

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

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

W.P.Nos.29924 and 29925 of 2017

R.Gurunath ... Petitioner in W.P.No.29924 of 2017
Sasikala ... Petitioner in W.P.No.29925 of 2017

vs.

1. The Regional Deputy Commissioner (Central),
Greater Chennai Corporation,
Division No.86, Unit - 19, Zone VII,
Ambattur, Chennai 600 053.
2. The Assistant Director/
P.A. to Collector,
Land Administration Department,
Thiruvallur District.
3. The Tahsildar,
Ambattur Taluk,
Chennai 600 053,
Thiruvallur District.
4. The Zonal Officer (VII),
Greater Chennai Corporation,
Ambattur Zone - VII,
Ambattur, Chennai 600 053. ... Respondents in both W.Ps.

W.P.No.29924 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the entire records pertaining to the Notice in Ref.Z.O.VII C.No./0367/2017, dated 09.11.2017 issued by the 1st respondent and quash the same and thereby permit the petitioner to enjoy the property in the western end of Natesan Nagar in between Plot Nos.49 and 63 in Survey No.378/2, Athipattu Village, Thiruvallur District.

W.P.No.29925 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the entire records pertaining to the Notice in Ref.Z.O.VII C.No./0366/2017, dated 09.11.2017 issued by the 1st respondent and quash the same and thereby permit the petitioner to enjoy the property in the

western end of Natesan Nagar in between Plot Nos.49 and 63 in Survey No.378/1, Athipattu Village, Thiruvallur District.

For Petitioner in both W.Ps. : Mr.K.Mohanamurali

For Respondents 1 to 3 in both W.Ps.: Mr.A.N.Thambidurai,
Special Govt. Pleader

For 4th Respondent in both W.Ps.:Mr.V.C.Selvasekaran Assisted by
Mr.A.Nagarajan

C O M M O N O R D E R

(Order of the Court was made by S.VAIDYANATHAN,J.)

Petitioners have come up with the present Writ Petitions, seeking to quash the Notice, dated 09.11.2017 issued by the 1st respondent and permit them to enjoy the property in the western end of Natesan Nagar in between Plot Nos.49 and 63 in Survey Nos.378/1 and 378/2, Athipattu Village, Thiruvallur District.

2. Since the issue involved in both the Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

3. Petitioners herein, viz. Gurunath and Sasikala, are husband and wife. According to them, Sasikala is the absolute owner of the property bearing Plot Nos.61, 62 and 63 of Natesan Nagar, Athipet Village, Ambattur Taluk in Survey No.378/2, Ambattur Township, Thiruvallur District, by virtue of Sale Deeds in Document Nos.4849 and 4850 of 2005, respectively, dated 11.05.2005 on the file of the Sub-Registrar Office, Ambattur. It is further stated that the petitioner/Gurunath is the absolute owner of the property bearing Plot Nos.48 and 49 of Natesan Nagar, Athipet Village, Ambattur Taluk in Survey No.378/2, Ambattur Township, Thiruvallur District, by virtue of a Sale Deed in Document No.8640 of 2006, dated 20.07.2006 on the file of the Sub-Registrar Office, Ambattur. According to the petitioner/Gurunath, he is also the sole and absolute owner of the property bearing Plot No.24 of Chennai New City, Athipattu Village, Ambattur Taluk in Survey No.378/1, Ambattur Township, Thiruvallur District, by virtue of the Sale Deed vide Document No.15276 of 2016, dated 21.11.2016 on the file of the Sub-Registrar Office, Ambattur, to an extent of 1800 sq. ft.

4. It is also stated by the petitioners that all the four Plots are in the dead end of the 24 feet road in Natesan Nagar and that they have put up zinc sheet roofing of the said property and erected compound wall in the western side of Plot Nos.63 and 49 including the 24 feet road and erected

superstructure with zinc sheet measuring 10 x 24 feet in the western corner of the Road.

5. According to the petitioners, they purchased the lands in question for industrial purpose and started business operations from 2005 in the name and style of 'M/s.Sree Lakshmi Engineering Works' and that several employees are working under them. It is stated by the petitioners that for the purpose of constructing storm water drain in Athipattu Village, the authorities of the 2nd and 3rd respondents inspected the area and started digging the road. But, it is the case of the petitioners that they have already raised an industry and installed machines and hence, they made representations to the District Collector and other authorities concerned about their willingness to provide an alternative site to construct rain water drain to Plot No.24 of Chennai New City, Athipattu Village.

6. Thereafter, on 30.10.2017, inspection was carried on by the Revenue Inspector of Ambattur Taluk and they categorically ascertained that rain water drain shall be constructed in Plot No.24 to link the rain water drain between Chennai New City and Natesan Nagar. Pursuant thereto, the 2nd respondent passed an order on 27.10.2017, about the acceptance of alternative land in Plot No.24 in Survey No.378/1. According to the petitioners, the residents/Villagers in that area had no objection for provision of alternative site to them. While so, the grievance of the petitioners is that the Corporation has issued a notice under Chennai City Municipal Corporation Act, 1919, requesting to remove the encroachments, failing which, appropriate action would be taken. It is the contention of the petitioners that no prejudice is going to be caused to anyone, muchless the official respondents, as they are willing to give another land for the purpose of constructing storm water drain.

