

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE V. PARTHIBAN

W.P. No. 11605 of 2017

&

W.M.P. No. 12617 of 2017

1. K.M. Srirangan

2. R. Annamalai

..Petitioners

.Vs.

1. The Government of Tamil Nadu,
rep. by Secretary to Government,
Housing and Urban Development
Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Commissioner of Town and Country
Planning,
No. 807, Anna Salai,
Chennai - 600 002.
3. The Commissioner,
Corporation of Chennai,
Rippon Building,
EVR Salai,
Chennai - 600 003.
4. The Member Secretary,
Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
5. The Commissioner of Police (Traffic),
Poonamallee High Road,
Kilpauk, Chennai - 600 010.
6. Nadigar Sangam Charitable Trust,
represented by its Secretary,
No. 1/8, Dr. Narasimhan Street,
T. Nagar, Chennai - 600 017.

7. South India Artistes Association,
rep. by its Secretary,
No. 1/8, Dr. Narasimhan Street,
T. Nagar, Chennai - 600 017.

8. Postmaster General,
Chennai City Region,
Chennai - 600 002.

(R8 suo motu impleaded as per order
dated 16.06.2017 in
W.P. No. 11605 of 2017)

.Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus forbearing the respondents 1 to 5 from permitting respondents 6 and 7 to encroach the 33 feet wide public road leading from Habibullah Road to Vidyodhaya first cross road which is classified as a road in the revenue records or put up any illegal construction therein, by considering the petitioner's representation dated 01.04.2017.

For Petitioners :: Mr.P. Valliappan

Mr.K.M.Srirangan, Party-in-Person

For Respondents:: Mr.K. Venkataramani,
Additional Advocate General
assisted by
Mr.R. Vijayakumar
Additional Government Pleader
for R1, R2, and R5.
Mr. Nagarajan for R3
Mr.C. Johnson for R4
Mr.A.L. Somayaji,
Senior Counsel for
Mr.Krishna Ravindran for R6 and R7

O R D E R

N. KIRUBAKARAN, J.

This writ petition has been filed seeking a Writ of Mandamus forbearing the official respondents from permitting respondents 6 and 7 to encroach upon 33 feet wide public road leading from Habibullah Road to Vidhyodaya First Cross Road, which is classified as a road in the revenue records or put up any illegal construction therein, by considering the petitioner's representation dated 01.04.2017.

2. The case of the petitioners is that they are residents of Vidhyodaya Colony, which was developed in 1940s. The original layout would clearly spell out the arterial roads and the main entrance to the colony is through Prakasam Street and Habibullah Road. The 7th respondent purchased 14 grounds of land. However, it claims right over nearly 18 grounds usurping the road namely 33 feet road connecting Habibullah Road and Prakasam Street. Respondents 6 and 7 has also got patta in the year 2010 for 18 grounds suppressing the fact that they purchased only 14 grounds by including 33 feet road abutting eastern side, which is a public road by unlawful means. The public and the residents of the area are being stopped from using the said public road.

3. Further, the said area is primarily a residential zone. However, the 6th and 7th respondents are trying to put up a multi-storied mall, multiplex theatres, which would suffocate the entire area and choke the traffic sytem causing pollution. Without even having any approved plan, respondents 6 and 7 are trying to put up illegal construction. Earlier, there was an attempt to put up construction and therefore, the petitioners filed C.S. No. 649 of 2013 against private respondents before this Court for the following reliefs:

(i) Declaration that the lease executed by D1 and D2 in favour of D3 in respect of A schedule property is invalid;

(ii) Permanent injunction restraining the third defendant, their men, agent, servants, etc. from putting up construction of multi storeyed buildings, malls, etc. in the suit Schedule 'A' property;

(iii) For mandatory injunction directing the 4th defendant to restore the 'B' Schedule property to its original status (i.e) 33 feet wide public road leading from Habibullah Road to Vidhyodaya First Cross Street and

(iv) Permanent injunction restraining defendants 4 and 5 from granting approval to any construction in violation of statutory provisions as per schedule A property situate at Door No. 16/153, Habibullah Road, T. Nagar, Chennai - 600 017 in Survey Nos. 4820. 4879/1, 4879/2, Block No.110, Mambalam - Guindy Taluk, Chennai District.

The said suit is pending before this Court.

4. When the said suit is pending, respondents 1 to 5 granted permission to respondents 6 and 7 to put up multi-storied building with swimming pool including 1400 seating capacity marriage hall and club house. Therefore, the petitioners sent a representation to the respondents 1 to 5 on 01.04.2017. Since no action has been taken and respondents 6 and

7 are trying to pursue with the construction, the petitioners have come before this Court.

5. Heard Mr.P. Valliappan, learned counsel for the petitioners; Mr.A.L. Somayaji, learned Senior Counsel for respondents 6 and 7; Mr.K. Venkataramani, learned Additional Advocate General assisted by Mr.R. Vijayakumar, learned Additional Government Pleader for respondents 1, 2 and 5; Mr.Nagarajan, learned counsel for the 3rd respondent and Mr.C. Johnson, learned counsel for the 4th respondent.

