

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 15.02.2018
Orders pronounced on : 20.02.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.1738 of 2018
WMP.No.2166 of 2018

The President

Hansa Abhinav Flat Owners Association,
No.67 A, Glass Factory Road (Village Street),
Thiruvottiyur, Chennai -19.

...Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai.
2. The Executive Engineer,
Corporation of Chennai,
Zone-1, T.H.Road,
Thiruvottiyur,
Chennai - 19.
3. The Inspector of Police,
H-8 Police Station,
Thiruvottiyur, Chennai -19.
4. The Assistant Commissioner of Police,
H-8, Police Station,
Thiruvottiyur, Chennai -19.
5. Hansa Vision India Private limited,
(Hansa Estate),
2nd Floor, No.605 & 606, Anna Salai,
Chennai - 600 002.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to forbear the respondents herein from preventing or restraining the petitioner from closing or constructing the 15 ft. wide gap of the demolished portion of the compound wall on the Western side of the petition mentioned property called Hansa Abhinav at No.67-A, Glass Factory Road, (Village Street), Thiruvottiyur, Chennai - 600 019 and further consequently direct the 1st and 2nd respondents to ensure free and exclusive access of ingress and egress to the residents of Hansa Abhinav through the road formed from north to south within the residential apartment on the western side of the petition mentioned property which was

laid by the promoter, the 5th respondent herein for the safety and security of the residents of Hansa Abhinav.

For Petitioner : M/s.R.Abdul Mubeen

For Respondents: Mr.T.C.Gopala Krishnan (for RR1 & 2)

Mr.V.Shanmuga Sundar, Spl.G.P.(for RR 3&4)

No Appearance (for R5)

ORDER

The petitioner has filed this writ petition to forbear the respondents herein from preventing or restraining the petitioner from closing or constructing 15 ft. wide gap of the demolished portion of the compound wall on the Western side of the petition mentioned property, called Hansa Abhinav, at No.67-A, Glass Factory Road, (Village Street), Thiruvottriyur, Chennai - 600 019 and further consequently direct the 1st and 2nd respondents to ensure free and exclusive access of ingress and egress to the residents of Hansa Abhinav, through the road formed from North to South within the residential apartment on the Western side of the petition mentioned property, which was laid by the promoter, the 5th respondent herein for the safety and security of the residents of Hansa Abhinav.

2. Heard the learned counsel for the petitioner, the learned Standing Counsel appearing for the respondents 1 and 2 and the learned Special Government Pleader appearing for the respondents 3 and 4. Despite service of notice on the 5th respondent, none appeared for them.

3. The case of the petitioner-Association is that the 5th respondent had constructed 27 blocks with 6 flats each in a project called "Hansa Abhinav", in a land measuring an extent of 17,687 sq.mt. in T.S.No.11/1, Block No.19 in Thiruvottiyur, Chennai-19 and the members of the petitioner-Association, who belong to middle class purchased the said flats. It is their further case that as per the sanctioned plan, 9 mt. wide road is available on the Western side of the plots for exclusive use of owners of the Flats and they have also constructed a compound wall.

4. The grievance of the petitioner is that the 5th respondent, after purchasing the vacant land on the Western side of the premises of "Hansa Abhinav" has opened the compound wall, in which a public road runs parallel to the road formed by the petitioner and it is used by the general public. Hence, the petitioner filed a writ petition in W.P.No.42329 of 2016, forbearing the 1st respondent from demolishing the compound wall and after withdrawing the writ petition, the petitioner has instituted a suit in O.S.No.67 of 2017 before the District Munsif Court, Thiruvottiyur and filed interlocutory applications

in I.A.Nos.470 and 470 of 2017, seeking interim injunction. Since the applications were dismissed, the petitioner has preferred an appeal before the Sub Court, Ponneri in C.M.A.Nos.9 and 10 of 2017. After receiving notice in the appeals, the 2nd respondent had demolished a portion of the compound wall on 09.01.2018. Hence, the present writ petition.

5. The respondents 1 and 2 have filed a counter affidavit stating that the 5th respondent had gifted the OSR land and the road in favour of the Corporation, vide Gift deed, which were registered as Doc.Nos.7146 of 2016 and 7318 of 2016 and as per the approved plan, 9 metre wide road was provided on the Western side of the "Hansa Abhinav" premises for usage of the general public. It is further stated that the petitioner has already approached the Civil Court and the learned District Munsif, Thiruvottitpur, has dismissed the interim application of the petitioner on 03.10.2017.

6. It is further stated that Ashok Leyland Employees Residential Welfare Association and Thiruvottitpur West Public Welfare Association gave representations for removal of the unauthorised compound wall put up by the petitioner and to form road to have an access to K.C.P. Road. The officials of the 1st respondent have demolished the compound wall put up by the petitioner on 09.01.2018 and after demolition of the compound wall, the petitioner has put up barricade preventing the general public to use the road, which was also removed with the help of police on 31.01.2018. According to the 1st respondent, the roads are meant for public and the petitioner has no right to block the road.

7. In the instant case, it is seen from the records that the petitioner withdrew the earlier writ petition in W.P.No.42329 of 2016 with liberty to approach the Civil Court. Subsequently, the petitioner has also instituted a suit and the same is pending. It is not in dispute that the interim injunction applications of the petitioner I.A.Nos.470 and 471 of 2017 were dismissed and the petitioner has preferred appeals before the Sub Court.

8. In the light of the above undisputed facts, in the considered view of this Court, the petitioner is not entitled for the prayer sought in the writ petition and any observation made in this writ petition would certainly affect the rights of the parties to the Civil Suit. In that view, the writ petition is dismissed. Taking note of the facts of this case, the Sub Judge, Ponneri shall dispose of the appeals, C.M.A.Nos.9 and 10 of 2017 on merits and in accordance with law, without being influenced by the order of this Court as expeditiously as possible, preferably within a period of one month from the date of receipt of a copy of this order.

9. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

pvs

To

1. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai.
2. The Executive Engineer,
Corporation of Chennai,
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H-8 Police Station,
Thiruvottiyur, Chennai -19.
4. The Assistant Commissioner of Police,
H-8, Police Station,
Thirutottiyur, Chennai -19.

+ 1 cc to Mr.T.C.Gopala Krishnan Advocate,SR.12725

+ 1 cc to M/s.R.Abdul Mubeen Advocate,SR.12672

+ 1 cc to The Govt.Pleader, SR.14541

nrk(co)
nr 14/03/2018

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