

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.535/2019

V.Sridhar ... Petitioner

Versus

- 1.The District Collector
Chennai District, Chennai.
- 2.The Commissioner
Greater Corporation of Chennai
Rippon Building, Chennai.
- 3.The Zonal Officer
Zone 8, Greater Corporation of
Chennai, 36G, Pulla Avenue
Shenoy Nagar, Chennai 600040.
- 4.The Executive Engineer
Greater Corporation of Chennai,
36G, Pulla Avenue
Shenoy Nagar, Chennai 600040.
- 5.The Assistant Engineer
Division 98, Greater Corporation of
Chennai, Aspiran Garden
New Avadi Road, Chennai.
- 6.The Member Secretary
CMDA, Thalamuthu Natarajan Maligai
Egmore, Chennai 600 008.
- 7.The Executive Engineer
PWD & WRO, Arani River Basin Division
[WRO], Chepauk, Chennai 600 005.

8.Nessaiah .. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of mandamus directing the respondents 2 and 7 to consider the representation of the petitioner dated 28.09.2018 and to take action thereon within time frame that may be fixed by this Court.

For Petitioner : Mr.S.Saravanan
For R1 & R7 : Mr.E.Manoharan, Spl.GP
For RR2 to 5 : Mr.P.Anantharangan
For R6 : Mr.S.Thiruvengadam
For R8 : Mr.P.B.Balaji

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

- (1)The writ petition was filed for espousing the individual / private cause of the petitioner and the Hon'ble Roster Judge, having felt that the matter in issue involves public interest, directed the Registry to obtain appropriate orders and to list the matter before this Bench and accordingly, the writ petition is converted as a Public Interest Litigation and listed before this Court.
- (2)The learned counsel for the petitioner has drawn the attention of this Court to the materials placed and would submit that the lands admeasuring to an extent of 21 grounds and 915 sq.ft., in RS.No.3149/2, Kuttiyapa Gramani Street, Kilpauk, Chennai, was purchased by Tmt.Gnana Achariyammal and 4 others by way of a registered Sale Deed bearing Doc.No.2291/1946 dated 04.11.1946 registered on the file of the Office of the Sub Registrar, West Madras. Therefore, Tmt.Gnana Achariyammal and 4 others, including Mercy Arul Marni Deva Sahayam got the said land divided among themselves by way of a registered Partition Deed dated 27.01.1969 bearing Doc.No.2134/1969 registered on the file of the same Sub Registrar Office. According to the learned counsel for the petitioner, in the said Partition Deed, it was clearly mentioned that since the land which is the subject matter of partition, is under-developed and landlocked and in the absence of facilities, parties to the agreement agreed that they shall form a Corporation road on the Northern side of the property and to provide with all amenities.
- (3)It is the further submission of the learned counsel for the petitioner that believing the said recital, the petitioner had purchased the property which was allotted to Mercy Arul Marni Deva Sahayam, from one of her legal heirs, viz., Mrs.Suguna Deva Sahayam, by way of registered Sale Deed dated 01.07.2005 bearing Document No.2860/2005 on the file of the Sub Registrar, Purasaiwalkam. It is the specific case of the petitioner that

the 8th respondent had devised a plot and in execution of the plot, had approached the Executive Engineer, PWD, WRO, Arani River Basin Division, Chepauk, Chennai as well as the jurisdictional District Collector with a request to form a bridge between Otterinullah and offered to give a land 5 feet in width and 317 meters in length in lieu of construction of a 37 feet width bridge across Otterinullah, at the cost of public exchequer for his exclusive usage in stead of forming a Corporation road for utilisation of the general public. The petitioner also expressed his grievance that the respondents being the public authorities, ought not to have acceded to the said request and constructed a bridge for the exclusive use of few individuals and therefore, the petitioner is constrained to submit a representation dated 28.0.2018 to the respondents 1 to 7 to look into the matter and ensure compliance of the Development Control Rules and see to that the bridge constructed, is for the user of the public also and since the said representation has not been considered, the petitioner is constrained to approach this Court by filing this writ petition.

- (4) When the matter was listed on 03.12.2019, this Court directed printing the name of Mr.S.Thiruvengadam, learned Standing counsel for the 6th respondent and when the matter is listed today, the 7th respondent has filed a counter affidavit and would state among other things, that the 8th respondent had divided a plot and approached the Executive Engineer, PWD, WRO, Arani River Basin Division, Chepauk, Chennai, and the District Collector with a request to form a bridge upon Otterinullah and offered to give a land with 5 feet width and 317 metres in length and it was also agreed and Tmt.Gnana Achariyammal and 7 others [including the 8th respondent herein] had also executed a Gift Deed, gifting an extent of 1585 sq.ft., of land in favour of His Excellency the Governor of Tamil Nadu, for construction of the said bridge and that apart, also remitted a sum of Rs.25,85,000/- in favour of the Executive Engineer, PWD, WRO, Arani River Basin Division, Chepauk, Chennai, towards the cost of the construction of the said bridge. Subsequently, permission was cancelled by the District Collector and it was revoked with a condition that an undertaking shall be obtained from the 8th respondent for user of the said bridge for public pathway also and it was also agreed and as such, the pathway came into being. The learned Standing counsel further took a stand that the amount of construction of the bridge was paid by the 8th respondent to the District Collector, who in turn, deposited the same to the credit of PWD and the plans and estimates were prepared by PWD in terms of paragraph 207 of the Tamil Nadu Public Works Department Rules, considering the hydraulic parameters of the Otteri Nullah and the bridge was constructed long back, especially, taking into consideration,

it also serves public purpose. In sum and substance, it is also the stand of the learned Senior counsel that the dispute between the petitioner and the 8th respondent, is purely private in nature and insofar as they are concerned, after necessary approval and sanction and payment of cost of the construction, the bridge was constructed and it is also put into use and hence, prays for dismissal of this writ petition.