6. Mr.P. Valliappan, learned counsel for the petitioners would submit that on the eastern side of Nadigar Sangam, there is a lane which connects Habibullah Road with Prakasam Lane, formerly known as Abdul Aziz Mutali Lane measuring about 33 feet. However, the 6th and 7th respondents encroached upon the said lane and annexed the lane along with their properties blocking the entire lane, which has been in existence for the use of the residents in that area. Therefore, the said lane has to be restored and there cannot be any construction in the said lane by respondents 6 and 7 and consequently, they should be restrained from putting up any construction.

7. Mr.K.M.Srirangan, the first petitioner herein in continuation of the argument advanced by Mr.P.Valliappan, learned counsel for the petitioners would submit that there was a lane measuring about 33 feet called as Abdul Aziz Mutali Lane and the said lane has been encroached upon by the 6th and 7th respondents. The actual extent of the property purchased by the 7th respondent is only 14 grounds, whereas the 7th respondent claim that the extent of the property purchased by them is 18 grounds, including the 33 feet lane abutting the eastern side of the 7th respondent's property. He would further submit that the authorities had also changed the documents and plans to suit the convenience of the 6th and 7th respondents. As regards the development of the property by the 6th respondent, he would submit that the area is a residential area and if any mall or theatre is constructed, there would be heavy traffic congestion affecting the peace of the locality and therefore, he seeks for allowing the writ petition.

8. However, Mr.A.L. Somayaji, learned Senior Counsel appearing for respondents 6 and 7 deny the existence of the lane as claimed by the petitioners. According to the learned Senior Counsel, the 6th and 7th respondents purchased the vacant land bearing Old No. 153, New No. 16, Habibullah Road, T.Nagar, Chennai - 17 forming part of T.S. No. 4820/2 on the southern side facing Habibullah Road, bounded on the south by Habibullah Road, on the west by T.S. Nos. 4819 and 4815/2, on the north by the remaining portion of the land forming part of T.S. No.

4820/2, measuring to an extent of 25 grounds and on the eastern side of T.S. No. 4821, measuring 32 feet north to south and 141 feet east to west to an extent of 18 grounds and 2061 sq.ft by virtue of a sale deed. The actual extent of the property is 45,261 sq.ft and the said extent alone is possessed by 6th and 7th respondents and there is no encroachment or inclusion of the alleged lane, as claimed by the petitioners. The sale deed is dated 11.05.1956.

9. Similarly, the official respondents would also contend that there is no evidence/proof that a lane was in existence.

10. Since rival claims were made with regard to the existence of lane and otherwise, this Court appointed Mr.K. Elangoo as Advocate Commissioner to visit the property of 6th and 7th respondents and measure the extent and note down the physical features of the property possessed by 6th and 7th respondents with the assistance of Assistant Director of Survey and Land Records, Guindy Taluk and the Tahsildar, Guindy Taluk along with Head Surveyor, Guindy Taluk. The learned Advocate Commissioner had also filed his report and the same was taken on file.

11. Since the petitioners alleged in paragraph No. 5 of the affidavit that there was a post office called as North Post Office of T.Nagar Main Post Office which was under the free access of the residents of the Vidyodhaya Colony and the people of the neighbourhood in the lane which the petitioners claim to be in existence, this Court suo motu impleaded the Post Master General, Chennai City Region, Chennai 600 002 to answer the query as to whether there was a postoffice functioning in the lane as claimed by the petitioners.

12. Mr.Su. Srinivasan, learned Assistant Solicitor General of India produced a communication dated 22.06.2017 addressed by the Senior Superintendent of Post Offices stating that Habibullah Road Post Office was functioning at No. 153, Habibullah Road, T.Nagar, Chennai - 600 017 belonging to Nadigar Sangam and no details have been given as to how the public had access to the said Post Office either from the main road or through the lane as claimed by the petitioners said to be located on the eastern side of Nadigar Sangam property. Subsequently, Mr.Su.Srinivasan produced a communication dated 12.07.2017 enclosing a copy of sketch of Habibullah Road Post Office and the lease agreement entered into between the 6th respondent and the postal department. It is stated that the 7th respondent formed the 6th respondent as a Public Charitable Trust by virtue of Deed of Declaration of Trust dated 30.05.1987. A perusal of the said lease agreement dated 26.03.1999 would disclose the boundaries of the property leased out to the postal department which is as follows:

North by Swami Sankaradoss Mandapam
South by open space within the compound
East by ARO's room
West by Devar Thirai Arangam

The sketch also does not disclose the existence of any lane as claimed by the petitioners.

13. The Corporation of Chennai produced block maps pertaining to the years 1940 and 1975 and they do not reflect the existence of Prakasam Lane. The Road War Register, Division No. 113, Unit 26, Zone IX was produced before this Court and they also do not disclose the existence of any lane, known as Abdul Aziz Mutali Lane, as claimed by the petitioners. The revenue records as well as Corporation records do not disclose the existence of any lane on the eastern side of the property of the 6th and 7th respondents.