7. The 4th respondent has filed counter affidavit, stating that the petitioners are the owners of the property in Plot Nos.48, 49, 62 and 63 of Natesan Nagar, Ambattur and that they have encroached the 24 feet road portion to an extent of 1440 sq. ft. and have put up unauthorised construction, which they themselves have admitted in paragraph 3.3 of their affidavits. It is further stated that due to heavy and torrential rains and floods during November and December 2015, Natesan Nagar, Ambattur was severely affected and after the floods, Greater Chennai Corporation has initiated steps for constructing storm water drain in the extended area.

8. According to the 4th respondent, after the expansion of the Greater Chennai Corporation from 175 kms to 476 kms in the year 2011, Greater Chennai Corporation, through TNUIFSL,

prepared a Detailed Project Report (DPR) for the construction of Integrated Storm Water Drain funded by World Bank for extended areas of Chennai Corporation, by engaging a consultant M/s.Tetrattech Private Limited. The extended area of Chennai Corporation is broadly divided into four basins, viz. (i) Kosasthalaiyar Basin, (ii) Coom Basin (iii) Adyar Basin and (iv) Kovalam Basin. As first phase, under Tamil Nadu Sustainable Urban Development Project (TNSUDP), through Work Bank funding, construction of Integrated Storm Water Drain work commenced in the Coom and Adyar Basins.

9. The 4th respondent went on to state that to avoid removal of encroachment, petitioners herein have sent a letter dated 10.07.2017 to the Chennai Corporation offering an alternative land, i.e. Plot No.24 of New Chennai City layout, to diver the storm water flow. Pursuant thereto, the 2nd respondent/Tahsildar, Ambattur sent a letter dated 27.10.2017 to the 2nd respondent, and submitted a Report as regards the enquiry conducted at Plot No.24 of Chennai New City. Thereafter, the 3rd respondent inspected the property in question on 07.11.2017 and submitted a Report to the District Collector, Thiruvallur, vide Letter dated 07.11.2017, relevant portion of which, reads thus:

" In Athipet Village, S.No.378/2 part of area 0.71.07 are, as per 'A' register and Adangal, belongs to Tamil Nadu Government. In this land, unapproved layout formed and sold out. There is a building constructed namely M/s.Lakshmi Industrial Work in the pathway. As per land register block 11, T.S.No.18/4, Street belongs to Tamil Nadu Government (Urban Land Ceiling). The above building namely Sri Lakshmi Industries Works has encroached and constructed the building in the passage in between the house Plots of the unapproved layout was measured by Taluk Survey Officials in presence of Greater Chennai Corporation officials, Revenue Inspector, Ambattur and Village Administrative Officer. ..."

10. According to the 4th respondent, the water flow has been decided by technical experts from the Consultants appointed by Storm Water Drain Department, Greater Chennai Corporation and it is very difficult for the respondents to alter the Storm Water Drain, through a different route.

11. Heard the learned counsel on either side and perused the material documents available on record.

12. It is not in dispute that the petitioners are the owners of Plot Nos.48, 49, 62 and 63. Admittedly, there is a 24 feet road and that the same has been encroached upon by the petitioners. Whether the Storm Water Drain has to run through the 24 feet road or through a different route is for the technical experts appointed by Storm Water Drain Department, Greater Chennai Corporation, to decide.

13. When the matter is taken up for hearing, learned Standing Counsel appearing for the respondent/Corporation submitted that the Corporation has decided to go ahead with the original plan for laying Storm Water Drain pipe. As the petitioners have admitted that the road has been encroached upon and constructions have been made, this Court is not inclined to grant the relief sought by the petitioners by directing the authorities concerned to consider the request of the petitioners to accept the alternative site offered by them, so that the Storm Water Drain can be routed through a different line. If the contention of the petitioners is accepted, it will amount to opening the pandora's box and several others may knock at the doors of this Court, that they are willing to give alternative site for construction of Storm Water Drain or any other channel. As, it is for the technical persons to decide, this Court cannot sit on the administrative side and direct the respondent/Corporation or any other officials, to accept the request of the petitioners.

14. In view of the above, we are of the considered view that as the petitioners have encroached the road portion, no mercy can be shown to them and that the road portion has to be restored by the Corporation, so that the amount availed by the respondent/authorities from the World Bank is utilized for the purpose, for which it is received. Hence, the relief sought by the petitioners is declined.

15. In fine, the Writ Petitions are dismissed. However, it is made clear that the encroached portions shall be removed by the petitioners within a period of 30 days from the date of receipt of a copy of this order, failing which, it is open to the respondent/Corporation to remove the encroachment and collect necessary demolition charges from the petitioners. If the encroachments are not removed within the time stipulated supra, departmental action has to be taken against the officials, who are responsible to evict the encroachers and major penalty has to be imposed, which shall be entered in their service records. No costs. Consequently, connected

W.P.M.P.Nos.32430 and 32431 of 2017 in the above Writ Petitions,
are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To:

1. The Regional Deputy Commissioner (Central),
Greater Chennai Corporation,
Division No.86, Unit - 19, Zone VII,
Ambattur, Chennai 600 053.
2. The Assistant Director/
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4. The Zonal Officer (VII),
Greater Chennai Corporation,
Ambattur Zone - VII,
Ambattur Chennai 600 053.

+4cc to Mr.K.Mohanamurali, Advocate sr.no.1632,1631
+1cc to Government Pleader in sr.no.1849

W.P.No.29924 & 29925 of 2017

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nr 22/02/2018

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