

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2019

PRONOUNCED ON : 24.09.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.22407 of 2019 and
W.M.P.No.21752 of 2019

R.Vadivelu

...

Petitioner

Vs

1.The Commissioner,
Corporation of Vellore,
Vellore District.

2.The Local Planning Authority,
Katpadi Taluk,
Vellore District,
Represented by its Director.

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Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus forbearing the respondents herein, their men, subordinates or anybody acting through them from in any manner putting up the compound wall or any other structures in front of the property of the petitioner herein comprised in S.No.355/2C, Kalinjur Village, Vellore District so as to prevent the petitioner herein from reaching the main road from his property and without considering the representation, dated 29.06.2019 submitted by the petitioner to the respondents herein.

For Petitioner

:Mr.Karthick, Senior Counsel
for Mr.Damodaran.N

For 1st Respondent

:Mr.S.T.S.Murthy,
Additional Advocate General,
Assisted by Ms.P.Shanthi,
Additional Government Pleader

For 2nd Respondent

:Mr.N.Inbanathan,
Additional Government Pleader

ORDER

The petitioner is the owner of the property bearing survey No.355/C, Kalinjur Village, Katpadi Taluk, Vellore District. He inherited the property from his ancestors. By virtue of the oral partition entered on 11/06/1990, P.Ramalingam (petitioner's father) and P.Vilvanathan (brother of petitioner's father) shared equally, 40 cents of land in the said survey number. 20 cents on the eastern side was allotted to the petitioner's father and 20 cents of land on the western portion was allotted to the brother of his father. After the demise of P.Ramalingam on 07/12/2010, the 20 cents of land on the eastern side vest with the petitioner.

2.In the year 1987, the adjustant land owners joined and promoted a layout and secured approval from the local authority. In the layout space for location of park is earmarked in S.No.333. The allegation of the petitioner is that, the developer has not handed over the place earmarked for park. The Promoter has not executed gift deed in favour of the local authority. The land earmarked for park not been put into use till recently.

3.While so, the respondents have started constructing compound wall along the perimeter of the area earmarked for park. The compound walls on the northern side and southern side of the petitioner's land does not cause any inconvenience to him. Whereas, the compound wall proposed to be put on the eastern side will render his property land lock. The ingress and egress to reach his property from the main road will be totally deprived.

4.According to the petitioner, his land is caught between the space earmarked for park in the approved layout promoted by his neighbouring land owners. If his land is compounded on the three sides, the only open access is the land on the western side which was allotted to P.Vilvanathan in the partition. Hence, as easement of necessity, the petitioner seeks right of access to his property to the public road on the eastern side through a passage over the space earmarked as park.

5.In the counter affidavit, the first respondent has contented that, the lay-out approved on 05/08/1987 with 98 plots have been sold to various third parties. The land of the petitioner is in between the layout area. As per the approval,

the reserved land for park and all formed roads were handed over to the erstwhile Kalinjur Town Panchayat through registered gift deed. Due to subsequent merger of Kalinjur town panchayat with Vellore Corporation, the land is now vest with the Vellore City Municipal Corporation. The land of the petitioner is surrounded on three sides with the area allotted for park. The land in S.No. 355 was one unit at the time of layout approval and that piece of land have access to the road formed in the adjacent lay out. The petitioner and other sharers in the land bearing S.No. 355 divided among themselves after the year 1990. While dividing the property, they should have left space for street/passage within their land to have access to the main road. Without providing passage in their land, the petitioner wants to have passage through the space settled for 'formation of park'.

6.It is also stated in the counter affidavit that, the respondents in view of the smart city project had proposed to develop the area earmarked as park. The work is in progress at the cost of Rs 434.50 lakhs. There is no ill motive or extraneous consideration in carrying out the project as alleged by the petitioner. The petitioner having failed to properly manage the partition with his co-owner, after 32 years of the approval, trying to give access to his land through public park. The respondents are taking necessary action to remove the unauthorised construction on the southern portion of the park area. The said encroachment does not mean that the petitioner should have passage through the park.

7.The learned Senior Counsel appearing for the petitioner as well the learned Additional Advocate General appearing for the first respondent have produced the layout of the land and the park area which encompass the petitioner land on three sides and the fourth side locked by the land of his erstwhile joint owner. The claim of the petitioner is that, for a quit long time, he and his predecessors in title, were using the said open space as passage to reach the road. Hence, it cannot be closed by construction a compound wall and create walking track for the public. The sketch reveals that the park area is on the northern and southern side of the petitioner land. These two portion is linked through the corridor which is the eastern side boundary of the petitioner. Since, the respondents have decided to construct a compound wall along the perimeter, the petitioner losses his access to the main road from eastern direction. When the approval for the layout plan granted in the year 1987, the Survey No.355 was one composite piece of land and it had access to the road (Karudathiri Nagar 1st street) from its western side. While dividing the land with his co owners during the year 1990, the parties had thought fit to divide it into two halves

cutting north- south instead of East - West. Therefore, the petitioner who has taken the eastern side without reserving right of passage in the co-sharer land, now realising his land is locked without access, attempts to get passage through the space gifted to the public authority for establishing public park.

