

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.27392 of 2003

WP.MP.No.33443/03

1. N.Kodeeswaran (Deceased)
2. K. Gopinath
(Second petitioner substituted
as Lr. vide order dt:08.06.2018
in WMP.No.18421 of 2017
by PDAJ) ..Petitioners

vs

- 1.The District Collector,
Villupuram.
2. The Executive Engineer,
P.W.D. (Buildings),
Office of the District Collector,
Villupuram.
3. The Inspector of Police
Villupuram Taluk Police Station,
Villupuram. ..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a writ of Mandamus directing the respondents 1 and 2 or their men, agents, servants or anybody claiming through them from putting up any construction in any manner obstructing the right of way of the petitioner to reach his land in S.No.215 of Poonthottam Village, Villupuram Taluk.

For Petitioner : Mr. A.Sivaji

For Respondents: Mr. K. Ravikumar
Additional Government Pleader

O R D E R

This petition has been filed seeking for a Writ of Mandamus directing the respondents 1 and 2 or their men, agents, servants or anybody claiming through them from putting up any

construction in any manner obstructing the right of way of the petitioner to reach his land in S.No.215 of Poonthottam Village, Villupuram Taluk.

2. The short facts which are required to be noticed for the disposal of this petition are as follows:

(i) It is the case of the petitioner that, the land to an extent of 1.84 acres in S.No.215 of Poonthottam Village in Villupuram District is the ancestral property of the petitioner. It was situated in the jurisdiction of Kollianur Panchayat Union and Valuthareddy Panchayat. In the said land, the petitioner had developed a layout. With the result, 1.66 acres were sold as house sites and the said layouts have been sanctioned or approved by the local authority/(Panchayat).

(ii) The sanction was given by the Panchayat by proceedings dated 01.10.2000 calling the layout as "Royal Garden".

(iii) In the eastern side of the layout, there is a road called Mambazhapattu Ellis Chatram road. As per the layout plan, as approved by the local Panchayat, the plots which are facing the southern side, necessarily to have the access, only from the said road as they had no other option to have the access. While that being so, on 22.09.2003, the petitioner found that on the southern side of the said layout, some construction work was started for the purpose of putting column to have a compound wall along with the southern side of the layout. Without enquiry, the Government wanted to put up a compound wall in between the southern side road and petitioner's layout, by thus, completely blocking the access of the plot owners, whose plots are located on the southern side and since the layout is facing the southern side, to have the access, they have to reach only to the said road on the southern side. Though the petitioner had given a complaint to stop the work, it was not stopped by the respondents, therefore, the petitioner has approached this court by filing this writ petition.

3. At the time of admitting the writ petition, an interim order was granted, therefore, no further construction activities was undertaken by the respondents.

4. Mr. A.Sivaji learned counsel appearing for the petitioner would submit that, as per the approval given by the Executive Authority of the Village Panchayat i.e., proceedings of the Valuthareddy Panchayat dated 01.10.2000, the entire layout called "'Royal Garden'", belongs to the petitioner, had been approved as per the approval plan. There are at least seven plots directly facing and abutting the road on the southern side and those plot owners can have only access through the said road

on the southern side alone. Once, the sanctioning authority had sanctioned the layout plan and according to the layout, the plot owners on the southern side of the layout have to necessarily have an access only on the southern side road, the said road accessibility, by way of easementary right has been recognised by the local Panchayat, who is the plan approving authority and therefore, the same shall be provided at any cost and it cannot be curtailed by a forcible action of putting up the compound wall along with the southern side of the lay out by which, blocking the accessibility of plot owners, who are having plots facing the southern side.

5. The learned counsel appearing for the petitioner also submits that, neither the petitioner nor the subsequent purchasers would claim any title over the Government land, abetting the road or Government land in between individual plots and the road. However, the petitioner as well as plot owners have every right to claim the accessibility by way of easementary right to have access towards the road, since the same has been already recognised by the approving authority by approving the layout plan, hence, the same cannot be denied by any authority much less the respondent herein.

6. Therefore, the learned counsel appearing for the petitioner would submit that, the respondent shall not put up any permanent construction or compound wall blocking or hampering the accessibility of the plot owners towards the southern side road and therefore, the prayer sought for herein may be accepted.

