

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09-10-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.15782 of 2017 and 30748 of 2016

And

W.M.P.Nos.17068 to 17070 of 2017 and 26648 & 26649 of 2016

- 1.Thiru T.G.Naveen
- 2.Thiru T.G.Nirmal
- 3.Tmt.P.G.Shobha

.. Petitioners in both WPs

..Vs..

- 1.The Executive Magistrate,
Tambaram-cum-Revenue Divisional Officer,
Revenue Divisional Office,
Tambaram,
Chennai-45.
- 2.The District Revenue Officer,
Kancheepuram,
Collectorate,
Kancheepuram District,
Kancheepuram,
Tamil Nadu 631 501.
- 3.The Tahsildar,
Shollinganallur,
Chennai-600 119.
- 4.Syed Salauddin

.. Respondents in WP 15782/2017

- 1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai.
- 2.The Divisional Engineer,
Tamil Nadu Electricity Board,
Chennai South,
Injambakkam,
Chennai-115.

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3.The Assistant Engineer,
Tamil Nadu Electricity Board,
Chennai South,
Injambakkam,
Chennai-115.

4.The District Collector,
Kancheepuram Collectorate,
Kancheepuram District,
Kancheepuram,
Tamil Nadu 631 501.

5.Ms.Farida Banu,
The Executive Magistrate,
Tambaram-cum-Revenue Divisional Officer,
Revenue Divisional Office,
Tambaram,
Chennai-45.

6.The District Revenue Officer,
Kancheepuram Collectorate,
Kancheepuram District,
Kancheepuram,
Tamil Nadu 631 501.

7.Mr.Jaya Kumar,
The Tahsildar,
Sholinganallur,
Chennai-600 119.

8.The Village Administrative Officer,
Injambakkam,
No.22, Sannathi Street,
Uthira Merur,
Kancheepuram.

9.Syed Salauddin

.. Respondents in WP 30748/2016

WP No.15782 of 2017 is filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the second respondent in Proc.Na.Ka.6730/2016/N.3 and dated 29.5.2017 in confirming the order of the first respondent in proceedings RC 1446/2015 dated 26.2.2015 signed on 26.2.2016 and quash the same as illegal, arbitrary, unsustainable in law and on facts.

WP No.30748 of 2016 is filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 2 and 3 to remove the electricity cable laid in Old Survey No.287, Patta No.223 as per New Patta Survey No.287/1A1 belonging to the second petitioner and further direct the respondents to raise construction of the compound wall in Old Survey No.287, Patta No.223 as per New Patta Survey Nos.287/1A1 at their cost, to an extent of 520 feet length and 8 feet height belonging to the second petitioner and award compensation of Rs.50,00,000/-

For Petitioner in both WPs : Mr.V.Raghavachari for
Mr.Ar.M.Arunachalam.

For Respondents-1to3 : Mr.V.Jayaprakash Narayanan,
in WP 15782/17 & Special Government Pleader
R-4 to R-6 & R-8 Assisted by Mr.R.S.Selvam,
in WP 30748/16 Government Advocate.

For Respondents-1to3
in WP 30748/16 : Mr.S.K.Raameshuwar

For Respondent-4 : Mr.R.Singaravelan,
in WP 15782/17 & Senior Counsel for Mr.Inamdar
R-9 in WP 30748/16 Ameenur Rahman.
For R-7 in WP 30748/16 : No Appearance

C O M M O N O R D E R

The writ on hand filed challenging the order passed by the second respondent in proceedings dated 29.5.2017, confirming the order passed by the first respondent in proceedings dated 26.2.2015.

2. The writ petitioners state that the lands in S.No.287/1A1 measuring an extent of 3.45 acres, S.Nos.287/1A3B and 287/1A3A measuring an extent of 1 acre and 2.45 acres respectively and S.No.287/1A4, measuring an extent of 3.45 acres were developed by the writ petitioners as "Gated Community - Unapproved Lay Out Sites" under the name "Gopi Krishna Brindhavan". In respect of S.No.287/1A1, a 20 feet private road (16ft + 4 ft wide) was formed for the exclusive use and convenient enjoyment of community purchasers. This 20 feet wide private road abuts the lands belonging to the fourth respondent Mr.Thiru A.Syed Salauddin, S/o.Haji. Syed Ibrahim. In respect of S.No.287/1A2B and S.No.287/1A3A, a 33 feet wide private road (20 feet + 13 feet wide) was formed for the exclusive use and convenient enjoyment of community purchasers. This 33 feet wide private road abuts the lands belonging to the fourth respondent

Mr.Thiru A.Syed Salauddin, S/o.Haji. Syed Ibrahim.

