Court that the 3rd Respondent has not executed any Gift Deed in his favour, whereby and whereunder, for providing Road, the land has to be handed over in respect of the unapproved layout. Hence, the extent of land could not be ascertained due to the aforesaid facts. However, in the absence of any documentary evidence to show the extent of Road, Gift Deed in favour of Town Panchayat in respect of handing over of land for Road, getting Planning approval from the appropriate authority and 'No Objection Certificate' from the Archaeological Department, Government of India, the Petitioner cannot claim any relief from this Court.

12. In short, the plea taken on behalf of Respondents 1 to 3 is that the Petitioner himself is an unauthorized occupant and does not have any permission to put up superstructure and however, he had not produced any 'No Objection Certificate' from the Archaeological Department, Government of India. According to the Respondents 1 to 3, the Petitioner has not approached this Court with clean hands and he himself is liable for eviction from the unauthorized constructions.

13. Insofar as the 4th Respondent is concerned, she is the neighbour to the Petitioner and she is also liable for eviction, as she has also put up unauthorized structure in the disputed area. According to the Sale Deed of the 4th Respondent, it does not disclose that Jayaram Nagar leads and joins with the Sakthi Nagar Road. As such, the Sale Deeds of both the Petitioner and the 4th Respondent does not disclose that Jayaram Nagar Road leads to Sakthi Nagar and there was no evidence for the approval of the layout, no handing over of land for Road by way of Gift Deed to the Town Panchayat and finally, the 'No Objection Certificate' from the Archaeological Department, Government of India has not been produced to put up any constructions within 200 metres from the bottom of the 'Pachaimalai Hill', which has been preserved as a Monument in that area.

14. The Learned Special Government Pleader appearing for Respondents 1 to 3 draws the attention of this Court that there was a representation from the public residing at Lakshmipuram and that the Burial Ground was renovated and a compound wall was also put up only after getting approval from the Panchayat Council in the year 2013. To prevent traffic problem in that area and in the interest of public, a Road length of 30 Metres and 4 Meter breadth was laid down and it leads to Burial Ground. Only after obtaining approval from the elected members of the

Town Panchayat in the year 2013, the above said work was carried out and the said information was provided to the Petitioner in his RTI Application.

15. In regard to the land in S.No.360/4C, it is a Patta land of the unapproved land of a larger extent. Likewise, the Patta mentioned in the Sale Deed of the 4th Respondent in Patta No.536 in Survey No.360/4D is related to the larger extent of land in Jayaram Nagar area. Till date, no separate Patta has been issued by the Revenue Department to any of the residents living in and around Jayaram Nagar and Sakthi Nagar. All the Revenue Records reveal that none has got Patta in that area, as the same was banned, as the Archaeological Department Monument 'Pachaimalai Hill' is situated nearby.

16. The Petitioner and the 4th Respondent have put up unauthorized structures and they have not produced any Patta/No Objection Certificate from the Archaeological Department, Government of India for putting up any construction within 200 metres from the bottom of the 'Pachaimalai Hill', which is kept as Monument. The Sale Deed of the Petitioner shows that the 4th Respondent did not support their claim. The RTI Reply shows that they have only put up a Road of an extent of 4 Metres breadth and 30 Metres length and it does not give any legal right to put up unauthorized structure. Moreover, the 3rd Respondent is taking severe steps to remove unauthorized structures put up not only by the Petitioner and the 4th Respondent, but also by several other persons.

17. Considering the fact that the Petitioner as well as the 4th Respondent have put up unauthorized constructions and in the absence of any legal right to and in their favour by virtue of their Sale Deeds and when he had purchased the lands from an unapproved layout in the absence of any document to prove their just, valid and legal claim in respect of their title, this Court, unhesitatingly comes to an irresistible conclusion that the 3rd Respondent, in law, is to take necessary action/steps in removing the unauthorized structures put up not only by the Petitioner and the 4th Respondent, but also by several other persons.

18. Viewed in that perspective, this Court, to prevent aberration of justice and to promote substantial cause of justice, directs the 3rd Respondent/Executive Officer, Thiruneermalai Town Panchayat, Chennai, to take serious steps in regard to the removal of unauthorized structures put up not only by the Petitioner and the 4th Respondent, but all other unauthorized structures, within a period of three months from the date of receipt of a copy of this order. If the Petitioner as well as the 4th Respondent have not removed the unauthorized

structures put up by them in the subject matter of property voluntarily, then it is open to the 3rd Respondent/Executive Officer, Thiruneermalai Town Panchayat, Chennai, to seek the assistance of the jurisdictional Police to put down the unauthorized structures. Also, the 3rd Respondent shall take the assistance of the local Area Engineer of the Tamil Nadu Electricity Board/TANGEDCO, to effect disconnection of electricity supply to the properties of the Petitioner and the 4th Respondent.

19. Before parting with the case, this Court directs the 3rd Respondent to file Compliance Report on or before 06.07.2018 in regard to the observations/directions of this Court being carried out by it, scrupulously and that too, in true letter and spirit.

This Writ Petition is disposed of with the above direction (s) and observation(s). No costs.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

(aeb)

To:

1. The District Collector,
Kancheepuram District.
2. The Commissioner,
Municipal Administration Department,
Ezhilagam.
3. The Executive Officer,
Thiruneermalai Town Panchayat,
Chennai 600 044.
(To file compliance report on or before 06.07.2018)
4. The Section officer
Writ Section, High Court, Madras (To post for reporting
compliance on 06.07.2018)

+1 CC to Mr.E. Srikanth, Advocate sr 18510.

+2 Ccs to Mr.R. Karthikeyan, advocate sr 18972.

W.P.No.28599 of 2017

BR(CO)

SP(05/04/2018)