

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.21640 of 2010
and
M.P.No.1 of 2010

Dr.Anjalakshi Chandrasekar

...Petitioner

vs

1.The Commissioner,
Chennai Corporation,
Chennai - 3.

2.The Asst.Commissioner,
Zonal Office IV, Chennai Corporation,
No.5, Anderson Street,
Ayanavaram, Chennai - 23.

...Respondents

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, praying for issuance of a writ of Mandamus forbearing the respondents from acquiring the petitioner land situated in T.S.No.16 block No:12 in Chinna Chembarampakkam Village, Purasaiwalkam -Perambur taluk unauthorizedly and also direct the 2nd respondent to return the material taken by him such as barbed wire, iron post and sand to the petitioner.

For Petitioner : Mr.S.Packiaraj

For Respondents : Mr.A.Najarajan,
Standing Counsel
for Corporation

ORDER

This writ petition has been filed praying for writ of Mandamus forbearing the respondents from acquiring the petitioner land situated in T.S.No.16 block No:12 in Chinna Chembarampakkam Village, Purasaiwalkam -Perambur taluk unauthorizedly and also direct the 2nd respondent to return the material taken by him such as barbed wire, iron post and sand to the petitioner.

2.The case of the petitioner is that he had purchased a land and building measuring 5878 sq.feet by way of two sale deeds on 14.12.2001 in T.S.No:16, block No:12 in Chinna Chembarampakkam Village, Purasaiwalkam - Perambur taluk. The said property comes within the Chennai corporation limit of Zone IV, division 57 and the measurement of land is as follows:

"North to South on the eastern side 55 1/2 feet
western side 57 feet,
East to west on the northern side 105 feet and
southern side 104 feet"

bounded on the
north by Railway masonry Drain and Kota Srinivasayya
land,
south by land of Thomas and shanmuga Mudaliar,
east by Anderson Road and
west by land Fernandez"

3. It is the further case of the petitioner that she is a post graduate in medicine with doctorate degree and her husband is a civil engineer and both have retired from Government service. Thereafter, she wanted to open a clinic in the property in question and therefore, she approached the second respondent seeking for planning permission. At that time, the second respondent has informed her that the Corporation may widen the road and therefore, asked her to wait for some time to know the move of the Corporation. In the year 2009, July, the local political party men approached the petitioner, seeking permission to put up petty shop in the vacant land in which she had been maintaining a garden. Thereafter, with the aid of the second respondent, the local politician had put up some petty shops inside the fencing. Therefore, the petitioner preferred a complaint before the police. At the instance of police, all the petty shops were removed and one petty shop was put up on the road margin outside the fencing. Thereafter, In the absence of the petitioner, the second respondent brought his men and removed the fencing and took away sand worth about Rs.40,000/- by stating that the higher authorities advised them to do the same. The petitioner approached the first respondent and submitted a representation dated 17.09.2010, along with the copy of the petitioner's property document and requested him to issue suitable direction to the second respondent to not to give any hindrance to her and also requested to return the material taken away by them. The first respondent has also assured to look after the same.

4.However, now, the second respondent is trying to put up petty shops in the petitioner's land contrary to the Government order. The petitioner also submits that there are petty shops in her land contrary to the Government order. The second respondent

has not prevented any other person from putting up petty shops in the property in question.

5.The petitioner has submitted that the respondents by putting petty shops in her land, are affecting her fundamental rights and her right over the property. Therefore, she seeks for an injunction restraining the respondents or their men or agent from putting up any construction temporarily or permanently or put up any petty shop in her land between her house and Anderson Road, situated in T.S.No.16, Block no:12 in Chinna Chembampakkam Village, Perambur-Purasaiwalkam Taluk.

6.The respondent Corporation has filed a counter stating that the petitioner had put up fencing by encroaching the road in front of her house, situated in Anderson Road, Ayanavaram, Chennai and had also placed few plants within the fencing. Further it is also submitted that in the year 2010, the Chennai Corporation has laid a footpath in the Anderson Road, for the use of general public and at that time, the encroachments made in the road margins were removed and accordingly, the encroachment made by the petitioner by way of fencing was also removed and the footpath work was completed. It is also submitted that the petitioner is trying to encroach the road margin by way of constructing a clinic by stating false and frivolous allegations against the respondents and the same was not allowed by the respondent.

7.It could be found that the petitioner's encroachment and other encroachments have been removed and foot path has been laid down. Therefore, the petitioner has no right to put up any other construction on the foot path. According to the directions of this Court, the Surveyor has conducted a survey in the said area and accordingly, the four corners of the petitioner's land was measured in the presence of the petitioner. As per the report, now there is no encroachment available.

8.Hence, in view of the above fact, action on the petitioner's prayer for issuance of a writ of Mandamus forbearing the respondents from acquiring the petitioner land do not arise and the action of the Corporation in laying the foot path at road margin has been found proper. At present there is no encroachment made by the petitioner. As per the respondent, the writ petitioner has no right to canvass such a prayer for returning the materials taken by them unauthorizedly, when no prima facie case has been made out by her. The proceedings of removal of encroachment taken up by the respondent authorities is as per law. When the action of the respondent corporation is found to be valid, the prayer of the petitioner has already become infructuous.

9. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsg
To

1. The Commissioner,
Chennai Corporation,
Chennai - 3.
2. The Asst. Commissioner,
Zonal Office IV, Chennai Corporation,
No.5, Anderson Street,
Ayanavaram, Chennai - 23.

+1cc to Mr.S.Packiaraj, Advocate Sr.25445

W.P.No.21640 of 2010
and
M.P.No.1 of 2010

rsv[col]
srg 20/06/2019

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