

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.08.2018
CORAM
THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.17276 of 2018

K.Baskaran

... Petitioner

Vs.

1. The Commissioner,
Sriperumbudur Municipality,
Sriperumbudur, Kancheepuram District.

2. The Secretary to Government,
Tamil Nadu Housing and Urban
Development Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.

3. The Director,
Directorate of Town and Country Planning,
Opp. to LIC, Chengalvarayan Building,
4th Floor, No.807, Anna Salai,
Chennai - 600 002.

... Respondents

(R2 & R3 are impleaded as per order
of this Court dated 01.08.2018 in
W.M.P.No.22756 of 2018 in W.P.No.17276 of 2018)

Prayer: This Writ Petition is filed under Article 226 of the
Constitution of India, seeking for a Writ of Mandamus, directing
the respondent to accept the execution of 598 sq.ft of the
petitioner's land in Survey No.75/2C in favour of the
respondent, on such execution direct the respondent to lay the
public road on the eastern side of the land allotted to the park
in Survey No.75/3 situated at Sriperumbudur 'A' Block Village &
Taluk, Kancheepuram District.

For Petitioner : Mr.P.Krishnan

For Respondents : Mr.V.Shanmuga Sundar
Special Government Pleader

O R D E R

Heard Mr.P.Krishnan, learned counsel for the petitioner and
Mr.V.Shanmuga Sundar, learned Special Government Pleader for the
respondents and perused the materials available on record.

2.The petitioner has come forward with this writ petition

seeking for issuance of a writ of mandamus, directing the first respondent to accept the gift of 598 sq.ft of his land in S.No.75/2C and consequently, direct the first respondent to lay a public road in S.No.75/3, situated at Sriperumbudur 'A' Block Village & Taluk, Kancheepuram District.

3. The petitioner would claim that he became owner of the land measuring an extent of 14 cents in S.No.75/2C in Sriperumbudur Village, vide a registered sale deed, dated 01.06.2012. Since then, he has been in possession and enjoyment of the same and the Revenue Records have been mutated in his favour. It is further stated that he approached the authorities for planning permission and he was directed to furnish the approval of layout in neighbouring Survey numbers and on perusal he became aware of the fact that no approach road was provided to his property.

4. The petitioner would allege that when a layout was approved for S.Nos.75/4A, 75/1E, 75/6, 75/A, 75/B, 75/5 and 75/3 roads have been provided for width of 30 feet and 23 feet and land in S.No.75/3 and 75/4A has been earmarked for establishment of park. According to the petitioner he has been using the road formed on the northern side in S.No.75/3 as access to reach his property. The authorities ought to have provided access to the property of the petitioner, while granting approval. However, his earlier representation to allot road to the petitioner's property was rejected by the second respondent on 11.08.2016.

5. The first respondent has filed a counter stating that as per Section 76 of the Tamil Nadu Town and Country Planning Act, the petitioner has to prefer an appeal to the Government and if he is aggrieved by the order of the Secretary to Government, Tamil Nadu Housing and Urban Development Department, Chennai, dated 11.8.2016, he could have preferred a Review Petition. Hence, the writ petition is not maintainable.

6. The learned counsel for the petitioner submitted that earlier the petitioner approached the respondents seeking approach road to his property, on the basis of Section 2(45) of the Tamil Nadu Town and Country Planning Act, but, at that time he did not offer an alternate sight. He would further submit that the petitioner is now ready to execute a gift deed in favour of the first respondent from his land in S.No.75/2C to extent of 598 sq.ft, to enable the first respondent Municipality to form a road in S.No.75/3, which is shown as park in the approved layout.

7. The learned Special Government Pleader submitted that there is no provisions in the Tamil Nadu Town and Country Planning Act to provide alternate sight and hence the request of the petitioner cannot be considered by the respondents.

8. I do not find any substance in the submission of the learned Special Government Pleader for the reasons that in similar circumstances, the Government has accepted alternative sight and issued G.O.Ms.No.188, Municipal Administration and Water Supply Department, dated 31.12.2016.

9. In the case on hand, it is not in dispute that in the approved layout S.No.75/3 has been shown as a park and the petitioner is the owner of the property in S.No.75/2C and he has been using 23 feet road in the park area in S.No.75/3, to reach his property. In the affidavit filed in support of this writ petition, it is stated that the petitioner is ready to execute a gift deed equivalent to that area i.e. 598 sq.ft in favour of the Municipality to expand the park in his land. Admittedly, the land of the petitioner is situated adjacent to park site and hence, no prejudice would be caused by slight modification of the layout.

