

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.17586 of 2018 &
W.M.P.No.20863 of 2018

1.R.Syed Jalal @ Iqbal
2.J.Syed Dawood
3.J.Syed Khaiyum ... Petitioners

Vs.

- 1.State of Tamil Nadu,
Represented by its Secretary,
Municipal and Local Administration Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector,
Collectorate Road,
Krishnagiri, Tamil Nadu - 635 115.
- 3.The Commissioner,
Hosur Municipality,
Bagalur Road, Hosur - 635 109.
- 4.The Sub-Collector,
Denkanikotta Road,
Anna Nagar, Hosur - 635 109.
- 5.The Block Development Officer,
BDO Office, Taluk Office Road,
Taluk Office,
Hosur 635 109.
- 6.The Tahsildar,
Hosur Town, Taluk Office,
Hosur - 635 109.

7.M.Vediappan .. Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Mandamus, to forbear the third respondent from interfering with

the petitioner's right of possession and enjoyment over their patta land in Survey No.377, Hosur Village, Hosur Taluk, Krishnagiri District (Patta No.82) by either digging trenches or laying road, or erecting any structures thereon.

For Petitioners : Mr.Sai Srujan Tayi
For Mr.Giridhar and Sai

For Respondents : Mr.V.Shanmuga Sundar
Special Government Pleader
for R1, R2, R4 & R6

Mr.N.Subbarayalu for R3

Mr.K.Ravikumar
Additional Government Pleader for R5

O R D E R

Heard Mr.Sai Srujan Tayi, learned counsel, representing Mr.Giridhar and Sai, learned counsel for the petitioners; Mr.V.Shanmuga Sundar, learned Special Government Pleader for the respondents 1, 2, 4 & 6; Mr.N.Subbarayalu, learned counsel for the third respondent; Mr.K.Ravikumar, learned Additional Government Pleader for the fifth respondent and perused the materials available on record.

2. This Writ Petition has been filed for issuance of Writ of Mandamus forbearing the third respondent from interfering with the petitioner's right of possession and enjoyment over their patta land in Survey No.377, Hosur Village, Hosur Taluk, Krishnagiri District.

3. The case of the petitioners is that they are the owners of land in Survey No.377 measuring an extent of 3.62 acres by virtue of sale deed in the year 1978. The notification issued for acquiring the land was set aside in W.P.No.6880 of 1983. Subsequently, in the year 2007, the first petitioner formed a layout of house sites and sold a portion of house sites to the third parties and in order provide access to the purchasers from the High Road, the first petitioner executed a registered gift deed dated 19.02.2009, gifting 23 feet wide passage leading to the High Road in favour of the Municipality.

4. The petitioners would further state that with regard to remaining portion of house sites unsold, first petitioner settled them in favour of petitioners 2 and 3 and in order to provide access to the unsold house sites, a 200 ft. long parcel

(50 to 80 ft width) was retained by the first petitioner. It is alleged by the petitioners that on 23.06.2018, an attempt was made by the respondents to lay a road on the patta land of the petitioners.

5. The specific case of the petitioners is that the 50 to 80 feet road in Survey No.377 is neither a public road nor a private road and it was formed for exclusive usage of the petitioners themselves and hence, the third respondent has no right to lay a road in that area.

6. The third respondent filed a counter denying the allegation of the petitioners and stated that the first petitioner developed 75 housing plots in his property and by registered settlement deed dated 23.11.2011, settled plot Nos.1, 28, 29, 74 and 75 in favour of the petitioners 2 and 3 showing 80 feet road on eastern boundary. The unapproved layout plan was attached with the settlement deeds.