(5) The 8th respondent has also filed counter affidavit and apart from supporting the stand of the 7th respondent, also took a stand that in terms of the Partition, the road would be formed and the petitioner has suppressed the fact that Kuttiyapa Gramani Street was formed accordingly for having access to his land and the 8th respondent has also paid the cost of Rs.25,85,000/- gifting an extent of 1585 sq.ft., of land and that apart, he has also paid an additional sum of Rs.2,10,000/- to enable the PWD Department to take up the work and in the light of the said fact, the petitioner has no locus standi to file the present writ petition, prays for dismissal of the writ petition.

(6) Heard the submissions of Mr. E. Manoharan, learned Special Government Pleader appearing for the official respondents and Mr. P. B. Balaji, learned counsel appearing for the 8th respondent and they would submit that in the light of the factual narration given in their respective counter affidavits, the petitioner has no locus standi at all to maintain the writ petition and he wants to have easementary right and the remedy open to him, if any, is to avail the Common Law remedy, subject to Law of Limitation and delay and laches and pray for dismissal of this writ petition with exemplary cost.

(7) This Court has paid its best attention to the rival submissions and also perused the materials placed before it.

(8) It is the stand of the 8th respondent, in terms of the recitals in the Partition Deed that the road, viz., Kuttiyapa Gramani Street, came to be formed and the Chennai Metropolitan Water Supply and Sewerage Board claimed to be its property and took possession of the same and therefore, the petitioner made a plea for construction of a bridge across the Otteri river and after getting necessary sanction and payment of cost, also gifted the land in the form of Gift Deed executed by the 8th respondent, the bridge came into being in the year 2015 and also denied the suggestion that the petitioner alone is having the access and that apart, the public is also having access to the bridge.

(9) The petitioner before purchasing a portion of the property, could have caused proper verification as well as collected the

particulars before filing the writ petition and from the counter affidavits filed by respondents 7 and 8, it appears that the petitioner has failed to do so and that apart, the petitioner also failed to exercise due diligence before purchasing the said property.

(10)The points urged by the learned counsel for the petitioner, in the considered opinion of the Court, would also revolve around adjudication of the disputed questions of fact for which, filing of the writ petition is not the appropriate remedy.

(11)This Court, in the light of the above facts and circumstances and the reasons assigned above, is of the considered view that the writ petition lacks merit and substance and deserves dismissal.

(12)Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

AP

To

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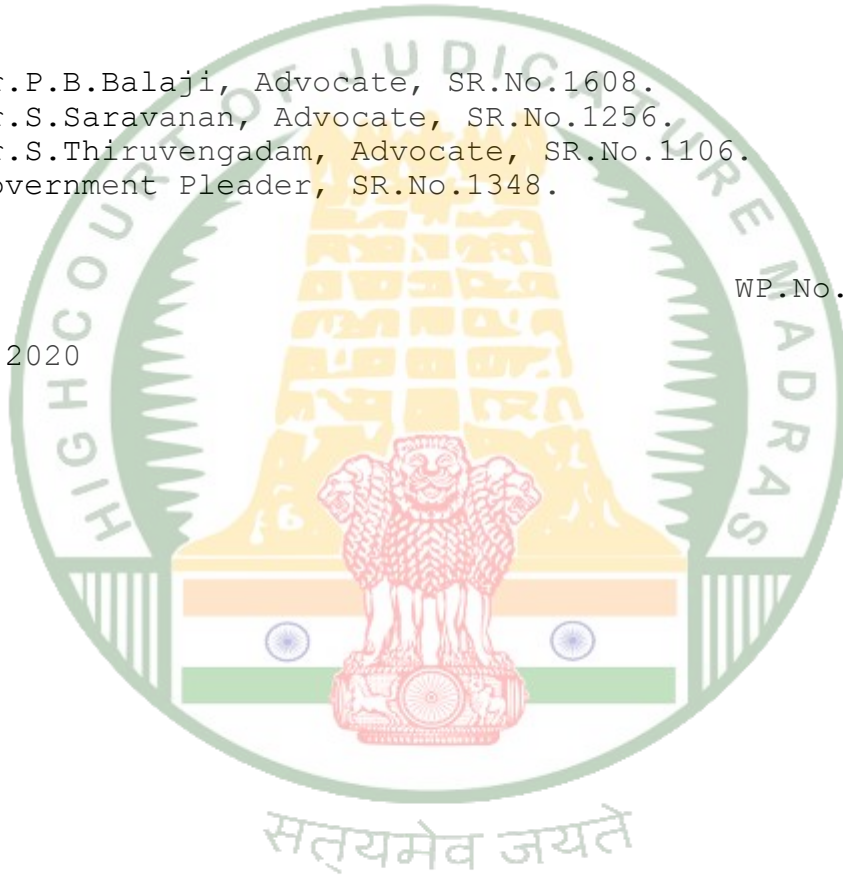
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7.The Executive Engineer
PWD & WRO, Arani River Basin Division
[WRO], Chepauk, Chennai 600 005.

+1cc to Mr.P.B.Balaji, Advocate, SR.No.1608.
+1cc to Mr.S.Saravanan, Advocate, SR.No.1256.
+1cc to Mr.S.Thiruvengadam, Advocate, SR.No.1106.
+1cc to Government Pleader, SR.No.1348.

PVS (CO)
CSR:06.02.2020

WP.No.535 of 2019



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