10. A perusal of the photos would reveal that thorny bushes have grown in the park area and it is not yet developed. Further, not even an inch of land in the park area is reduced for modifying the layout, since the petitioner is gifting equivalent area from his patta land in favour of the Local Body. At the time of granting approval to the layout, the authorities ought to have provided access by forming a road to enable him to enjoy the property and for any mistake committed by the Officials, the petitioner cannot be made to suffer.

11. It is pertinent to note that the Secretary to Government, Housing and Urban Development Department rejected the appeal of the petitioner by his order dated 11.8.2016, stating that there are no rules to change the approval of the layout without the consent of the layout promoter. As stated above in the earlier occasion, change in layout has been approved by the authorities. Further change is not sought for in the residential plots, hence consent promoter of the layout is not at all required and the enjoyment of the land of the petitioner cannot be kept in abeyance till the other owner forms a layout in the agricultural land. Hence, the reasoning of the Secretary cannot be countenanced.

12. It is pertinent to note that Rule 7 of the Tamil Nadu Change of Land Use (From Agriculture to Non-Agriculture Purposes in Non-planning Areas), Rules, 2017, it has been stated as follows:-

"7. Guidelines to be followed by the Director for giving his prior concurrence:-

(i) The Director shall satisfy himself the following, namely:-

(a) the proposed development in part or

whole is not in public water body like channel, canal, tank, lake, river, etc.

(b) The proposed development in part or whole is not in Government Poromboke land, temple lands, wakf properties and other lands belonging to religious / charitable institutions.

(c) The proposed development is not made in vacant lands blocking access to surrounding lands which do not have any other means of access.

(d) The proposed development in part or whole is not lying in the lands affected by the alignments of proposed road or rail corridors.

(e) The proposed development does not encroach any public road or street or other land which the applicant does not possess ownership right.

(f) The proposed development in part or whole is not lying in the lands below the alignment of high tension and extra high voltage electric line including tower lines.

(g) The Director shall ensure that the proposed development possess proper drainage system and pattern wherein all the waste water and excess rain water from the development area flows in the nearest higher order drainage system or some alternate arrangement created for the same so as to arrest water logging in the development area.

(2) The Director shall consider the prior concurrence given by the Collector in respect of wet lands and the report of Joint Director of Agriculture in respect of dry agriculture lands for taking a decision to issue his prior concurrence.

(3) In order to satisfy himself before granting his concurrence, the Director may cause inspection or seek report from such officials as he deems fit."

13. The above Rule would make it clear that while granting approval in the non planning areas, the Director shall ensure that the proposed development is not blocking access to the surrounding lands and it is mandatory that the owner of the neighbouring land, who does not have any other means of access should not be denied right of access in view of the development from agricultural land to non-agricultural purpose. This Court is the conscious of the fact that approval to the layout was granted much prior to framing of the above Rules. However, even then, the owner of the neighbouring land cannot be denied a right of access to his property at the time of forming layout in

non-planning areas.

14. In the light of the above facts, this Court is of the considered opinion that the petitioner is entitled to succeed in this Writ Petition. Accordingly, this Writ Petition is allowed with the following directions:-

(i) The petitioner shall execute a gift deed, settling 600 sq.ft of his land in S.No.75/2C in favour of the Local Body adjacent to the park area.

(ii) The first respondent is directed to accept the gift deed and process his application to form a road in S.No.75/3, having width of 23 feet to enable the petitioner to reach his property in S.No.75/2C; and

(iii) The respondents 2 and 3 shall grant necessary approval to the first respondent to lay a road as stated above. The entire exercise shall be completed within a period of four months from the date of receipt of a copy of this order. There is no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Sriperumbudur Municipality,
Sriperumbudur,
Kancheepuram District.
2. The Secretary to Government,
Tamil Nadu Housing and Urban
Development Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
3. The Director,
Directorate of Town and Country Planning,
Opp. to LIC, Chengalvarayan Building,
4th Floor, No.807, Anna Salai,
Chennai - 600 002.

+1cc to Mr.C.Krishnan, Advocate, S.R.No.52779

+1cc to the Government Pleader, S.R.No. 54097

W.P.No.17276 of 2018

MR(co)

rrs 02/08/2018