3. The writ petitioners as well as the fourth respondent have laid compound wall adjoining to each other lands and was in existence for long over the aforesaid two survey numbers. The field map annexed is self-explanatory. In fine, the entire 20 feet and 33 feet of land fall within the private holding of the writ petitioners. The 13 feet of the 33 feet referred above was sold by three registered Sale Deeds on 2.9.2013 and registered as Document Nos.6146, 6147 and 6148 of 2013 respectively in favour of the writ petitioners. Consequently, the writ petitioners have been given patta after due verification of records, the details of which are as under:-

S.No.	Classification	Extent in S.Ft.	Patta No.	Name of Pattadars
287/21	Dry	2253	5673	Mr.T.G.Nasveen, S/o.T.G.Gopinathan
287/22	Dry	2253	5674	Mr.T.G.Nirmal, S/o.T.G.Gopinathan
287/23	Dry	2253	5675	Mrs.P.G.Shobha, W/o.T.G.Gopinathan

4. The writ petitioners further states that the 4 feet of the 20 feet referred above was sold by a registered Sale Deed on 16.4.2013 and registered as Document No.4796 of 2013 in favour of one of the writ petitioner. The fourth respondent Syed Salavuddin, S/o.Haji Syed Ibrahim approached the first respondent and complained as if there had been a 33 feet road gifted by the writ petitioners to the Village Panchayath and that these writ petitioners have unauthorisedly obtained patta to the said lands and had accordingly requested to restore the pathway in our patta lands S.No.287/1A1A and 287/1A3A1A, so as to enable him to reach his lands. The representation was mischievous. As they had persons of the same clan they were accommodated and under R.C.1446/2015/A dated 26.2.2015, signed on 26.2.2016 cancelled the pattas with respect to the lands, 287/1A1A and 287/1A3A1A, thereby urging the authorities mentioned in the order therein to take note of said order and to restore the road in furtherance thereto.

5. However, the fourth respondent Syed Salavuddin, S/o.Haji Syed Ibrahim with the help of the authorities demolished the compound wall built by the writ petitioners to delineate their respective properties. The fact remains that the Sale Deed pertaining to the walls that existed and was

demolished is duly registered in the name of the writ petitioners. The Tahsildar cannot treat the private property as an encroachment to enable them to exercise their authority.

6. Cancellation of patta, when title by Deeds and documents still stands in the name of owner cannot be a subject matter of investigation at the instance of the Revenue Authorities. Repeatedly, this Court had cautioned against such exercise. The first and the second respondents in their order of cancellation of patta, takes credence of the third respondent's report as detailed below:-

(i) Revenue Inspector having submitted his report vide O.Mu.No.1062 and dated 26.12.2014;

(ii) The Taluk Surveyor having submitted his report vide Memo Na.Ka.No.15527/2014 B 2 and dated 29.12.2014.

However, no notice has been given to the writ petitioners before the alleged inspection at the site and the third respondent along with his Officers carried out the Chamber exercise and had never ever inspected the site at any point of time and neither are the writ petitioners served with these reports.

7. Furthermore, the second respondent, in paragraph 11 of its order, had summed up holding that until the lands are handed over to the Government, the patta still stands in the joint names of the owners/purchasers. The Revenue Divisional Officer further mentioned the Circular of Survey and Settlement ordered in Q1/21356/2012 (SY) dated 2.7.2012 taken as criteria to arrive a conclusion in this case. The brief lines of Circular are furnished below:-

"In respect of unapproved layouts, the common areas till they are handed over/taken by Government/local bodies etc., will bear a joint patta in the name of all owners of the unapproved layout and will not be label to as road etc., since this involves the jurisdiction of local body/Government Department."

The aforesaid provision has been wrongly interpreted, as the writ petitioners never gave any undertaking to authorities towards surrender of lands, as its their private road in the Gated Community.

8. The fourth respondent Mr.Syed Salavuddin, S/o.Haji Syed Ibrahim, intends to utilize the writ petitioners developed private road while seeking access to reach his lands to be converted into lay out sites. Under such circumstances, it remains that the fourth respondent is only the adjacent land owner to the writ petitioners' lands.

9. However, alleging that access of the fourth respondent is denied, the fourth respondent/claimant sought to cancel writ petitioners' patta and accordingly based on "Discreet Chamber Reports" the respondents 1 to 3 engineered and cancelled the patta over the private lands of the writ petitioners.