7. It is further stated that after showing the 80 feet road in the settlement deed, now the petitioners cannot object laying tar road on 80 feet road. This 80 feet road passes through Survey Nos.403, 405, 406, 407, 381, 382, 378 and 377. The respondents have already 80 feet road wide Survey Nos.403, 406, and 407. The 80 feet road in Survey No.377 connects inner 23 feet road of the layouts, so all the plots connected to 80 feet wide link approach road. Since certain roads in Hosur Village have suffered wear and tear and on the basis of the representations from the residential association, public and traders, the Municipality, by a Resolution dated 27.06.2013 in Resolution No.384, resolved to form 80 feet link road at an estimated cost of Rs.82 Lakhs . It was also widely published in newspapers calling for objections and suggestions, but, they did not receive any objections nor any suggestions.

8. It is further stated that as per the Government Orders in G.O.Ms.No.78, dated 04.05.2017, Housing and Urban Development Department and G.O.Ms.No.172, 13.10.2017, Rules have been framed for regularization of the unapproved layouts under Section 113 read with 122 of Tamil Nadu Town Country Planning Act and as per the Rules, suo motu power has been given to the Authority to prepare and approve and give in principle approval in respect of connectivity to the adjoining lands. Regularisation order has been issued in respect of unapproved plots Nos.11 and 12, dated 06.07.2018, in which also, 80 feet road reflects.

9. The learned counsel for the petitioners mainly contended that though the petitioners formed an unapproved layout in Survey Nos.376 and 377, a portion of the property in Survey No.376 was already sold, in which, the first petitioner had

already executed a gift deed in favour of the Local Body, third respondent herein and in the layout formed in Survey No.377, no plot has been sold to any third party, no interest of third parties was created and hence, the 80 feet road has to be treated as private property of the petitioners. The learned counsel in this regard has referred Sections 2 (20), 175, 176 of the City Municipalities Act and relied upon the judgment of this Court in W.P.No.40577 of 2012, dated 21.01.2018 reported in Indian Kanoon in <http://indiankanoon.org/doc/1039229>.

10. The learned Standing Counsel for the third respondent contended that the unapproved layout was formed by the first petitioner long ago, in which the 80 feet road has been shown and after selling some of the house plots in favour of third parties and after referring 80 feet road in the settlement deeds executed in favour of the petitioners 2 and 3, the petitioners cannot now contend that it is neither a private road nor a public road and the Municipality has no authority to maintain form a link road.

11. According to the learned Standing Counsel for the third respondent in view of the Rules framed under G.O.Ms.Nos.78 and 172, the road can be treated as public road and suo motu power is granted to the Local Body to regularize the unapproved layouts. It is further stated that the owners of plot Nos.11 and 12 have approached the third respondent to regularise their unapproved plots and their request was accepted and approval was granted on 06.07.2018 showing this road as a public road.

12. In the judgment cited by the learned counsel for the petitioners, a layout plan was approved by the Director of Town and Country Planning in the year 1974, but subsequently, no sale had been effected for long number of years and the landowner decided to put up a construction in his land which was shown as 30 feet road in the approved layout. It was objected by the Local Body on the ground that once a plan was sanctioned, the road automatically vest with the Municipality / Local Body and the landowner has no right to put up construction on the road. This Court, considering the facts that no plot was sold to any third party and as per Section 50 of Town and Country Planning Act, the approved layout would be in force for a period of three years, held that the respondent-Municipality did not have any right to object construction in the area shown as a road in the approved plan. In my considered opinion, the decision has no application to the case at hand for the reason that here the facts are totally different.

13. It is not in dispute that the first petitioner had formed the unapproved layout in Survey Nos.376 and 377 and in Survey No.376, he already sold house plots to the third parties. Perusal of the records shows that nowhere in the writ affidavit,

petitioners have stated how many plots have been sold so far nor gave any details about the purchasers. It is to be further noted that the purchasers of the unapproved plots are necessary and proper parties, but they have not been impleaded in this case for the reasons best known to the petitioners.