7. Per contra, Mr.K.Ravikumar the learned Additional Government Pleader appearing for the respondents would submit that, in so far as the approved layout belongs to the petitioner is concerned, it is located in S.No.215. In between S.No.215 and the Panchayat road on the southern side of the said layout, there has been a huge land. The said land on the western side is having width of 4.80 meters on the middle, which is having a width of 18 meters and on the eastern end it is having a width of 30 meters. Under the guise of easementary right and accessibility towards to the road, the petitioner or subsequent purchaser/plot owners on the southern side of the layout would claim or would occupy or encroach upon the entire Government land, which is a valuable piece of land abetting on the road, as the same may be utilized for public purpose in future.

8. The learned Additional Government Pleader also submits that, if this valuable land belongs to the Government is occupied by the plot owners or the petitioner under the guise of the easementary right, the Government will loose its valuable land and its right. Therefore, only in order to protect the said

land, the Government wanted to put up fence by way of compound wall and since the interim order was passed by this court, the said move to construct the compound wall has been stopped. Therefore, the learned Additional Government Pleader would submit that the said land, which comes roughly about 21000 sq.ft. cannot be occupied by anyone on permanent basis or temporary basis and the said land since belongs to the Government no one can claim any right whatsoever.

9. I have considered the said submissions made by the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents.

10. It is an admitted fact that S.No.215 in the Valuthareddy village is belongs to the petitioner and in the land in that survey number, the petitioner as early as in the year 2000 itself, developed a layout. After developing layout, the layout plan was submitted to the local Panchayat, who was the plan sanctioning authority to give plan sanction, for lay out proposal in Village level. At that time, the local Panchayat had given approval for sanctioning the layout plan by their proceedings dated 01.10.2000. Based on the said approval given, the petitioner had developed the layout further and he might have sold some plots to the subsequent purchasers/ owners of the plot.

11. When we have a look at the copy of the lay out plan produced by the petitioner in the typed set of papers, it reveals that, atleast 8 plots, plotted out in the said layout, are facing the southern side of the road, which, according to the said layout plan, as approved, are abetting the road on the southern side.

12. The 21000sq.ft land belongs to the Government as claimed by the Government have not been shown in the layout plan as approved by the Panchayat authority. However, the facts remains that the said 21000sq.ft land belongs to Government, located in between the road and plots of the layout belongs to the petitioner.

13. It is also to be noted that, assuming that the Government Poramboke land is there in between the plots and road, once the plan has been sanctioned by the competent authority, the plot owners, who are having the plot on the southern side of the layout abetting the road necessarily to have access to the road and for the said purpose, whether they are entitled to have the easementary right through the said 21000 sq.ft. Government land is the question which should be decided only by the competent civil Court and not by this court.

14. However, the fact remains that, from 2003 onwards, no construction work had been undertaken for all these years and in the near future whether they are going to make any construction by putting up any compound wall or making any construction for public purpose, as of now, have not been revealed by the respondents.

15. In the circumstances, since the layout plan has already been approved by the local Panchayat, certainly the plot owners having plot on the southern side of the layout of the petitioner, have to be provided accessibility by way of easementary right. However, such right has to be established by the plot owners in the eye of law before the competent civil court only. Unless that issue is decided by the competent court, neither the petitioner nor the plot owners, who are subsequent purchasers nor the government can alter the present position.

16. In view of the above, this court is of the considered view that, the area in question that is, the land between the road and the plots on the southern side of the layout of the petitioner, as approved by the Village Panchayat, shall not be altered by making any construction or any developmental activities by the respondents.

17. The said position shall continue till the issue of easementary right of the petitioner or successor in title in so far as the plots earmarked on the southern side of the approved layout plan, is decided by the competent Civil Court.

18. It is made clear that, by giving this direction, this Court does not drive the petitioner to approach the Civil Court immediately. It means that, if necessity arises to protect the easementary right of the petitioner or subsequent purchasers, they can do so by approaching the competent Civil Court and once such eventuality arises, pursuant to which, if they approach the competent Civil Court, till a decision is given or arrived at before the competent Civil Court, the said 21000sq.ft land in between the road and the plots of the petitioner shall not be altered and the status quo shall be maintained till such time.

19. With these directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Villupuram.

2. The Executive Engineer,
P.W.D. (Buildings),
Office of the District Collector,
Villupuram.

3. The Inspector of Police
Villupuram Taluk Police Station,
Villupuram.

+ 1 cc to Mr.A, Sivaji, Advocate Sr.56232

W.P.No.27392 of 2003

KK(CO)
EU(14/12/2018)

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