10. The letters given on 18.7.2016 and 20.7.2016 to the Electricity Authorities to revoke the electricity line laid and given to the fourth respondent in the private lands S.No.287/1A1 (not the subject matter of patta cancellation enquiry) is subject matter of writ petition W.P.No.30478 of 2016).

11. The learned counsel for the writ petitioner made a submission that the adjacent land owner cannot claim as a matter of right wards right of access over the private roads in the writ petitioners' layout. Though patta stood cancelled by virtue of the impugned orders, the ownership over the landed property cannot cease to exist. By cancellation of patta, it cannot have implied effect of writ petitioners' private road being converted into public road, when admittedly the writ petitioners have not executed the Deed of Gift to the Corporation.

12. Admittedly, the Government has not followed any procedures or conducted any meeting and passed orders after due notice to the writ petitioners as contemplated under the Chennai City Municipal Corporation Act towards acquisition of the private road to be converted into the public road. If at all, the Government intends and needs to acquire the private road of the Gated Community for the sake of a single person-fourth respondent and convert it to public road, it needs to follow the procedures as contemplated under the Chennai City Municipal Corporation Act.

13. The respondents for having demolished the compound wall in the writ petitioners' private property on two sides as referred in the writ petition, without following any due process as stated above, needs to be directed to compensate the writ petitioners, either jointly or severally in terms of damages caused.

14. The learned Senior Counsel, appearing on behalf of the fourth respondent, disputed the grounds raised by the writ petitioners by stating that the first petitioner is the Power Agent, after forming of the layout he has no interest whatsoever in respect of the property concerned.

15. The learned Special Government Pleader, appearing on behalf of the Official Respondents 1 to 3, also states that the first respondent, as a Power Agent, had sold the plots of the petitioners' layout. Now it is brought to the notice of this Court that the third writ petitioner, who is the Power of Attorney Holder of the original land owner sold the entire properties in favour of the third parties and therefore, he has no interest whatsoever in the property.

16. The learned Special Government Pleader, further states that the third writ petitioner is now attempting to grab the land and therefore, her actions were disproved by the Official Respondents. The third writ petitioner is creating Law and Order problem in that locality by attempting to grab the land, which was already sold in favour of the third parties by forming a layout and demarcating the rights for the usage of all concerned. Under these circumstances, the Tahsildar also conducted a Field Inspection and submitted a Report. Thus, WP No.15782 of 2017 is liable to be rejected.

17. The learned Senior Counsel, appearing on behalf of the fourth respondent, states that the fourth respondent owns a property adjacent to that land in question and his right of pathway is affected on account of the illegal activities of the writ petitioners.

18. Supporting the contentions raised by the learned Special Government Pleader, the learned Senior Counsel also states that the third writ petitioner is a land grabber and attempting to create Law and Order problem in that locality.

19. May that it be. This Court considered the complex factors raised by the respective parties to the lis on hand directed the Tahsildar to submit a Status Report, so as to consider the claims of the writ respective parties. The third respondent-Tahsildar filed a Status Report on 24.9.2018 as follows:-

"STATUS REPORT FILED BY THE THIRD RESPONDENT

I, Tmt.D.Nirmala, W/o.T.Ponraj, aged 50 years working as Tahsildar, Sholinganallur Taluk do hereby solemnly affirm and sincerely state as follows:-

1) I am the third respondent herein and as such I am well acquainted with facts and the land bearing Survey No.287 of Injambakkam Village with an extent of 8.12.5 Hec has been subdivided and patta has been issued to many person and in it is possession of the purchasers.

2) The land bearing Survey No.287

originally belonged to Saleemunnissa, W/o.Haj Syed Ibrahim Sahib.

3) The above land was settled by Salleesmunissa by way of registered document No.830/1985 dated 12.3.1985 to Syed Salludin to an extent of 3 acres and 50 cents.

4) In the same way she had also settled land to an extent of 3 acres 45 cents to Amandeed, S/o.Syed Ibrahim which in turn was sold by two registered power document No.937/2003 dated 30.9.2003 and document No.1414/2003 dated 14.4.2003 (as ascertained from the affidavit filed by Naveen and Two other) and third petitioner Tmt.P.G.Shoba, W/o.T.G.Gopinathan is the power holder.

5) It is submitted that after the purchase of the above land petitioner-3 Tmt.Shoba had made unapproved layout and also the lands she purchased from Tmt.Seetha, W/o.Narayan and Balakrishnan, S/o.Narayan into layout sites.