14. The petitioners seek relief in this Writ Petition contending that in S.F.No.377, plots have not been sold and hence the road in dispute shall be treated as their private passage. I find it difficult to countenance the argument of the learned counsel for the petitioners for the reason that though in Survey No.377 as claimed by the petitioners no sale has been effected in favour of the third parties, but indisputably, in the same layout in Survey No.366, right of the third parties have been created and while granting approval to Plots 11 and 12, this road has been shown in the order. The learned counsel for the petitioners has not questioned the authority of the respondents to grant approval to the unapproved layout, but contends that unless the entire plots have been sold, the authorities shall not exercise the suo motu power. Here again, I find no force in his arguments, since no such stipulation has been stated in the Rules.

15. Considering the above facts, in my considered opinion, as per the Rules framed pursuant to the G.Os' referred supra, the Local Body has an authority to treat this road as a public road and the petitioners have no legal right to oppose formation of road.

16. In that view, the Writ Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

r n s

To

1.The Secretary,
Government of Tamil Nadu,
Municipal and Local Administration Department,
Fort St.George, Chennai - 600 009.

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2.The District Collector,
Collectorate Road,
Krishnagiri, Tamil Nadu - 635 115.

3.The Commissioner,
Hosur Municipality,
Bagalur Road, Hosur - 635 109.

4.The Sub-Collector,
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5.The Block Development Officer,
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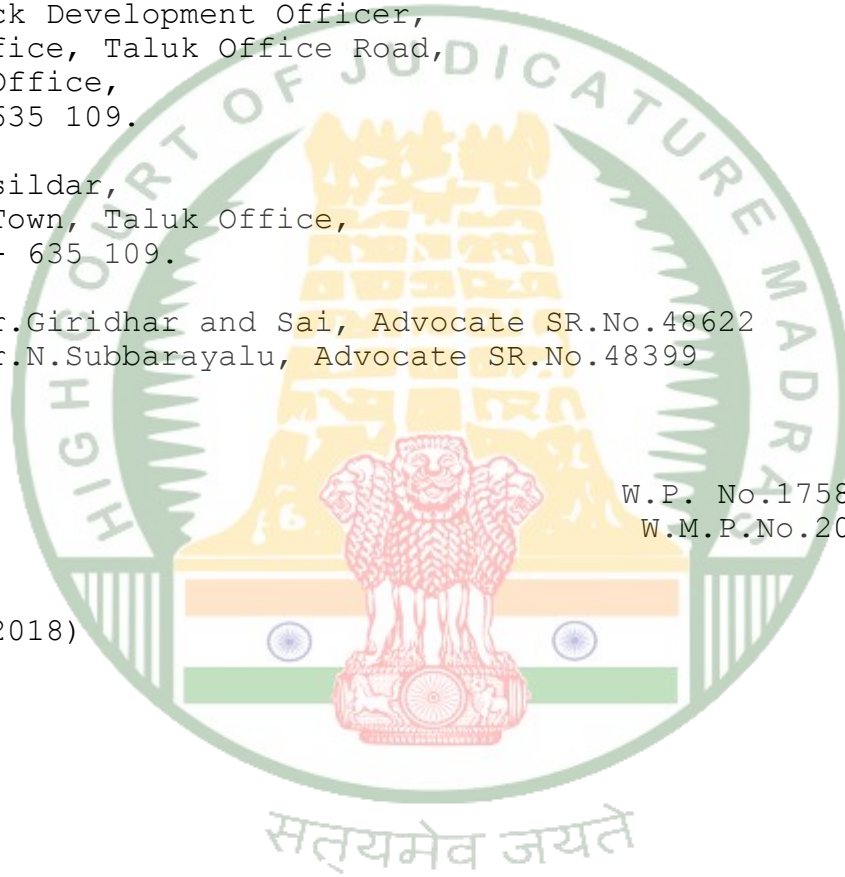
6.The Tahsildar,
Hosur Town, Taluk Office,
Hosur - 635 109.

+1cc to Mr.Giridhar and Sai, Advocate SR.No.48622

+1cc to Mr.N.Subbarayalu, Advocate SR.No.48399

W.P. No.17586 of 2018 &
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GN(24/07/2018)



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