8.The learned Additional Advocate General appearing for the first respondent would submit that the petitioner who on his own failed to retain any right of passage while dividing the property. It is his own fault and he cannot take advantage of his fault and seek right of passage through public park on the pretext of easement of necessity. Further, in the counter affidavit, in paragraph No.12, the first respondent has also suggested a solution to the grievance of the petitioner as below:-

"12.The Corporation will not part their legitimate park land for providing access to the petitioner's piece of land. There is only one way to the petitioner to seek access through the land on western side of the petitioner's land. In case the partner of the petitioner land has given consent to form such an extent of land for providing street, the Corporation is ready to take appropriate action to publish it as public street under Corporation Act without violating any rules, and took action to take over and future its maintenance, which will directly touching the access to neighbouring layout area (Karudathri Nagar 1st Cross Street) in the location of street is situated at the western side of the layout and petitioner's land.

9.In the light of the facts and circumstances of the case narrated above, the lay out approved causing inconvenience to the neighbouring land owners preventing free ingress and egress ought to have objected at the earliest point of time. By acquiesce the petitioner has lost his right to challenge the wisdom of granting the lay out approval. Now, it is for the petitioner to work out his remedy with his neighbouring land owner on the western side to get access for his land. He cannot through writ petition, seek for right of easement of passage against the respondents even on the ground of necessity.

10.In the result, the writ petition is disposed of with liberty to the petitioner to work out his remedy as mentioned in paragraph No.12 of the counter affidavit of the first respondent which is extracted above. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

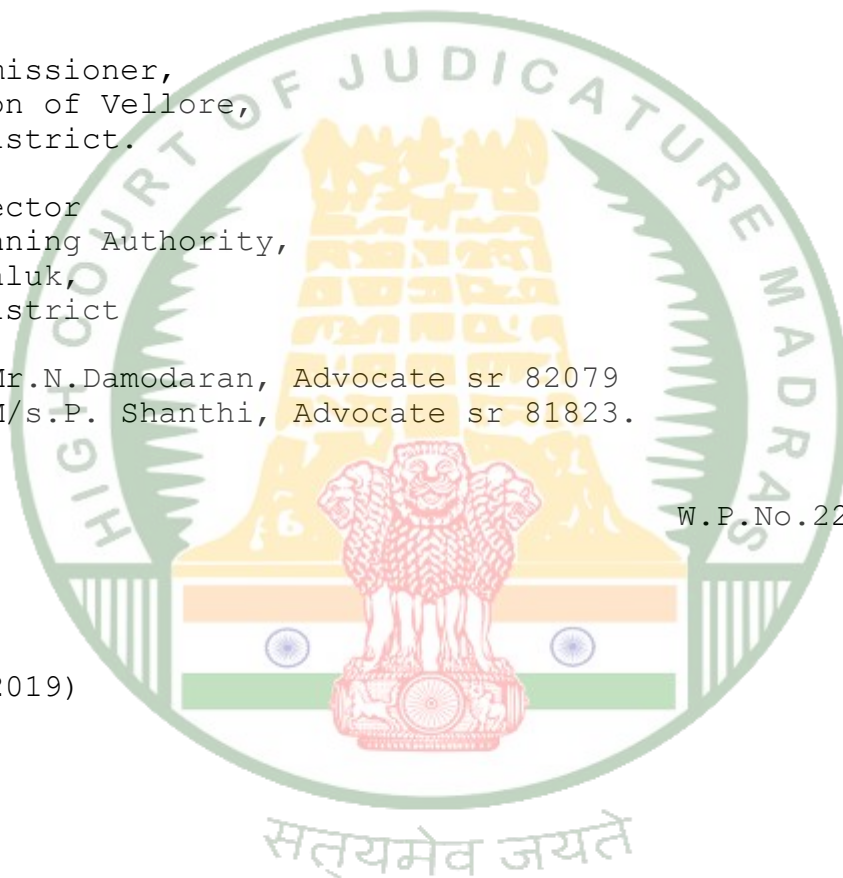
1.The Commissioner,
Corporation of Vellore,
Vellore District.

2.The Director
Local Planning Authority,
Katpadi Taluk,
Vellore District

+1 CC to Mr.N.Damodaran, Advocate sr 82079
+1 CC to M/s.P. Shanthi, Advocate sr 81823.

W.P.No.22407 of 2019

NRL (CO)
SP (24/10/2019)



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