



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.804 of 2013

and

M.P (MD)No.1 of 2013

S.Sundararajan

... Appellant

Vs.

1.The Government of Tamil Nadu
rep. by its Secretary
Municipal Administration and
Water Supply Department,
Secretariat, Chennai - 600 009.

2.The Collector of Madurai
Madurai - 625 020.

3.The Commissioner,
Madurai Municipal Corporation,
Madurai - 625 002.

...Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed by the learned Single Judge in W.P (MD)No.597 of 2010 dated 18.04.2013.

Prayer in WP(MD). 597/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India for the issuance at a WRIT OF MANDAMUS, directing the Respondents to pass orders for payment of adequate compensation as requested in the notice sent by the Petitioner through his lawyer in lien of the properties so taken within appropriate time frame.

For Appellant : Mr.N.Murugesan

For Respondents : Mr.Aayiram K.Selvakumar
Addl. Govt. Pleader (for R1 & R2)

Mr.R.Murali (for R3)



JUDGMENT

(Judgment of the Court was delivered by **K.KALYANASUNDARAM, J.**)

This writ appeal is directed against the order of the learned Single Judge dated 18.04.2013 passed in W.P(MD)No.597 of 2010.

2.The appellant filed the writ petition praying for issuance of Writ of Mandamus directing the respondents to pay compensation as requested in the notice sent by his lawyer within a time frame.

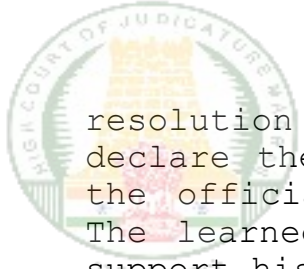
3.According to the petitioner, he was absolute owner of the land measuring to an extent of 14600 sq.ft out of total extent of 2 acres and 70 cents of the lands situated in T.S.No.1706/02 of Bibikulam in Madurai Town. The respondents had a proposal to form a scheme road through the petitioner's property and hence, the petitioner instituted a suit in O.S.No.90 of 1998 before the First Additional District Court, Madurai, for permanent injunction restraining the Madurai Corporation from forming any scheme road in his property. The suit was decreed exparte on 15.09.2000. It is further stated that he filed an execution petition to enforce the decree and in the course of the proceedings, the third respondent made a promise that they would acquire the land of the petitioner under the Land Acquisition Act and would pay necessary compensation and hence, he did not proceed with the Execution Petition further.

4.The grievance expressed by the third respondent is that the third respondent in violation of the promise given in the execution proceedings trespassed into the property by forming road and hence, the writ petition.

5.In the counter filed by the third respondent before the learned Single judge, it has been stated that the petitioner owned 2 acres 70 cents in T.S.No.1706/02 of Bibikulam in Madurai Town and he promoted his property by forming an unapproved layout and sold 103 plots by showing the 50 feet road. It is the case of the third respondent that they never acquire the land of the petitioner and the plot owners themselves formed a road and it has become a public road and on that ground they sought for dismissal of the writ petition.

6.The learned Single Judge dismissed writ petition by imposing cost of Rs.25,000/-. Assailing the order, the present writ appeal has been filed.

7.Mr.N.Murugesan, learned counsel for the appellant while reiterating the case of the appellant would urge that the third respondent corporation had trespassed into the property of the petitioner and formed a road. According to the learned counsel, even if the land in dispute had been shown as 50 feet road in the unapproved layout, it cannot be treated as a public road and the procedures have been contemplated and as per Section 225, proper



resolution followed by proper notification has to be issued to declare the same as a public road. If there is no declaration in the official Gazateer, the appellant is entitled for compensation. The learned counsel placed reliance on the following decisions in support his case.

- (i) **(1995)1 SCC 47** [PT.Chet Ram Vashist (dead) by Lrs. vs. Municipal Corporation of Delhi]
 (ii) **2008-2-L.W.653** [Kanagam and 7 others Vs. The Commissioner, Coimbatore Corporation & others]

8.It is the further submission of the learned counsel by citing the decision in the case of the **Commissioner, Madurai Corporation vs. Sri Subramaniaswamy Bajanai Madam Trust** reported in **2006(5) CTC 276** that the writ petition cannot be rejected on the ground of laches.

9.Per contra, the learned counsel for the respondents made submission in support of the decision of the learned single Judge. In the instant case, it is not in dispute that the petitioner formed an unapproved layout in his land measuring to an extent of 2 acres 70 cents in the year 1964 and between 1964 and 1996 he sold the plots to 103 third party purchasers. In the sale deeds, he had shown the 50 feet road as access to their plots. The learned single Judge, while considering these aspects, has held that the petitioner cannot now ask the respondent authorities, after selling all those plots to the individual plot owners, to acquire the road portion that was shown by the petitioner in the unapproved layout and to pay him compensation. It is also observed that the appellant cannot sell 103 plots without providing a public pathway to those plot owners. In paragraph 17 of the order, the learned single Judge has referred the Judgments relied on by the learned counsel for the appellant and observed that the Judgments are of no use to him. It is to be noted that the writ petition was not rejected on the ground of laches. Hence, the decisions in **2006(5) CTC 276** (cited supra) has no application to the facts of this case.

In the considered opinion of this Court, the appellant has not made out any case to upset the findings of the learned single Judge. We find no merits in the writ appeal and hence, the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS I)

// True Copy //



To

1.The Secretary to the Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai - 600 009.

2.The Collector of Madurai
Madurai - 625 020.

+1CC to Mr.R.MURALI , Advocate SR.No. 53878.

W.A.(MD)No.804 of 2013
and
M.P(MD)No.1 of 2013

13.03.2019

DS/ /SAR- (28.03.2019) 4P 4C