6) It is submitted I have inspected the land under reference along with Taluk Surveyor, Revenue Inspector and Village Administrative Officer.

7) On perusal of the FMB there is one side 20 feet road other side 33 feet road is earmarked in field on both Eastern and Western side of the S.No.287/1A2A1. Hence, after the cancellation of patta since in TK8A/145/1426 by the Proceedings of RDO, Tambaram, in ROC.1446/2015/A dated 26.2.2016 and same was upheld by DRO in proceedings No.6730/2016/N3 dated 29.5.2017, the compound wall was demolished by the authorities and now there is only small shed half constructed without any occupation.

8) It is submitted that the petitioner had not furnished layout sketch of the unapproved layout to any seller's and they stated in the Sale Deeds on roads.

9) It is submitted the petitioners had put a gate on the Southern side of Survey Number where the 33 feet road was already in old FMB and thus closed the road and it is not accessible to the fourth respondent.

10) It is submitted that the petitioners are Real Estate Agents and have doing business without following the Rule of Law by cheating several public as well

Government Authorities by forming unapproved layout which had been seriously warned and stayed by the First Bench of this Hon'ble High Court. The petitioners further failed to surrender the 33 feet road and 20 feet road portion earmarked for road in the unapproved layout to the Chennai Corporation with an intention to grab the same. The intention of the petitioners is very clear since all the four false, fabricated documents were created among the family members after 10 years from the date of the unapproved layout were formed by themselves.

In these circumstances, it is, therefore, prayed that this Hon'ble Court may be pleased to dismiss the above writ petition as devoid of merits."

20. The Tahsildar found that the FMB there is one side 20 feet road other side 33 feet road is earmarked in field on both Eastern and Western side of the S.No.287/1A2A1. It is further found that the writ petitioners had put a gate on the Southern side of Survey Number where the 33 feet road was already in old FMB and thus closed the road and it is not accessible to the fourth respondent. The Tahsildar mentioned that the writ petitioners are Real Estate Agents and have doing business without following the Rule of Law by cheating several public as well as the Government Authorities by forming unapproved layout which had been seriously warned and stayed by the First Bench of this Court. The writ petitioners further failed to surrender the 33 feet and 20 feet road portion earmarked for road in the unapproved layout to the Chennai Corporation with an intention to grab the same. The intention of the writ petitioners is very clear since all the four false, fabricated documents were created among the family members after 10 years from the date of the unapproved layout were formed by themselves.

21. On a perusal of the Report submitted by the Tahsildar, this Court is of an opinion that certain serious allegations are raised against the conduct of the writ petitioners. In the event of identifying any false registration of documents or correction of documents, the Tahsildar has to initiate action by prosecuting the offenders. If the falsification of documents or fraudulent activities are found in respect of any activity, then the Tahsildar has to initiate appropriate action by registering a police complaint for prosecution.

22. In respect of the Status Report, this Court is of an opinion that if at all the writ petitioner claims that they are the owners and the land is a private land and the same cannot be utilised as road for public purposes, then it is left open to them to approach the Competent Civil Court of Law for establishing their civil rights by producing the original documents and by adducing evidences. However, the unapproved layout formed contrary to the provisions of the Statutes and in violation of the judgments of the Hon'ble Division Bench of this Court warrants further action against the writ petitioners. The Authorities Competent are bound to identify the land in question and pass appropriate orders based on the documents, whether the said road is to be utilised for public purposes or not. In the event of any complaint that the said road is meant for public usage and the layout was formed and after formation of the layout, the said road cannot be considered as a private property. Then it must be kept open to all for common usage.

23. This being the principles to be followed, then the Authorities Competent are also bound to consider these aspects and settle the issues in the interest of the public at large and leaving such issues open will create unnecessary litigations and further create Law and order problem in that locality, more specifically, amongst these litigants.

24. The learned Special Government Pleader made a submission that the order dated 26.2.2015, passed by the Revenue Divisional Officer also states that the particular portion of the land is earmarked as a road for the purpose of usage of the public at large.

25. This apart, the Gate constructed by the writ petitioners was removed and as of now the road is kept open for the public usage. The above order passed by the Revenue Divisional Officer is confirmed by the District Revenue Officer, Kancheepuram in proceedings dated 29.5.2017. The District Revenue Officer also passed an order, rejecting the appeal filed by the writ petitioners with an observation that the land in question is earmarked as a road and kept open for the usage of public at large.