14. The Advocate Commissioner, who visited the property categorically stated that the property of 6th and 7th respondents is located in S.No. 4820/2, Theagaraya Nagar. The linear measurement of 6th and 7th respondents' property as well as boundaries are given as follows:

East to West on the North 141 feet
East to West on the South 141 feet
North to South on the East 319 feet
North to South on the West 321 feet
Bounded on
North by Vidyodhaya Street
South by Habibullah Road
East by T.S. No. 4821
West by T.S. No. 4815/11 & 4891

The learned Advocate Commissioner had also, after verification of the Road Registers maintained by Chennai Corporation and Revenue Registers maintained by Tahsildar stated that they do not disclose 33 feet lane on the eastern side of the property. Further, he categorically stated that the propoerty was purchased by the private respondents through sale deed dated 15.07.1957 bearing Document No. 700/1957, S.R.O., T.Nagar, Chennai and they are in possession of the property apart from having patta in the name of the 7th respondent. The Advocate Commissioner enclosed block map/sketch dated 07.04.1940 and block map/sketch dated 01.10.1975 maintained by Chennai Corporation Road Sketch for Block No. 110 maintained by the Chennai Corporation, Road Register and Sketch of Roads maintained by the Corporation of Chennai, sketch prepared by the Sub Inspector of Survey, Guindy Taluk as per 1940 and 1975 maps. A perusal of those maps and sketches would also prove that there is no existence of such lane as claimed by the petitioners.

15. A close scrutiny of the sale deed dated 15.07.1957 executed in favour of the 7th respondent by A.R. Sahasranamam and K.A. Ramachar would reveal that the 7th respondent purchased the property measuring about 18 grounds and 2061 sq.ft comprised in S.No. 4820/2 in T.S. No. 8492, Block No.110 of T.Nagar Village. Therefore, the contention of the petitioners in paragraph No.10 of the writ affidavit that the 7th respondent purchased only 14 grounds and they now claim 18 grounds usurping 33 feet road abutting eastern side of the 7th respondent's property is not sustainable.

16. The 7th respondent was issued patta by the revenue authorities on 10.07.2010. Therefore, the title and possession of the 7th respondent have been proved by the 7th respondent negating the claim of the petitioners. The property tax statement along with latest property tax receipts issued by the Corporation would disclose that tax has been paid by the 7th respondent. Similar is the case of water connection. The 7th respondent was granted planning permit by CMDA on 24.03.2017 and building permission to put up construction was granted on 27.04.2017 by the Corporation of Chennai, which are evident from the documents produced before this Court. The road sketch of the property is also produced.

17. The valid documentary evidence produced by the 6th and 7th respondents to prove title, possession and extent of the property of the 7th respondent is confirmed by the maps and sketches maintained by the Revenue Authorities as well as Corporation Authorities. There is no evidence to prove that there existed 33 feet lane namely Abdul Aziz Mutali Lane. The Corporation as well as Revenue Authorities have also denied in their counter affidavit that there existed such a lane. Even the Postmaster General who was subsequently impleaded as a party respondent has not produced any document to show that post office was located in that lane.

18. The petitioners have been given ample opportunity to produce documents and prove the existence of the lane. In spite of that, the petitioners are unable to produce any document. This Court took efforts to find out the facts by summoning all the documents which are in possession of the Revenue Authorities as well as Corporation Authorities. However, there are no documents produced either by the petitioners or by the authorities to prove the existence of lane. Above all, the Advocate Commissioner's report beyond doubt prove the absence of any lane as claimed by the petitioners.

19. The documents produced by all the authorities would undoubtedly prove that there was no lane as claimed by the petitioners. Though this Court is not supposed to conduct a

roving enquiry into the disputed facts, in an endeavour to find out the truth, this Court made all efforts by summoning all the documents from the authorities as the petitioners will not be in a position to produce all the documents. However, there is nothing to favour the petitioners. In view of that, the claim of the petitioners is liable to be rejected, accordingly, rejected.

20. However, it is made clear that the petitioners have filed a comprehensive suit in C.S. No. 649 of 2013. In the said suit, written statements have been filed and it is pending for trial. The dismissal of this writ petition will not prevent the petitioners from proving their claim in the said suit. To put it in other words, this order will not be a res judicata for the civil suit in which all the parties concerned have got every right to adduce evidence, both oral and documentary, to prove their respective claims. Reserving the rights of the parties in the civil suit, as stated above, this writ petition is dismissed. No costs. Connected W.M.P is closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Housing and Urban Development
Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Commissioner of Town and Country
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5. The Commissioner of Police (Traffic),
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

6. The Postmaster General,
Chennai City Region,
Chennai - 600 002.

+1cc to Mr.P.Valliappan, Advocate, SR.No.75691
+1cc to the Govt.Pleader, Vide Sr.No.75591
+1cc to Mr.Krishna Darwin Advocate, SR.No.74534

W.P. No. 11605 of 2017

Kak(27/09/2019)