

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.6380 of 2009

R.Ravichandran

...Petitioner

VS

1. The Commissioner
Corporation of Chennai
Chennai 600 003.

2. The Health Officer
Corporation of Chennai
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorarified Mandamus, calling for the records from the first respondent relating to the impugned letter Z.O.IV.C.No. / /2008 dated 25.11.2008, quash the same and further direct the respondents to remove all encroachments and illegal construction put up by the respondents at Survey Nos.196/1 and 196/3 of Konnur Village, Makara Thottam, Chennai, and grant vacant possession of the afore said lands to the Petitioner.

For Petitioner : Mr.B.Rabu Manohar

For Respondents: Mr.S.R.Rajagopal
Assisted by
R.Arunmozhi
Standing Counsel for
Chennai Corporation.

O R D E R

The prayer sought for herein in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records from the first respondent relating to the impugned letter Z.O.IV.C.No./ /2008 dated 25.11.2008, quash the same and further direct the respondents to remove all encroachments and

illegal construction put up by the respondents at Survey Nos. 196/1 and 196/3 of Konnur Village, Makara Thottam, Chennai and grant vacant possession of the afore said lands to the Petitioner.

2. The learned counsel appearing for the petitioner would submit that the property in Survey Nos. 196/1, 196/3 measuring about 1 acre and 28 cents was purchased by the petitioner's father Shri.K.Ramasamy and his uncle (father's brother) Rathna Pandya from 1) Arunachala Mudaliar and 2) C.Manicka Mudaliar by way of registered sale deed dated 20.06.1952. Subsequently by way of a registered partition deed dated 25.05.1960 in document No.2131 of 1960, this property was partitioned in favour of the petitioner's mother Smt.Pushparathina Ammal, after the death of the petitioner's father. It was also mentioned that after the petitioner and the petitioner's brother became majors, the entire property was to be handed over to the petitioner and the petitioner's brother R.Jayarama Pandian. Subsequently, partition deed was executed on 10.02.1983, between the petitioner's mother Smt.R.Pushparathina Ammal, the petitioner's elder brother R.Jayarama Pandian and the petitioner and a part of Survey No.196/1 measuring 41.5 cents and Survey No. 196/3 measuring 23 cents totaling to around 64.5 cents were transferred to the petitioner and he was in absolute enjoyment and possession of the said property. Adjacent to the petitioner's property, Survey No. 192 measuring 37 cents of land is owned by the Corporation which is used for cremation and burial purposes.

3. Originally the extent of O.S.No. 196/3 in the revenue record is shown as 38.70 cents. It is the case of the petitioner that under Deed of Partition entered into between Pushpa Rathinammal, Jayaramapandian and himself as Item No.4 in Schedule 'B', the property in Survey No. 196/1 measuring 41 1/2 cents and in Survey No. 196/3 measuring 23 cents was allotted to him. The boundaries of the property so allotted to him as per the Deed of Partition are, it is south of Pattai, it is the north of the burial ground, west of private lands and east of 'A' schedule property. The burial ground property has been measured, boundary fixed and the property North of burial ground measuring 26 1/2 cents have been fenced and given to the petitioner. The petitioner has for the purpose of access given 0.5 cents measuring 215 s.ft for access to the burial grounds.

4. The petitioner has provided access to the burial ground through his property and he has also enabled the Corporation and other public to access the burial ground. Hence, the respondent Corporation has filed a memo as follows:

"The first Respondent submits that in furtherance of the request to the Petitioner in the above

proceedings and the understanding arrived, the property in Survey No.196/1 Part measuring about 27.0 cents has been fenced and the possession has been taken by the writ petitioner. The petitioner herein has provided access to the burial ground through his property and in this regard had demarcated 0.5 cents measuring above 215 sq.ft.

21'.4" ft. East to West and 18'.4" ft North to South. This respondent undertakes to clear the site which is in possession of the petitioner and subject matter of this writ petitioner, within a period of 8 weeks. Necessary police protection may be given to the Official of the 1st Respondent / Corporation in this regard.

This Report has been filed pursuant to the leave granted by this Court on the hearing on 24.06.2019 and in addition to memo filed on 1st July 2019."

5. The petitioner himself agrees to provide access to the burial ground through his property to an extent of 0.5 cents measuring above 215 sq.ft. 21'.4" ft. East to West and 18.4" ft North to South. Hence, this court is inclined to direct the petitioner to execute gift deed in favour of the respondent Corporation. The petitioner is granted liberty to approach the Law Enforcing Agency to secure his property and the respondents are also granted permission to enter the land and secure the said 215 sq.ft.

6. With the above terms, the present writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kmm

To

1. The Commissioner
Corporation of Chennai
Chennai 600 003.

2. The Health Officer
Corporation of Chennai
Chennai.

+lcc to Mr.R.Arunmozhi, Advocate Sr.55724

+lcc to Mr.B.Rabu Manohar, Advocate Sr.55661 [31/10/2019]

W.P.No.6380 of 2009

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srg 19/09/2019