26. This being the concurrent findings of both the Revenue Divisional Officer and the District Revenue Officer, this Court is of an opinion that no further consideration is required in respect of the grounds raised in the writ petition viz., WP No.15782 of 2017 on merits. This apart, pursuant to the directions of this Court, the Tahsildar, Sholinganallur conducted a Field Inspection and submitted a report, cited as supra.

27. On perusal of the Status Report, it is clear that the obstructions created by the writ petitioners were removed and now the said portion of the land is utilised as a public road and is in the usage of public.

28. This being the factum of the case, this Court is of an opinion that the orders passed by the Revenue Divisional Officer as well as the District Revenue Officer, deserve no revision at all. If at all the writ petitioners are of an opinion that they are the owners of the lands in question, it is for them to approach the Competent Civil Court of Law for adjudication and for establishing their civil rights. However, the roads, now in the usage of the public at large, cannot be disturbed and in this respect, the status quo as of now to be maintained by all concerned and the Official Respondents should ensure no further disturbances or disputes in respect of the usage of the property in question as a public road by all concerned.

29. With the above observations, WP No.15782 of 2017 stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

30. In view of the orders passed in WP No.15782 of 2017, no further orders are required in respect of the grounds raised in WP No.30748 of 2016 and accordingly, WP No.30748 of 2016 stands closed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IX)

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सत्यमेव जयते
Sub Assistant Registrar

Svn

To

1.The Executive Magistrate,
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Revenue Divisional Office,
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+1cc to Mr.M.Arunachalam, Advocate, S.R.No.70415

+1cc to Mr.S.K.Raameshuwar, Advocate, S.R.No.70059

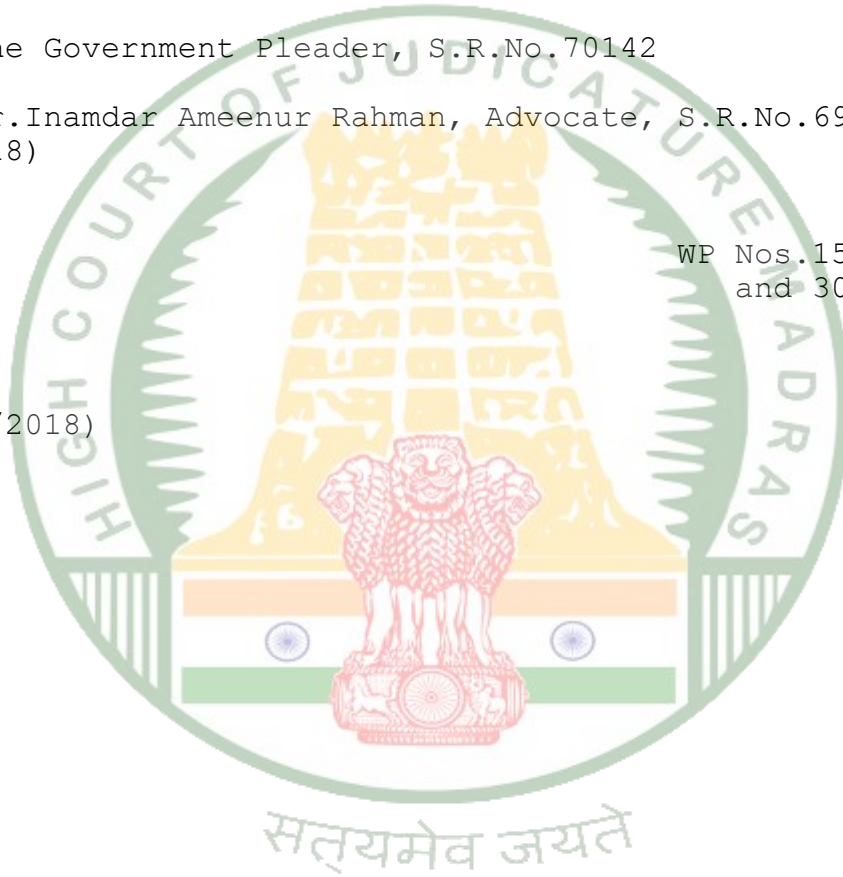
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+1cc to the Government Pleader, S.R.No.70142

+3cc to Mr.Inamdar Ameenur Rahman, Advocate, S.R.No.69742
(08/11/2018)

WP Nos.15782 of 2017
and 30748 of 2016

JP (CO)
GSP (26/10/2018)



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